

INSOL Europe

Survey Of Certain Regulation For Insolvency Officeholders

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1. Types Of Insolvency Office Holder

insolvency administrator (Insolvenzverwalter):

With opening of insolvency proceedings, the insolvency court appoints an insolvency administrator. The insolvency administrator shall determine the status of the estate, ensure the recovery and securing of assets as well as determining the debts. Furthermore the insolvency administrator shall without delay establish whether the enterprise is able to carry on with business or be reopened.

special administrator (Besondere Verwalter):

The insolvency court may assign a special administrator to the insolvency administrator, when the complexity of the transaction makes it necessary or the insolvency administrator lacks impartiality with regard to a creditor.

trustee (Treuhandler):

In the reorganization plan the debtor can agree to supervision by a trustee of the creditors. With regard to third parties the trustee is authorized to all legal transactions and legal acts necessary to fulfil the obligations of his duties, unless the insolvency court has ruled to limit his powers in a specific case and has informed the third party thereof.

creditors' committee (Gläubigerausschuss):

The creditors' committee has the duty to supervise and support the insolvency administrator. The court shall assign a creditors' committee to the insolvency administrator without delay ex officio or on petition of the first creditors' meeting or a later one summoned for his subject-matter consisting of three to seven members.

debtor in possession (Schuldner im Sanierungsverfahren mit Eigenverwaltung):

During the reorganisation proceedings, the debtor may administer the insolvent estate under the supervision of the insolvency administrator (reorganisation administrator). For the opening of the proceedings, the debtor must offer the insolvency creditors at least 30 % within a time-period of no more than two years.

2. Size Of The Profession

Those who wish to be appointed as insolvency administrators must register in the insolvency administrator list (See www.insolvenzverwalter.justiz.gv.at). Actually there are 1.296 registrations.

3. Practising Norms

As there are no large law firms that are specialized in insolvency proceedings the Austrian market is dominated by specialized attorneys and small law firms.

4. Qualification Training and Entry Into The Profession

The regulations for the organs of the insolvency proceedings pursuant to ss 80 et seq. IO are the fundamental guidelines for the Insolvency Officeholders.

The appointed insolvency administrator shall be a respectable and trustworthy person knowledgeable in business and with knowledge of insolvency matters. In insolvency proceedings concerning enterprises the prospective person shall have sufficient knowledge of commercial law and business management. Should the insolvency proceedings concern an enterprise that is of economic importance with regard to size, location, economic complexity or other equally important reasons then a person with great experience in the field of insolvency matter shall be called upon.

5. Professional Bodies

Despite the fact that it is not necessary to be member of a professional body, in Austria most of the insolvency administrators are attorneys at law. Tax consultants, auditors and professionals in various business fields are also candidates. The insolvency administrators therefore are part of a statutory framework and strict guidelines for the professional diligence of lawyers.

6. Continuing Professional Education („CPE“)

The continuing professional education is mandatory for lawyers according to the rules and regulations for lawyers (“RAO”).

For insolvency lawyers and related professions there are currently four specialized annual non-mandatory seminars where expertise and experiences can be exchanged and the results are summarized in an annual report.

7. Body Corporate Or Individual

Besides single lawyers also legal entities may be appointed as insolvency administrators. In this case the court has to be informed about the person in charge.

Legal entities may also be appointed as members of the creditors’ committee.

8. Sanction For Acting As An IOH Without Proper Authorization

The insolvency administrator is liable for pecuniary losses with respect to all parties incurred by dereliction of his duty while in office.

9. Bonding And Insurance

As most insolvency administrators and trustees are attorneys at law they must fulfill the statutory regulations. In Austria every lawyer is obliged to have a legally required liability insurance of minimum € 400.000 per case (for legal entities up to € 2.400.000).

10. Appointment Of IOHs

See 1.

11. Remuneration

The insolvency administrator is entitled to a remuneration plus VAT as well as being reimbursed for expenses incurred. The remuneration is a percentage of the evaluation basis and the remuneration is decreasing pro rata in connection with the surplus. The remuneration is at least 2.000 Euros. With the approval of a reorganization plan the remuneration of the insolvency administrator is different but at least 2.000 Euros. The normal remuneration shall be increased or decreased, inasmuch as this is deemed necessary pursuant to section 82b et seq. of the insolvency act.

12. Personal Liability Of IOHs

The insolvency administrator shall employ the required diligence pertaining to his management (section 1299 ABGB) and render exact account of his administration. The insolvency administrator is therefore liable for pecuniary losses with respect to all parties incurred by dereliction of his duty while in office.

13. Release Of IOHs From Liability

There is no general release from liability. As there is regular supervision through the insolvency court and the creditors committee the important decisions must be announced and have to be approved from the court or/and the creditors committee.

Furthermore the insolvency court shall supervise the activity of the insolvency administrator in general and may issue written or verbal instructions, demand reports and inspect accounts. The insolvency court may request the insolvency administrator to present specific concerns to the receive creditors' committee.

14. Independence

The insolvency administrator shall be independent from the debtor and the creditors and shall not be a close relative or a competitor of the debtor and should not have been a reorganization auditor in a previous reorganization proceeding pursuant to the URG. The insolvency administrator shall advise the court immediately of any circumstances likely to doubt on his impartiality. He shall in all events inform the insolvency court, that he represents or advises the debtor, his close relatives or executive officers or has done so within five years prior to opening of the insolvency proceedings, represents or advises a creditor of the debtor or has represented or advised a creditor against the debtor within three years prior to opening the insolvency proceedings. With regard to the special interests of individual parties the insolvency administrator shall protect common interests.