A&O SHEARMAN

Restructuring across borders
Lithuania

CORPORATE RESTRUCTURING AND INSOLVENCY PROCEDURES | MARCH 2025

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Introduction

As of 1 January 2020, in Lithuania, the Law on Insolvency of Legal Entities (the LoI) entered into force and replaced both the Law on Bankruptcy of Legal Entities and the Law on Restructuring of Legal Entities. LoI, together with the Civil Code and Law on Companies, provides seven principal restructuring and insolvency regimes available for the companies in Lithuania:

- judicial bankruptcy proceedings (*bankroto byla*)
- out-of-court bankruptcy proceedings (*bankroto procesas ne teismo tvarka*)
- simplified bankruptcy proceedings (*supaprastintas bankroto procesas*)
- composition with creditors (*taikos sutartis*)
- liquidation proceedings (*likvidavimo procedūra*)
- restructuring proceedings (*restruktūrizavimo byla*)
- informal restructuring (*neformalus restruktūrizavimas*)

Judicial bankruptcy proceedings *(Bankroto byla)*

Bankruptcy proceedings aim to liquidate an insolvent company by satisfying its creditors' claims with the company's assets.

Bankruptcy proceedings can be opened if it is established that (i) a company is insolvent, ie, it cannot meet its financial obligations on time (the "liquidity" test) or its liabilities exceed the value of its assets (the "balance" test), and (ii) the company is unviable, ie, it is not engaged in commercial activities that would enable it to meet its future obligations.

The right to initiate bankruptcy proceedings is vested in (i) the head of the company when there is a likelihood of the company's insolvency, ie, where there is a realistic probability that the company will become insolvent within the next three months; and (ii) the creditor to whom an obligation is overdue. The obligation to initiate bankruptcy proceedings arises for (i) the head of the company when the company is insolvent; and (ii) the liquidator of the company when it becomes apparent during the voluntary liquidation of the company that it is insolvent.

The initiation of bankruptcy proceedings starts with the submission of a mandatory notice to the counterparty, which must be complied with at all times, with certain exceptions provided for in the LoI.

The court opens bankruptcy proceedings by issuing a court order. By the same order and using a respective software program for the selection of insolvency administrators, the court also appoints an insolvency administrator. The court-appointed insolvency administrator manages the bankruptcy proceedings and exercises the rights and obligations of the company's management bodies.

To ensure that the company's financial situation will not deteriorate and the equality of creditors will be respected, during bankruptcy proceedings, no action may be taken concerning the company's assets, which could reduce the volume of assets of the company or worsen its financial situation, eg, to enforce the company's financial obligations, collect debts from the company, set-off claims, establish compulsory mortgages, servitudes, usufructs, etc.

Bankruptcy proceedings can unfold in several different scenarios. Bankruptcy proceedings can be terminated if the solvency of the company is restored when (i) creditors waive their claims; (ii) the company settles with creditors; (iii) a composition is reached with creditors (*taikos sutartis*; described below); or (iv) the company moves into restructuring (*restruktūrizavimo byla*; described below). If a company's solvency cannot be restored, the bankruptcy proceedings shall be closed by a liquidation of the company and its deregistration from the Register of Legal Entities (*likvidavimo procedūra*; described below).

Out-of-court bankruptcy proceedings *(Bankroto procesas ne teismo tvarka)*

Unlike judicial bankruptcy proceedings, out-of-court bankruptcy proceedings are managed by the creditors' meeting and not the court. Therefore, the meeting of creditors has the right to decide on matters falling within the competence of the court, including the appointment of the insolvency administrator to manage such bankruptcy proceedings. Nevertheless, upon the application of an interested party, the court has jurisdiction to decide on the legality of the contested decision of the creditors' meeting.

In addition to the two necessary cumulative conditions for the opening of bankruptcy proceedings (ie (i) insolvency; and (ii) unviability), out-of-court bankruptcy proceedings might be opened if: (iii) the company is not engaged as a respondent in any judicial proceedings in which the company is subject of financial claims (including labour law claims); (iv) the assets of the company are not subject to enforcement; and (v) the company is not subject to a tax investigation. If these preconditions are not met, out-of-court bankruptcy proceedings may still be opened with the consent of the claimant, the debt collector and/or the tax administrator.

As in the case of judicial bankruptcy, submitting a notice about the intention to open the proceedings is mandatory. Regardless of which party – the company or its creditors – initiates the out-of-court insolvency proceedings, the company (as the court is not involved) must notify all its creditors of the meeting to be convened and invite all creditors to vote on whether to initiate the insolvency proceedings.

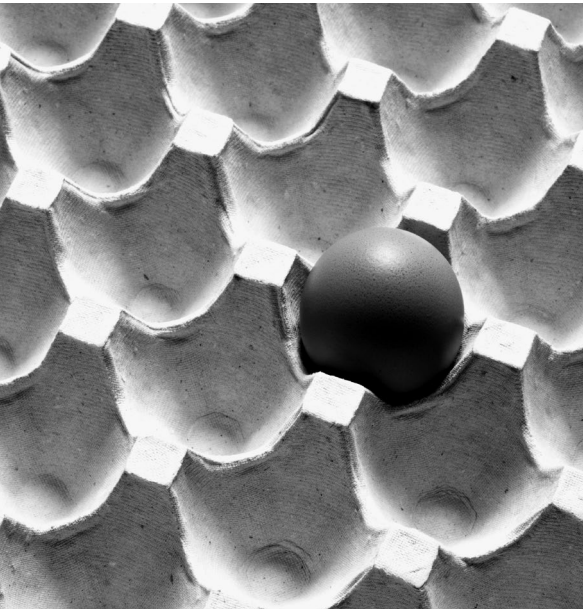
The opening of the out-of-court bankruptcy proceedings is decided at the creditors' meeting. A decision commencing out of-court bankruptcy proceedings can be adopted by creditors whose claims represent at least 75% of all claims against the company, including claims which have not matured yet.

Out-of-court bankruptcy proceedings have the same stages as the judicial bankruptcy proceedings, managed by the insolvency administrator, which is appointed and supervised by the creditors' meetings instead of the court.

Out-of-court bankruptcy proceedings can unfold in the same scenarios as judicial bankruptcy proceedings.

Simplified bankruptcy proceedings *(Supaprastintas bankroto procesas)*

Simplified bankruptcy proceedings are carried out in respect of the insolvent company, which (i) is no longer engaged in commercial activities and (ii) has insufficient assets to cover the costs of the bankruptcy administration.



Upon establishing the circumstances mentioned above (i) and (ii), the court invites the claimant to pay into the court's depository account the funds to cover the costs of the bankruptcy administration.

If the set amount is not paid in, the court informs the insolvency administrators of the possibility of administering the bankruptcy proceedings by assuming the risk of such costs not being covered in full.

If no insolvency administrator submits a declaration of consent to administer such bankruptcy proceedings, the court refuses to open regular judicial bankruptcy proceedings and, instead, issues a court order instructing the liquidation of the company to be carried out by the Lithuanian Register of Legal Entities.

However, if the costs of the bankruptcy administration are paid into the deposit account or an insolvency administrator agrees to administer such bankruptcy proceedings facing the risk of the costs not being covered, the court will open simplified bankruptcy proceedings.

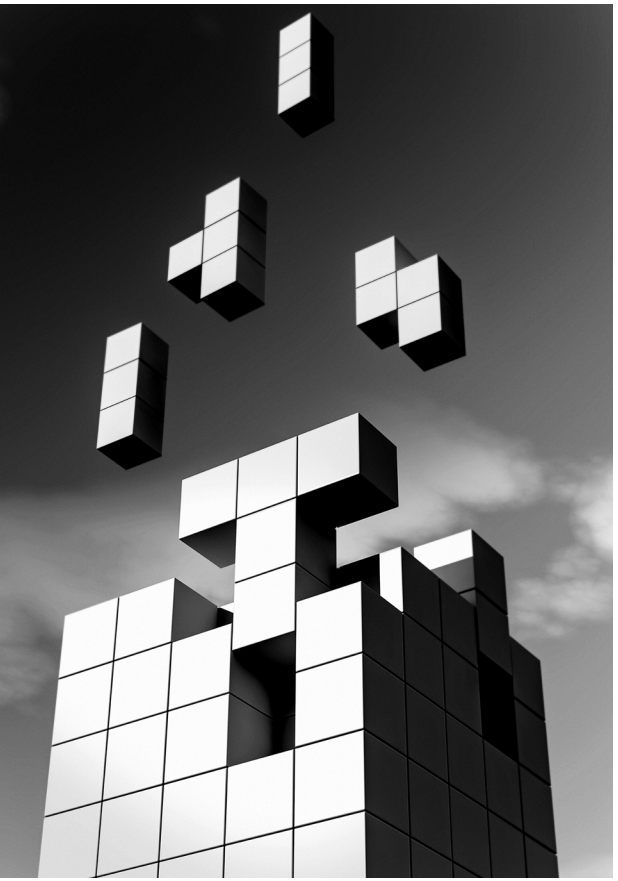
Once the court order opening the simplified bankruptcy proceedings enters into force, the company's liquidation starts immediately. During the liquidation stage, the company's assets are sold to satisfy the creditors' claims to the greatest extent.

During the simplified bankruptcy proceedings, meetings of creditors are not convened, and the court decides on all the issues regarding the bankruptcy proceedings.

In the course of the simplified bankruptcy proceedings, the court may, on its initiative or by a reasoned insolvency administrator's request, decide to terminate the simplified bankruptcy proceedings and commence regular judicial bankruptcy proceedings if, during the liquidation, the company has accumulated a significantly large amount of funds that can cover the costs of the bankruptcy administration.

Simplified bankruptcy proceedings end with a court order terminating the company and its deregistration from the Lithuanian Register of Legal Entities.

Composition with creditors *(Taikos sutartis)*



The right to end bankruptcy (either regular or simplified) proceedings through a composition agreement is a right of the parties to the bankruptcy proceedings, namely the company and its creditors.

To exercise this right, the following conditions must be present according to the LoI:

(i) the composition agreement must be approved by the participants (shareholders) of the company following the procedure laid down by the law governing the legal form of the company concerned (in the case of private companies, the composition agreement must be approved by the participants (shareholders) of the private limited liability company in the general meeting of shareholders by a 2/3 majority of the participants of the legal person present at the meeting of participants) or, if such law does not provide for such procedure, by a 2/3 majority of the participants of the legal person present at the meeting of participants;

(ii) a creditor, insolvency administrator or the participants (shareholders) of a legal person must submit an offer to conclude a composition agreement together with a draft composition agreement to the creditors' meeting;

(iii) the composition agreement must be signed by all creditors and the insolvency administrator after obtaining the approval of the participants (shareholders) of the company; and

(iv) the composition agreement must be approved by the court (or certified by a notary if the bankruptcy proceedings are conducted out-of-court).

Following the conclusion of the composition agreement, but no later than within five business days, the insolvency administrator must apply to the court for the approval of the composition agreement and for the termination of the insolvency proceedings.

The composition agreement enters into force at the same time as the court order by which the bankruptcy proceedings are terminated.

Bankruptcy proceedings can be terminated at any stage by concluding a composition agreement.

Liquidation proceedings *(Likvidavimo procedūra)*

If other possible scenarios (a waiver of creditors' claims, the satisfaction of all the creditors' claims, composition agreement, transition to restructuring or regaining the status of a solvent company) do not play out within the time limits set by the LoI, the company enters into its final stage of the bankruptcy proceedings – liquidation.

Normally, the court is supposed to order to liquidate the company within three months after the court's order confirming the creditors' claims comes into force. The court can extend this time limit by another three months upon a reasonable application of the insolvency administrator or the creditors' meeting.

During the liquidation of a company, its assets are sold according to the rules set out by the creditors' meeting unless a mandatory form of sale of the respective property is set in the LoI.

At the end of the liquidation stage, the insolvency administrator has to prepare a final insolvency report draft, which must include information on (i) the amount of the proceeds received during the bankruptcy proceedings; (ii) the amount of the total costs of the bankruptcy administration; (iii) the amounts to be allocated to the satisfaction of the creditors' claims, according to the ranking and the stages of the creditors' claims; and (iv) the amounts to be allocated to the variable remuneration for the administration of the proceedings.

The draft final report shall be submitted for the consideration and approval of the creditors' meeting. The approved final report must be signed by the insolvency administrator and the chairman of the creditors' meeting and submitted for the court's approval.

The final court-approved insolvency report constitutes the basis for the insolvency administrator to settle with the creditors and to pay the variable remuneration for the administration of the insolvency proceedings. Once these steps have been carried out, the company is deregistered from the Lithuanian Register of Legal Entities.

This stage of bankruptcy proceedings should not be confused with the voluntary or compulsory corporate liquidation of a legal person, which takes place based on the Lithuanian Civil Code and the Lithuanian Law on Companies.

Restructuring proceedings *(Restruktūrizavimo byla)*

The restructuring proceedings aim to overcome a company's financial difficulties, preserve its viability and prevent bankruptcy by receiving creditors' assistance and implementing economic, technical, organisational and other measures.

Restructuring proceedings can be opened if all the following preconditions are met: (i) a company is facing financial difficulties, ie the company is either insolvent or has a real risk of becoming insolvent within the next three months; (ii) such company is viable, ie, the company carries on an economic and commercial activity that will enable it to meet its future obligations; and (iii) the company is not subject to liquidation due to bankruptcy.

Compliance with the pre-trial procedure is also mandatory before the initiation of restructuring proceedings (the same requirements as above apply).

In the case of restructuring, as opposed to bankruptcy, the management bodies of the restructured company retain their powers to run the company.

An insolvency administrator's appointment to manage restructuring proceedings is mandatory only in limited cases. In most cases, the appointment of an insolvency administrator is optional.

After the restructuring proceedings have been opened, the main objective is to prepare a restructuring plan and submit it for the court's approval. The restructuring plan envisages a way for the restructured company to overcome its financial difficulties by implementing a range of economic, technical, and organisational measures in its activities, balancing the interests of the company and its creditors. Such measures may be, among others, expanding the field of the company's business activities, modernising and digitalising the work process, initiating mergers and acquisitions, concluding agreements with creditors for the extension of time limits for meeting payment obligations, etc.

The task of preparing the restructuring plan falls within the competence of the head of the company.

The restructuring plan must be approved by the creditors. The company's creditors include (i) those whose claims are secured and (ii) other creditors. In each of these groups, the creditors, who are considered to be affected by the restructuring plan, are entitled to vote on the approval of the restructuring plan. The restructuring plan is deemed to be approved if the affected creditors within the groups (i) and (ii) vote for the approval of the restructuring plan and the amount of their claims in terms of value exceeds half of the total amount of all the claims of the creditors in each of the group approved by the court. Once the court approves the restructuring plan, its implementation can begin.

During the restructuring proceedings, creditors' claims shall be satisfied in the order and within the time limits set out in the restructuring plan, in accordance with the ranking of creditors' claims provided in the LoI.

The implementation of the restructuring plan may not exceed four years from the date of the court ruling approving the restructuring plan. This deadline may be extended by the court once for an additional year. However, in practice, the implementation of restructuring plans tends to last even longer.

The restructuring proceedings are terminated if the restructuring plan is implemented and the objectives of the restructuring plan are achieved.

However, if the restructuring plan is not properly implemented, the restructuring proceedings could be terminated by a court order and, if a company is insolvent, bankruptcy proceedings opened instead.

Informal restructuring *(Neformalus restruktūrizavimas)*

An informal restructuring is a non-statutory process in which a company facing financial difficulties tries to reach an agreement with its creditors on certain incentives, deferrals and other similar measures that could ease the company's financial burden and speed up the process of overcoming those financial difficulties.

This process can be quicker and more efficient due to its flexibility and cost-efficiency.

However, it is important for the company's head to properly assess whether the company still has the potential to improve its financial situation. If the company is already insolvent, the head of the company has a duty to initiate insolvency proceedings. The law provides for the liability of the company's head if they fail to initiate insolvency proceedings in a timely manner.

Despite all the potential advantages of this process, the informal restructuring is quite rare in Lithuania. Companies often delay addressing their financial difficulties in a timely manner, therefore by the time a decision to initiate some kind of a restructuring is made, the company usually has already reached the point of insolvency and one of the insolvency processes discussed above must be initiated.

European Insolvency Regulation

In the European Union, insolvency proceedings that go beyond the borders of a single Member State are regulated by the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (the Recast Regulation), which applies to all proceedings that have been opened after 26 June 2017.

The Recast Regulation supersedes its predecessor, the Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

Annex A of the Recast Regulation states the respective Lithuanian proceedings to which the Recast Regulation applies.

These are: (i) corporate judicial bankruptcy proceedings (*įmonės bankroto procesas*); (ii) corporate out-of-court bankruptcy proceedings (*įmonės bankroto procesas ne teismo tvarka*); (iii) corporate restructuring proceedings (*įmonės restruktūrizavimo byla*); and (iv) bankruptcy proceedings of a natural person (*fizinio asmens bankroto procesas*), but the latter are outside the scope of this overview.

Key contacts

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at A&O Shearman, or email **rab@aoshearman.com**.

This factsheet has been prepared with the assistance of Ellex Valiunas. Any queries under Lithuanian law may be addressed to the key contacts listed below:

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Further information

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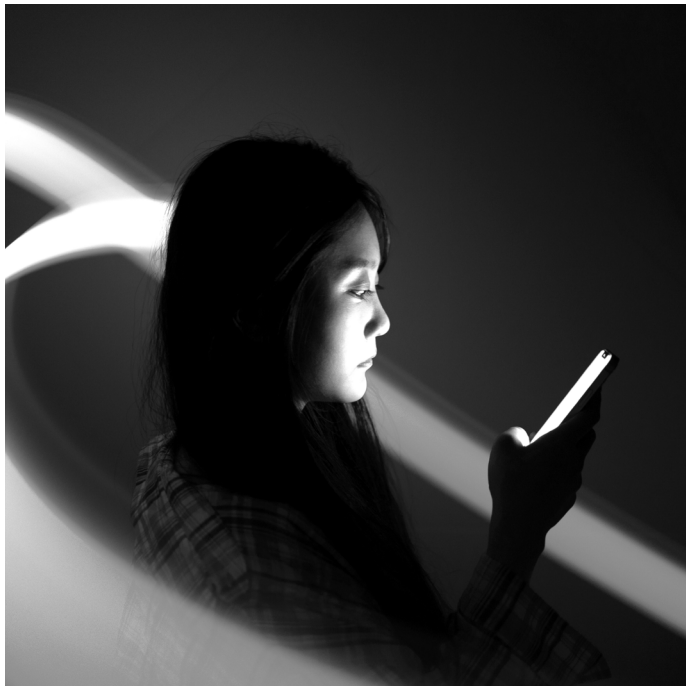
To access this resource, please **click here**.



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