



Restructuring and Insolvency

in 51 jurisdictions worldwide

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Contributing editor:
Bruce Leonard,
Cassels Brock & Blackwell LLP

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Joseph Samuel

Marketing managers

Alan Lee
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Edward Perugia
Robyn Hetherington
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Ellie Notley

Subscriptions manager
Nadine Radcliffe
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Editorial assistant

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Senior production editor

Jonathan Cowie

Chief subeditor

Jonathan Allen

Senior subeditor

Kathryn Smuland

Subeditors

Ariana Frampton
Charlotte Stretch

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

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Lithuania

Giedrius Kolesnikovas and Emil Radzihovsky

Motieka & Audzevičius

1 Legislation

What legislation is applicable to bankruptcies and reorganisations?

The principal legal act regulating bankruptcy proceedings of enterprises is the Enterprise Bankruptcy Law (EBL). The principal legal act regulating restructuring of enterprises is the Law on Restructuring of Enterprises (LoRE). The Civil Code (CC) regulates bankruptcy and restructuring proceedings to the extent that these proceedings are not regulated by EBL and LoRE. The Law on Companies (LoC), the Law on Personal Enterprises (LoPE), and the Law on Commercial Partnerships (LoCP) govern liquidation of companies, personal enterprises and commercial partnerships respectively. Sanctions for violations related to bankruptcy and restructuring proceedings are laid down in the Law on Enterprise Bankruptcy, the Law on Restructuring of Enterprises, the Civil Code, the Criminal Code, and the Code of Administrative Transgressions of Law.

2 Excluded entities

What entities are excluded from general bankruptcy proceedings and what legislation applies to them?

The Law on Enterprise Bankruptcy applies to all enterprises registered in Lithuania. The Law on Enterprise Bankruptcy expressly excludes the following entities from its scope: budgetary agencies, political parties, trade unions and religious organisations. Presently, bankruptcy laws do not apply to individuals.

3 Secured lending and credit (immovables)

What principal types of security are taken on immovable (real) property?

The principal type of security granted over immovable property is a mortgage. The objects of a mortgage may be individual immovable things, registered in the public register and not withdrawn from civil turnover, that may be submitted for a public forced auction. The mortgage is created by concluding a contract or by a unilateral declaration of the owner and subsequent registration of the mortgage bond in the Mortgage Register. Claims secured by the mortgage have priority over preferential and unsecured claims in bankruptcy proceedings. Although the data of the Mortgage Register is publicly available and offers guidance to creditors, it may be challenged and, therefore, is not final. If a property is mortgaged to several persons, priority is determined according to the moment of submission of the mortgage bond (rather than registration).

4 Secured lending and credit (moveables)

What principal types of security are taken on moveable (personal) property?

The principal security devices granted over moveable property are as follows.

Pledge

A pledge may be taken on moveable property (in certain circumstances it may be items that will come into pledgor's ownership in the future) or real rights securing the discharge of an existing or future debt obligation when the object of the pledge is transferred to the creditor, a third person or remains with the pledgor. A pledge may secure a performance of any monetary obligation. Although the pledges are registered in the Mortgage Register, which is publicly available and offers guidance to creditors, it may be challenged and, therefore, is not final. If a property is mortgaged to several persons, the priority of the registered pledges is determined according to the moment of submission of the application to the Mortgage Register. Claims secured by the pledge have priority over preferential and unsecured claims in bankruptcy proceedings.

Pledge of goods in stock that are in circulation

A pledgor, having pledged goods (raw materials) in stock that are in circulation, has the right to change the composition and form of pledged goods in stock provided their total value is not reduced. Accordingly, the pledge passes on to the new goods in stock from the moment of acquisition of the goods. All provisions applying to a regular pledge apply to this type of security as well, except the rules on expiration of this kind of pledge: the pledge of particular goods ends if the goods are legally transferred to other persons.

Retention of a thing

A lawful possessor who has the right of claim in respect of the owner of the property belonging to another is entitled to retain it until its claim is satisfied. The possessor may retain the entire object until its claim is fully satisfied. A person who enjoys the right of retention may keep the fruits of the retained property and thus satisfy his or her claims prior to other creditors. At the same time, a person who has the right of retention may not lease, pledge or otherwise encumber the thing or use it except as necessary to preserve the thing, unless laws or parties' agreement provides otherwise. The right of retention must not be registered in public registers.

Retention of title

The seller of a personal property may retain title over the assets it is selling until the purchase price has been paid. Such an arrangement is legally possible; however, in practice bankruptcy administrators do not permit transferring the assets back to the seller even when the purchase price has not been paid. Presently, there is no case law protecting the retention of title arrangements.

5 Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

Where the bankruptcy proceedings have not been instituted, an unsecured creditor must first obtain a decision by the court or an arbitral

award in respect of its debt. Only after such decision is obtained can the creditor initiate recovery procedures against the debtor. According to the Code of Civil Procedure, interim measures may be applied during court proceedings if failure to do so may complicate enforcement of the judgment or make it impossible. As the court procedures may be difficult and time-consuming, the interim measures may be applied even before the claim is filed with the court.

The interim measures comprise:

- seizure of immovable property; making of a record in a public register prohibiting disposal of property;
- seizure of moveable property or property rights or assets belonging to the debtor;
- lien of property belonging to debtor;
- appointment of administrator of debtor's property;
- prohibition for the debtor to enter into certain transactions or perform certain acts;
- prohibition for other persons to transfer property to the debtor or perform other obligations;
- positive obligation to prevent or mitigate damages; and
- other measures provided for by laws.

The court may apply more than one interim measure for an amount not substantially exceeding the claim. The court must decide on the interim measures within three days from receipt of such request and notify the defendant afterwards. A separate appeal against the court ruling regarding interim measures may be filed; however, the ruling of the appellate instance's court is final.

Foreign creditors in possession of a foreign judgment have to apply to a Lithuanian court for recognition and enforcement of their judgment.

A creditor has the right to challenge transactions (including grant of security), where the debtor was not bound to make them and by such transaction the debtor renders itself insolvent or by which, being insolvent, it grants preference to another creditor, while the debtor knew or ought to have known that prejudice to the creditor would result from that transaction (*actio pauliana*).

6 Courts

What courts are involved in the bankruptcy process? Are there restrictions on the matters that the courts may deal with?

Bankruptcy cases are heard by courts of general jurisdiction. Petitions for bankruptcy must be filed with the district court of the locality in which the registered office of the enterprise is situated.

The court must refrain from passing decisions on matters within the competence of the meeting or committee of creditors until the meeting or committee of creditors or the bankruptcy administrator takes a decision on such a matter (see question 23 on the competences of the meeting and committee of creditors).

7 Voluntary liquidations

What are the requirements for a debtor commencing a voluntary liquidation and what are the effects?

The general requirements for commencing a voluntary liquidation of a solvent legal entity are laid down in the Civil Code, LoC, LoPE and LoCP, regulating the procedure of voluntary liquidation of the respective types of legal entities.

A resolution to liquidate a legal person must be adopted by a qualified majority vote of members of a legal entity. The qualified majority may not be less than two-thirds of all votes of participants of the respective general meeting. After a resolution to liquidate a legal entity has been adopted, members of the legal entity, the meeting of creditors, the manager of the Register of Legal Entities or a court must appoint a liquidator. The management bodies of the legal entity lose their powers upon appointment of liquidator, who assumes their powers. The liquidator is responsible for settlement

with creditors of the legal entity, termination of any pending business transactions, drawing up a liquidation statement, distribution of the remaining assets to its members, and applying for removal of the legal entity from the Register of Legal Entities. Members of a company who have subscribed but not fully paid for shares must make the payments unless the ground for liquidation is invalidation of the company's incorporation.

Legal persons in liquidation may only conclude contracts that are related to the termination of a legal person's activities and those contracts that are provided for in the liquidation resolution.

If during voluntary liquidation of the legal entity it appears that the legal entity will be unable to discharge its liabilities, the liquidator must forthwith suspend all payments and file a petition for bankruptcy.

8 Involuntary liquidations

What are the requirements for creditors placing a debtor in involuntary liquidation and what are the effects?

Creditors may file a petition for bankruptcy of the debtor if at least one of the following conditions is met:

- the entity fails to pay salaries and other employment-related payments due;
- the entity fails to duly pay for the goods received, work performed or services provided, defaults in the repayment of credits, and does not discharge other contractual liabilities;
- the entity fails to duly pay taxes, other compulsory contributions prescribed by laws or awarded amounts;
- the entity has made a public announcement or notified creditors otherwise of its inability or lack of intent to discharge its liabilities; or
- debts of the entity cannot be recovered in execution proceedings because the entity has no assets.

In the situations indicated in the first three points above the creditor must notify the debtor of its intention to file a petition for bankruptcy in writing. Such a notification must identify undischarged liabilities of the debtor and contain a warning that in case of failure to discharge the above liabilities within the specified time limit (which must be at least 30 days), the creditor will file a petition for bankruptcy. A petition filed with the court may be waived before the court passes a ruling to institute bankruptcy proceedings. The court shall institute bankruptcy proceedings if:

- the entity is insolvent (ie, liabilities overdue constitute over a half of the balance sheet assets) or defaults paying employee wages; or
- the entity has made a public announcement or otherwise notified creditors of its inability or lack of intent to discharge its liabilities.

Insolvency of an entity is defined by the EBL as the state of enterprise when it fails to settle with creditors after the lapse of three months from the statutory or contractual deadline, or upon expiry of the said period after the creditors demand discharge of liabilities and the overdue liabilities are in excess of half the balance sheet assets of the entity.

After the court decision to institute bankruptcy proceedings becomes effective, the management bodies must transfer the assets and documents of the entity to the administrator. The management bodies lose their powers; members of the bodies may not be entitled to severance pay. The bankruptcy administrator assumes the powers of the management bodies.

Discharge of liabilities due, including interest and taxes, and their recovery either by court action or without suit, is prohibited with limited exceptions. Accrual of interest and penalties upon the entity's liabilities is suspended. The company may continue its economic activity provided that such activity reduces the losses of the entity's creditors incurred by the reason of bankruptcy.

The court must declare the entity bankrupt and issues liquidation order if an order to conclude the composition with the creditors is not issued within three months from the effective date of the order to allow the creditors claims and no extension of the deadline is granted. The bankruptcy administrator is obliged to dispose of the company's assets in order to satisfy the creditors' claims and take other actions to complete liquidation and apply for removal of the entity from the Register of Legal Entities.

9 Voluntary reorganisations

What are the requirements for a debtor commencing a financial reorganisation and what are the effects?

There are two restructuring procedures established in the LoRE: ordinary and simplified. The simplified procedure is described in question 21. Under the LoRE, restructuring of the entity may be commenced where:

- the entity fails to settle with creditors three months from the statutory or contractual deadline, or upon expiry of said time period after the creditors demand discharge of liabilities;
- the entity has not discontinued its economic and commercial activities; and
- no bankruptcy proceedings have been initiated against the entity and no extrajudicial bankruptcy process has been commenced.

The head of an entity may file a petition on initiating the restructuring proceedings to the court upon decision of the meeting of the members of the entity and having the consent of principal creditors of the entity. Upon receiving the petition and any additional documents necessary for the hearing, the court adopts a decision to institute the restructuring proceedings. The court may refuse to institute the proceedings if the entity does not submit the necessary documents to the court, or bankruptcy proceedings have been initiated against the entity, or the LoRE conditions for initiating the restructuring proceedings are not met. If a petition for restructuring is filed at the time when the court is considering a bankruptcy petition, consideration of the bankruptcy petition shall be suspended until an order is made to initiate or to refuse to initiate restructuring proceedings.

Upon adopting the decision to initiate restructuring proceedings, the court must appoint the administrator for the period of developing the restructuring plan. The court may apply interim measures until the court order becomes effective. The final restructuring plan must be submitted to the court for approval within four months from the day when the restructuring order becomes effective (the period may be extended for one month).

After the decision to institute the restructuring proceedings becomes effective, it is prohibited to discharge liabilities that were not discharged before the court order to initiate the enterprise restructuring proceedings became effective, including payment of the interest, the default interest and compulsory payments; to recover debts from the entity; to apply judgment mortgage, servitudes, usufruct; to offset claims; or to sell or transfer in any other way the assets of the entity necessary for the continuation of its activities. Accrual of interest, except employment-related, is suspended. The recovery under writs of execution and a set-off of the claims are suspended if they are not stipulated in the restructuring plan. The entity must discharge its obligations to the creditors according to the schedule set forth in the restructuring plan. Creditors of the entity may make concessions with regard to the discharge of debts accrued before the decision to institute the restructuring proceedings became effective.

10 Involuntary reorganisations

What are the requirements for creditors commencing an involuntary reorganisation and what are the effects?

The LoRE envisages that the petition on initiating the restructuring proceedings may be filed by the creditors pursuant to a resolution

of the first creditors' meeting. Upon receipt of such a petition and after hearing explanations of the head of the entity, the court may commence the restructuring proceedings without the decision of the meeting of the members of the entity and obligate the head of the entity to draft the restructuring plan.

In addition to the general grounds for refusal to institute restructuring proceedings specified in question 9, the court may refuse to institute proceedings if the entity satisfies the claims of the creditor who has filed the petition prior to the restructuring order. Other provisions are the same as the voluntary restructuring.

11 Mandatory commencement of insolvency proceedings

Are companies required to commence insolvency proceedings in particular circumstances? If proceedings are not commenced, what liabilities can result?

The duty to file a petition for bankruptcy of the entity is owed by the head or owner of the entity under the following conditions: the entity is or will be unable to settle with the creditors, and the latter have not filed a petition for bankruptcy; or the entity has made a public announcement or otherwise notified creditors of its inability or lack of intent to discharge its liabilities. The head of the entity or other persons empowered to adopt the decision must compensate damages incurred by the creditors as a result of delay in filing the bankruptcy petition. Managers of the entity are subject to civil and administrative liability (a fine or removal from office for a second violation) for breach of such a duty.

The duty to file the petition for bankruptcy is also established for the liquidator in voluntary liquidation if it appears that the entity will be unable to discharge all its liabilities to creditors. The liquidator is subject to civil and administrative liability for breach of such duty.

12 Doing business in reorganisations

Under what conditions can the debtor carry on business during a reorganisation? What conditions apply to the use of assets and to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

The restructuring plan is implemented, all the property owned or held in trust by the entity is disposed of, and economic activities of the enterprise are directed by the managing bodies of the entity within their competence under the entity's constitution in compliance with the restrictions established in the restructuring plan or the court order. The restructuring plan must provide for measures to ensure a long-term solvency of the entity, the schedule for the implementation of these measures, the persons responsible for their implementation, the sources of financing and the anticipated results.

During the restructuring, the entity must make all the current payments unless it has entered into agreements with the creditors on deferral or replacement of payments. Creditors' petitions about default on current payments, with the exception of compulsory payments, shall be considered by the court hearing the restructuring case, which shall also determine the forms and schedules of recovery. The compulsory payments not paid when due shall be recovered by the administrators of compulsory payments. The administrators of compulsory payments may defer claims or waive the claims arising from pecuniary obligations that accrued during the restructuring, but only for a period not longer than the implementation of the restructuring plan.

During the drafting of the restructuring plan, the activities of the managing bodies are supervised by the administrator appointed by the court. During the implementation of the restructuring plan, the activities of the said bodies are supervised by the chairman of the meeting or committee of creditors and the administrator, if such has been appointed.

13 Rejection and disclaimer of contracts in reorganisations

Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party?

The restructuring plan must specify contracts to be terminated and contracts that are not useful for the entity and creditors, with the exception of employment contracts, concluded prior to the day of initiating restructuring proceedings. After the restructuring order becomes effective, the entity administrator, if such has been appointed, must examine the contracts entered into by the entity for at least 12 months preceding the initiation of restructuring proceedings. Upon resolution of the committee or meeting of creditors, the administrator may bring an action for the invalidation of the contracts that are not in line with the objects of the entity or that might have led to the inability of the entity to settle with creditors. If a contract is declared null and void by the court restitution is applied. Where restitution in kind is impossible, the parties are bound to compensate damages, unless the laws provide otherwise.

14 Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

Restructuring

During the restructuring, the assets of the entity are sold in accordance with the restructuring plan, which stipulates the arrangements of the sale of the assets and the purpose of the proceeds obtained. The pledged (mortgaged) property is sold upon the consent of the pledge (mortgagee) after the annulment of its pledge (mortgage), with the exception of the cases when the buyer agrees to buy the pledged (mortgaged) property.

Liquidations

During liquidation proceedings, the bankruptcy administrator is obliged to sell the assets according to the following rules:

- animals, products, and other property with a limited usage period, must be sold for the highest possible price, which must be adjusted by the court or creditors' meeting;
- immovable property and pledged property must be sold at auction according to the procedure established by the government; and
- other assets as well as property that has not been sold at two consequent auctions is disposed of according to the procedure established by the meeting of creditors.

The assets that have not been sold may be transferred to creditors.

Securities held by the entity in bankruptcy must be sold in the manner prescribed by laws governing trade in securities. Shares held in private limited companies must be sold in the manner prescribed by the meeting of creditors for the highest price offered; pre-emption rights apply.

Radioactive materials and equipment must be transferred in accordance with the law on radiation protection.

15 Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

Liquidations

Upon the decision of the court to institute bankruptcy proceedings, all pending property claims against the debtor are transferred to the

court that instituted the bankruptcy proceedings. Recovery of all debts against the debtor is suspended. Claims of all creditors (secured and unsecured) must be satisfied in the course of bankruptcy proceedings. Creditors may only submit their claims in the course of bankruptcy proceedings. Recovery under writs of execution from the bankrupt estate may not be continued.

Restructuring

After the restructuring order becomes effective, it is prohibited to discharge prior liabilities; recovery of debts is also suspended. Enforcement proceedings under writs of execution, as well as a set-off of the claims, are stayed if they are not stipulated in the restructuring plan.

16 Arbitration processes in bankruptcy

How frequently is arbitration used in insolvency proceedings? What limitations are there on the availability of arbitration in insolvency cases? Will the court allow arbitration proceedings to continue after an insolvency case is opened?

The Law on Commercial Arbitration prohibits the use of arbitration in bankruptcy proceedings.

17 Set-off and netting

To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Set-off is prohibited from the day when the decision to institute bankruptcy proceedings becomes effective.

In restructuring proceedings, the creditors may not exercise the right of set-off from the day the restructuring order becomes effective, if set-off is not stipulated in the restructuring plan.

18 Intellectual property assets in insolvencies

May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?

Generally, the licensor or owner of IP may terminate the IP agreement only if the agreement provides for such right. The bankruptcy administrator is authorised to exercise all rights granted under IP agreements concluded by the debtor before the bankruptcy proceedings were initiated. The administrator may notify the licensor or owner of the IP within 30 days after the decision to institute bankruptcy proceedings becomes effective that the entity will not perform the IP agreement, which constitutes termination of the agreement.

19 Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

The entity may still continue economic activities during the bankruptcy proceedings provided it reduces the losses incurred by creditors as a result of the bankruptcy. Lithuanian laws do not establish any special rules for credit facilities obtained during the proceedings.

In restructuring proceedings, the restructuring plan must specify the sources of financing such as loans or credits. No special priority rules are established.

20 Successful reorganisations

What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

The LoRE indicates a detailed list of the issues to be included in the restructuring plan, including:

- the aims and duration of restructuring;
- the entity's detailed business plan for the period of restructuring, providing for measures ensuring a long-term solvency of the entity;
- reallocation of assets;
- agreements to be terminated or not useful for the entity and creditors;
- details of anticipated credit facilities;
- concessions granted by creditors to the entity during the restructuring period;
- a list of creditors, their claims, and schedules for satisfying the claims;
- creditors classified by groups and their claims, and the procedure for settling;
- property claims against and by the entity in other civil cases;
- the number of employees to be dismissed;
- the arrangement for covering creditors' contingency losses;
- the procedures for reporting about the implementation of the restructuring plan;
- restrictions on the competence of the management bodies;
- an estimate of administrative expenses;
- loans received or receivable on behalf of the state or with a state guarantee, and their terms; and
- the guarantees provided by the creditors initiating the restructuring of the entity, when a decision of the meeting of the members of the entity has not been obtained.

The order of satisfying creditors' claims set in the restructuring plan may not infringe the sequence of creditors claims established in the LoRE (see question 28).

Upon resolution of the meeting of creditors, the creditors may vote collectively or in groups on the issues of the restructuring plan. For the purposes of voting, the following groups of creditors may be formed:

- secured creditors;
- employees whose claims arise from payments or claims related to employment relations and persons whose claims arise from payment for agricultural production purchased for processing;
- administrators of compulsory payments;
- unsecured creditors who have granted non-expired long-term loans; and
- other creditors.

The restructuring plan must be approved by the meeting of creditors if the implementation of the plan will restore the solvency of the entity. For the plan to be approved, it is necessary that creditors with at least three-quarters of the aggregate amount of certified claims vote in favour of the restructuring plan.

When the meeting of creditors decides that voting for the restructuring plan must take place in groups of creditors, it is necessary that within each group the creditors with at least two-thirds of the aggregate amount of certified claims accept the restructuring plan.

The approved plan must be submitted to the court for affirmation. If the court does not affirm the plan, the restructuring proceedings are terminated.

21 Expedited reorganisations

Do procedures exist for expedited reorganisations?

The restructuring may be initiated in accordance with a 'simplified procedure' provided its restructuring plan is drawn up prior to the filing a petition for restructuring. When applying a simplified procedure, the head of the entity or a representative of the creditors must file with the court, together with the petition for restructuring, the restructuring plan (which must be accepted by all the creditors), the decision of the members of the entity to restructure the entity, and the approval of the restructuring plan as well as conclusion of the independent expert about feasibility of the plan and measures of its implementation.

22 Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of the plan not being approved? What if the debtor fails to perform a plan?

If the restructuring plan is not filed within the prescribed time limits, or if the court does not approve it, the court shall issue an order to terminate the enterprise restructuring proceedings.

The management bodies of the entity are responsible for implementation of the restructuring plan within their competence. If the management bodies fail to perform the restructuring plan properly or cause damage to the creditors, the chairman of the meeting of creditors or administrator must request written explanations of the default and must notify the committee or meeting of creditors thereof. The meeting of the creditors may apply to the court with a request to suspend of the powers of members of the management bodies of the entity or remove the head of the entity. Members of the management bodies are also generally liable for the damage caused to the entity and creditors.

23 Bankruptcy processes

During a bankruptcy case, what notices are given to creditors? What meetings are held? What committees can be formed and what powers or responsibilities do they have? May creditors pursue the estate's remedies against third parties?

The court must notify the creditors of its decision to institute the bankruptcy proceedings within 10 days after the said decision becomes effective. The court must set a time limit (30 to 45 days) within which the creditors may file their claims that arose prior to the day of institution of bankruptcy proceedings against the entity.

The administrator may notify the entity's counterparties on expiry of contracts concluded by the entity (except for employment contracts) within 30 days from the effective date of the court decision to institute the bankruptcy proceedings.

In the course of bankruptcy proceedings, the bankruptcy administrator convenes the meetings of creditors and furnishes the creditors with information in the manner established by the meeting of creditors.

The interests of the creditors are represented in the form of the meetings of creditors or the committee of creditors.

Meeting of creditors

The first meeting of creditors must be convened by the court or by the administrator (upon instruction of the court) within 30 working days after the effective date of the court ruling to approve the claims of the creditors. The meeting of the creditors is authorised, *inter alia*:

- to decide on the formation, composition, and rights of the committee of creditors;
- to examine creditors' complaints regarding acts of the administrator;
- to request the administrator to submit reports about his activities and to approve them;

- to approve the estimate and procedure of covering the administration costs, etc;
- to decide on the continuity of economic activities of the entity and submit respective motions to the court, as well as motions to restrict the disposal of property;
- to fix the number of employees to be employed during the bankruptcy proceedings;
- to fix remuneration of the administrator and to apply for replacement of the administrator;
- to establish the manner of notifying the creditors; and
- to propose liquidation of the entity to the court.

Committee of creditors

The main function of the committee of creditors is to supervise the bankruptcy proceedings and activities of the administrator, and to protect the creditors' interests in the periods between the meetings of creditors.

As a general rule, the bankruptcy administrator may initiate proceedings to pursue remedies against third parties. In exceptional cases, the creditors that believe that the lawful interests of the entity may be violated may initiate indirect actions on behalf of the insolvent entity provided the administrator has failed to take such actions.

Creditors also have the right to submit an application to examine whether the entity was brought to bankruptcy fraudulently. Persons maliciously bringing an entity to bankruptcy are subject to civil and criminal liability.

24 Insolvency of corporate groups

In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

Lithuanian insolvency laws do not establish special group proceedings, therefore bankruptcy proceedings involving related parties may not be combined and their assets may not be pooled either.

25 Modifying creditors' rights

May the court change the rank of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

The court cannot modify the priority of creditors' claims in either bankruptcy or restructuring proceedings.

26 Enforcement of estate's rights

If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

Creditors can initiate an indirect action on behalf of the entity in bankruptcy to pursue the entity's remedies. Fruits of the remedies in such cases belong to the insolvent entity and must be used for the interests of all creditors according to the sequence of their claims. The bankruptcy administrator may transfer the claims against the debtors to the creditors or any third party in the manner established by the meeting or committee of creditors.

27 Claims and appeals

How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Are there provisions that deal with the transfer of claims against the debtor?

The creditors can submit their claims to the bankruptcy administrator within a period prescribed by the court (30 to 45 days after the effective date of the decision to institute bankruptcy proceedings). The court may admit late claims until it decides to dismiss the proceedings

or to start liquidation if a creditor was unable to submit the claim for a valid reason. The claim must be accompanied by documents substantiating the claims and evidence of security. The administrator must compile a list of creditors and their claims revised on the basis of financial statements, submit the list for the court approval, and contest unfounded claims at the creditors meeting and the court. The latter issue must be finally resolved by the court.

The court orders regarding the allowance of the creditors' claims may be appealed only by the administrator and creditors subject to the respective order. Other creditors may appeal the orders only if such orders involve claims the amount whereof exceeds 250 litas and allowed amount of the appellant itself exceeds 250 litas.

Creditors' claims may be assigned to another creditor or third party; the statutory sequence of the claims is not affected by the transfer.

28 Priority claims

What are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

Bankruptcy

The claims of secured creditors have priority over all other claims. These claims are satisfied from proceeds of the sale of the pledged assets or by transfer of the pledged assets. The rest of the claims are satisfied in the following sequence:

- claims of the employees arising from the employment relationship; claims for compensation for damage caused by personal injury, an occupational disease or death due to an accident at work; claims regarding payment for agricultural production purchased for processing;
- claims for payment of taxes, compulsory social and health contributions, and other payments into the budget; claims relating to loans obtained on behalf of the state or guaranteed by the state; claims relating to the granted EU aid; and
- all other claims.

Restructuring

The following sequence for satisfying creditors' claims must be set in the restructuring plan:

- claims of secured creditors, which are satisfied from the proceeds of the sale of the pledged property in the first place;
- claims for compensation for damage caused by personal injury, an occupational disease or death due to an accident at work; claims regarding payment for agricultural production purchased for processing; and
- claims for compulsory payments and loans granted on behalf of the state or with a state guarantee, as well as all remaining claims of creditors.

29 Liabilities that survive insolvency proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

No liabilities of the debtor survive after insolvent debtor is liquidated. If an entity is restructured, liabilities that survive must be structured in the restructuring plan.

Regarding personal enterprises and commercial partnerships, the owner of the enterprise is subsidiarily liable for the debts of the enterprise. Hence, in a situation where the assets of such an enterprise are insufficient to cover its liabilities, the owner will be held liable for the debts.

30 Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

The proceeds received during the course of liquidation of the bankrupt entity are distributed according to the sequence of creditors'

Update and trends

The existing Lithuanian legislation only regulates bankruptcy of legal entities and does not cover insolvency regulation of natural persons engaging in individual activity. The Ministry of Economy has prepared the Draft Law on Insolvency of Natural Persons, which is under discussion, and consideration by business entities and concerned groups.

claims in two stages. During the first stage, the creditors' claims do not include accrued interest and penalties, while in the second stage the remaining part of the creditors' claims shall be satisfied in the same sequence. The claims of creditors of each rank are satisfied after claims of the superior rank are satisfied in full. If funds are insufficient to satisfy all the claims of a class in full, the said claims are satisfied on pro rata basis according to the amount due.

In restructuring, claims are satisfied in accordance with the restructuring plan, which must follow the sequence of creditors claims established in the LoRE (see question 28).

31 Transactions that may be annulled

What transactions can be annulled or set aside in bankruptcies and what are the grounds? What is the result of a transaction being annulled?

The administrator may bring an action before the court for annulment of contracts that contradict the objects of the entity, or could have led to the entity's inability to settle with the creditors. The transaction may be declared void by the court on the grounds established in the CC, which, inter alia, include contradiction of transaction to the mandatory statutory provisions; contradiction of transaction to public order, good morals or the legal passive capacity of the entity; fictitious and or simulated transactions; transactions concluded by incapable persons, and others. If a transaction is declared as null and void by the court, restitution is applied to the parties. Where restitution in kind is impossible, the parties are bound to compensate damages, unless the laws provide otherwise.

32 Proceedings to annul transactions

Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

The bankruptcy administrator has the obligation to examine all contracts of the entity concluded within the 36 months prior to initiation of the bankruptcy proceedings and bring an action before the court for annulment of contracts on the grounds indicated in question 31. If the court finds malicious bankruptcy, the bankruptcy administrator is under an obligation to examine all transactions of the entity concluded within the five years prior to initiation of the bankruptcy proceedings and bring an action before the court for annulment of transactions on the same grounds as above.

According to the CC and practice of the Supreme Court creditors that believe that their interests are violated may also contest respective transactions in the court. In restructuring and bankruptcy proceedings creditors may initiate indirect actions on behalf of the debtor, provided the administrator fails to contest such transactions.

33 Directors and officers

Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

Members of management bodies are subject to civil, administrative and criminal sanctions for actions taken prior to or during the bankruptcy proceedings.

Civil liability may arise if a member of a management body fails to perform his or her duties with due managerial care and, as a consequence the entity incurs damage. The member of the management body must compensate the entity for such damage; however, the member is not directly liable for the obligations owed by the entity to its creditors. In the meantime, the head of the entity or other responsible persons must compensate damages incurred by the creditors as a result of failure or delay in filing bankruptcy.

A fine is envisaged for failure to submit documents for investigation of the bankruptcy case. The court may restrict the right of a person to hold an office of the head of a company for three to five years if the person fails to file bankruptcy petition, transfer assets or documents, etc.

Entity managers are subject to administrative liability (a fine or removal from office for a repetitive violation) for infringement of the order and procedure of satisfaction the creditors' claims, failure to file a petition for the institution of the bankruptcy proceedings or failure to convene the meeting of creditors.

Criminal sanctions (a fine, imprisonment, or both) are envisaged for deliberate mismanagement of an entity that results in its bankruptcy and causes significant damage to its creditors. Further, similar criminal sanctions are applicable to meeting or securing claims of one or a group of creditors to the detriment of other creditors, and concealing or disposing of the entity's assets in an unjustifiable way to the detriment of creditors.

The Lithuanian Supreme Court has established that if acts of the members of the management bodies that induced the entity's bankruptcy are qualified as a criminal offence by court judgement, such members are liable to the creditors jointly with the entity.

34 Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

Lithuanian laws do not establish any processes allowing creditors to seize an insolvent entity's assets outside of court proceedings.

35 Corporate procedures

Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

A decision to liquidate a solvent legal entity may be adopted at any time by a qualified majority vote of the members of the legal entity. In specific cases, a legal entity may also be liquidated following a decision of the court (eg, the entity has not updated its records in the commercial register for the past five years). Voluntary liquidation may only be conducted if the entity has sufficient assets to satisfy all creditors' claims (see also question 7). Unlike in bankruptcy proceedings, voluntary liquidation is normally initiated for reasons other than insolvency of a entity and, therefore, creditors have no decision-making powers and are not provided with special protection. Liquidation is conducted by the liquidators appointed by the entity or the court respectively and usually are not monitored by the court.

36 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Bankruptcy proceedings are formally concluded by a court decision or, in extrajudicial bankruptcy proceedings, by a decision of the meeting of the creditors. After such decision is issued and respective documents are submitted to the Register of Legal Entities, the entity is removed from the Register.

Restructuring proceedings are formally concluded by a court decision. The court adopts such decision after the restructuring plan is implemented and documents regarding implementation of the plan are submitted to the court.

37 International cases

What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

Since Lithuania is an EU member state, cross-border insolvency proceedings involving other EU member states (except Denmark) are governed by Council Regulation No. 1346/2000/EC on Insolvency Proceedings (Regulation). In general, insolvency proceedings must be automatically recognised in other member states and the Lithuanian assets of the debtor are subject to foreign insolvency proceedings. Nonetheless, foreign insolvency proceedings will not be recognised if recognition is contrary to the Lithuanian public order and due process.

Judgments of the courts of the EU member states, which are separate from the insolvency proceedings, where an entity in insolvency is a party to an action are recognised in accordance with Council Regulation No. 2001/44/EC on the Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

Within the EU, the courts of a member state where the centre of the debtor's main interests (COMI) is situated shall have jurisdiction to institute main insolvency proceedings. The Regulation contains a rebuttable presumption that COMI of companies and partnerships is in the Member State where the registered office is located.

If a debtor's COMI is located in an EU member state, the opening of secondary proceedings is possible if the debtor has a branch in Lithuania. Such secondary proceedings entail only the Lithuanian assets of the debtor.

Lithuania has concluded a number of bilateral treaties on legal assistance that also regulate recognition and enforcement of judgments of foreign courts with, inter alia, Ukraine, Russia, China and Belarus.

In the absence of an international treaty, recognition of foreign insolvency judgments is subject to general rules of recognition set forth in the Code of Civil Procedure, based on compliance with public order and due process. Foreign creditors are treated on an equal footing with Lithuanian creditors during bankruptcy proceedings that take place in Lithuania.

Incorporation of the UNCITRAL Model Law on Cross-Border Insolvency is not currently under consideration in Lithuania.

38 Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

The Lithuanian courts have not yet entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries. To the best of our knowledge, there has been no coordinated communication or joint hearings with courts of other countries.



Giedrius Kolesnikovas

giedrius.kolesnikovas@ma-law.lt

Gyneju street 4
01109 Vilnius
Lithuania

Tel: +370 5 2000 777
Fax: +370 5 2000 888
www.ma-law.lt

These tables are for quick reference only. They are not intended to provide exhaustive procedural guidelines, nor to be treated as a substitute for specific advice. The information in each table has been supplied by the authors of the relevant chapter.

Lithuania	Applicable bankruptcy law, reorganisations: liquidations
	Law on Enterprise Bankruptcy; Law on Restructuring of Enterprises; Civil Code; Law on Companies, Law on Personal Enterprises; Law on Commercial Partnerships.
	Customary kinds of security devices on immoveables
	Mortgage.
	Customary kinds of security devices on moveables
	Pledge, pledge of goods in stock that are in circulation, retention of title.
	Stays of proceedings in reorganisations/liquidations
	Upon decision of the court to institute bankruptcy proceedings, all pending cases involving property claims against the debtor are transferred to the court that has instituted the bankruptcy proceedings. Stays on execution proceedings under writs of execution are applied in bankruptcy and restructuring proceedings.
	Duties of the insolvency administrator
	The duties of the administrator are aimed at protecting the interests of creditors and entity during the bankruptcy proceedings, and include management of the entity and implementation of the court rulings as well as decisions of the meeting or committee of creditors during bankruptcy proceedings.
	Set-off and post-filing credit
	Set-off is prohibited both in bankruptcy and restructuring. Post-filing credits are possible in bankruptcy and restructuring.
	Filing claims and appeals
	Creditors may file their claims to the administrator within the time limits set by the court. The court must approve the claims. Court rulings on creditors' claims are subject to appeal.
	Priority claims
	Priority: (i) secured claims; (ii) claims related to the employment and agricultural production purchased for processing; (iii) claims related to duties for a state.
Major kinds of voidable transactions	
Transactions that contradict objects of the entity or could cause the entity's inability to settle with the creditors.	
Operating and financing during reorganisations	
Entity's operation and financing is implemented in accordance with the restructuring plan, which must provide measures to ensure long-term solvency of the entity.	
Requirements for approval of reorganisations	
Restructuring plan must be approved by creditors with at least three-quarters of all the aggregate amount of certified claims in favour of the restructuring plan. If voting takes place in groups of creditors, it is necessary that within each group the creditors with at least two-thirds of the aggregate amount of certified claims accept the restructuring plan. The plan approved by creditors must be approved by the court.	
Liabilities of directors and officers	
Civil, administrative (including restriction to hold an office of manager), and criminal liabilities (fine and imprisonment).	
Pending legislation	
Law on Insolvency of Natural Persons.	

