

# Business Reorganisation Assessment

📍 Lithuania



**European Bank**  
for Reconstruction and Development



## Special thanks to:

TGS Baltic Law Firm

Sorainen Law Firm

## Part A

# General Information

## Macro Data

2.796

Population (million)<sup>1</sup>

3.2%

GDP growth rate<sup>1</sup>

US\$ 22,240

GDP per capita<sup>1</sup>

€  
Euro – EUR

Currency

15%

Corporate tax rate<sup>2</sup>

1.5%

Inflation rate<sup>1</sup>

8.4%

Unemployment rate<sup>1</sup>

## Insolvency Legislation

The primary legislative text governing the insolvency of legal entities in Lithuania is the **Law on Insolvency of Legal Entities** (the Insolvency Law), effective as of 1 January 2020, as amended. This legislation includes provisions that transpose **Directive (EU) 2019/1023** (the Restructuring Directive) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

Further amendments to the Insolvency Law to transpose the remaining provisions of the Restructuring Directive entered into force on 15 July 2021. The primary legislative text governing insolvency of natural persons (including entrepreneurs) in Lithuania is the **Law on Bankruptcy of Natural Persons**, as amended.<sup>3</sup>



## Insolvency Data

The **Audit, Accounting, Valuation and Insolvency Management Service**, which is under the **Ministry of Finance of the Republic of Lithuania**, is the authority responsible for publishing data on insolvency proceedings. All data is available **here**. According to the data of the first six months of 2021, six restructuring processes were initiated and two have been completed.

In 2020, 29 restructuring proceedings were initiated and seven were completed, while in 2019, 33 restructuring proceedings were initiated and six were completed. There is no data regarding how many restructurings were pre-packaged restructurings.

<sup>1</sup> IMF – Source as of June 2021: [www.imf.org/en/Countries/LTU](http://www.imf.org/en/Countries/LTU)

<sup>2</sup> PWC – Source as of January 2021: [taxsummaries.pwc.com/lithuania/corporate/taxes-on-corporate-income](http://taxsummaries.pwc.com/lithuania/corporate/taxes-on-corporate-income)

<sup>3</sup> The legal regime for entrepreneurs contained in the Law on Bankruptcy of Natural Persons falls outside the scope of this profile.



## Company Information

The Lithuanian company law framework is governed mainly by the **Law on Companies No. VIII-1835** dated 13 July 2000, as amended, and the **Civil Code No. VIII-1864** dated 18 July 2000, as amended.

The **Centre for Registration of Legal Entities**, created in 2004, is the company portal in which all the information about legal entities is collected and centralised. The Centre maintains a database with all incorporation and other corporate documents that might be produced during the life cycle of a company. The website allows parties to searched for registered entities free of charge and is connected with the **European Business Register**, an association of business registry professionals. Statistics on the number of registered and de-registered companies are available on the Centre's website.

## Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency and reorganisation proceedings are overseen by regional courts of first instance (located in Vilnius, Utena, Panevėžys, Klaipėda, Alytus, Tēta, Šiauliai, Taurage, Marijampole and Kaunas). Jurisdiction of the court in relation to legal entities is determined by the location of the registered office of the company and the place of main residence for natural persons, including entrepreneurs.

The **Audit, Accounting, Valuation and Insolvency Management Service**, which is under the **Ministry of Finance of the Republic of Lithuania**, maintains a list of authorised insolvency practitioners (known as administrators), who can act in both insolvent liquidation (bankruptcy) and reorganisation (restructuring) cases. The list is available **here**.

The **Lithuanian Chamber of Insolvency Administrators**, established in 2019, unites more than 700 licensed professionals and companies which provide insolvency practitioner services in Lithuania. Its mission is to coordinate the activities of insolvency practitioners, to ensure the quality of insolvency practitioner services and to strengthen the role of Lithuanian insolvency practitioners on a national and international level. It also prepares and submits proposals concerning the government's insolvency legislation. The Chamber is in charge of the qualification exams for the insolvency practitioners, who must either have at least two years of experience as assistant insolvency administrators or be recognised as lawyers, or have at least five years of work experience as company managers during the seven years immediately prior to the exams.

Continue to Part B 

## Part B

# Business Reorganisation

### Are there any incentives for extrajudicial voluntary agreements (workouts)?

There are no specific incentives for concluding extrajudicial voluntary agreements; however, the Insolvency Law enables a debtor in financial difficulties to submit a pre-packaged restructuring plan which has majority creditor consent to the court for its approval (Article 24). This incentivises extrajudicial agreements and makes the court process more efficient.

### What is the nature and purpose of the reorganisation procedure?

There is one reorganisation procedure under the Insolvency Law for legal entities known as the restructuring procedure (restruktūrizavimo procesas) with an option for a pre-packaged restructuring plan (pagreitingas restruktūrizavimo procesas, kai restruktūrizavimo byla iškeliamą kartu patvirtinant restruktūrizavimo planą). **Click here** for a high-level overview of the procedure.

The restructuring procedure aims to overcome the financial difficulties of a legal entity, preserve its viability and avoid the debtor's insolvent liquidation (bankruptcy) by obtaining creditors' financial, technical and organisational assistance (Article 2).

### Who can commence the process and what entry conditions apply?

There is one gateway into insolvency proceedings, which can lead to either the opening of restructuring proceedings where the debtor is solvent or insolvent but with a prospect of viability, or the opening of insolvent liquidation proceedings where the debtor is insolvent with no prospect of viability. In addition to the restructuring proceedings available within the main insolvency proceedings, there is the option of pre-packaged restructuring.

Insolvency proceedings can be initiated either by the debtor, or by a creditor which has an unpaid due debt, subject to a threshold of 10 government-determined minimum monthly salaries, which equals approximately €6,420 (Article 4). The debtor's management must initiate insolvency proceedings if the debtor is insolvent where the debtor is a legal entity (Article 5).

Pre-packaged restructuring proceedings can be initiated by the debtor only. The debtor needs to submit its application for the opening of insolvency proceedings together with a draft restructuring plan approved by the meeting of the participants (shareholders) of the debtor and its majority creditors (Articles 24, 106 and 107). The majority consent threshold is described below.

The court will commence restructuring proceedings if the legal person is in financial difficulties, i.e. where the legal person is insolvent or there is a real probability that it will become insolvent in the next three months and the legal person is viable (Articles 2 and 21).

### Is there any court involvement?

Yes. An application for the commencement of insolvency proceedings should be filed with the court (Article 17). The court can either accept or refuse the application (Article 19). The court is responsible for approving the creditors' claims and thereafter the restructuring plan (Article 111). The pre-packaged restructuring plan envisages less court involvement, as the plan is pre-agreed before submission to the court for approval.

References to Articles are to Articles of the Insolvency Law, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**



### Are there any hybrid reorganisation procedures?

Yes, the Insolvency Law contemplates the possibility of a pre-packaged restructuring, where a restructuring plan is approved by the creditors before the initiation of in-court restructuring proceedings. The court decides on opening the restructuring case and approves the restructuring plan by the same order (Article 24).

### Does the debtor remain in possession of the company and continue carrying its business operations while conducting the reorganisation?

Yes, the debtor remains in possession but may be subject to the supervision of an insolvency practitioner (known as an administrator). The court has the discretionary power to appoint an insolvency practitioner on receipt of a relevant request by the debtor, the creditors' meeting or the creditor initiating the restructuring (Article 35).

### Is there a need to appoint an insolvency practitioner?

Yes, as mentioned above, the court has the discretionary power to appoint an insolvency practitioner to supervise the management of the business (Article 35).

While the debtor remains responsible for implementation of the restructuring plan, the insolvency practitioner is responsible for preserving the interests of both the debtor and the creditors. The insolvency practitioner performs a number of roles, including: taking measures to prepare, submit for approval and implement the restructuring plan; advising on the preparation of the draft restructuring plan; and supervising the implementation of an approved restructuring plan (Article 103).

### Is there any applicable stay or moratorium?

Yes, a moratorium arises from the date of entry into force of the court order to open restructuring proceedings (and pre-packaged restructuring) until the court's approval of the restructuring plan. During the moratorium it is prohibited: for the debtor to pay any outstanding financial obligations, including the payment of taxes, interest and penalties; for any creditor, secured, unsecured and preferred, to seek payment from the debtor; for any third party to set off claims, except for opposing mutual claims which satisfy certain conditions; to establish or enforce any security against the debtor; and to sell or otherwise transfer any property of the debtor which is necessary to preserve its viability.

The court may grant a derogation from all or part of these provisions if it facilitates the decision on the restructuring plan and if it is requested to do so by the debtor, the insolvency practitioner or the security holder. This court order can be appealed, but an appeal against the order does not suspend its execution (Article 28).





### Is there any protection for essential contracts and to prevent termination of contracts by third parties?

Yes, as part of transposition of the Restructuring Directive, essential contracts, which are contracts necessary to ensure the day-to-day continuity of the company's activities, may not be terminated by a creditor until the restructuring plan has been approved in court, nor may the terms of the agreement be changed to the detriment of the debtor business (Article 102 (1)).

### Is new financing protected by law?

Yes, and all relevant provisions from the Restructuring Directive have been transposed. The concept of new financing is contained in the Insolvency Law (Article 2 (15)). New financing by existing or new creditors, which aims to enable the debtor to overcome its financial difficulties and is approved in the restructuring plan, is protected.

There is also a concept of intermediate financing, meaning the provision of additional funds from existing or new creditors that are reasonably and immediately required to for the debtor to continue to be or remain viable until the restructuring plan is approved (Article 2 (20)).

Transactions providing new financing and/or intermediate financing may not be declared invalid unless they have been concluded in breach of the law or fraudulently (Article 64 (3)).

Claims of creditors arising out of new financing and/or intermediate financing have priority over unsecured creditors, but not over secured creditors, and are satisfied first, together with the claims of the following creditors: employee claims related to the employment relationship; claims for state social insurance, compulsory health insurance contributions and contributions to the state Guarantee Fund and the Long-Term Employment Benefit Fund; and claims arising from economic activities carried out in the course of insolvency (Article 94).

### Does the law recognise separate classes of creditors for voting purposes?

Creditors are divided into the following two classes for voting purposes: secured creditors whose claims are secured by a pledge and/or mortgage; and unsecured creditors (including any preferred creditors) (Article 108).

The Insolvency Law does not envisage the possibility of further classes of creditors.

### What are the majorities required to approve a reorganisation plan?

Each of the two classes of creditors (secured and unsecured) affected by the restructuring plan needs to approve the plan. Approval of the plan in respect of each class requires a majority of affected creditors holding more than half of the total value of claims. The draft restructuring plan must also be approved by the shareholders of the debtor (Articles 106 and 107).

Approval by the court is subject to a number of additional conditions. For example, the court must be satisfied that dissenting creditors will not be in a worse position than they would have been in case of insolvent liquidation (bankruptcy) of the debtor (Article 111).

### Who does the reorganisation plan bind?

The plan binds all the creditors (Article 51). Case law has also clarified that if the majority of creditors approves the restructuring plan, the majority decision will be binding on the minority of dissenting creditors (Judgment of the Lithuanian Court of Appeal of 20 August 2020, made in Civil Case No. 2-1289-450/2020). Therefore cram down of dissenting creditors is possible if the required majority is achieved in each class of creditors (Articles 106 and 107).

## What is the timeframe for the reorganisation procedure and any moratorium?

The insolvency practitioner or the debtor must submit the draft restructuring plan, which has been approved by the creditors, to the court within four months from the effective date of the decision to initiate restructuring proceedings (Article 110).

The court will issue an order approving the restructuring plan within 14 days from the date of submission of the restructuring plan to the court (Article 111). The duration of the pre-packaged restructuring plan is short as it is pre-voted. The court opens restructuring proceedings and confirms the plan by the same order (Article 24).

The moratorium is imposed for the duration of the procedure, i.e. from the date of entry into force of the court order to open restructuring proceedings (and pre-packaged restructuring), until the court's approval of the restructuring plan.

The duration of the implementation of the restructuring plan may not exceed four years starting from the date of the court order approving the restructuring plan. The court may extend the implementation period of the restructuring plan once, but for no longer than one year in total, and in that case the restructuring plan must be amended to reflect such an extension (Article 105).

## Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

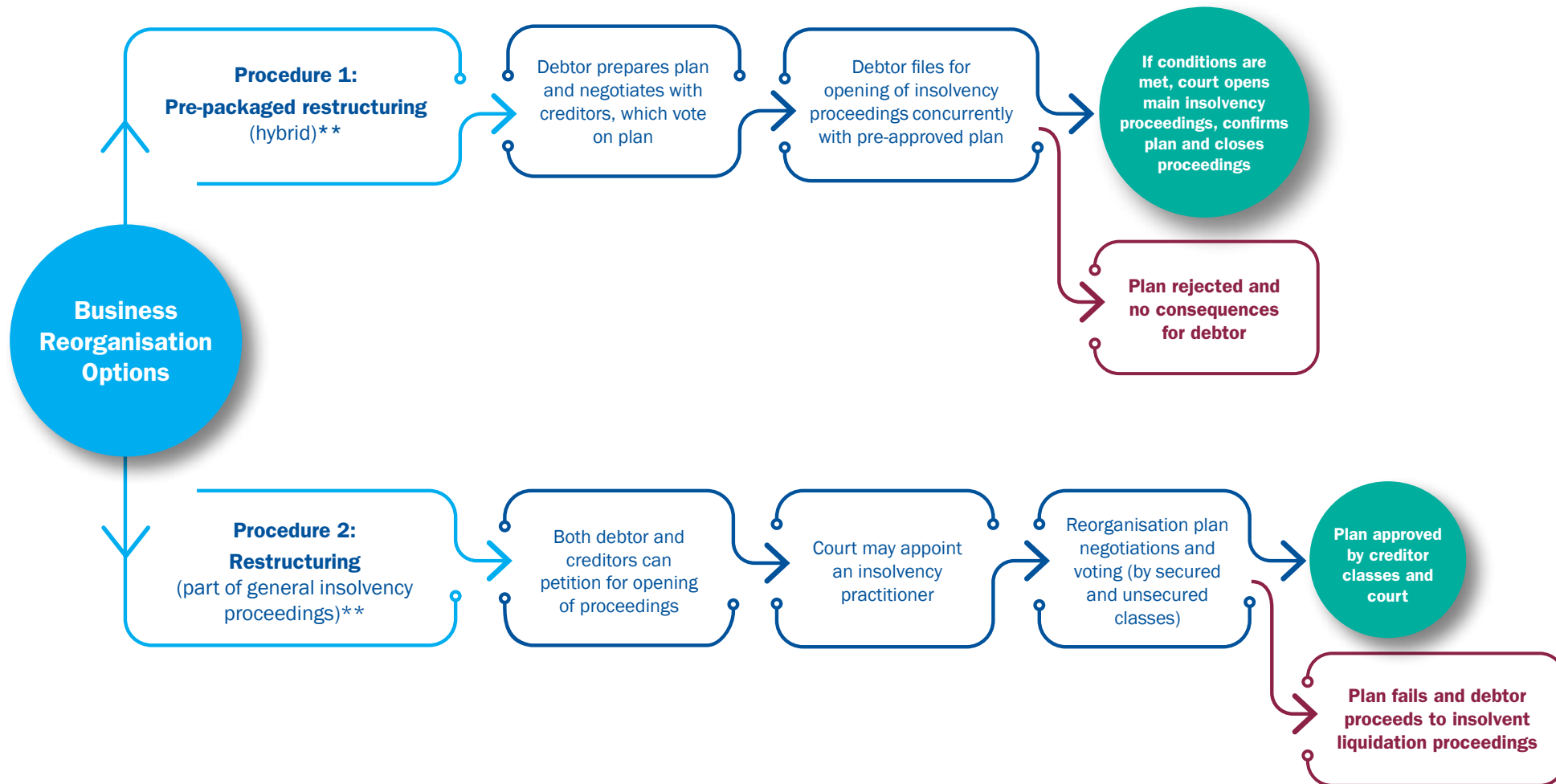
No, Lithuania has not adopted the UNCITRAL Model Law. However, as a member of the European Union, Lithuania is subject to **Regulation (EU) 2015/848** on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

## Special features/observations:

- Lithuania is among relatively few economies where we operate where there is a pre-packaged procedure that allows a company to present simultaneously with the petition for the opening of insolvency proceedings a pre-voted restructuring plan.
- Prior to the adoption of the Insolvency Law, the **Audit, Accounting, Valuation and Insolvency Management Service** maintained two distinct lists of insolvency practitioners, one for insolvent liquidation proceedings and one for restructuring proceedings. Following the entry into force of the new Insolvency Law, there is now a single list of insolvency practitioners which can act in both insolvent liquidation and restructuring proceedings.



# Overview of Lithuanian Business Reorganisation Procedures\*



\* This provides a high-level overview of business reorganisation procedures. See the commentary in this profile and the Insolvency Law for further details, including with respect to any applicable moratoria and creditor voting thresholds.

\*\* Court opens restructuring proceedings if legal person is in financial difficulties, i.e. insolvent, or there is a real probability that it will become insolvent in the next three months and the legal person is viable.



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