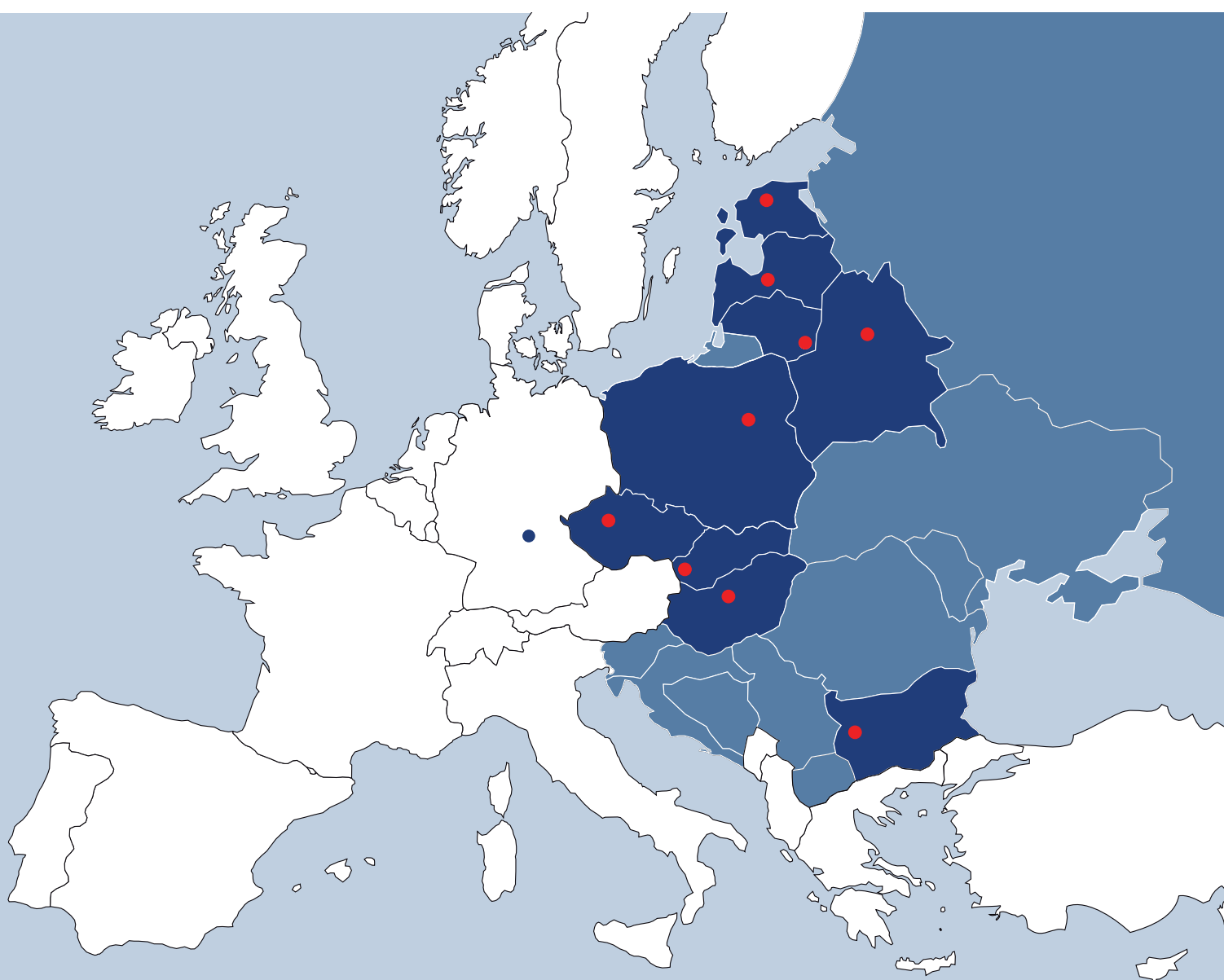


INSOLVENCY SURVEY

Central- and Eastern Europe

2013/2014



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Introduction

Financial distress and insolvency continues to be a main risk factor for businesses. Company managers and other executive staff have to be aware of these risks and the implications of business partners facing insolvency. Only then are they able to make the right decisions well in advance, to secure the interests of their businesses and to hope to find themselves in a more favourable position than unprepared and unsecured creditors in insolvency proceedings.

A serious challenge for businesses operating cross-border is that insolvency laws still vary considerably between different states, even within the European Union (“EU”) and despite the EU having recently intensified processes aimed at an increased degree of harmonization of the insolvency laws of member states. The EU Insolvency Regulation, enacted more than ten years ago and soon to be amended based on the experience of the first ten years of its application, was certainly a significant step forward in offering a certain degree of harmonization and legal certainty. However, it was never the aim of the Regulation to harmonize the member states¹ insolvency laws. What is more, though directly applicable in the member states, the provisions in the Regulation are interpreted and applied differently in different member states.

This Survey focuses on Central and Eastern Europe (“CEE”) a region with a comparably recent history of a free market economy where insolvency proceedings are widely accepted as an instrument either to liquidate the debtor in orderly proceedings or – in some jurisdictions – to help rescue the company and to allow it to continue business. In the wake of the financial crisis since 2008 many countries in CEE have reacted to the need to modernize their legal framework for insolvencies and have amended or completely re-enacted their insolvency and related laws.

This Survey aims to provide an overview of the rapidly changing legal framework for insolvencies in CEE, to help decision makers get a sense of the impact of insolvencies in CEE countries and thus to enable them to take the right decisions at an early stage, including the decision to consult insolvency experts to help secure their interests.

Frank Heemann

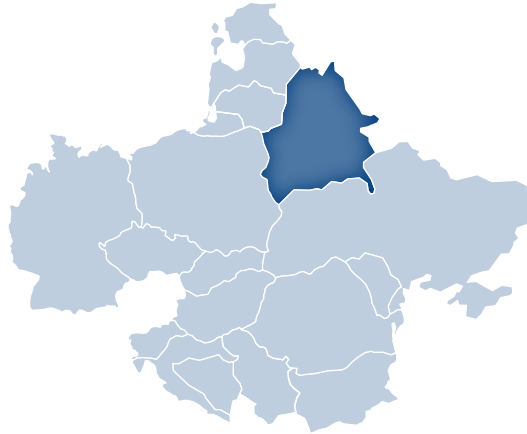
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Note that this Survey was prepared based on laws in effect on 30 June 2013. Later changes have not been reflected. Note also that, despite having been prepared diligently, this Survey and the information in it are not to be understood as legal advice, which should be sought from an insolvency specialist for each specific case.

¹ Except for Denmark.

Insolvency



- **Legal framework**
 - Act on Insolvency (Bankruptcy) of 2012.
 - Presidential Edict on Insolvency (Bankruptcy) of 2013.
 - Decisions of Government, Ministry of Economy and Supreme Economic Court.
- **Insolvency phases**
 - Protection period (opening proceedings).
 - Insolvency proceedings (final proceedings).
 - Voluntary settlement.
- **Types of insolvency proceedings**
 - Bankruptcy proceedings (aimed at liquidation)
 - Restructuring proceedings (aimed at financial rehabilitation of the debtor)
- **Filing parties**
 - There are both obligatory and optional filing procedures for a debtor.
 - Creditors are entitled to file.
 - Representatives of the debtor's employees are entitled to file.
 - Public prosecutor is entitled to file.
 - Authorised state bodies are entitled to file (tax, customs, social insurance authorities, etc.).
- **Insolvency register**
 - Information about insolvency proceedings is published by the Supreme Economic Court (Bulletin of the Supreme Economic Court)
 - Some information is available at:
<http://court.by/online-help/bankruptcy/stats-privately-enterprises/> (in Russian only)
 - It is planned to create a uniform state insolvency register which will be in the public domain.
- **Competent court**
 - Claims for initiating insolvency proceedings must be filed in written form with the court where the company is located.

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Bankruptcy proceedings (aiming at liquidation): **Belarus**

Insolvency

- **Grounds for filing**
 - If the insolvency is constant or is tending to become constant the debtor must file for insolvency:
 - if after satisfying the claims of one or several creditors it is impossible to satisfy claims of other creditors in full or if satisfaction of claims will stop the debtor's activity;
 - if the debtor's corporate body which is entitled to make decision on liquidation decides to file for insolvency; if the owner of the property of the unitary enterprise decides to file for insolvency;
 - if during the liquidation procedure it appears that the debtor's assets are not sufficient to satisfy creditors' claims in full. Moreover, the debtor may file for insolvency if it is evident that it will not be able to pay under employment-related obligations in time.
- **Right to bankruptcy petition**
 - Creditors, representatives of the debtor's employees, competent public authorities are entitled to file if:
 - A creditor has reliable documentary proof that the debtor's insolvency (or is becoming) constant within 12 months prior to balance sheet formation.
 - Enforcement of a court decision during the last three months was not possible due to debtor's lack of assets.
- **Sanctions for not filing a bankruptcy petition**
 - If the debtor filed for insolvency while it had enough funds to satisfy all creditors' claims in full, the debtor is liable for actual damage caused by filing.
 - If insolvency is caused by the debtor's shareholders or its managing bodies, they jointly bear subsidiary liability towards creditors.
 - If the debtor's officials responsible for filing do not file for insolvency as required by law, they jointly bear subsidiary liability towards creditors.
 - The debtor's officials responsible for filing are subject to administrative or criminal liability if they fail to file for insolvency as soon as grounds for filing arise.
- **Opening proceedings**
 - Opening procedures may not exceed three months. In extraordinary cases subject to the debtor's request the court may establish a 3-year protection period aimed at out-of-court restructuring of the debtor.
 - The court appoints an interim administrator who:
 - secures the debtor's assets;
 - ascertains who the creditors are;
 - analyses the debtor's financial state and solvency;
 - facilitates the debtor's operations and promotes voluntary settlement;
 - reports to the court on the debtor's financial state and solvency.
 - The interim administrator does not take over the functions of the debtor's managing bodies but controls their activity. If it becomes evident to the court that the debtor's managing director is impeding the activities of the interim administrator, the court suspends the powers of the managing director and empowers the interim administrator to perform functions of the management body.
- **Final proceedings**
 - Information about opening bankruptcy proceedings is published in the mass media.
 - An administrator is appointed.
 - Powers of the debtor's bodies are transferred to the administrator.
 - Administrator is empowered to dispose of the debtor's assets and make transactions on behalf of the debtor in compliance with legal limitations.
 - Administrator organizes the creditors' meeting.
 - Administrator drafts an insolvency plan (liquidation or restructuring) and submits it to the creditors' meeting.
 - Creditors approve or reject the insolvency plan.
 - On the basis of the creditors' decision the court decides on liquidation or restructuring.

Bankruptcy proceedings (aiming at liquidation): **Belarus**

Insolvency

- **Selection of liquidators**
 - The court appoints an administrator from candidates proposed by the petitioner.
 - The insolvency administrator must have a certificate of category A, B or C issued by a competent authority, which enables the administrator to manage an insolvent company with up to 100 employees, up to 1000 employees or a company with an unlimited number of employees.
- **Foreign liquidators**
 - Only an individual or legal person certified by the competent Belarusian authority may be an insolvency administrator. In order to apply for certification an individual must be registered as an individual entrepreneur.
 - Foreigners might file for certification if they have a residence permit in Belarus.
- **Ethical standards for liquidators**
 - Code of Conduct for insolvency administrators (2006), can be found at <http://www.bankrot.by/zak/154> (available only in Russian).
- **Time for lodging creditors' claims, consequences of failure**
 - Creditors must file claims within 2 months after information on opening insolvency proceedings is officially published.
 - In case of delay a creditor may claim for reinstatement of the period. The decision on reinstatement is taken by the court.
- **Costs of filing claims**
 - None
- **Administration costs**
 - Remuneration consists of: 1) minimum reward of 1 base unit for each calendar day (approximately 8,4 Euro); 2) additional quarterly reward; 3) extra compensation.
 - Providing there is a contract between the administrator and the public authority, the administrator's remuneration is specified by the contract and is calculated according to the procedure established by governmental resolution.
 - The administrator's remuneration is established by the court based on a proposal by the creditors' meeting.
 - Generally remuneration is paid from the debtor's assets.
 - If the debtor's assets are not sufficient, remuneration is paid from the state budget.
 - General rules on the administrator's remuneration are established by governmental decision.
- **Secured creditors**
 - Claims by secured creditors rank fourth in priority and are paid after the following claims are satisfied:
 - claims by individuals on indemnification for death and health injury (first priority);
 - claims by employees (second priority);
 - claims for compulsory payments such as taxes, duties, etc (third priority).
 - Claims secured by pledge or mortgage are satisfied from the value of the collateral as well as from the value of other assets.
- **Unsecured creditors**
 - Claims by unsecured creditors have fifth (lowest) priority and are settled proportionately.
- **Employees**
 - According to the priority order, payments to employees are made in the second rank and include salary and compensation.
- **Nullifying contracts**
 - The court may invalidate:
 - a transaction concluded 6 months prior to bankruptcy proceedings if made in favour of one or several creditors and against the interests of other creditors;
 - a transaction concluded 1 year prior to bankruptcy proceedings if the debtor intentionally caused harm to creditors and other parties to the transaction who were aware of this;

Insolvency

- a transaction concluded 3 years prior to the bankruptcy proceedings if insolvency was caused by the debtor's criminal action and other parties to the transaction were aware of this;
- a transaction that contradicts state interests;
- other transactions.

Restructuring proceedings (aiming at rescuing a legal entity): **Belarus**

Insolvency

- **Preconditions for restructuring**
 - The court starts restructuring proceedings:
 - On the basis of a creditors' decision.
 - At its own initiative in case of a disagreement between the administrator and creditors; if creditors do not approve the restructuring plan proposed by the administrator. The court may initiate restructuring proceedings on an agricultural company even if the administrator and creditors decided on liquidation. The court may do so if it ascertains that the debtor will be able to satisfy creditors' claims from profit that the debtor will receive after the respective agricultural period.
- **Stages**
 - Drafting of a restructuring plan by the administrator.
 - Approval of restructuring plan by creditors.
 - Decision of the court to open restructuring proceedings.
 - Taking restructuring measures required by law.
 - Administrator's report to creditors and proposal: (i) to cancel restructuring due to restoration of the debtor's solvency; (ii) to conclude a settlement agreement; (iii) to prolong the restructuring period; (iv) to cancel restructuring proceedings and to start liquidation proceedings.
 - Approval of the administrator's report and taking a decision based on the administrator's proposal.
 - Approval of the administrator's decision by the court and setting a period for satisfaction of creditors' claims.
 - If creditors' claims are satisfied within the set period, the bankruptcy proceedings are cancelled by the end of the period.
 - If creditors' claims are not satisfied within the established period, the court takes a decision on the debtor's liquidation.
- **Restructuring plan: main content**
 - Restructuring measures and duration of restructuring.
 - Analysis of the debtor's activities, financial analysis and analysis of the debtor's solvency.
- **Filing a petition for restructuring proceedings**
 - The restructuring plan approved by the creditors' meeting together with the minutes of the creditors' meeting are to be filed with the court within five days after the respective creditors' meeting.
- **Main content of petition**
 - No requirements.
- **Time for lodging creditors' claims, consequences of failure**
 - Creditors' claims are submitted before the decision on restructuring is taken.
 - Creditors must submit their claims within 2 months after information on opening insolvency proceedings is officially published.
 - In case of a delay a creditor may claim reinstatement of the period. The decision on reinstatement is taken by the court.
- **Selection of restructuring administrators**
 - The insolvency administrator is appointed before the decision on liquidation or restructuring is taken. The appointed administrator is eligible to perform their functions either in liquidation or in restructuring proceedings.
- **Foreign administrators**
 - Only an individual or a legal person certified by the competent Belarusian authority may be an insolvency administrator. In order to apply for certification the individual must be registered as an individual entrepreneur.
- **Ethical standards for restructuring administrators**
 - Code of Conduct for insolvency administrators (2006), can be found at <http://www.bankrot.by/zak/154> (available only in Russian)

Restructuring proceedings (aiming at rescuing a legal entity): **Belarus**

Insolvency

- **Main rights of the creditors' meeting**
 - Approval of restructuring plan.
 - Approval of proposals and decisions of the administrator.
 - Conclusion of settlement agreement.
- **Final proceedings**
 - Claims by creditors are satisfied in compliance with the restructuring plan.
 - After restructuring is completed, rights of the debtor's management bodies are restored and all restrictions imposed during bankruptcy proceedings are removed.
- **Self administration (debtor-in-possession)**
 - Such a restructuring instrument is not known to Belarusian law.

Insolvency



- ➔ **Legal framework**
 - Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
 - Commercial Act, Part 4 (Insolvency), last amended DV 20/2013.
 - Bank Insolvency Act, last amended DV 105/2011.
- ➔ **Insolvency phases**
 - Opening proceedings: Insolvency court investigates conditions for opening proceedings and sets the exact date in the past on which the prerequisites for the insolvency proceedings were first met. This date is known as “initial date of insolvency” and plays a major role in regaining insolvency estate.
 - Main proceedings: The enterprise is restructured and/or liquidated.
- ➔ **Types of insolvency proceedings**
 - During the insolvency proceedings a restructuring procedure can take place. However, such a procedure is not a must. Bank insolvency does not go through restructuring procedure.
 - If restructuring does not take place or if it fails, the insolvency proceedings go on to result in liquidation of the debtor’s enterprise.
- ➔ **Filing parties**
 - The following can file for insolvency proceedings: the management of the debtor, a creditor, a liquidator of an enterprise in liquidation, the National Revenue Agency in case of public debt to the treasury, the Bulgarian National Bank in the case of bank insolvency.
 - Obligated to file under certain conditions: debtor, liquidator of an enterprise in liquidation.
 - Entitled to file for restructuring procedure: debtor, insolvency manager, creditors who hold at least 1/3 of secured debt, creditors who hold at least 1/3 of unsecured debt, owners who hold at least 1/3 of capital, any personally liable partner, 1/5 of all employees.
- ➔ **Insolvency register**
 - All relevant official publications are found in Bulgarian only under the webpage of the Bulgarian Commercial Register: <http://www.brra.bg/>.
- ➔ **Competent court**
 - Petitions for initiating bankruptcy and restructuring proceedings must be filed in writing with the court where the enterprise is located.

Insolvency

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Bankruptcy proceedings (aiming at liquidation): **Bulgaria**

Insolvency

- **Grounds for filing**
 - The debtor is unable to pay a debt due arising out of a commercial deal and/or a public debt due to the state or municipal treasury.
 - Over-indebtedness of a capital-based commercial company.
- **Right to petition for insolvency**
 - The following can file for insolvency proceedings: the management of the debtor, any creditor, a liquidator of an enterprise in liquidation, the National Revenue Agency in the case of public debt to the treasury as well as the Bulgarian National Bank in the case of a bank insolvency procedure.
 - Obligated to file under certain conditions: debtor, liquidator of an enterprise in liquidation.
 - Entitled to file for restructuring procedure: debtor, insolvency manager, creditors who hold at least 1/3 of secured debt, creditors who hold at least 1/3 of unsecured debt, owners who hold at least 1/3 of capital, any personally liable partner, 1/5 of all employees.
- **Sanctions for not filing a bankruptcy petition**
 - Failure to file (in time) for bankruptcy may result in civil, administrative and criminal liability, including prohibition for up to 2 years to be managing director of an enterprise.
- **Opening proceedings**
 - Courts must consider the application immediately in closed session and issue a decision within three days.
 - If necessary, court takes immediate arrest measures and appoints a preliminary insolvency manager.
 - If the court chooses to do so, the debtor's management continues its activity under surveillance by the insolvency manager unless the court deprives the debtor's management of any further rights and concentrates all powers to decide and represent in the appointed insolvency manager.
 - Court investigates if the conditions for opening insolvency proceedings are met and sets the exact date in the past on which this was the case for the first time. This date is known as the "initial date of insolvency" and plays a major role in regaining insolvency estate.
- **Final proceedings**
 - During the main proceedings, the insolvency estate is increased by revising certain past deals by the debtor.
 - Restructuring procedure may take place without being a must.
 - If the procedure does not start or fails, assets are liquidated and proceeds distributed to debtors with approved claims.
- **Selection of liquidators**
 - Insolvency court appoints insolvency manager from among a list of natural persons registered with the Bulgarian Ministry of Justice.
 - Main requirements for registration: good reputation, university degree in law and/or economy, three years of relevant work experience and passing a qualifying exam.
- **Foreign liquidators**
 - No restrictions regarding citizenship.
 - Foreign candidates must also fulfil the above requirements for registration.
 - Command of the Bulgarian language is a prerequisite. However, this might conflict with EU law.
- **Ethical standards for liquidators**
 - A number of restrictions in the Commercial Act aimed at avoiding conflicts of interest.
 - Government Regulation Nr. 3/27 June 2005 on the procedure for choice, qualification and control over insolvency managers.
- **Time for lodging creditors' claims, consequences of failure**
 - One month from the day of publication of the court's decision to open insolvency proceedings in the electronic commercial register: default creditors lose certain rights, in particular the right to challenge claims already admitted or settled as well as the opportunity to receive payment from assets already liquidated and distributed.

Insolvency

- Three months from the day of publication of the court's decision to open insolvency proceedings in the electronic commercial register: default creditors irretrievably lose the opportunity to file their claims.

→ **Costs of filing claims**

- None

→ **Administration costs**

- A lump-sum remuneration of some 500 EUR payable to the liquidator monthly. The exact amount is set by the court when appointing the insolvency manager.

→ **Secured creditors**

- Paid first of all: creditors, from the proceeds of the security object

→ **Unsecured creditors**

- Included in the lowest rank and settled proportionately

→ **Employees**

- Employment contracts are usually terminated. Employees are paid severance pay of one average monthly wage.
- Employees' claims are secured by the Guarantee Fund.

→ **Nullifying contracts**

- The insolvency manager can cancel any contract that is not fulfilled or is only partially fulfilled by giving 15 days pre-notice.
- Any act of taking over debt, securing debt, contract performance or transfer of assets that has taken place after the initial day of insolvency is void. The claim is not limited by time.
- Certain contracts that are detrimental for the debtor and were closed or performed within three years prior to the day the court opens the insolvency proceedings may be annulled at the initiative of the insolvency manager or any creditor. The claim must be filed within one year from the day the court opens insolvency proceedings.

Restructuring proceedings (aiming at rescuing a legal entity): **Bulgaria**

Insolvency

- **Preconditions for restructuring**
 - Generally, every debtor with sufficient insolvency estate to cover the expenses of insolvency proceedings qualifies for restructuring.
 - Restructuring is not possible when the procedure would obviously only lead to diminishment of the insolvency estate.
- **Stages**
 - Initiation of restructuring proceedings by filing with the court a restructuring plan by the management of the debtor, insolvency manager, creditors who hold at least 1/3 of secured debt, creditors who hold at least 1/3 of unsecured debt, owners who hold at least 1/3 of the debtor's capital, any personally liable partner, 1/5 of all employees. More than one plan can be proposed.
 - Formal check of the plan by the court; the court may require formal corrections from the applicant.
 - Within 7 days from filing a formally correct plan: decision of court to admit the plan to discussion by the creditors meeting; publication of that decision in the commercial register.
 - No sooner than 45 days from the day of publishing: court session at which the creditors meeting has the opportunity to discuss, modify and vote on propositions.
 - Creditors vote on the plan in four separate classes: secured creditors, employees, creditors of public receivables and unsecured creditors. Only creditors whose claims have been accepted by the insolvency manager or have been deemed probable by the court on the basis of persuasive written proof have the right to vote. Votes are submitted personally or by written statement with a notarized signature.
 - Creditors may choose a controlling committee to whom the debtor must report if the plan becomes effective or ask the court to appoint a controlling committee at its discretion.
 - In order to become effective, the plan must receive a simple majority of votes based on the sums claimed by every class of creditors. The amount of the claim decides the weight of a creditor's vote. However, the plan cannot be passed if more than half the total admitted claims vote against it.
 - Creditors may file objections against the plan with the court within seven days from the day of voting.
 - In closed session the court considers the plan and all objections and decides whether to declare it effective. This decision is published in the electronic commercial register and can be subject to appeal. Revision is not possible.
 - Once the restructuring plan becomes final, the insolvency proceedings are discontinued, the mandate of the insolvency manager comes to an end and the debtor continues an independent existence, though must report regularly to the controlling committee. However, if the debtor does not perform strictly under the restructuring plan, the affected creditors who hold no less than 15 % of the whole debt or the controlling committee can apply for renewal of the insolvency proceedings. The latter then continue to end in liquidation of the debtor's enterprise.
- **Restructuring plan: main content**
 - Expected degree of performance to each class of creditors.
 - Prospective collateral for creditors.
 - List of managerial, organizational, legal, financial, technical and other measures.
 - Prospective effect on employment.
- **Filing a petition for restructuring proceedings**
 - Within one month from the day on which the court publishes the creditors' list in the electronic commercial register.
- **Main content of petition**
 - Restructuring plan.
 - List of candidates for the controlling committee.

Restructuring proceedings (aiming at rescuing a legal entity): **Bulgaria**

Insolvency

- Valuation of the debtor's assets.
- List of any creditors who are prepared to take over share capital in exchange for debt.

→ Time for lodging creditors' claims, consequences of failure

- The general rules apply for claims that emerge before opening the insolvency proceedings.
- For later claims that emerge before the restructuring plan is declared effective, the insolvency manager must prepare a separate list. Unless otherwise governed by the plan, the court will oblige the debtor to payment according to this list.

→ Selection of restructuring administrators

- The court may appoint a controlling committee of three to seven members. The rules under which the committee works must be set out in the restructuring plan.
- The members must be natural persons of unrestricted legal capability. No further requirements are set out in the applicable legislation.

→ Foreign administrators

- No restriction exists as to the citizenship of candidates. Compare above.

→ Ethical standards for restructuring administrators

- No special rules exist.

→ Main rights of the creditors' meeting

- Selection of a committee of creditors.
- Approval of the restructuring plan.
- Application to the court for appointment of a controlling committee and proposing its members.

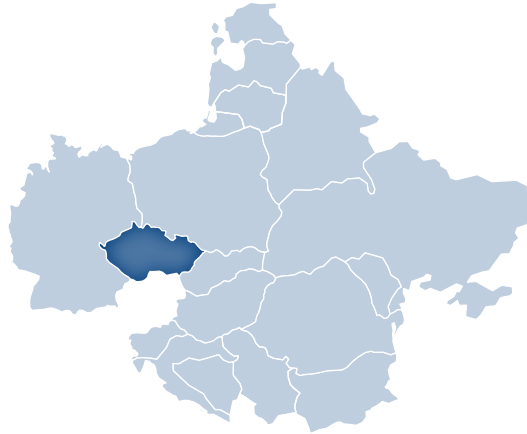
→ Main proceedings

- Claims of creditors are satisfied by the enterprise under the restructuring plan.
- The management body is still allowed to manage and dispose of all assets in compliance with the restructuring plan and under supervision of the controlling committee administrator. Key deals need prior consent by the controlling committee. Nevertheless, rights of third persons accrued in good faith remain unaffected if the deal is closed and executed without the respective act of consent.
- By declaring the restructuring plan effective the court ends the insolvency proceedings but can reopen them at any time if the debtor defaults under the restructuring plan or violates it.

→ Self administration (debtor-in-possession)

- Upon opening the insolvency proceedings, the court may let the debtor continue managing the enterprise under the surveillance of the insolvency manager or deprive the debtor of any such rights and vest them in the insolvency manager.
- Upon declaring the restructuring plan effective, the court may subject the debtor to surveillance by a controlling committee or choose not to appoint one.

Insolvency



→ Legal framework

- Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
- Act No. 182/2006 Coll., on insolvency (in Czech: zákon o úpadku a způsobech jeho řešení (insolvenční zákon) – ‘the Act’).
- Act No. 312/2006 Coll., on Liquidators (in Czech: zákon o insolvenčních správcích – ‘Act on Liquidators’).
- Act No. 118/2000 Coll., Act on Protection of Employees of Employers in financial difficulties (in Czech: zákon o ochraně zaměstnanců při platební neschopnosti zaměstnavatele – ‘Act on Protection of Employees’).

→ Insolvency phases

- Application to start insolvency procedure.
- Decision on bankruptcy and type of procedure.
- Resolving bankruptcy.

→ Types of insolvency proceedings

- Bankruptcy
- Restructuring
- Debt relief for natural persons (not for businesses)

→ Filing parties

- Creditor
- Debtor
- Liquidator

→ Insolvency register

- Insolvency register (insolvenční rejstřík), electronically maintained by Ministry of Justice: <https://isir.justice.cz/isir/common/index.do>

→ Competent court

- District court (Krajský soud / in Prague: Městský soud) for region where debtor has registered seat or domicile.

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Bankruptcy proceedings (aiming at liquidation): **Czech Republic**

Insolvency

- **Grounds for filing**
 - The debtor is insolvent (in bankruptcy), if having:
 - at least two creditors,
 - financial obligations at least 30 days overdue and
 - unable to pay those obligations.
 - A statutory presumption of inability to pay financial obligation arises if the debtor:
 - has not paid a substantial part of financial obligations, or
 - does not pay for more than three months after payment falls due, or
 - cannot discharge an overdue financial obligation to a creditor by enforcement of title, or
 - has not paid in cases listed by the Act as required by the insolvency court.
 - A debtor who is a legal entity or a natural person in business is also insolvent if over-indebted. Over-indebtedness occurs if the debtor has at least two creditors and if total obligations exceed assets.
- **Right to petition for insolvency**
 - The debtor must file an insolvency petition immediately after becoming aware (or with expert care could have become aware) of being insolvent (in bankruptcy).
 - The debtor may file an insolvency petition in case of a “future pending bankruptcy” (this is a legal term from the Act).
 - A creditor may file an insolvency petition but must prove that the debtor is bankrupt. This right has been abused in the past: recently (as of 1 November 2012, Act 334/2012), the Czech legislator has amended the Act countering unfounded insolvency petitions; however, it seems doubtful whether those new rules can effectively counter such abuse.
- **Sanctions for not filing a bankruptcy petition**
 - A person responsible for filing a bankruptcy petition on behalf of the debtor but who violates that obligation is liable to creditors for damage caused to them by late (or non-) filing of a petition unless they prove that they acted with the care of a prudent businessman.
 - Additionally, criminal responsibility derives from the Criminal Code (law No 40/2009 Coll.) e.g. for fraud, damaging creditors, causing insolvency.
- **Opening proceedings**
 - Insolvency proceedings begin with filing an insolvency petition, which appears within 2 hours in the insolvency register (and affiliated registers, e.g. the commercial register), whether it is founded or not.
 - The insolvency court examines the petition and clarifies whether there is bankruptcy or not.
 - The insolvency court issues a ‘decision on bankruptcy’.
 - The insolvency court decides on how to resolve a proven bankruptcy (e.g. bankruptcy, restructuring or debt relief).
- **Final proceedings**
 - Payment of costs of proceedings + liquidator’s fee and expenses.
 - Satisfaction of claims from liquidation of property.
 - Preparation of final report and final balance sheet of the debtor.
 - Decision on settlement of final claims.
 - End of the bankruptcy, the debtor is removed from the commercial registry and ceases to exist.
- **Selection of liquidators**
 - The Ministry of Justice administers a registry of liquidators.
 - The insolvency court appoints the liquidator.
 - The liquidator is appointed by the insolvency court at latest in the decision on bankruptcy. Before this, the insolvency court can appoint a provisional liquidator.

Bankruptcy proceedings (aiming at liquidation): **Czech Republic**

Insolvency

- ➔ **Foreign liquidators**
 - It is possible to appoint foreign liquidators (natural persons and companies that do this work in their states of residence) as host liquidators. Permission to be a host liquidator can be given to a foreign liquidator who:
 - proves employment as a liquidator in a EU member State, and
 - has insurance covering damage.
 - Sections 27 and 28 of the Act on Liquidators contain the details.
 - Foreign liquidators can be from EU member states, the EEA and Switzerland.
 - The application to the Ministry of Justice must be in Czech, but the foreign liquidator need not prove command of the Czech language.
- ➔ **Ethical standards for liquidators**
 - The liquidator must put the interests of creditors above his own interests. The liquidator must act independently and in line with the Act .
 - There is no official code of ethical standards for liquidators.
- ➔ **Time for lodging creditors' claims, consequences of failure**
 - Creditors can lodge their claim immediately after the petition for bankruptcy has been lodged. At latest, those claims must be lodged 30 days up to 2 months after the decision of the insolvency court on bankruptcy (the insolvency court sets the exact deadline in this decision).
 - The insolvency court has to inform every known foreign creditor about the bankruptcy of the debtor and the decision on bankruptcy. This affects all creditors in the EU except Denmark. The Act does not contain stipulations about creditors in other countries (creditors from EEA countries and Switzerland should be treated the same way as EU creditors). Section 430 of the Act should be interpreted so that the deadline for foreign creditors is the same as for Czech creditors (in line with regulation 1346/2000 arts 24 and 25). However, the Czech courts interpret section 430 so that the deadline for lodging claims begins with receipt of the information, i.e. so that known foreign creditors from EU countries except Denmark have a longer deadline to lodge claims. However, this interpretation is unconvincing, as it results in different deadlines for different groups of creditors. Moreover, being a known or an unknown creditor is random.
 - If a creditor misses the deadline for lodging a claim, the insolvency court will not look into the claim and will exclude the claim from further proceedings.
- ➔ **Costs of filing claims**
 - No administration fee
- ➔ **Administration costs**
 - The insolvency court may ask a person who lodges a bankruptcy petition for a deposit up to 2.000,- EUR, which will be used as security for costs of the proceedings.
 - A deposit cannot be required from an employee of the debtor if the claim is job-related.
 - A creditor who has lodged a claim and who is contesting a claim by another creditor must pay a deposit up to 400,- EUR as security for costs of the proceedings.
- ➔ **Secured creditors**
 - Secured creditors are paid first from the proceeds of realizing the security after deduction of legal and administrative costs.
- ➔ **Unsecured creditors**
 - Unsecured Creditors are included in the lowest rank and settled proportionately.
- ➔ **Employees**
 - Job-related claims by employees are put on the same level with claims against the debtor's assets and are satisfied first.
 - Employees may – in cases of insolvency of an employee as debtor – ask the state to pay them their salaries for up to three months, if the conditions of the Act on Protection of Employees are met.

Insolvency

→ Nullifying contracts

- The Act differentiates between nullity and ineffectiveness.
- The insolvency court may examine the nullity and ineffectiveness of contracts and legal deeds and is not bound by decisions of other courts or organs.
- If a contract was pronounced null and void or ineffective, the property benefit gained from it must be given back (details according to the Act).
- A deed is ineffective if used by the debtor to lessen the possibility to satisfy creditors or if giving preferential treatment to one creditor at the expense of others.
- Persons affected by the ineffectiveness of a legal deed must give back the original payment or other fulfilment by the debtor to the debtor's assets (details according to the Act).

Restructuring proceedings (aiming at rescuing a legal entity): **Czech Republic**

Insolvency

Preconditions for restructuring

- Restructuring (under the Act: reorganization) is an option if the debtor is a business (mainly legal entities) and in bankruptcy and if a petition for bankruptcy is lodged. Reorganization is not an option if the debtor is already in liquidation or is a trader in securities (special rules exist for bankruptcy of financial institutions and insurers: in reality, a special kind of reorganization).
- As a general rule, reorganization is restricted to businesses with a yearly turnover of more than ca. 4 Mio. EUR in the last business year or if the debtor has at least 100 employees; but if the debtor presents a reorganization plan together with a petition for bankruptcy at latest 15 days after the decision on bankruptcy, the above restrictions (turnover, employees) do not apply. In that case, the reorganization plan must be approved by at least half the secured and half the unsecured creditors.

Stages

- Petition to the insolvency court for permission to reorganize, at latest ten days before the first meeting of creditors following the decision on bankruptcy.
- Permission of the insolvency court to allow reorganization (if not, the procedure finishes with a negative decision by the insolvency court, and the matter continues as a bankruptcy procedure).
- Possible limitation of the competences of the debtor to act (on application by the liquidator and/or the creditors' meeting). (332)
- Reorganization plan, with content in line with the Act. (338, 340)
- Choice of six methods to realize the reorganization. (341)
- Insolvency court accepts the reorganization plan (348); only those creditors who did not consent to the reorganization plan may appeal against this decision. (350)
- The reorganization plan legally enters into force.
- Functioning of the debtor according to the reorganization plan.
- After the reorganization plan: all claims by creditors are excluded except those mentioned in the reorganization plan. (359)
- If the reorganization plan is violated, the insolvency court can cancel it and further proceedings are in bankruptcy. (363)
- If the reorganization plan is fulfilled, the insolvency court issues a statement that the reorganization has ended; the insolvency court decides on the liquidator's fee and expenses. (364)

Restructuring plan: main content

- Obligatory content of reorganization plan is listed in the Act (340):
 - List of creditors + their position in groups in the reorganization and how to deal with claims by creditors in the different groups.
 - Choice of reorganization method (341):
 - restructuring of creditors' claims by reducing claims
 - sale of debtor's property or all/part(s) of the business
 - merger of the debtor with another legal entity
 - issue of shares or other securities
 - assurance of financing for the debtor's business
 - change of debtor's statutes regulating internal relations
 - Appointing persons who may fulfil the reorganization plan, including their rights.
 - Information whether and under what conditions the activity of the business or part of it will continue.
 - Information about persons involved in financing the reorganization plan or taking over the debtor's obligations or assuring their fulfilment, and information about their participation in the plan.
 - Information under the act on whether the reorganization plan influences the number of employees in the debtor's business, and the documents in this respect.
 - Information about whether and, if so, what the debtor's obligations will be after the reorganization ends.

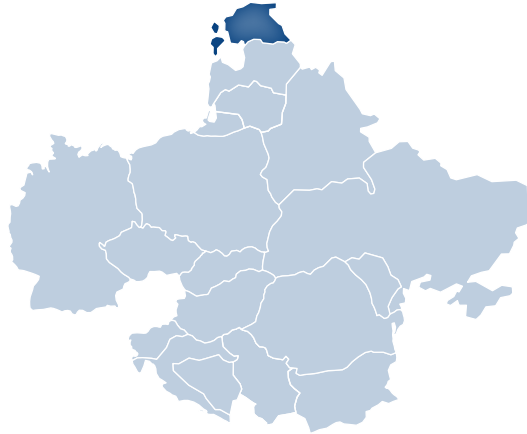
Restructuring proceedings (aiming at rescuing a legal entity): **Czech Republic**

Insolvency

- How court claims are secured and up to what amount these claims will be reserved for creditors under the reorganization plan.
- The reorganization plan must contain true data on the business and legal outlook of the debtor.

- **Filing a petition for restructuring proceedings**
 - The debtor must file a petition for reorganization with the insolvency court in the case of a pending bankruptcy at latest on the day of the decision on bankruptcy. In all other cases, the petition can be filed until ten days before the scheduled first meeting of creditors after the decision on bankruptcy. (318)
 - The decision of the insolvency court confirming reorganization contains a 120-day deadline to file a reorganization plan. (329)
- **Main content of petition**
 - General requirements for petitions according to the Act.
 - All information on the debtor, its capital structure, and on the property of the persons who own the debtor.
 - Information on reorganization method. (319)
- **Time for lodging creditors' claims, consequences of failure**
 - The insolvency court in its decision on bankruptcy sets a deadline for lodging creditors' claims (30 days up to two months after the decision) (136); claims can be lodged immediately after a petition for bankruptcy is filed with the insolvency court.
 - A claim that misses the deadline can no longer be made.
 - Deadlines for foreign creditors: see chapter on general insolvency procedure.
 - The decision on bankruptcy can be joined with the decision of the insolvency court confirming reorganization (not explicitly stated in 329).
- **Selection of restructuring administrators**
 - The insolvency court appoints a liquidator (there is no special administrator for reorganization) according to the principles mentioned in the chapter on general insolvency procedure.
- **Foreign administrators**
 - A foreign liquidator (there is no special administrator for reorganization) can be appointed according to the principles mentioned in the chapter on general insolvency procedure.
- **Ethical standards for restructuring administrators**
 - See principles mentioned in chapter on general insolvency procedure.
- **Main rights of the creditors' meeting**
 - Approval of reorganization plan. (344)
 - If the insolvency court approves the reorganization plan, the creditors' meeting can appeal the decision.
 - Monitoring fulfilment of the reorganization plan. (355)
- **Final proceedings**
 - If the reorganization plan is not fulfilled by the debtor, the reorganization proceedings can be ended by the insolvency court; the proceedings will follow the principles of bankruptcy proceedings (leading to satisfaction of creditors from the complete assets of the debtor and to liquidation of the debtor). (362,363)
 - If the reorganization plan is fulfilled, the insolvency court will issue a decision confirming that the plan was fulfilled and the reorganization completed. (364)
 - The insolvency court decides on the liquidator's fee.
- **Self administration (debtor-in-possession)**
 - The Act does not contain such an instrument of reorganization.

Insolvency



- **Legal framework**
 - Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
 - Bankruptcy Act, last amended 2011 (pankrotiseadus).
 - Reorganisation Act, last amended 2012 (saneerimisseadus).
- **Insolvency phases**
 - Opening procedure: the court examines the grounds for declaring a debtor insolvent.
 - Final procedure: defending claims, sale of bankruptcy estate, satisfaction of claims.
- **Types of insolvency proceedings**
 - Bankruptcy proceedings aimed at liquidation.
 - Abatement: terminating proceedings without declaring bankruptcy if the debtor's assets are insufficient to cover the costs of bankruptcy proceedings and it is impossible to recover or reclaim assets or to file a claim against a member of a directing body.
 - Restructuring proceedings, aimed at rescuing the debtor.
- **Filing parties**
 - Entitled to file: creditors, debtor, other persons such as successors or executor of will.
 - Obligated to file under certain conditions: management board, liquidator.
 - Restructuring proceedings: the enterprise itself.
- **Insolvency register**
 - No separate register. The insolvency of a specific enterprise is indicated in the commercial register.
- **Competent court**
 - Petitions for initiating bankruptcy and restructuring proceedings must be filed in writing with the court where the enterprise is located.

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Insolvency

- **Grounds for filing**
 - The creditor is entitled to file if:
 - The debtor has failed to perform an obligation within 30 days after the obligation has fallen due and the creditor has cautioned the debtor in writing of the creditor's intention to file a bankruptcy petition and the debtor has thereafter failed to perform the obligation within 10 days.
 - It has not been possible within 3 months to satisfy a claim in execution proceedings due to lack of assets or it is evident that the assets of the debtor are insufficient to perform all obligations.
 - The debtor or its legal representative has destroyed, hidden or squandered his property or made grave errors in management or has otherwise intentionally caused insolvency of the debtor.
 - The debtor has notified the creditor, the court or the public of the inability of the debtor to perform obligations.
 - The debtor has left Estonia, or is in hiding, in order to evade performance of obligations.
 - The management board must file if an enterprise is insolvent and insolvency is not temporary.
 - The liquidator must file during liquidation if it is evident that the assets of the enterprise are insufficient to satisfy all creditors' claims.
- **Right to bankruptcy petition**
 - Right to file a petition: creditor, debtor, other persons such as successors, executor of will.
 - Obligation under certain conditions: management board, liquidator.
- **Sanctions for not filing a bankruptcy petition**
 - The members of the management board jointly compensate the enterprise for any payments made (a) after insolvency of the enterprise became evident but (b) without due diligence.
 - Failure to perform the obligation is punishable by a fine or up to one year imprisonment.
- **Opening proceedings**
 - Acceptance of bankruptcy petition: the court refuses to accept a petition if it is not evident from a (creditor's) petition that the petitioner has a claim against the debtor, or the creditor's petition is based on a claim to which a restructuring plan or a debt restructuring plan applies.
 - Appointment of interim trustee: within 10 days after accepting the decision, or within 20 days if the petition was filed by a creditor.
 - Preliminary hearing: if the petition was filed by creditors.
 - Hearing of bankruptcy petition.
 - After hearing a bankruptcy petition, a court declares bankruptcy, dismisses the petition or terminates the proceedings by abatement.
 - A debtor is insolvent if unable to satisfy creditors' claims and due to the debtor's financial situation the inability is not temporary.
- **Final proceedings**
 - First general meeting of creditors.
 - Approval of trustee.
 - Filing and defence of claims.
 - Sale of bankruptcy estate.
 - Distribution proposal, approval of distribution proposal.
 - Payments from money received from sale of the bankruptcy estate according to distribution.
 - Termination of bankruptcy proceedings.
- **Selection of liquidators**
 - Named by the court, approved by the general meeting of creditors.

Insolvency

- Must be a; sworn advocate, senior clerk of a sworn advocate; sworn auditor; bailiff or a person authorised to act as a trustee who
 - has an officially recognised bachelor's degree + at least 2 years' professional experience in finance, law, management or accounting or who has an officially recognised master's degree;
 - is honest and of high moral character;
 - has oral and written proficiency in Estonian;
 - has passed the examination + undergone training for trustees.

→ Foreign liquidators

- Must comply with all of the above requirements.

→ Ethical standards for liquidators

- Good Professional Practice of 2011 (available at http://www.kpkoda.ee/doc/Hea%20kutsetava_1.pdf, in Estonian)
- Includes requirements on independence, impartiality, confidentiality, honour, dignity, trustworthiness, relationships with parties to the proceedings, colleagues, the public.

→ Time for lodging creditors' claims, consequences of failure

- Not later than two months of the date of publication of the bankruptcy notice in the official publication *Ametlikud Teadaanded*
- If a claim is filed with good reason after expiry of the term, the general meeting restores the term for filing the claim at the request of the creditor. A claim cannot be filed after the distribution proposal has been submitted to the court for approval.
- The term for filing a claim need not be restored in the case of a claim secured by a pledge.
- If the term for filing a claim is not restored, the claim may be defended but, in the case of acceptance, the claim is satisfied after satisfaction of accepted claims which were filed on time.

→ Costs of filing claims

- State fees for filing a petition
 - EUR 10 (EUR 5 if the petition is filed via website www.e-toimik.ee) if the petition is filed by the debtor, successors, executor of will
 - EUR 300 (EUR 250 if the petition is filed via website www.e-toimik.ee) if the petition is filed by a creditor
 - EUR 300 (EUR 250 if the petition is filed via website www.e-toimik.ee) state fee for filing restructuring petition
- No fees for filing claims in bankruptcy proceedings by creditors.

→ Administration costs

- The court sets the remuneration of the trustee on approval of the final report of the bankruptcy proceedings after having heard the opinions of the trustee, the debtor and the bankruptcy committee.
- The court sets remuneration in the minimum amount specified in the Insolvency Act. In justified cases, the court may set remuneration in an amount exceeding the minimum amount. The court may set remuneration in an amount lower than the minimum amount if the amount of remuneration does not correspond to the volume of work performed by the trustee.
- Trustee may request reimbursement of expenses necessarily incurred in performance their obligations.

→ Secured creditors

- Claims secured by pledge are satisfied first to the extent of the sum received from the sale of the pledged object from which payments relating to bankruptcy proceedings in a certain ratio have been deducted.
- Payments deducted are in proportion to the ratio of the sum received from the sale of the pledged object to the total sum received from the sale of the bankruptcy estate, but not more than 15/100 of the sum received from the sale of the pledged object.

Bankruptcy proceedings (aiming at liquidation): **Estonia**

Insolvency

- **Unsecured creditors**
 - Paid after secured creditors.
- **Employees**
 - The unemployment insurance scheme provides partial coverage of employer's obligations in case of insolvency.
 - Contracts are usually terminated and employees made redundant.
- **Nullifying contracts**
 - The court revokes transactions concluded or other acts performed by the debtor before declaration of bankruptcy and which harm the interests of creditors.
 - Contracts up to 5 years before appointment of interim trustee are examined.

Restructuring proceedings (aiming at rescuing a legal entity): **Estonia**

Insolvency

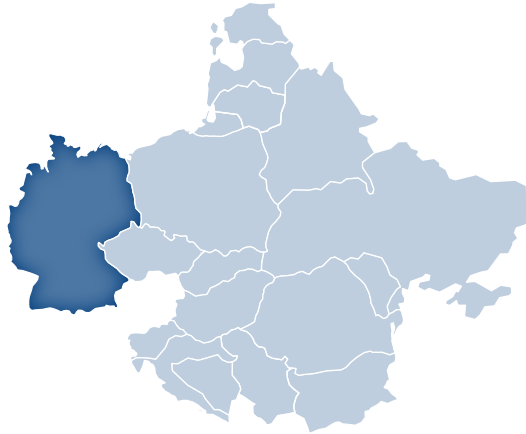
- **Preconditions for restructuring**
 - The enterprise is likely to become insolvent in the future.
 - The enterprise requires restructuring.
 - Sustainable management of the enterprise is likely after restructuring.
 - There are no bankruptcy proceedings against the enterprise.
 - There is no court ruling on compulsory dissolution or supplementary liquidation being carried out.
 - More than two years have passed from termination of previous restructuring proceedings.
- **Stages**
 - Restructuring application to court.
 - Court ruling to initiate restructuring.
 - Restructuring notice – restructuring administrator notifies creditors of commencement of proceedings and the amount of the claims that they have against the enterprise according to the list of debts.
 - Term for filing refusal to agree with the claim.
 - Preparation of restructuring plan and submission of plan for examination.
 - Acceptance of restructuring plan by creditors.
 - Approval of restructuring plan by the court.
 - Fulfilment of restructuring plan.
 - Termination of restructuring.
- **Restructuring plan: main content**
 - Description of the economic position of the enterprise, analysis of reasons which caused the need to restructure the enterprise.
 - The expected economic position of the enterprise after restructuring.
 - The term for compliance with the restructuring plan.
 - A description of the restructuring measures to be implemented and an analysis of their purposefulness, including a description of and justification for transforming a claim by a creditor.
 - The impact of the restructuring plan on employees of the enterprise.
- **Filing a petition for restructuring proceedings**
 - An application is filed with the court by the enterprise.
- **Main content of petition**
 - The petition must explain the reasons for economic difficulties and substantiate that:
 - the enterprise is likely to become insolvent in the future;
 - the enterprise requires restructuring;
 - sustainable management of the enterprise is likely after restructuring.
 - Annexed to petition: financial statement for the previous financial year + overview of the financial situation, debtor's profit or loss and cash flows and a list of debts as at the date of filing the petition.
- **Time for lodging creditors' claims, consequences of failure**
 - Creditor must file a claim if not agreeing the claim or its amount in the restructuring notice.
 - The term is set by the court.
 - Creditor must file a written application which sets out the part of the claim specified in the restructuring notice to which they refuse to agree and must submit evidence certifying these circumstances.
 - A creditor that fails to apply by the due date is deemed to have agreed to the amount of the claim.

Restructuring proceedings (aiming at rescuing a legal entity): **Estonia**

Insolvency

- **Selection of restructuring administrators**
 - The court appoints a restructuring administrator on commencement of proceedings after having considered the opinion of the enterprise.
 - The following may act as restructuring administrators:
 - sworn advocates, sworn advocates' senior clerks, trustees in bankruptcy, auditors;
 - other natural persons who are honest and of moral character and who are proficient in oral and written Estonian, who possess good economic knowledge and the necessary legal knowledge and who have an officially recognised master's degree or qualifications equal thereto or a foreign qualification equal thereto;
 - investment firms and credit institutions.
- **Foreign administrators**
 - Must meet the same criteria as national administrators.
- **Ethical standards for restructuring administrators**
 - No specific regulations established.
 - Must be honest and of moral character.
 - If the administrator is a sworn advocate, sworn advocate's senior clerk, trustee in bankruptcy or auditor, then they must comply with their own specific professional codes.
- **Main rights of the creditors' meeting**
 - Acceptance of restructuring plan.
- **Final proceedings**
 - Fulfilment of restructuring plan or premature termination of restructuring.
 - Grounds for premature termination:
 - failure to perform the obligation of an enterprise to cooperate;
 - the enterprise fails to pay into court a sum of money specified by the court for remuneration of and expenses relating to a restructuring administrator or an expert;
 - refusal by the court to approve the restructuring plan;
 - refusal to satisfy an application for approval of a restructuring plan which has not been accepted;
 - refusal to approve a restructuring plan which has not been accepted;
 - on the basis of an application by the enterprise;
 - where the basis for commencement of restructuring proceedings ceases to exist;
 - upon squandering the property of an enterprise or harming the interests of creditors;
 - failure to submit the restructuring plan by the due date;
 - due to ambiguity of a claim.
- **Self administration (debtor-in-possession)**
 - Not available.

Insolvency



- **Legal framework**
 - Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
 - Insolvency Code of 1994 (Insolvenzordnung – InsO).
- **Insolvency phases**
 - Preliminary proceedings.
 - Final insolvency proceedings.
 - Both supervised by the court.
- **Types of insolvency proceedings**
 - Bankruptcy proceedings (generally aims at liquidation).
 - Insolvency plan proceeding (with possible restructuring).
 - Both are initiated by a formal “Insolvency proceeding” under InsO. there is only one type of formal proceeding with differing courses of action
- **Filing parties**
 - Indebted company must file in case of certain grounds.
 - Indebted company is always entitled to file.
 - Each creditor may file only in case of certain grounds.
 - The court is not entitled to file.
- **Insolvency register**
 - <https://www.insolvenzbekanntmachungen.de/>
(only German version available)
- **Competent court**
 - Petitions for initiating bankruptcy proceedings must be filed in writing with the court (Amtsgericht) where the enterprise is located.

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Bankruptcy proceedings (aiming at liquidation): **Germany**

Insolvency

- **Grounds for filing**
 - Illiquidity: debtor is unable to settle mature obligations without a delay of more than approximately 3 weeks.
 - Imminent illiquidity: debtor presumes that he will not be able to settle obligations when they fall due.
 - Over-indebtedness: the assets of the debtor do not cover obligations.
 - Until 31 December 2013 the obligation to file for over-indebtedness is omitted if a probability prevails that the business can be continued.
 - There is an approximate maximum of three weeks wherein the petition should be filed.
- **Right to insolvency petition**
 - Indebted company must file in the case of certain grounds.
 - Indebted company is always entitled to file.
 - Each creditor may file only in the case of certain grounds.
 - The court is not entitled to file.
- **Sanctions for not filing a bankruptcy petition**
 - Delayed filing may lead to criminal consequences, personal liability or to prohibition on heading a company as managing director.
- **Opening proceedings**
 - The preliminary administrator
 - secures the debtor's assets;
 - analyses whether assets cover costs of insolvency proceedings;
 - continues or supervises the business of the debtor (strong/weak preliminary administrator);
- **Final proceedings**
 - If assets are likely to cover costs of proceedings, an insolvency administrator is appointed. Their rights and duties are:
 - to maintain the company's business if possible;
 - to collect assets and to settle secured claims;
 - to document and report on the progress of the proceedings to the court and to the creditors' meeting;
 - to finally liquidate the company;
- **Selection of liquidators**
 - Appointment by court.
 - Any natural person who is suitable in the particular case.
 - Experienced in business, independent of creditors and debtor.
 - Courts keep registers with lists of suitable persons; lists are open for application by any person.
- **Foreign liquidators**
 - No restrictions as long as they fulfil general criteria
 - Problematic points are:
 - court language is German;
 - usually the administrator should have their seat at the place of the insolvent company;
 - both criteria may conflict with EU legislation and therefore do not generally hinder foreign administrators from being appointed in Germany.
- **Ethical standards for liquidators**
 - None
- **Time for lodging creditors' claims, consequences of failure**
 - Set by court at the end of the opening procedure;
 - Period may vary between two weeks and three months;
 - Missing the deadline does not lead to exclusion of claims but the creditor may have to carry the administrative costs of late filing.

Bankruptcy proceedings (aiming at liquidation): **Germany**

Insolvency

- **Costs of filing claims**
 - None;
 - If creditor asks lawyer for help the respective costs can be filed but are regarded as subordinate claims.
- **Administration costs**
 - Debts are incumbent on the assets involved in the proceedings.
 - Court fees are regulated in the Act on Court fees (Gerichtskostengesetz).
 - Administrator's fees are regulated by the Insolvency Remuneration Regulation (Insolvenzrechtliche Vergütungsverordnung).
 - If the assets of the enterprise do not cover the legal and administrative expenses of the preliminary proceedings an advance payment may be imposed on the debtor under strict circumstances.
- **Secured creditors**
 - Secured creditors may have a right to separation or segregation, depending on the form of security;
 - Procedure follows rules not specifically governed by Insolvency Code.
- **Unsecured creditors**
 - Claims by unsecured creditors to be filed with the claim list until a date set by court;
 - Claims are settled from the proceeds according to rank and quota after the costs of the proceedings have been paid.
- **Employees**
 - Employees are protected by "insolvency money" which covers wages for three months;
 - Employees are often transferred to a rescue company;
 - Extraordinary right to cancel work contracts.
- **Nullifying contracts**
 - Administrator examines contracts entered into within at least the last 3 months before bankruptcy proceedings and brings actions for invalidation of contracts contrary to the objectives of enterprise activities or which could have led to the disability of the enterprise to settle its obligations.
 - Settlement of shareholder claims is examined 1 year back in time.
 - In the case of fraudulent behaviour towards creditors, contracts are examined ten years back in time.

Restructuring proceedings (aiming at rescuing a legal entity): **Germany**

Insolvency

- **Preconditions for restructuring**
 - An enterprise has financial difficulties.
 - Enterprise must be “worth reconstructing”; it must have good market standing; changes in the cost and claim structure must lead to permanent profitability.
 - Creditors must be willing to support the restructuring by waiving (part of) their claims.
- **Stages**
 - Best practice: preparation of insolvency plan and coordination with main creditors before filing for insolvency.
 - Filing for insolvency; best practice: debtor should file:
 - preparation/amendment of insolvency plan;
 - approval of insolvency plan by creditors;
 - approval of insolvency plan by court;
 - realization of insolvency plan.
- **Restructuring plan: main content**
 - Representative part:
 - report on the economic status of the company;
 - presenting the aim of the restructuring;
 - presenting steps which have already been taken or must be taken;
 - Organizing part:
 - regulation of the legal positions of all parties;
 - liability claims;
 - financial arrangements;
 - Plan may explicitly differ from regulations under InsO.
- **Filing a petition for restructuring proceedings**
 - Filing for insolvency (as under A).
 - No special procedure.
 - Best practice: debtor should file.
- **Main content of petition**
 - Petition should include (draft) insolvency plan.
- **Time for lodging creditors’ claims, consequences of failure**
 - Claims must be lodged before approval of plan by creditors.
 - In the case of missing the deadline, the plan also has effect against such creditors if they belong to a certain group of creditors.
 - Otherwise, the court can grant preliminary stay of execution for up to 3 years.
 - Claims not filed are subject to the statute of limitation after 1 year.
- **Selection of restructuring administrators**
 - Appointment by court.
 - Any natural person suitable in the particular case.
 - Experienced in business, independent of creditors and debtor.
 - Courts keep registers with lists of suitable persons; lists are open for application by any person.
- **Foreign administrators**
 - No restrictions as long as they fulfill the general criteria; see above.
- **Ethical standards for restructuring administrators**
 - None.
- **Main rights of the creditors’ meeting**
 - Selection of committee of creditors and transfer to it specific rights
 - Approval of insolvency plan and amendments.
 - Application to the court to restrict functions of management bodies.
 - Application to the court to dismiss the restructuring administrator and appoint a new one.
 - Approval of proposal by administrator to end restructuring proceedings.

Restructuring proceedings (aiming at rescuing a legal entity): **Germany**

Insolvency

- **Final proceedings**
 - Claims by creditors are satisfied by the enterprise according to the insolvency plan.
 - The management body is still allowed to manage and dispose of all assets in compliance with the insolvency plan and under supervision of the administrator.
 - Decision of the court to end proceedings.

- **Self administration
(debtor-in-possession)**
 - Possible if debtor filed for insolvency and if no circumstances are known which might lead to disadvantages for creditors.
 - Under supervision of a trustee.
 - Currently rarely used; but amendments to InsO in 2011 must aim at higher practice.

Insolvency



- ➔ **Legal framework**
 - Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
 - Bankruptcy and Liquidation Proceedings Act N° 49 of 1991. (1991. évi XLIX. törvény a csődeljárásról és a felszámolási eljárásról)
 - Act N° 4 of 2006 on Business Associations.
 - 114/2006 Government Decree on the Register of Liquidators
- ➔ **Insolvency phases**
 - Initial court proceedings: to investigate grounds for ordering insolvency proceedings.
 - Final insolvency proceedings.
- ➔ **Types of insolvency proceedings**
 - Bankruptcy proceedings (generally aimed at liquidation).
 - Restructuring proceedings (aimed at rescuing debtor).
- ➔ **Filing parties**
 - Entitled to file: enterprise itself, creditor, liquidator.
 - Obligated to file under certain conditions: the court terminating previous, unsuccessful restructuring proceedings, the Court of Registry, the Criminal Court.
- ➔ **Insolvency register**
 - No such national register in operation.
 - The fact of opening of proceedings is published in the Corporate Gazette (in Hungarian "Cégközlöny" - only available in Hungarian).
 - Affixed to the name of the enterprise is the supplementary: "f.a." meaning "under bankruptcy" or "cs.a." meaning "under restructuring".
- ➔ **Competent court**
 - Petitions for initiating insolvency proceedings must be filed in writing with the court where the enterprise is seated.

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Bankruptcy proceedings (aiming at liquidation): Hungary

Insolvency

- **Grounds for filing**
 - General grounds for filing:
 - Restructuring proceedings were not successful (debtor fails to fulfil payment obligations in restructuring settlement).
 - Failure to restore lawful operation of the enterprise despite the court of registry's request, where the enterprise has assets.
 - The enterprise fails to pay a fine imposed in criminal proceedings.
 - The enterprise fails to pay due claims by creditors (amount of claim must be over HUF 200 000 – not incl. interest – , ca. EUR 665).

Note: The court presumes insolvency of the enterprise on these grounds and orders bankruptcy proceedings irrespective of whether the enterprise is de facto insolvent or not.
- **Right to petition for insolvency**
 - Entitled to file: enterprise itself (management), creditor, liquidator.
 - Obligated to file: the court terminating previous, unsuccessful restructuring proceedings, the Court of Registry, the Criminal Court.
- **Sanctions for not filing a bankruptcy petition**
 - Failure to file for restructuring may result in personal liability of the manager of the enterprise.
 - No criminal liability for late filing.
- **Opening proceedings**
 - The court adopts a ruling ordering bankruptcy within 60 days of filing a petition for opening bankruptcy proceedings.
 - The court declares the debtor insolvent:
 - if the debtor fails to settle or contest previously uncontested and acknowledged contractual debts within twenty days of the due date, and fails to satisfy a debt upon receipt of a creditor's written payment notice, or
 - if the debtor fails to settle a debt within the deadline specified in a final court decision or order for payment, or
 - if an enforcement procedure against the debtor was unsuccessful, or
 - if the debtor did not fulfil a payment obligation as stipulated in a composition agreement in restructuring or bankruptcy proceedings, or
 - if the court has declared previous restructuring proceedings terminated or
 - if the debtor's liabilities in proceedings initiated by the debtor or by the liquidator exceed the debtor's assets.
- **Final proceedings**
 - Proceedings commence on the day of publication of the court decision on insolvency in the Corporate Gazette.
 - Appointment of liquidator (the management loses its powers).
 - All debts of the enterprise fall due and creditors file their claims.
 - Good claims are registered, verified by the liquidator and set into categories according to the title / collateral provided.
 - The assets of the enterprise are assessed and sold.
 - Absent mutual settlement by the creditors and the debtor, the court decides on the balance sheet drafted by the liquidator concerning assets of the enterprise, and decides on distribution of the assets. Creditors may contest the proposal by the liquidator. If the balance sheet is approved, the enterprise is terminated by the court.
- **Selection of liquidators**
 - The Court appoints the liquidator from the Registry of Liquidators (Insolvency Administrators) using a random electronic selection process.
 - A business association may be appointed to function as liquidator if on the Register of Liquidators and complies with the articles of Government Decree 114/2006 on the Register of Liquidators.

Bankruptcy proceedings (aiming at liquidation): Hungary

Insolvency

- **Foreign Liquidators**
 - The liquidator must be either seated in Hungary or be the Hungarian branch office of a foreign business seated in EEA and the liquidator must be qualified in that EEA as well.
 - Only administrator organizations of another signatory of the EEA agreement are permitted to have a Hungarian branch office.
 - “Foreign” candidates must also fulfil the criteria set for a genuinely Hungarian establishment.
- **Ethical standards for liquidators**
 - There is no statutory code of conduct; however the professional organization of insolvency administrators (www.foe.hu) has drafted a uniform code of conduct to foster application of ethical norms in the operation of insolvency administrators. Membership in the organization is not obligatory.
- **Time for lodging creditors’ claims, consequences of failure**
 - Claims should be lodged within 40 days from publication of the court decision on bankruptcy in the Corporate Gazette.
 - If a creditor misses this deadline, a claim may still be lodged within 180 days from the commencement date but will only be satisfied if the remaining assets suffice after satisfaction of other registered creditors.
 - No claims may be lodged after expiry of the 180-day deadline.
 - Claims arising during the bankruptcy proceedings may be lodged within 40/180 days under the legal consequences as above.
- **Costs of filing claims**
 - Payment of a fee amounting to 1% of the sum claimed at a minimum of EUR 18 (HUF 5 000) and capped at EUR 700 (HUF 200 000).
- **Administration costs**
 - The fixed costs of ordinary proceedings amount to 5% of the whole sum of the value of assets sold in the course of bankruptcy and proceeds from claims - arising at the time of the opening of bankruptcy proceedings - recovered, but not less than EUR 1060 (HUF 300 000). If the debtor continues operating during the bankruptcy procedure, 2 % of the sales revenues arising therefrom can be taken into account as a fee. In the case of an agreement, the basis of the fee is 5 % of the value of the assets included in the agreement.
 - The fee amounts to EUR 1060 (HUF 300 000) in simplified proceedings.
- **Secured creditors**
 - Sale of the security must be used to cover secured claims.
- **Unsecured creditors**
 - Claims by unsecured creditors are categorized by the Bankruptcy and Liquidation Proceedings Act N° 49 of 1991 and the categories are satisfied after the claims of secured creditors.
- **Employees**
 - Claims by employees constitute the first category of unsecured creditors. If employees’ claims are not satisfied, the state reimburses these if the enterprise under bankruptcy can comply with the articles of Wage Guarantee Fund Act N° 66 of 1994.
- **Nullifying contracts**
 - The liquidator may terminate with immediate effect contracts concluded by the debtor or rescind the contract if neither of the parties rendered any services. Any claim due to the other party owing to the above may be enforced by notifying the liquidator within forty days from the date when the rescission or termination was communicated.
 - A creditor and the liquidator may file for legal action before the court within ninety days from the time of gaining knowledge or within a one-year forfeit deadline from the date of publication of the notice of liquidation to contest:
 - contracts concluded by the debtor within five years before the date when the court received a petition to open liquidation proceedings or thereafter, or his other commitments, if intended to conceal the debtor’s assets or to defraud any individual

Insolvency

creditor or all creditors, and the other party had or should have had knowledge of such intent;

- contracts concluded by the debtor within two years before the date when the court received a petition to open liquidation proceedings or thereafter, or his other commitments, if intended to transfer the debtors assets without compensation or to undertake a commitment to encumber any part of the debtor's assets, or if the stated consideration constitutes unreasonable and extensive benefits to a third party;
- contracts concluded by the debtor within ninety days before the date when the court received a petition to open liquidation proceedings or thereafter, or his other commitments, if intended to give preference and privileges to any one creditor, such as amendment of an existing contract to the benefit of a creditor, or to provide financial collateral to a creditor that does not have any.

Restructuring proceedings (aiming at rescuing a legal entity): Hungary

Insolvency

- **Preconditions for restructuring**
 - If the enterprise is in financial difficulty: unable to settle its debt (debts) or is expected to fail its liabilities on the date due.
 - The debtor may file for restructuring in a court of law. Legal representation is mandatory.
 - The debtor may not file a petition for restructuring if already adjudicated in restructuring, or if a request for bankruptcy has been filed and a decision has already been adopted in the first instance for the debtor's liquidation.
 - Activities of the debtor do not cease.
- **Stages**
 - Initiation of restructuring proceedings by preparing and filing a petition and the necessary documents (listed below).
 - The court orders a payment moratorium of 120 days and the opening of proceedings automatically within 1 business day.
 - Decision published in the Corporate Gazette.
 - Appointment of administrator.
 - Filing of creditors' claims with the administrator.
 - Confirmation of claims by the administrator.
 - Negotiations with creditors' meeting concerning contents of restructuring settlement.
 - Confirmation of settlement by the creditors' meeting (at least the majority counted from the total amount of creditors' claims. approved by the court in both secured and unsecured groups of creditors).
 - Confirmation of settlement by the court.
 - Satisfaction of creditors' claims in accordance with the settlement.
- **Restructuring plan: main content**
 - List of creditors taking part in the settlement, their category, amount of their claims, number of their votes.
 - Accepted debt assessment and restructuring plan, method of execution and supervision.
 - Possible modifications to payment deadlines, quitclaim statements and acceptance of claims, everything that creditors and/or the debtor consider necessary in order to settle the debt amount and re-establish and sustain liquidity.
- **Filing a petition for restructuring proceedings**
 - Filing a petition is the competence of management.
 - There is no statutory deadline within which management would have to file a petition for restructuring.
- **Main content of petition**
 - Basic data of the enterprise.
 - Documentary evidence concerning prior approval of the decision making body to initiate the proceedings and notify employees.
 - A financial statement of the enterprise not older than 3 months and written confirmation by management that the statement gives a realistic and reliable picture of the financial situation.
 - A summary of changes in the financial situation after issue of the above financial statement.
 - Any contracts regarding the company group (if the enterprise belongs to one).
 - Basic information concerning claims against the enterprise and claims by the enterprise against others.
 - Payment certificate of publishing fee which is payable by the debtor to start the proceedings.
 - Payment service providers where the debtor has a current account, showing the account numbers and the name of the investment firm where the debtor has a securities account.
 - Declaration by management notifying payment service providers affected at the time of submission of the petition for the opening of restructuring proceedings on having the petition filed.

Restructuring proceedings (aiming at rescuing a legal entity): Hungary

Insolvency

- **Time for lodging creditors' claims, consequences of failure**
 - 30 days after publishing the decision on initiating restructuring proceedings.
 - If the deadline is missed, claims are not part of the restructuring proceedings and not subject to restructuring settlement.
 - Claims arising during insolvency proceedings may be lodged within 8 business days under the above legal consequences.
- **Selection of restructuring administrators**
 - The administrator is appointed randomly by an electronic system (similarly to the liquidator - insolvency administrator).
- **Foreign administrators**
 - Provisions on liquidators apply mutatis mutandis to restructuring administrators (see above "Foreign liquidators").
- **Ethical standards for restructuring administrators**
 - Just as in the case of bankruptcy proceedings, there is no statutory code of conduct; however the professional organization of insolvency administrators (www.foe.hu) drafted a uniform code of conduct which is just a recommendation. Membership in the organization is not obligatory.
- **Main rights of the creditors' meeting**
 - Selects a committee of creditors and transfers specific rights to it.
 - Approval of extensions of moratorium (an extended moratorium is capped at 365 days).
 - Approval of restructuring settlement and amendments.
 - Application to the court to dismiss the administrator and appoint a new one.
- **Final proceedings**

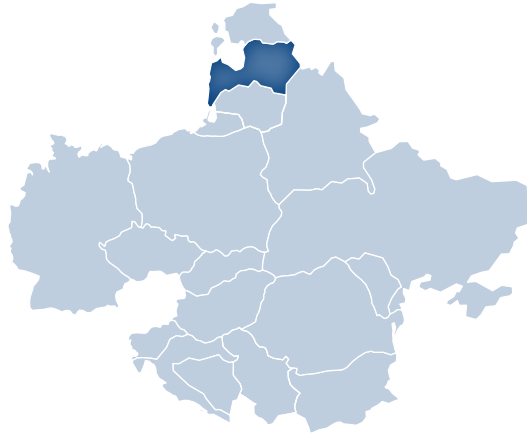
If restructuring settlement is approved by creditors:

 - The court approves the restructuring settlement and the proceedings are terminated.
 - Decision is published in the Corporate Gazette if there are more than 100 creditors.
 - The bankruptcy administrator loses their position.
 - Claims by creditors are paid by the enterprise under the settlement.
 - Further claims arising after the restructuring proceedings may be enforced separately before the court.

If the settlement is not approved by creditors:

 - the court orders bankruptcy proceedings.
- **Self administration (debtor-in-possession)**
 - No such institution exists.

Insolvency



- **Legal framework**
 - Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
 - Insolvency law of 2010, last amended 2013 (Maksātnespējas likums).
 - Law on protection of employees in case of employer insolvency 2001, last amended 2012 (Likums "Par darbinieku aizsardzību darba devēja maksātnespējas gadījumā").
 - Civil procedure law of 1998, last amended 2013 (Civilprocesa likums)
- **Insolvency phases**
 - Opening proceedings: the court investigates conditions for opening insolvency.
 - Final proceedings.
- **Types of insolvency proceedings**
 - Legal protection proceedings (aimed at renewal of debtor's paying capacity).
 - Insolvency proceedings (aimed at liquidation of debtor).
- **Filing parties**
 - Entitled to file for insolvency: creditor or creditors.
 - Obligated to file for insolvency: debtor, restructuring administrator, liquidator.
 - Entitled to file for restructuring: debtor.
- **Insolvency register**
 - For insolvency and restructuring proceedings:
http://www.mna.gov.lv/lv/maks_subjekti/baze/ (the Insolvency Register, only Latvian version available)
<https://www.lursoft.lv/> (private source with access to databases, including the Insolvency Register, Latvian and English versions available)
- **Competent court**
 - Insolvency and restructuring petitions must be filed in writing in a court of first instance for the domicile of the debtor.

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Bankruptcy proceedings (aiming at liquidation): **Latvia**

Insolvency

- **Grounds for filing**
 - If at least one of the grounds mentioned below is established:
 - Impossibility of compulsory enforcement of court judgments.
 - Overdue employment-related or other claims and impossibility of performance.
 - Unpaid debt(s) which separately or in total exceed LVL 3 000 (approx. EUR 4 300) (limited liability or stock company) or LVL 1 500 (approx. EUR 2 100) (partnership, individual trader or a person registered in a foreign country who performs permanent economic activities in Latvia).
 - Violation of legal protection proceedings.
- **Right to bankruptcy petition**
 - Private and public creditor(s).
 - Debtor.
 - Liquidator in the sense of Council Regulation No 1346/2000.
 - Liquidator of enterprise in liquidation.
 - Restructuring administrator in legal protection proceedings.
- **Sanctions for not filing a bankruptcy petition**
 - Civil liability.
 - Administrative liability.
 - Criminal liability (for negligently or intentionally causing insolvency of the debtor – legal person).
- **Opening proceedings**
 - Court decides on opening insolvency proceedings within 7 – 15 days.
 - Petitioner must file these documents with insolvency petition:
 - Confirmation that state duty + insolvency deposit paid.
 - Warning of intention to file insolvency petition + proof of claim and amount (creditor's petition).
- **Final proceedings**
 - Court appoints liquidator: debtor's management loses its competences/ powers which are then vested in the liquidator.
 - If solvency may be renewed, transfer from insolvency proceedings to legal protection proceedings is possible.
 - If solvency may not be renewed, the court terminates insolvency proceedings and liquidates the debtor.
- **Selection of liquidators**
 - Court appoints a liquidator suggested by the state agency "Insolvency Administration".
 - Liquidator is a natural person who meets these requirements
 - full legal capacity;
 - over 25;
 - fluent in Latvian;
 - qualified lawyer;
 - possesses certificate issued by the professional association of liquidators;
 - has at least three years work experience as a lawyer or other legal professional;
 - has not committed an intentional crime;
 - not a target of insolvency proceedings in the last 5 years.
- **Foreign liquidators**
 - Foreign liquidators must comply with the above requirements; no additional requirements are set.
- **Ethical standards for liquidators**
 - Code of ethics (Sertificēto maksātnešpējas administrator ētikas kodekss) (since 2003), issued by the professional organization of liquidators.
 - Liquidator must be independent, objective, reliable, honest, maintain the interests of creditors and ensure the lawfulness of insolvency proceedings.

Insolvency

- **Time for lodging creditors' claims, consequences of failure**
 - One month from the day after entry in the Insolvency Register.
 - Claims may be filed no later than 6 months after entry in the Insolvency Register.
 - Consequences of missing one-month term: no voting rights.
 - Consequences of missing the six-month term: no acknowledgement of claim.
- **Costs of filing claims**
 - From LVL 450 (approx. EUR 640) up to LVL 650 (approx. EUR 925)
- **Administration costs**
 - Minimum LVL 400 (approx. EUR 569)
- **Secured creditors**
 - Liquidator realizes pledged property (securities) at (or without) auction and transfers the proceeds to secured creditors.
- **Unsecured creditors**
 - After covering administration costs, settlement of employees and State Revenue claims, remaining property divided between acknowledged unsecured creditors, proportionally to amount of claim.
- **Employees**
 - Claims by employees are settled from property of the debtor, if any, otherwise the Guarantee Fund settles these claims as follows:
 - work remuneration for the last three months;
 - compensation for annual paid leave;
 - compensation for other types of paid leave in last three months;
 - severance payment;
 - compensation for damages.
- **Nullifying contracts**
 - Contracts may be found null and void regardless of type of contract if they caused losses to the debtor.
 - Liquidator examines all transactions concluded three months prior to insolvency proceedings and transactions concluded three years prior to insolvency proceedings, if concluded with shareholders, directors, managers or other persons related to the debtor.
 - Liquidator brings court action to nullify contracts, if necessary.

Restructuring proceedings (aiming at rescuing a legal entity): **Latvia**

Insolvency

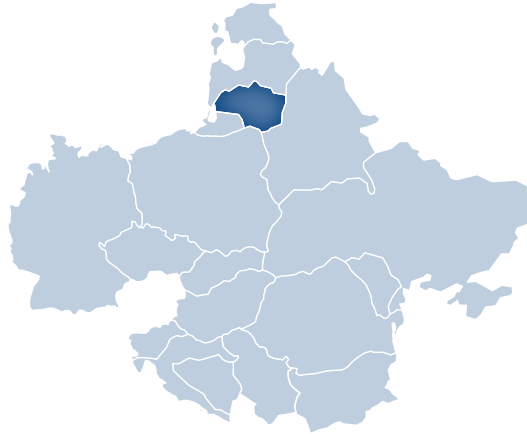
- **Preconditions for restructuring**
 - Debtor has (or will have) financial difficulties.
- **Stages**
 - Legal protection proceedings (LPP)
 - Debtor files LPP petition with the court.
 - Within 2 months after initiation of LPP by the court the LPP plan must be drawn up and approved by:
 - Secured creditors whose principal claims form 2/3 of the total amount of creditors' principal claims against the debtor and by unsecured creditors whose principal claims form more than 1/2 of the total amount of the creditors' principal claims.
 - Restructuring administrator.
 - Court.
 - Term of LPP is 2 years which can be prolonged up to 2 years.
 - LPP terminated by the court, if successful and solvency has been renewed, or if LPP unsuccessful; in the latter case insolvency proceedings are started.
- **Restructuring plan: main content**
 - Plan for fulfilment of obligations.
 - Different measures necessary to renew solvency, for example, cancellation or reduction of debts.
 - Existing and planned types of economic activities of the debtor.
 - Deadline of LPP.
 - Transactions (+ amounts) which the debtor may perform without co-ordination with the restructuring administrator.
 - Restructuring administrator candidate.
 - Restrictions on rights of secured creditors and compensation for those restrictions.
- **Filing a petition for restructuring proceedings**
 - Debtor who is a legal person, partnership, individual merchant, person registered abroad who performs permanent economic activities in Latvia, is entitled to apply for LPP in order to renew solvency.
 - No time limit.
- **Main content of petition**
 - Confirmation that none of the facts mentioned below exists:
 - Liquidation proceedings of the debtor.
 - Debtor had successfully implemented LPP plan during the preceding 5 years.
 - Debtor had unsuccessful LPP during the last 4 months or the LPP petition was rejected by the court.
 - Document confirming payment of state duty of LVL 100 (approx. EUR 114).
 - Circumstances why the debtor is asking for LPP.
- **Time for lodging creditors' claims, consequences of failure**
 - If LPP have been started and the LPP plan is approved by all persons mentioned above, the LPP plan is obligatory and binding on the debtor and its creditors, including creditors who did not approve the LPP plan.
- **Selection of restructuring administrators**
 - Debtor may choose a restructuring administrator, but approval of creditors' majority required for the proposed restructuring administrator and afterwards by the court.
 - If the debtor cannot agree with creditors' majority on a restructuring administrator, the state agency "Insolvency administration" recommends (and the court approves) a restructuring administrator.
 - The same requirements set by law for liquidators also apply to restructuring administrators.
- **Foreign administrators**
 - The same requirements set by law for liquidators also apply to restructuring administrators.

Restructuring proceedings (aiming at rescuing a legal entity): **Latvia**

Insolvency

- | | |
|---|---|
| → Ethical standards for restructuring administrators | <ul style="list-style-type: none">• The same requirements set by law for liquidators also apply to restructuring administrators. |
| → Main rights of the creditors' meeting | <ul style="list-style-type: none">• None. |
| → Final proceedings | <ul style="list-style-type: none">• Decision of the court to terminate LPP and, if necessary, start insolvency proceedings. |
| → Self administration (debtor-in-possession) | <ul style="list-style-type: none">• During LPP restrictions on disposal of the debtor's property are imposed, the debtor may not issue loans, make presents, dispose of immovable property or establish pledges on immovable property, distribute profits, fulfill obligations which are not indicated in the LPP plan. |

Insolvency



- **Legal framework**
 - Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
 - Enterprise Bankruptcy Law of 2001, last amended May 2013 (EBL; Imoniu bankroto įstatymas).
 - Law on Restructuring of Enterprises of 2001, last amended July 2013 (LRE; Imoniu restruktūrizavimo įstatymas).
- **Insolvency phases**
 - Opening proceedings: insolvency court investigates conditions for opening of proceedings.
 - Final proceedings.
- **Types of insolvency proceedings**
 - Bankruptcy proceedings (generally aimed at liquidation).
 - Restructuring proceedings (aimed at rescuing debtor).
- **Filing parties**
 - Entitled to file for bankruptcy proceedings: creditors, owners, head of enterprise.
 - Obligated to file under certain conditions: liquidator of enterprise in liquidation, enterprise manager and/ or owners.
 - Entitled to file for restructuring proceedings: management body of the enterprise.
- **Insolvency register**
 - For bankruptcy proceedings (only Lithuanian version available)
<http://www.bankrotodep.lt/Bankrotas.php?Tipas=1>
 - For restructuring proceedings (only Lithuanian version available)
<http://www.bankrotodep.lt/Restrukturizavimas.php?Tipas=1>
- **Competent court**
 - Petitions for initiating bankruptcy and restructuring proceedings must be filed in writing with the court where the enterprise is located.

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Bankruptcy proceedings (aiming at liquidation): Lithuania

Insolvency

- **Grounds for filing**
 - If either of the following grounds is established:
 - enterprise fails to pay due claims by creditors (including employees or tax authorities);
 - enterprise makes a public announcement or notifies creditors in any other way of its inability or unwillingness to discharge its liabilities;
 - enterprise has no assets or income from which debts could be recovered and creditors therefore cannot enforce claims.
- **Right to bankruptcy petition**
 - Creditors, owners and head of enterprise administration are entitled to file a petition for initiating bankruptcy proceedings.
 - Obligated to file a petition for initiating bankruptcy proceedings under certain conditions: liquidator of enterprise in liquidation, enterprise manager and/or owners.
 - Public prosecutor acting in public interest.
- **Sanctions for not filing a bankruptcy petition**
 - Failure to file (in time) for bankruptcy may result in civil and administrative liability, including prohibition for up to 5 years to be managing director of an enterprise.
 - No criminal liability for (late) filing, but for other insolvency-related conduct of management.
- **Opening proceedings**
 - Courts must decide in max. 2 months whether conditions for opening of proceedings are met:
 - valid petition, and
 - enterprise is insolvent or does not meet due claims of employees, or has indicated to creditors or in public its inability or unwillingness to discharge liabilities, and
 - sufficient assets to cover legal and administration expenses, and
 - no pending restructuring proceedings under LRE.
 - Insolvency = enterprise does not meet its due obligations and the value of such obligations exceeds 50 % of the value of the assets on the balance sheet.
- **Final proceedings**
 - Court appoints liquidator: debtor's management loses its competences/ powers which are then vested in the liquidator.
 - Assets liquidated and proceeds distributed to debtors with approved claims.
- **Selection of liquidators**
 - Insolvency court appoints a liquidator from among persons proposed by the petitioner.
 - The liquidator must have a license obtained in Lithuania or another EU Member State. A license under Lithuanian law is granted to persons who fulfil the following requirements: good reputation, university degree, certain working experience as assistant liquidator, head of an enterprise or as an attorney, passed qualification exam and with good command of the Lithuanian language.
- **Foreign liquidators**
 - Only citizens of another Member State of the European Union.
 - No particular mechanism provided for by law that would enable recognition of administrator licenses acquired outside Lithuania. This gap in regulation means that any administrator who is licensed in an EU member state may practice freely in Lithuania, in line with EU Directive 2006/123/EC (the Service Directive).
 - Since under Lithuanian law there is no separate recognition procedure or additional requirements imposed on foreigners, it is sufficient for a foreign bankruptcy administrator to have fulfilled the requirements of their home Member State, even if these are more lenient.
- **Ethical standards for liquidators**
 - Code of Conduct for liquidators and restructuring administrators (2010).
 - 8 principles: respect for human rights and liberties, professionalism, effectiveness, confidentiality, impartiality, honesty, decency and cooperation.

Bankruptcy proceedings (aiming at liquidation): Lithuania

Insolvency

- **Time for lodging creditors' claims, consequences of failure**
 - Time limit set by the court for lodging claims may not exceed 45 days from entry into force of the court decision to initiate bankruptcy proceedings.
 - Filing a claim after the delay is also possible.
 - Consequences of not filing a claim: no acknowledgement of claim.
- **Costs of filing claims**
 - No stamp duties or other expenses for the court.
- **Administration costs**
 - Remuneration payable to the liquidator and the procedure for payment is set in the commissioning contract.
 - Remuneration may be paid in a lump sum after completion of the proceedings or by instalments during proceedings.
 - In practice, it is also usual to set a certain ceiling or percentage not to be exceeded during the entire process.
 - If sufficient basis exists to suspect that the assets of the enterprise will not cover legal and administrative expenses, the court may recommend to the person who lodges a petition to pay an amount not exceeding LTL 25 000 (ca. EUR 7 225) into the court's deposit account in order to initiate bankruptcy proceedings; the sum may later be reclaimed jointly from the company manager and owner(s) for not meeting their obligation to initiate bankruptcy in due time.
- **Secured creditors**
 - Paid first of all from proceeds of realizing security, but only after contributing to legal and administration costs.
- **Unsecured creditors**
 - Included in the lowest rank and settled proportionately.
- **Employees**
 - Employment contracts are usually terminated. Employees are paid severance pay of two average monthly wages.
 - Employees' claims are secured by the Guarantee Fund.
- **Nullifying contracts**
 - Liquidator examines transactions entered into within at least 36 months before bankruptcy proceedings and brings actions to invalidate contracts contrary to objectives of enterprise activities.
 - In case of established fraudulent bankruptcy, all transactions five years prior to bankruptcy proceedings are examined.

Restructuring proceedings (aiming at rescuing a legal entity): **Lithuania**

Insolvency

- **Preconditions for restructuring**
 - An enterprise has (or is likely that to have within the 3 coming months) financial difficulties.
 - Activities have not ceased.
 - Bankruptcy proceedings are not opened.
 - Not insolvent (i.e. no obligation to start bankruptcy proceedings).
 - Certain requirements relating to the period after establishing the enterprise and the end of previous restructuring proceedings.
- **Stages**
 - Initiation of restructuring proceedings by drafting guidelines for restructuring plan by the management body.
 - Confirmation of guidelines and decision to apply to the court by the shareholders/ owners of the enterprise.
 - Filing petition with the court.
 - Decision of the court to open restructuring proceedings, appointment of restructuring administrator.
 - Submission of creditors' claims to the administrator.
 - Confirmation of claims by the administrator and the court.
 - Confirmation of restructuring plan by shareholders/owners of the enterprise.
 - Confirmation of restructuring plan by the creditors' meeting (at least 2/3 qualified majority counted from the total amount of creditors' claims approved by the court).
 - Confirmation of restructuring plan by the court.
 - Satisfaction of creditors' claims.
 - Decision of the court to end the proceedings.
- **Restructuring plan: main content**
 - Aims and duration of restructuring.
 - Business plan.
 - List of creditors and debtors of the enterprise.
 - Estimated administrative costs..
- **Filing a petition for restructuring proceedings**
 - Up to 5 business days as of the decision by the shareholders / owners to apply to the court.
 - Management body applies for restructuring proceedings.
- **Main content of petition**
 - Reasons for initiation.
 - Name of candidate of restructuring administrator + their consent.
 - Guidelines for restructuring plan.
 - Decision on approval of guidelines by shareholders/owners of the enterprise.
 - Set of financial statements of the previous financial year.
- **Time for lodging creditors' claims, consequences of failure**
 - The court prescribes the deadline for submission of claims to the restructuring administrator (30-45 days after the decision comes into force).
 - Claims submitted later are approved only if lodged too late for important reasons.
 - Court approves the claims.
- **Selection of restructuring administrators**
 - Court appoints restructuring administrator.
 - Petitioner must propose an administrator + submit consent of administrator to be appointed.
 - Natural or legal persons can be administrator.
 - Requirements for administrator: good reputation, university degree, certain working experience as head of an enterprise or bankruptcy administrator, passed qualifying exam and having a command of the Lithuanian language.

Restructuring proceedings (aiming at rescuing a legal entity): **Lithuania**

Insolvency

- **Foreign administrators**
 - Only citizens of another Member State of the European Union.

No particular mechanism provided for by law that would enable recognition of administrator licenses acquired outside Lithuania. This gap in regulation means that any administrator who is licensed in an EU member state may practice freely in Lithuania, in line with EU Directive 2006/123/EC (the Service Directive).
- **Ethical standards for restructuring administrators**
 - Code of Conduct for liquidators and restructuring administrators (2010).
 - 8 principles: respect for human rights and liberties, professionalism, effectiveness, confidentiality, impartiality, honesty, decency and cooperation.
- **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 for restriction of functions of management bodies.
 - Application to court to dismiss restructuring administrator and appoint a new one.
 - Approval of proposal by administrator to terminate restructuring proceedings.
- **Final proceedings**
 - Claims by creditors are satisfied by the enterprise 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 restructuring administrator.
 - Decision of the court to end restructuring proceedings terminates the proceedings.
- **Self administration (debtor-in-possession)**
 - Such a restructuring instrument does not exist.

Insolvency



→ Legal framework

- Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
- Insolvency Act of 28 February 2003 (IA), with further amendments.
- Civil Code of 23 April 1964 (CC), with further amendments.
- Liquidator License Act of 15 June 2007, with further amendments.

→ Insolvency phases

- Initial court proceedings in order to investigate grounds for ordering insolvency proceedings (conducted by the court; starts with an insolvency petition and ends with court order on insolvency proceedings).
- Final insolvency proceedings (supervised by the court; ends – depending on the case – with a decision on approval of plan to divide bankruptcy estate funds between creditors or with a decision to approve settlement between debtor and creditors).

→ Types of insolvency proceedings

- Insolvency proceedings – aimed at satisfying creditors by:
 - sale of assets and dividing the proceeds between creditors (connected with liquidation of the debtor)
 - approval of settlement (by creditors and later by the court) including conditions of repayment of debt or liquidation of assets proposed by the debtor.
- Restructuring proceedings – aimed at rescuing debtor.

→ Filing parties

- Insolvency proceedings
 - the indebted company has to file;
 - each creditor is entitled to file.
- Restructuring proceedings – only an entrepreneur threatened with insolvency is entitled to file.

→ Insolvency register

- There is no national insolvency register.
- Transparency ensured by:
 - affixes to company names “w upadłości likwidacyjnej” meaning “under insolvency aiming at liquidation of the debtor” or “w upadłości układowej” meaning “under insolvency aiming at reaching a settlement”;
 - opening of proceedings published in the Court and Commercial Gazette (Monitor Sądowy i Gospodarczy) (CCG);
 - modified name of the enterprise and information on opening insolvency or restructuring proceedings to be entered in the commercial register (Krajowy Rejestr Sądowy) of the enterprise – available online at:
<https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu>
- Above information only available in Polish.

Insolvency

→ **Competent court**

- Petitions to initiate insolvency or restructuring must be filed in writing with the district court with a division for commercial cases (insolvency cases) and has jurisdiction over the place where:
 - the principal business location operated by the enterprise is seated or
 - the registered office of the enterprise is seated (if the enterprise holds no business location in Poland) or
 - assets of the enterprise are located (if the enterprise has no registered office in Poland).

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Bankruptcy proceedings (aiming at liquidation): **Poland**

Insolvency

- **Grounds for filing**
 - The debtor fails to pay its due financial obligations towards at least two creditors.
 - The debtor being a legal person or partnership has liabilities exceeding the value of its assets.
- **Right to petition for insolvency**
 - Entitled to file:
 - each creditor.
 - Obligated to file:
 - indebted company (not later than within two weeks after insolvency occurs).
- **Sanctions for not filing an insolvency petition**
 - Civil liability for damages of member of the management board or the liquidator arises due to late filing.
 - Possible criminal prosecution.
- **Opening proceedings**
 - The court verifies whether a statutory condition exists to dismiss the petition and whether the debtor's property will cover the costs of insolvency proceedings (an expert may be appointed to examine this).
 - Assets may be secured – e.g. - by appointment of:
 - a temporary court supervisor (supervisor's consent is necessary for any transaction exceeding the scope of ordinary affairs);
 - a compulsory supervisor (debtor loses the right to manage and dispose of its assets).
- **Final proceedings**
 - Appointment of liquidator.
 - Management of the company is no longer in charge of company affairs (with some exceptions).
 - Liquidator liquidates assets to satisfy claims of approved creditors.
- **Selection of liquidator**
 - Liquidator:
 - 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
 - Liquidator's license granted by Minister of Justice to a person who meets all statutorily prescribed requirements, i.e.:
 - knowledge of the Polish language 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.
- **Foreign liquidators**
 - Liquidator's license may be granted to natural persons with Polish citizenship and to persons with citizenship of a member state of the EU, Switzerland or of an EFTA member state party to the EEA Agreement.
 - Citizens of other states must meet the same requirements as Polish citizens including appropriate knowledge of the Polish language.
- **Ethical standards for liquidators**
 - 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.

Bankruptcy proceedings (aiming at liquidation): **Poland**

Insolvency

- **Time for lodging creditors' claims, consequences of failure**
 - To be specified by the court – 1 to 3 months from publication of the court decision on insolvency in the CCG.
 - After the above deadline lodgement still possible until approval of final plan for distribution of debtor's assets (claim will only be taken into consideration in distribution plans drawn up after acknowledgment of the claim).
- **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.
- **Administration costs**
 - Administration costs consist of remuneration of the liquidator (administrator, supervisor) and of expenses to be repaid.
 - Initial amount of remuneration is set by the court at the request of the liquidator (administrator, supervisor).
 - Final amount of remuneration 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.
- **Secured creditors**
 - Any creditor secured by mortgage, pledge, or by transfer of ownership by way of security is entitled to priority (privileged satisfaction of claims out of secured assets).
- **Unsecured creditors**
 - Unsecured claims are divided into 5 categories under IA.
 - Claims may only be settled if all claims from preceding categories are settled.
 - Within the same category claims are settled proportionally.
- **Employees**
 - Claims by employees for 2 years preceding announcement of insolvency are to be covered in the second category.
 - The Employees Claims Guarantee Fund covers in particular unsatisfied wages and social insurance premiums for the last 3 months.
- **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 one 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).
 - Under general conditions in the CC the trustee (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 and taking place no longer than within 5 years before the application is filed. In any event, an application may be filed no later than 2 years after insolvency.
- **Settlement of insolvency**
 - Court declares insolvency aiming at reaching a settlement if it is likely that in this way creditors will be satisfied to a greater extent than in insolvency proceedings.
 - Settlement may aim at restructuring (further existence of the debtor) or at liquidating the debtor's assets.
 - Court appoints court supervisor (if the debtor manages the property) or court administrator (if the debtor is deprived of property management).
 - Court supervisor/administrator in particular must:
 - meet the same professional requirements as liquidator;
 - set compositions of the bankruptcy estate;
 - draw up list of claims;

Insolvency

- take part in meetings of creditors;
- issue an opinion on the condition of the enterprise and performability of settlement proposals to be presented to the meeting of creditors called for voting on settlement.
- Settlement to be adopted or rejected by the meeting of creditors.
- To be effective the settlement must be approved by the court.

Restructuring proceedings (aimed at rescuing a legal entity): **Poland**

Insolvency

- **Preconditions for restructuring**
 - Applicable to an entrepreneur threatened with insolvency, i.e. when based on a reasonable estimation of its economic condition it is evident that it will soon be insolvent, even if it duly performs its obligations.
 - May not be initiated in respect of an entrepreneur:
 - which has already conducted restructuring proceedings, if two years have not yet elapsed since discontinuation of the proceedings;
 - which has already been covered by a settlement in restructuring or insolvency proceedings, if five years have not yet elapsed since performance of the settlement;
 - against which insolvency proceedings were conducted which included liquidation of the debtor's assets or during which liquidation settlement was adopted, if five years have not yet elapsed since a final and valid conclusion of these proceedings; or
 - in respect of which an application for declaration of insolvency was dismissed or insolvency proceedings were discontinued due to lack of assets sufficient to satisfy the costs of the proceedings, if five years have not yet elapsed since the date when the dismissal became final and valid.
- **Stages**
 - Initiation of restructuring proceedings 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 publishes an announcement of filing the statement on initiating restructuring proceedings in the CCG, at least in one national + one local newspaper.
 - Entrepreneur enters information on initiating proceedings in the appropriate commercial register.
 - Court appoints a supervisor with whom the entrepreneur must conclude an agreement for payment for court supervisor's duties.
 - Meeting of creditors to be prepared and led by court supervisor.
 - Adoption or rejection of restructuring settlement by the meeting of creditors to be based on restructuring proposals regarding the debtor's liabilities presented by the entrepreneur (debtor).
 - Approval (rejection) by the court of restructuring settlement.
- **Restructuring plan: main content**
 - Main contents of settlement are restructuring of the entrepreneur (debtor)'s liabilities in particular in the following manner:
 - deferral of performance of obligations;
 - payment of debts by instalments;
 - reduction of debts;
 - conversion of claims into shares or stock ("debt-equity swap");
 - modification, exchange or cancellation of a right securing a claim.
- **Filing parties**
 - Only an entrepreneur threatened with insolvency is entitled to file.
- **Main content of petition**

The petition must contain:

 - 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 that no circumstance occurred due to which the proceedings would not be allowed;
 - restructuring plan with grounds;

Restructuring proceedings (aimed at rescuing a legal entity): **Poland**

Insolvency

- declaration with notarized signature that all data and declarations included in the statement on initiating the proceedings and documents enclosed therewith are true.

→ Time for lodging creditors' claims, consequences of failure

- Provisions on restructuring proceedings do not set any procedure for lodging creditors' claims and in particular any deadline.
- Debtor must draw up list of creditors and notify all creditors of the restructuring plan and date of the meeting of creditors; a creditor that is not informed is entitled to notify its claim at its own initiative no later than the beginning of the meeting of creditors.
- 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.

→ Selection of court supervisor

- A natural person or commercial partnership (company) that could be appointed as liquidator in insolvency proceedings.

→ Foreign court supervisors

- The same rules apply as in the case of foreign liquidators in insolvency proceedings.

→ Ethical standards for court supervisors

- The same rules apply as in the case of liquidators.

→ Main rights of the creditors' meeting

- Adoption or rejection of restructuring settlement.

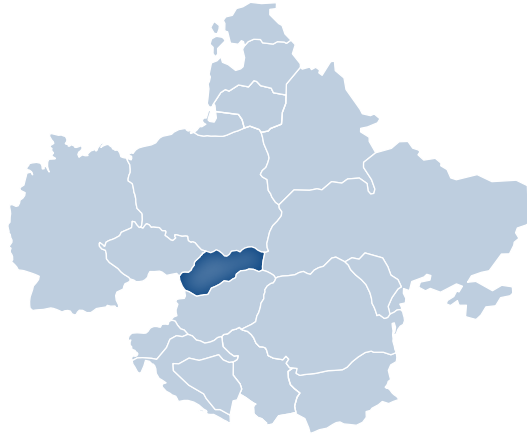
→ Final proceedings

- If restructuring settlement is adopted by creditors:
 - Approval of restructuring settlement by the court and order for proceedings to come to an end.
 - The court supervisor loses their position; however in a decision approving settlement the court may appoint a supervisor for the period for performing the settlement.
 - Claims of creditors covered by the settlement are satisfied by the enterprise according to the restructuring settlement.
 - Further claims that are not covered by the restructuring settlement may be enforced separately before the court.
- If bankruptcy settlement is not adopted by the creditors a new meeting of creditors may be convened; at the reconvened meeting of creditors new proposals for restructuring the obligations and other changes in the restructuring plan may be submitted.
- If restructuring proceedings are conducted by a small or medium entrepreneur the proceedings are discontinued by law if settlement is not made within three months of the date the proceedings are opened. In other cases, the proceedings are discontinued after four months from the date the proceedings are opened.

→ Self administration (debtor-in-possession)

- The court supervisor supervises the activities of an entrepreneur (debtor) that manages the property by itself.

Insolvency



- **Legal framework**
 - Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.
 - Act no. 7/2005 Coll. on Bankruptcy and restructuring (zákon o konkurze a reštrukturalizácii).
 - Act no. 8/2005 Coll. on Liquidators (zákon o správcoch).
 - Decree no. 665/2005 Coll. for execution of provisions of the Bankruptcy and restructuring act (vyhláška na vykonávanie ustanovení zákona o konkurze a reštrukturalizácii).
 - Decree no. 643/2005 Coll. on particulars regarding the method of insolvency determination (vyhláška o podrobnostiach o spôsobe určenia platobnej neschopnosti a predĺženia).
- **Insolvency phases**
 - Opening proceedings: Insolvency court investigates conditions for opening proceedings.
 - Final proceedings.
- **Types of insolvency proceedings**
 - Bankruptcy proceedings.
 - Restructuring proceedings.
 - Bankruptcy proceedings of a natural person – including debts discharge.
- **Filing parties**
 - Creditor.
 - Debtor.
 - Liquidator of a business company in liquidation.
- **Insolvency register**
 - Commercial bulletin (Obchodný vestník) <http://www.zbierka.sk/sk/obchodny-vestnik>
 - Insolvency Register (Register úpadcov) <http://insolv.justice.sk/>
- **Competent court**
 - District court in which debtor has its registered seat, place of business or domicile (Okresný súd).

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Bankruptcy proceedings (aiming at liquidation): **Slovakia**

Insolvency

- **Grounds for filing**
 - Debtor is insolvent if either of the following grounds is established:
 - Debtor fails to pay at least two obligations more than 30 days overdue to more than one creditor.
 - Debtor has more than one creditor and the value of its claims due exceeds the value of its assets.
- **Right to bankruptcy petition**
 - The debtor in insolvency must file a bankruptcy petition within 30 days from the moment when they became (or should have become) aware of insolvency or 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 their legal representative.
 - A creditor may file for bankruptcy if a reasonable assumption exists of insolvency of the debtor; debtor's insolvency can be reasonably assumed when the debtor is more than 30 days late with payment of at least two financial obligations to more than one creditor and was asked for payment by one creditor.
- **Sanctions for not filing a bankruptcy petition**
 - 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 1 January 2013 a person who during the 4 years prior to bankruptcy proceedings acts in the function of a statutory body or its member, liquidator of a business company in liquidation or the legal representative of a debtor breaches the duty to file a bankruptcy petition in time, has to pay for the benefit of the general bankruptcy estate the amount of the debtor's registered capital listed in the commercial register at the current time of the breach up to a maximum EUR 10 000,- in the case of a limited liability company and EUR 50 000,- in the case of a joint-stock company.
 - Criminal sanctions for infringing obligations set by the Bankruptcy and Restructuring Act.
- **Opening proceedings**
 - Court must decide within 15 days after filing a relevant petition, whether conditions for proceedings are met:
 - valid petition;
 - enterprise is insolvent;
 - sufficient assets to cover legal and administration expenses, and
 - no pending restructuring proceedings.
- **Final proceedings**
 - Court appoints a liquidator: debtor's management loses its competences/ powers which are then vested in the liquidator.
 - Assets liquidated and proceeds distributed to creditors with approved claims.
- **Selection of liquidators**
 - Insolvency court appoints a liquidator from among persons registered with the Register of liquidators.
 - Main requirements for the post: good reputation, university degree (Law or Economy), passed qualifying exam.
 - Citizen of a Member State with permanent residence in a Member State.
 - Possibility of appointing liquidator on the basis of creditors' meeting proposal.
- **Foreign liquidators**
 - Only citizens of another Member State or European Economic Area.
 - Under the Act on liquidators and the practice of the Ministry of Justice foreign candidates must also fulfil the above requirements, including good command of Slovak language and passing exam at the Ministry of Justice.
 - Such legislation and practice is ambiguous, while there is a possibility of dissonance with Service directive 2006/123/EC.

Bankruptcy proceedings (aiming at liquidation): **Slovakia**

Insolvency

- **Ethical standards for liquidators**
 - Liquidator must be trustworthy, professionally qualified and must have full legal capacity to enter into legal relationships.
 - Liquidator must perform their activities honestly, responsibly and conscientiously.
 - Liquidator is obliged to perform their activities with professional care, using all their experience and professional expertise.
- **Time for lodging creditors' claims, consequences of failure**
 - Claims to be lodged within 45 days after declaration of bankruptcy
 - If a creditor delivers a claim to the liquidator later, the application will be taken into account but the creditor loses voting and associated rights. However claims would be satisfied but only from the proceeds of general bankruptcy estate.
- **Costs of filing claims**
 - No administration fee.
- **Administration costs**
 - Before filing a bankruptcy petition the applicant must pay legal and administrative expenses to the preliminary liquidator in advance.
 - If after appointment of a preliminary liquidator the bankruptcy court finds out that the debtor's assets will be insufficient even to cover the expenses of bankruptcy, bankruptcy proceedings would end.
 - If the debtor's assets do not cover legal and administrative expenses, the person who lodged a petition may pay an amount into the court's deposit account; then, the bankruptcy proceedings will be initiated; the creditor could later apply for a refund in bankruptcy proceedings.
 - Remuneration of the liquidator 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 liquidator is entitled to remuneration determined as a percentage of proceeds.
- **Secured creditors**
 - Paid first among all from the proceeds of sale of security after deduction of legal and administration costs.
- **Unsecured creditors**
 - Included in the lowest rank and settled proportionately.
- **Employees**
 - By the declaration of bankruptcy the liquidator may act in the name of the debtor in labour relations.
 - Employment contracts are usually terminated.
 - Certain employees' claims are secured by the Guarantee Fund.
- **Nullifying contracts**
 - Contestable legal acts are in particular:
 - 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 a fulfilment, whose market value is 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 the creditors, and the debtor's intention was or must have been known by the contracting party).
 - Liquidator or creditors may bring actions for ineffectiveness of contracts (contestable legal acts) entered into within at least the past 12 months before bankruptcy proceedings.
 - In the case of related persons, contracts are examined three to five years back in time.

Restructuring proceedings (aiming at rescuing a legal entity): **Slovakia**

Insolvency

- **Preconditions for restructuring**
 - An enterprise has financial difficulties.
 - Activities do not cease.
 - A debtor who led to bankruptcy or is insolvent may authorize the administrator to prepare a restructuring report for the purpose of determining whether the conditions for restructuring are met.
 - Creditors may appoint an administrator to prepare a report if they agree with the debtor to provide the necessary cooperation.
 - Administrator may recommend restructuring of debtor if
 - the debtor carries on business;
 - the debtor leads to bankruptcy or is already in bankruptcy;
 - it could be reasonably expected to maintain at least a substantial part of the debtor's business operations and
 - if permission is granted for restructuring it can be reasonably expected to meet a wider range of creditor satisfaction than in a declaration of bankruptcy.
- **Stages**
 - Preparation of restructuring report on debtors' or creditors' demand.
 - Filing petition with the court within 30 days after recommendation by restructuring administrator in the report.
 - If filing a petition, a creditor must attach the debtors' acknowledgment of insolvency + agreement to restructuring.
 - Decision by the court to open restructuring proceedings within 15 days.
 - After opening proceedings the court has 30 days to declare restructuring of debtor, appointment of restructuring administrator.
 - Legal acts by the debtor performed throughout the restructuring must be approved by the restructuring administrator to the extent defined by the court.
 - Submission of creditors' claims to the administrator within 30 days from the declaration.
 - Confirmation of claims by the administrator and the court.
 - Creditors' meeting takes place within 30 days from the declaration, 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.
 - Decision of the court to end the proceedings.
- **Restructuring plan: main content**
 - Aims and duration of restructuring.
 - Business plan.
 - List of creditors and debtors of the enterprise.
 - Estimated administrative costs.
 - Modification of the rights and duties of both debtors and creditors (for example delaying the maturity of debts, forgiving a certain proportion of claims).
- **Filing a petition for restructuring proceedings**
 - A petition must be filed with the court within 30 days after a recommendation by the restructuring administrator in the restructuring report.
- **Main content of petition**
 - General requirements for petitions.
 - Restructuring report by the restructuring administrator.
 - Lists of debtor's assets and obligations.
 - List of debtor's related persons.
 - Set of financial statements of the previous financial year.

Restructuring proceedings (aiming at rescuing a legal entity): **Slovakia**

Insolvency

- **Time for lodging creditors' claims, consequences of failure**
 - The court sets the deadline for filing claims with the restructuring administrator (30 days after the decision comes into force).
 - Claims submitted later are not accepted.
- **Selection of restructuring administrators**
 - The court appoints a restructuring administrator upon request of the petitioner and with consent of the administrator.
 - A natural or legal person.
 - Insolvency court appoints administrator from among persons registered with the Register of liquidators.
 - Main requirements for the post: good reputation, university degree (Law or Economy), passed qualifying exam.
 - Citizen of a Member State with permanent residence in a Member State.
 - Possibility of appointing liquidator on the basis of creditor's meeting proposal.
- **Foreign administrators**
 - Only citizens of another Member State or European Economic Area.
 - Under the Act on liquidators and the practice of the Ministry of Justice foreign candidates must also fulfil the above requirements, including good command of Slovak language and passing an exam at the Ministry of Justice.
 - Legislation and practice is ambiguous, while there is a possibility of dissonance with Service directive 2006/123/EC.
- **Ethical standards for restructuring administrators**
 - Liquidator must be trustworthy and professionally qualified.
 - Liquidator must perform their activities honestly, responsibly and conscientiously.
 - Liquidator must perform liquidator activities with professional care, using all their experience and professional expertise.
- **Main rights of the creditors' meeting**
 - Election of creditors' committee and transfer to it of certain rights, in particular preparation of the restructuring plan.
 - Approval of restructuring plan.
 - Approval of proposal by administrator to end restructuring proceedings.
- **Final proceedings**
 - Claims by creditors are satisfied by the debtor according to the restructuring plan.
 - The management body is still allowed to manage and dispose of all assets in compliance with the restructuring plan and under supervision of the restructuring administrator.
 - Decision of the court to finish restructuring proceedings and to end proceedings.
- **Self administration (debtor-in-possession)**
 - No such restructuring instrument exists.

Insolvency

| | |
|-----------------------|---|
| Belarus | <ul style="list-style-type: none">• There are no consumer insolvency proceedings in Belarus. |
| Bulgaria | <ul style="list-style-type: none">• No act on consumer insolvency exists.• Consumer insolvency is thus not currently possible. |
| Czech Republic | <ul style="list-style-type: none">• The Act allows consumer insolvency proceedings, which amount already to 75 % of all insolvency proceedings registered in the Czech Republic as at the end of 2012; only a natural person who is not in business can apply for consumer insolvency.• The petition must be filed in a form prepared by the Ministry of Justice – it can be filed together with a petition for bankruptcy.• There are two methods for consumer proceedings – liquidation of property and fulfilling a debt plan (over five years).• The proceedings are structurally more similar to reorganization than bankruptcy and end with a partial write-off of creditors' claims.• If the debt plan was fulfilled, all creditors lose the rest of their claims (maximal 70 %); creditors who do not lodge their claims in time lose them altogether.• If the debt plan was not fulfilled or if the debt plan was revoked, the procedure follows the rules on bankruptcy procedure. |
| Estonia | <ul style="list-style-type: none">• A debtor who is a natural person may be released from their obligations through bankruptcy proceedings under the procedure in the Insolvency Act.• A debtor who is a natural person may be released from obligations not performed during bankruptcy proceedings. |
| Germany | <ul style="list-style-type: none">• Yes, under § 304 InsO. |
| Hungary | <ul style="list-style-type: none">• Does not exist in Hungary. The idea of introducing this type of proceedings to Hungarian law has been discussed for years, but no action has been taken so far. |
| Latvia | <ul style="list-style-type: none">• Natural persons, excluding individual traders, may apply for initiation of insolvency proceedings.• Insolvency proceedings of a natural person may be started if at least one of the grounds mentioned below is established:<ul style="list-style-type: none">– Due and payable obligations which separately or in total exceed LVL 5 000 (approx. EUR 7 100) and which the debtor cannot fulfil.– Obligations which will become due within one year and separately or in total exceed LVL 10 000 (approx. EUR 14 200) and which the debtor will not be able to fulfil.• In addition the debtor must be able to settle one-off remuneration of the liquidator of two minimum monthly wages totalling LVL 400 (approx. EUR 570) in 2013. |
| Lithuania | <ul style="list-style-type: none">• Consumer insolvency is possible as of 1 March 2013.• A natural person is insolvent if unable to pay due debts exceeding the legal minimum income per month by 25 times. |
| Poland | <ul style="list-style-type: none">• Such proceedings exist in Poland in respect of natural persons that do not conduct any business activities. |
| Slovakia | <ul style="list-style-type: none">• Basically similar to bankruptcy proceedings – called „Small“ bankruptcy – included in Bankruptcy and Restructuring Act.• If a bankruptcy order is made against an individual who is not engaged in business.• After fulfilling certain conditions, the debtor, a natural person, may also ask the court to be discharged from his debts that were not met during insolvency proceedings. |

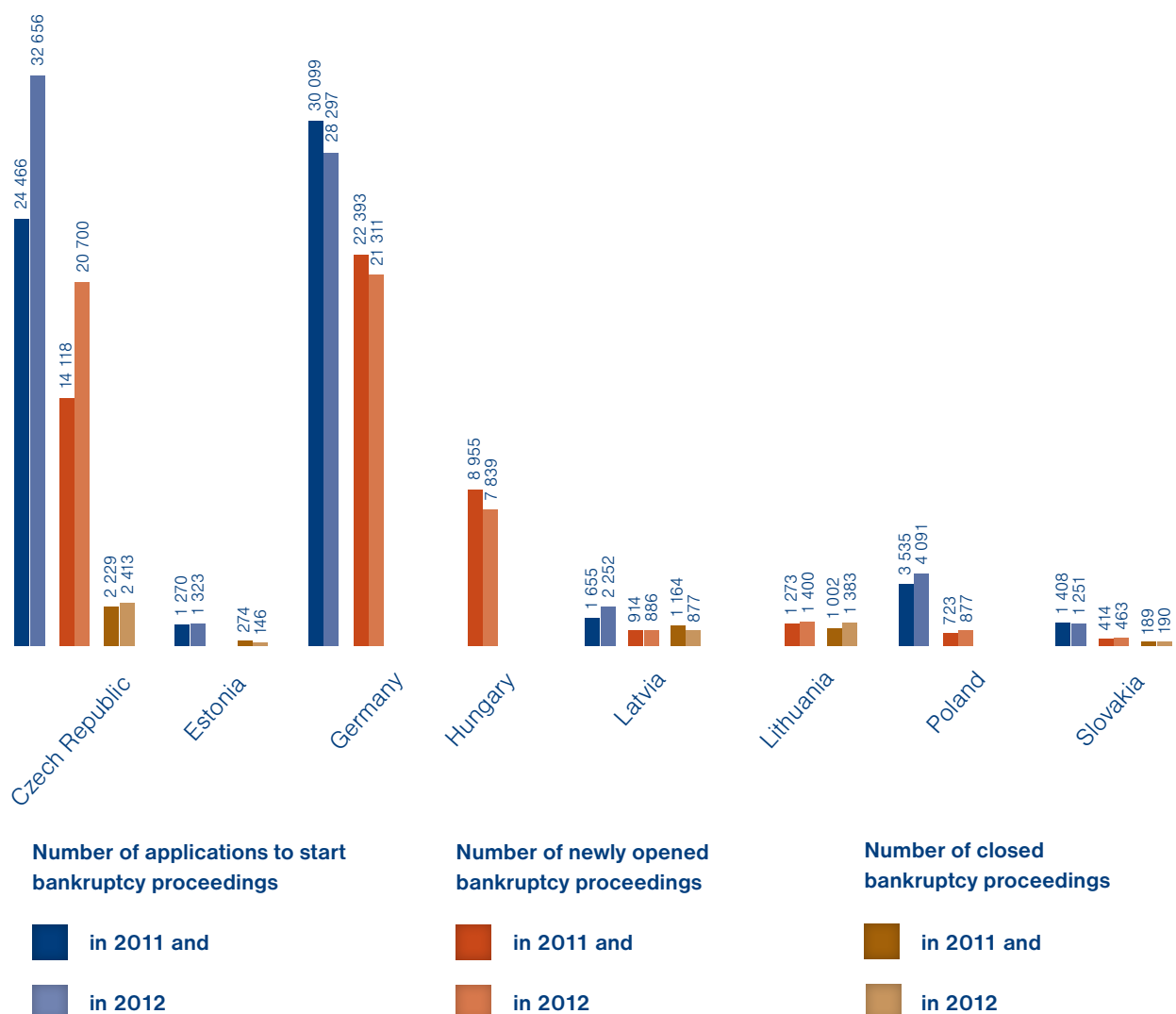
Insolvency

- A petition for debts discharge can be filed together with a petition for bankruptcy or at the latest before the end of proceedings.
- The court in its judgment allowing debts discharge in particular:
 - orders a probationary period of 3 years;
 - determines the scope of legal acts of the debtor which are subject to the prior consent of the trustee;
 - determines the amount of money which the debtor must provide at the end of each probation year to meet his debts, but not more than 70% of his total net income for the previous probation year.
- A debtor who fulfils all obligations will be discharged from all debts after a 3 year probationary period.

Insolvency

Number of bankruptcy proceedings

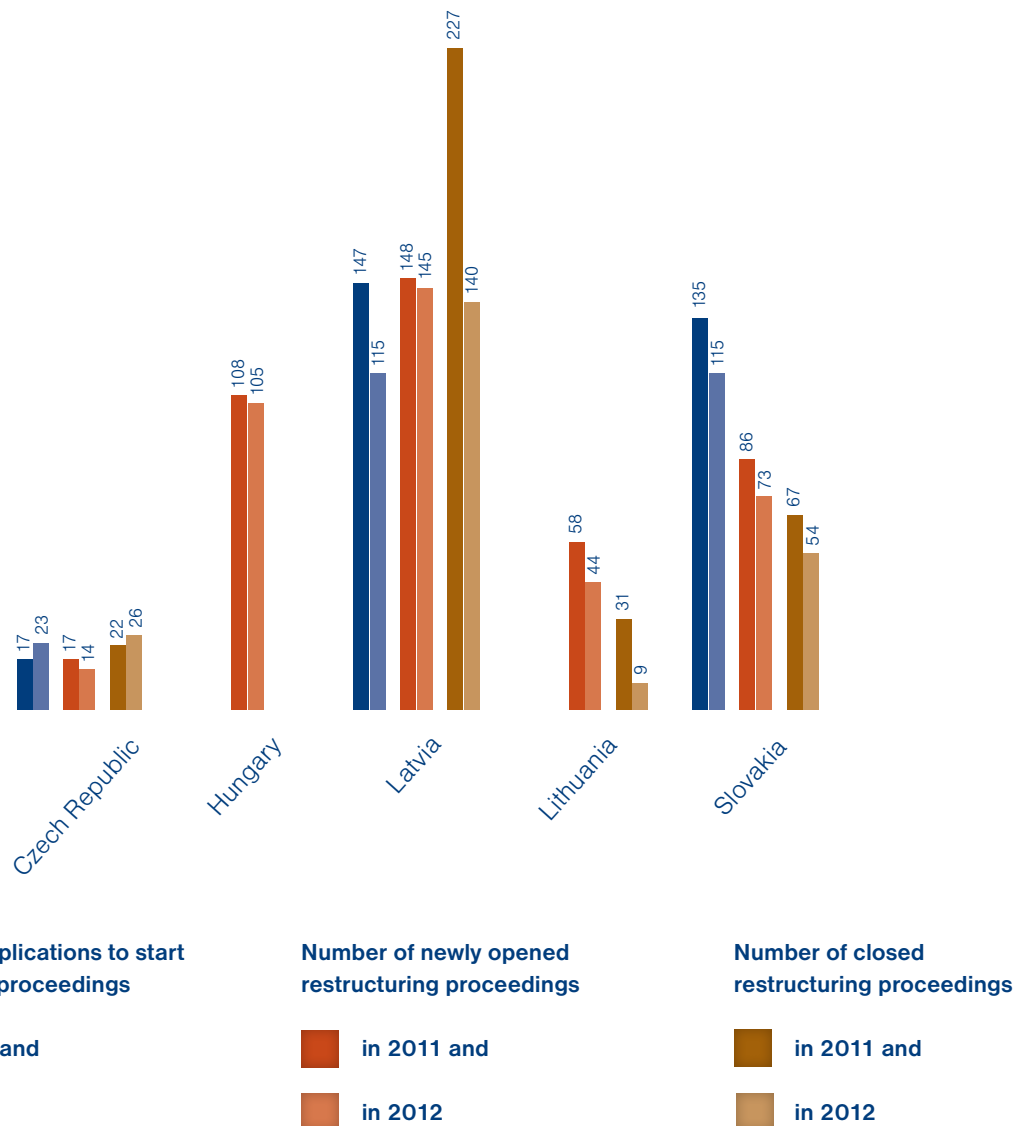
| | Number of applications to start bankruptcy proceedings in 2011 and in 2012 | | Number of newly opened bankruptcy proceedings in 2011 and in 2012 | | Number of closed bankruptcy proceedings in 2011 and in 2012 | |
|-----------------------|--|--------|---|--------|---|-------|
| | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 |
| Czech Republic | 24 466 | 32 656 | 14 118 | 20 700 | 2 229 | 2 413 |
| Estonia | 1 270 | 1 323 | N/A | N/A | 274 | 146 |
| Germany | 30 099 | 28 297 | 22 393 | 21 311 | N/A | N/A |
| Hungary | N/A | N/A | 8 955 | 7 839 | N/A | N/A |
| Latvia | 1 655 | 2 252 | 914 | 886 | 1 164 | 877 |
| Lithuania | N/A | N/A | 1 273 | 1 400 | 1 002 | 1 383 |
| Poland | 3 535 | 4 091 | 723 | 877 | N/A | N/A |
| Slovakia | 1 408 | 1 251 | 414 | 463 | 189 | 190 |



Insolvency

Number of restructuring proceedings

| | Number of applications to start restructuring proceedings in 2011 and in 2012 | | Number of newly opened restructuring proceedings in 2011 and in 2012 | | Number of closed restructuring proceedings in 2011 and in 2012 | |
|-----------------------|---|------|--|------|--|------|
| | 2011 | 2012 | 2011 | 2012 | 2011 | 2012 |
| Czech Republic | 17 | 23 | 17 | 14 | 22 | 26 |
| Hungary | N/A | N/A | 108 | 105 | N/A | N/A |
| Latvia | 147 | 115 | 148 | 145 | 227 | 140 |
| Lithuania | N/A | N/A | 58 | 44 | 31 | 9 |
| Slovakia | 135 | 115 | 86 | 73 | 67 | 54 |



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