

## Introduction

In Estonia the insolvency procedures are regulated by three laws. Bankruptcy Act (*BA*) that can be applied to insolvent companies as well as insolvent natural persons. Reorganisation Act (*ROA*) that regulates the reorganisation proceedings of enterprises with the aim of overcoming economic difficulties. ROA can not be applied to an enterprise that is insolvent. Debt Restructuring and Debt Protection Act (*DRDPA*) which purpose is to facilitate the restructuring of the debts of a natural person having solvency problems (debtor), in order to overcome the solvency problems and avoid bankruptcy proceedings.

## Types Of Insolvency Office Holder

### IOH in BA

- Interim Trustee

To give start to the legal proceedings a bankruptcy petition must be presented under the BA. After accepting a bankruptcy petition, the court shall decide on the appointment of an interim trustee within ten days and make a ruling on the decision. The requirements to the interim trustee are the same as for a trustee (see below). The main role of an interim trustee is to ascertain the execution proceedings concerning the assets of the debtor; assess the financial situation and solvency of the debtor and the prospect of continuation of the activities of the enterprise of the debtor and, if the debtor is a legal person, of the rehabilitation of the debtor; ensure the preservation of the debtors assets.

- Trustee

After the bankruptcy of the debtor has been declared by the court a trustee will be appointed. A trustee shall defend the rights and interests of all the creditors and of the debtor and ensure a lawful, prompt and financially reasonable bankruptcy procedure. A trustee shall perform his or her obligations with the diligence expected from an accurate and honest trustee and take into consideration the interests of all the creditors and the debtor. Trustees perform their obligations personally. A trustee shall determine the claims of the creditors, administer the bankruptcy estate, organise its formation and sale and satisfaction of the claims of the creditors out of the bankruptcy estate; ascertain the causes of insolvency of the debtor and the time when the insolvency was caused; organise continuation of the business activities of the debtor if necessary; if the debtor is a legal person, conduct the liquidation of the debtor if necessary; provide information to the creditors and the debtor in the cases prescribed by law; report on his or her activities and provide information concerning the bankruptcy proceedings to the court, the supervisory official and the bankruptcy committee.

### IOH in ROA

A court shall appoint a reorganisation adviser upon commencement of reorganisation proceedings after having considered the opinion of the undertaking. The duty of a reorganisation adviser is to inform the

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obligees and the court of the economic situation and reorganisation possibilities of the enterprise in an impartial and competent manner, to advise and assist the undertaking in the course of reorganisation proceedings and to verify the lawfulness of the claims of the obligees and the purposefulness of the transactions of the undertaking. The duties of a reorganisation adviser also include the duties to immediately obtain information about the economic situation and the planned reorganisation of the enterprise; analyse the solvency of the undertaking during reorganisation proceedings and, if insolvency has become evident, notify the court and the undertaking promptly thereof; assist the undertaking during preparation of the reorganisation plan and negotiations with the obligees and creditors; within reasonable time after the receipt of the application, provide the court, the obligees and creditors with information on the economic situation of the enterprise and preparation of the reorganisation plan; provide information on the performance of his or her duties to the court; assess whether the claim to be transferred is certified and lawful, and inform the court of a claim which actually does not exist, the amount of which is unclear or the lawfulness or certification of which cannot be determined; if necessary, request from the undertaking and obligees evidence regarding the claim to be transformed.

## IOH in DRDPA

A court may, on the basis of a debtor's petition or of its own volition, appoint an advisor for ensuring the compliance of the petition proceedings with the requirements if it is necessary for identifying the debtor's financial situation or if it clearly simplifies or expedites the petition proceedings or ensures better protection of the interests of the debtor or the creditors. The court may appoint an advisor also after declaring a debt restructuring petition admissible. The advisor's function is to impartially and professionally inform the court and the creditors of the debtor's financial situation and of the possibilities of overcoming the solvency problems, and to advise and assist the debtor in the course of the debt restructuring proceedings and to verify the lawfulness of the creditor's claims and the lawfulness and reasonableness of the debtor's transactions. Among other things, the advisor will: assist the debtor in drawing up the debt restructuring plan and in negotiations with the creditors; inform the court about the performance of the advisor's functions; assess whether the claims to be restructured are certified and lawful, inform the court of any non-existent claims, claims whose amount is unclear and claims whose lawfulness or certification cannot be assessed; if necessary, request from the debtor and the creditors evidence of the claims to be restructured.

## Sizes Of The Profession

To act as a trustee under the BA one must be a member of the Chamber of Bailiffs and Bankruptcy Trustees (Chamber), that also holds the list of the trustees. Currently there are 76 active trustees listed at the Chamber. The list is public.

The ROA stipulates that the following may act as reorganisation advisers: sworn advocates, trustees in bankruptcy and auditors; other natural persons who are honest and of moral character and who are proficient in oral and written Estonian, who possess good economic and the necessary legal knowledge

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and who have been awarded an officially recognised Master's level degree or have qualifications equal thereto within the meaning of subsection 28 (2<sup>2</sup>) of the Republic of Estonia Education Act or a foreign qualification equal thereto; investment firms and credit institutions. So it is difficult, if not impossible to assess the size of the profession.

The DRDPA states that a person having sufficient knowledge and experience may be appointed as an advisor. The DRDPA states that usually, a bankruptcy trustee is not appointed as an advisor. So it is difficult, if not impossible to assess the size of the profession.

There are no restrictions on the size of the professions, other than that the qualifying requirements for authorisation and acceptance of appointments detailed below.

## **Practising Norms**

Estonian IOHs range from senior partners of large firms to sole practitioners.

## **Qualification Training and Entry Into The Profession**

### BA

As mentioned above to be able to act as a trustee one must be a member of the Chamber. To be accepted to the Chamber one must undergo training and take an exam. Sworn advocates, sworn auditors and bailiffs complying with clause 47 (1) 1) of the Courts Act are not required to pass the examination of trustees or undergo training in order to be granted the right to act as a trustee. They are granted the right to act as trustees upon acceptance into the membership of the professional union of the Chamber. The abovementioned persons are accepted into the membership of the professional union of the Chamber on the basis of a written application.

### ROA and DRDPA

Keeping in mind the list given above of the persons allowed to act as a reorganisation adviser under ROA or an advisor under DRDPA one can induce that the advisor must be trusted by the court and the debtor. This is especially so with the advisor under the DRDPA of whom even higher education (university diploma) is not required.

## **Professional Bodies**

As mentioned above the IOHs under the BA must be members of the Chamber. The Chamber is a public legal person that is governed by the Bailiffs Act since 2010.

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IOHs under ROA and DRDPA may be attorneys. In Estonia an attorney can only be a person who is a member of the Estonian Bar Association which is a self-governing professional association acting on local government administration principles established on 14 June 1919 for the organization of the provision of legal service in private and public interest and defending of the professional rights of the attorneys. Estonian Bar Association assists the members of the Bar Association in their professional activity and performs surveillance, also looks out for the carrying on of the traditions of Estonian attorneys.

IOHs under ROA and DRDPA may also be auditors who are members of the Estonian Board of Auditors, which was created in 1999 with the Authorized Public Accountants Act of the Republic of Estonia. The Board of Auditors is the institute of Estonian certified auditors, only members of the Auditing Board have the right to practice as auditors in Estonia. The Estonian Board of Auditors is a self-governing professional association of Estonian auditors, which organizes the professional activities of auditors and protects the rights of auditors.

## **Continuing Professional Education („CPE“)**

The members of the Chamber are required to continue their professional education periodically. They must fulfil 40 hours of CPE per year.

The members of the Estonian Bar and The Estonian Board of Auditors must also undergo CPE in minimum of 10 hours per year for the members of the Estonian Bar and 120 hours per three years for the members of the Estonian Board of Auditors.

## **Body Corporate Or Individual**

IOHs are in all cases individuals. For example under ROA the if an investment firm or a credit institution is appointed as an reorganisation adviser, he or she shall inform the court of the name and details of the natural person who performs the duties of the reorganisation adviser instead of him or her or organises the performance of these duties. Typically the IOHs are employees or partners of law firms of accounting firm.

## **Sanction For Acting As An IOH Without Proper Authorisation**

It would be very unlikely for a person who is not properly authorised to hold themselves out as an IOH because in all proceedings the IOHs must be appointed by the court. If such a case would occur civil liability for damages caused is possible.

## **Bonding And Insurance**

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## BA

In order to ensure compensation for damage caused by trustee's professional activities, the trustee shall enter into a professional liability insurance contract. The minimum amount of insurance coverage for one insured event can not be less than 63,910 euros and the maximum amount of insurance indemnities payable for all the insured events occurring during the period of insurance shall be not less than 300,000 euros. Trustees are not required to insure liability arising from intentional violation of obligations. A bailiff, an advocate and a sworn auditor whose liability arising from his or her professional activities has been insured pursuant to law is not required to enter into the contract specifically meant for trustees as described above if the professional liability insurance contract includes acting as a trustee in bankruptcy.

## ROA and DRDPA

There are no bonding and insurance requirements for IOHs under the ROA and DRDPA.

## **Appointment Of IOHs**

### BA

An interim trustee as well as a trustee in bankruptcy proceedings is appointed by the court. Approval of a trustee appointed by a bankruptcy ruling shall be decided by the first general meeting of creditors. If a trustee appointed by a bankruptcy ruling is not approved, the creditors shall elect a new trustee whose approval shall be decided by a corresponding court ruling. If a court does not approve a trustee elected at a general meeting, the court shall appoint a new trustee by a ruling and the trustee need not be approved by a general meeting of creditors.

### ROA

A court shall appoint a reorganisation adviser upon commencement of reorganisation proceedings after having considered the opinion of the undertaking. Upon making the decision, the court is not required to take account of the opinion of the undertaking.

### DRDPA

The advisor is appointed by the court. Before appointing an advisor, the court will hear the debtor's opinion. No advisor will be appointed without the debtor's consent.

## **Remuneration**

### BA

- Interim trustee

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An interim trustee has the right to receive remuneration in the amount determined by the court for the performance of his or her duties and demand reimbursement of the necessary expenses incurred in the performance of his or her duties. The court determines the amount of the remuneration taking into consideration the volume and complexity of the duties of the interim trustee and his or her professional skills. The court shall verify whether the expenses incurred in the performance of the duties of the interim trustee were justified and shall approve the amount of the necessary and justified expenses. The amount of the remuneration shall be calculated on the basis of the time needed for the performance of the duties. An interim trustee shall submit information on working time and an application for reimbursement of the expenses. The maximum hourly wage of an interim trustee is 96 euros. If proceedings commenced on the basis of a petition of the debtor are terminated by abatement without declaration of bankruptcy and the assets of the debtor are insufficient to make the required payments, the court shall order the remuneration of an interim trustee payable and the expenses subject to reimbursement to be paid by the debtor but may order reimbursement thereof from the state funds. The amount of the remuneration and the expenses of an interim trustee reimbursed from state funds shall not exceed 397 euros (including the taxes prescribed by law, except value added tax).

- Trustee

Trustees have the right to receive remuneration for the performance of their duties. The court shall determine the remuneration of a trustee in bankruptcy upon approval of the final report of the bankruptcy proceedings after having heard the opinions of the trustee, the debtor and the bankruptcy committee. At the request of a trustee, the court shall order the remuneration of the trustee to be paid to the office through which the trustee operates. The remuneration of a trustee shall be calculated on the basis of the money which has been received and included in the bankruptcy estate as a result of the sale and recovery of the bankruptcy estate and other activities of the trustee. The court shall determine the amount of the remuneration taking into account the volume and complexity of the work of the trustee and his or her professional skills. In the calculation of the remuneration of a trustee, the assets of the debtor at the time of the declaration of bankruptcy or assets received independently of the activities of the trustee shall not be taken into account. The minimum amount of the remuneration of a trustee on a bankruptcy estate of up to 6,400 euros is 20 per cent of the bankruptcy estate. The minimum amounts of remuneration paid on a bankruptcy estate exceeding 6,400 euros are the following:

Size of bankruptcy estate in euros	Minimum amount of the remuneration of a trustee in euros	Remuneration of a trustee on the part exceeding the lower limit of the size of bankruptcy estate
6,401 . 12,800	1,597	15%
12,801 . 32,000	2,556	11%
32,001 . 64,000	4,665	10%
64,001 . 128,000	7,861	7%
128,001 . 320,000	12,334	3.5%
320,001 . 640,000	19,045	2.25%

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The maximum amount of the remuneration payable to a trustee on a bankruptcy estate of up to 6400 euros is 35 per cent of the bankruptcy estate. The maximum amounts of remuneration paid on a bankruptcy estate exceeding 6,400 euros are the following:

Size of bankruptcy estate in euros	Maximum amount of the remuneration of a trustee in euros
Remuneration of a trustee on the part exceeding the lower limit of the size of bankruptcy estate 6,401 .	
12,800	2,556 18%
12,801 . 32,000	3,706 12.5%
32,001 . 64,000	6,103 11%
64,001 . 128,000	9,618 7.5%
128,001 . 320,000	14,412 4%
320,001 . 640,000	22,081 2.6%

The maximum amount of the remuneration payable to a trustee on a bankruptcy estate exceeding 640,000 euros is up to 5 per cent of the bankruptcy estate.

In addition to the remuneration of a trustee, he or she has the right to request the reimbursement of the necessary expenses incurred in the performance of his or her obligations. For that purpose, a trustee shall, after each three months as of declaration of bankruptcy, submit a report on the expenses incurred during that period to the bankruptcy committee and the court. The bankruptcy committee and the court have the right to demand submission of expense receipts and additional information from the trustee. A court may refuse to approve reimbursement of the expenses, of which the bankruptcy committee and the court were not notified in due time.

## ROA

Upon release of a reorganisation adviser or approval of a reorganisation plan, the reorganisation adviser has the right to receive reimbursement of the necessary and justified expenses incurred upon performance of his or her obligations and remuneration for the performance of his or her duties. The procedure for calculating the remuneration of reorganisation advisers and the expenses subject to reimbursement and the limits of remuneration as a percentage is established by a regulation of the Minister of Justice. Under this regulation for example, if the amount of claims to be reorganised under the reorganisation plan is up to 6 390 euros the minimum remuneration percentage is 15% and the maximum remuneration percentage is 40% of this sum. If the amount of claims to be reorganised under the reorganisation plan is up to 319 560 euros and more, the minimum remuneration percentage is 2,25% and the maximum remuneration percentage is 2,6% of this sum.

## DRDPA

In the event of appointment of an advisor, the court will determine the amount that the debtor must deposit to the designated account for the purpose of covering the advisor's fee and expenses and will set a term for depositing the amount. The procedure for calculation of the advisor's fee and expenses to be compensated and the percentage limits of the fee is established by a regulation of the Minister of Justice. According to the said regulation the advisor is paid an hourly fee in the minimum amount of 10% calculated from the overall monthly minimum rate of remuneration or in the maximum amount of 20% calculated from the overall monthly minimum rate of remuneration. The overall monthly minimum rate of remuneration in 2016 in Estonia is 430 euros.

## **Personal Liability Of IOHs**

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## BA

- Interim trustee

An interim trustee shall be liable for the damage wrongfully caused to a debtor or creditor through violation of the obligations of the interim trustee. The limitation period for a claim filed against an interim trustee is three years as of the date of termination of the activities of the interim trustee.

- Trustee

A trustee who violates his or her obligations and thereby wrongfully causes damage to the debtor, a creditor or a person who may claim performance of a consolidated obligation shall compensate for the damage. The limitation period for a claim for compensation for damage arising from violation of the obligations of a trustee is three years as of the date when the victim became aware of the damage and the circumstances on which the liability of the trustee is based, but not more than three years as of the release of the trustee.

Also disciplinary liability of a trustee is possible. The Minister of Justice may impose a disciplinary penalty for violation of the obligations arising from legislation regulating the professional activities of trustees. The Minister of Justice shall not impose a disciplinary penalty on a sworn advocate, this is done by the Estonian Bar.

## ROA and DRDPA

An advisor who has wrongfully caused damage to the undertaking by violation of his or her obligations shall compensate for the damage. The limitation period for a claim for compensation for damage arising from violation of the obligations of an advisor is three years as of the date when the victim became aware of the damage and the circumstances on which the liability of the advisor is based, but not more than three years as of the release of the reorganisation adviser.

## **Release Of IOHs From Liability**

There are no specific regulations for release of IOHs from liability. In principle, if the IOH is liable the person with the claim against IOH can waive the claim.

## **Independence**

The IOHs independence is mainly achieved by the principle that the people who are connected to the court, the creditors or the debtor can not be appointed as IOHs. The members of the Estonian Bar follow and enjoy the position given to them by law. This also applies to the members of the Chamber and Estonian Board of Auditors.



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