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**Increasing efficiency in insolvency proceedings. The appointment of IP-s**

**Estonian system.**

Estonian system is Quite like previous German system. Judge has a key role in appointment of IP. We dont have specialized courts, but in bigger county courts there are specialized judges, who have ther „own lists“ of IP-s. Official list of IP-s is maintained by the Chamber of Bailiffs and Bankruptcy Trustees. There are about 80 persons registred in the list of IP-s.

A IP must have the confidence of the court and the creditors.

Courts shall exercise supervision (ex officio) over the lawfulness of bankrutcy proceedings (and over IP) from the beginning till the end of bankrutcy proceedings.

Approval of a IP appointed by judge shall be decided by the first meeting of creditors. If IP apponted by judge is not approved by creditors, the creditors shall elect a new IP, whose approval shall be decided by judge. Judge has a right not to approve IP elected by creditors and right to appoint  new IP. If court appoints new IP, there is no need  for IP to be approved by a meeting of creditors.

If courts shall not approve IP elected by creditors, the court ruling shall set out the reasons for refusal to approve IP.

This system exists from 1992 and is critisized quite a lot.

Problems:

* There are judges whose „own list“ is really short (3-5 IP-s). Sometimes bankruptcy judge and IP work in „pairs“
* Creditors are not satisfied with their role in IP appointment
* IP-s possibility to get appointed sometimes depends on his/her relationship with the bankrutcy judge
* Problems with transparency

**UNCITRAL:** While ensuring fair and impartial distribution of cases , one possible disadvantage of a roster system is that it may not ensure the appointment of the person most qualified to conduct the particular case. That may depend of course, upon the manner in which the roster is compiled and upon the qualifications required of IP-s in order to be included on that röster.

**My personal view**

Randomised methods of appointment have the superficial appearance of fairness but they are obviously something of a lottery and may not match up individual IPs with suitable cases. As an EBRD commentator has remarked, a randomised appointment system not only does not match an IP to a case, it may remove the incentive for an IP to perform to a high level as “future appointments are not dependent on performance. In systems where… [IPs] are appointed on the basis of reputation and merit, it is likely that they will work hard to maintain their reputation and perform to the best of their abilities. Creditors have no role in the selection process.

I prefer to give creditors greater role in the IP appointment process as has been done recently in Germany. Creditors have a direct interest in the outcome of the insolvency proceedings.