**INSOL Europe Survey**

**Insolvency Office Holders in the Czech Republic**

**January 2016**

1. **Types of Insolvency Office Holder**

According to the Czech Act No. 182/2006 Coll., on Bankruptcy and its Resolution (hereinafter referred to as „Insolvency Act“) there can be distinguished four types of Insolvency Office Holders.

a) Preliminary insolvency administrator

A preliminary insolvency administrator is appointed before the decision on bankruptcy. Meanwhile his rights and duties are defined in the Insolvency Act and by the insolvency court. After the decision on bankruptcy, the preliminary insolvency administrator becomes the insolvency administrator with full authority.

b) Insolvency administrator

The Insolvency administrator is a general type of Insolvency Office Holder (IOH) with full authority. Unlike the other three types of insolvency administrators, this is a general type of an insolvency administrator appointed by the insolvency court during the decision on bankruptcy (*úpadek*) of a debtor. The main activity of an insolvency administrator is dealing with the estate of the debtor. In case of bankruptcy by liquidation (*konkurs*), the main activity is the sale of the property of the debtor, and also acting on behalf of the debtor. The main aim of the insolvency administrator is to maximize the satisfaction of the creditors.

Further as to the function of an insolvency administrator of some debtors such as (i) financial institution or (ii) central securities depository, broker, settlement system operator, operator of investment instruments, investment company, investment fund, pension fund, or (iii) its bankruptcy is solved by reorganization, or (iv) having a net turnover over more than 100 million CZK, or (v) having more than 100 employees, a special license is necessary (hereinafter referred to as “specific debtors”) .

c) Separate insolvency administrator

A separate insolvency administrator can be appointed for certain acts if the insolvency administrator is excluded from them because of his relationship to the debtor’s creditors or only to one of the representatives of the debtor's creditors. Furthermore there must be no doubt that this relationship will affect the overall arrangements for exercising the rights and duties of the insolvency administrator in general.

d) Special insolvency administrator

A special insolvency administrator can be appointed if there is necessary to deal with specific issues requiring technical specialization. The competent court will regulate his relationship to the insolvency administrator.

1. **Size of The Profession**

There are more than 500 insolvency administrators in the Czech Republic nowadays. At the moment the size of the profession is not limited.

1. **Practising Norms**

Insolvency administrator can be either a natural person or a legal entity.

Usually the insolvency administrators are active as attorneys-at-law, tax advisors, and auditors. There are all different ways of business such as sole practitioner, specialized firm as well as part of diverse professional service firms.

1. **Qualification Training and Entry Into The Profession**

The requirements for becoming an insolvency administrator are as follows: full legal capacity, clean criminal record, master degree in legal or economic field, to pass an insolvency exam, to pay the registration fee, 3 years of professional practice related to the function of an insolvency administrator, particularly in the areas of law, economy, tax consultancy, bookkeeping, audit or business management and also insurance liability.

For the special license it is necessary to pass a special oral insolvency exam. Moreover, for the special activity, there have to be fulfilled the requirements according to the Act on Classified Information Protection and Security in case of the insolvency administrators with the special license.

The insolvency exam consists of two parts - written and oral part. The areas of knowledge being examined are as follows:

1. civil law, commercial law and labour law,
2. civil procedure law,
3. insolvency law,
4. administrative law including administrative procedure,
5. financial law including the tax procedure
6. business management,
7. bookkeeping and business financing.

The special insolvency exam consists of the following topics:

1. principles and functioning of the financial market,
2. business organization and legal regulation of a specific debtor,
3. investment instruments, trading and other handling with these instruments,
4. legal regulation of duties of an insolvency administrator within the bankruptcy of a specific debtor,
5. insolvency law, civil law, commercial law,
6. business management,
7. bookkeeping and business financing.

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Each of the examining body has 5 members. The members must have a master degree in the legal or economic field and they are appointed by the Minister of Justice. For the special insolvency exam there is a steady 8 member examining body appointed by the Minister of Justice, two members thereof are appointed in agreement with the governor of the Czech National Bank.

In the year 2015 approximately 25 % of the applicants passed the written part of the exam and were admitted to pass the oral part. Statistics referring to the oral part of the exam are not available.

1. **Professional Bodies**

IOH very often exercise the profession of an attorney-at-law and further of a tax advisor or auditor.

The membership in the professional bodies, such as in the Chamber of Specialists for Crisis Management and Insolvency in the Czech Republic (after this the “*Chamber*”) or in the Association of Insolvency Administrators (after this the “*Association*”), is voluntary.

The Association was founded in autumn 2008 in connection with the new legislation on insolvency. It is a voluntary, professional and independent organization and its aim is to create a platform for development and continuous improvement of insolvency proceedings and activity of insolvency administrators. In cooperation with the Ministry of Justice of the Czech Republic, the Czech Bar Association, the Czech Bank Association and the Judicial Union of the Czech Republic it also realizes a project of united education.

The Chamber was established in 1994 and is also a member of INSOL International. The purpose of the Chamber is the development of science, education, research and development and education purposes. The aim is to raise qualification through education programs, to create a base for the integrity of procedures, the development of methodology and processing of necessary legislation, to protect and represent the interests of its members outside of the Chamber and to create conditions for internal cooperation between its members, to create conditions for the cooperation of the Chamber with the authorities of the state and other professional organizations in the Czech Republic and abroad both.

1. **Continuing Professional Education**

There is a general statutory obligation for the insolvency administration for continuous education and to deepen their professional knowledge enshrined in the Act No. 312/2006 Coll., on Insolvency Administrators.

1. **Body Corporate Or Individual**

IOH can be either an individual or a company in the form of a general partnership (in Czech “*veřejná obchodní společnost*”), or a foreign company or a foreign association providing equal guarantees as *veřejná obchodní společnost*, established according to the law of a EU’s member state. Currently there are over 80 insolvency administrators in form of *veřejná obchodní společnost* in Czech Republic.

1. **Sanction For Acting As An IOH Without Proper Authorisation**

An insolvency administrator acts without the proper authorization if he does not inform the Ministry of Justice about all the circumstances that could lead to the suspension or termination of the right to be active as an insolvency administrator or that could lead to the cancellation of the license or special license. The fine for the breach of the above mentioned information duty is up to 200 000 CZK.

1. **Bonding And Insurance**

IOHs have to conclude an insurance contract on their own account which is for the duration of the function. This insurance shall cover those damages that are caused in connection with their function or their employees’ activities. The minimal insurance coverage of insolvency administrator is 1 000 000 CZK for one insurance event for an individual. For a partnership this minimum coverage is multiplied by the number of partners. This special type of indemnity insurance is offered by the larger insurance companies.

1. **Appointment of IOHs**

The following paragraphs refer to the appointment of an insolvency administrator.

An insolvency administrator is appointed for the particular insolvency proceeding by the insolvency court from the list which includes the insolvency administrators. The list of insolvency administrators is led by the Ministry of Justice. The judge has no free choice, he is bounded to the list and has to make the selection from the list. The insolvency administrator is appointed one after another to guarantee that all the administrators are considered.

If an IOH cannot be appointed from the list of insolvency administrators, the individual must fulfil the statutory requirements for registration and the consent to the appointment must be approved.

If the decision on bankruptcy is associated with the decision on reorganization and the submitted reorganization plan designates an insolvency administrator, the insolvency court will appoint this person as an insolvency administrator. This does not apply if this person does not meet the requirements mentioned above. Otherwise the insolvency court will appoint as insolvency administrator a person designated by the Chairman of the insolvency court. The appointment is according to the day of the registration of the seat or establishment of that person which is stated in the Register of insolvency administrators.

1. **Remuneration**

The IOH is entitled to a remuneration and the reimbursement of cash expenses. In case of bankruptcy, the remuneration is determined by the number of reviewed, registered claims and the liquidation proceeds that will be distributed among the creditors. The specific amount of remuneration is regulated by the Ministry of Justice.

The IOH makes a statement of remuneration and cash expenses in the final report or in the report about his activity. In certain circumstances, the insolvency court has the right to increase or decrease the remuneration after its consultation with the creditors’ committee. The reason for the reduction of the remuneration is in particular the fact that the insolvency administrator violated any of his duties.

1. **Personal Liability of IOHs**

The IOH is responsible for damages or other disadvantages caused to the debtor, creditors or third parties by violation of his duties when exercising his activity. This also applies if he did not proceed with professional care.

The IOH’s liability includes also damages and other disadvantages caused by the persons who were entrusted with performing actions related to the IOH's activities. Furthermore he is responsible for the employees of the debtor working within their previous positions or other persons having a contract with the debtor.

The IOH is also responsible for damages or other disadvantages caused to a creditor with a claim against the insolvency based on an act of the IOH in case that the creditor’s claim could not be satisfied.

1. **Release Of IOHs from Liability**

The IOH is released from his liability for breach of his duty if he proves that the damage or other injury could not be prevented by the exercise of all the effort that could have been reasonably required with respect to the insolvency proceedings.

The IOH is released from his liability to a creditor only if he proves that at the time when undertaking the legal act he could not have known that the insolvency estate would not be sufficient for satisfaction of the creditor’s claim which incurred against the estate.

1. **Independence**

The insolvency administrator is excluded from the insolvency proceeding if there is a reason to doubt his impartiality with regard to the relation to the case itself or to the debtor and creditors. If there is any reason for his exclusion, the insolvency administrator is obliged to inform the insolvency court immediately.