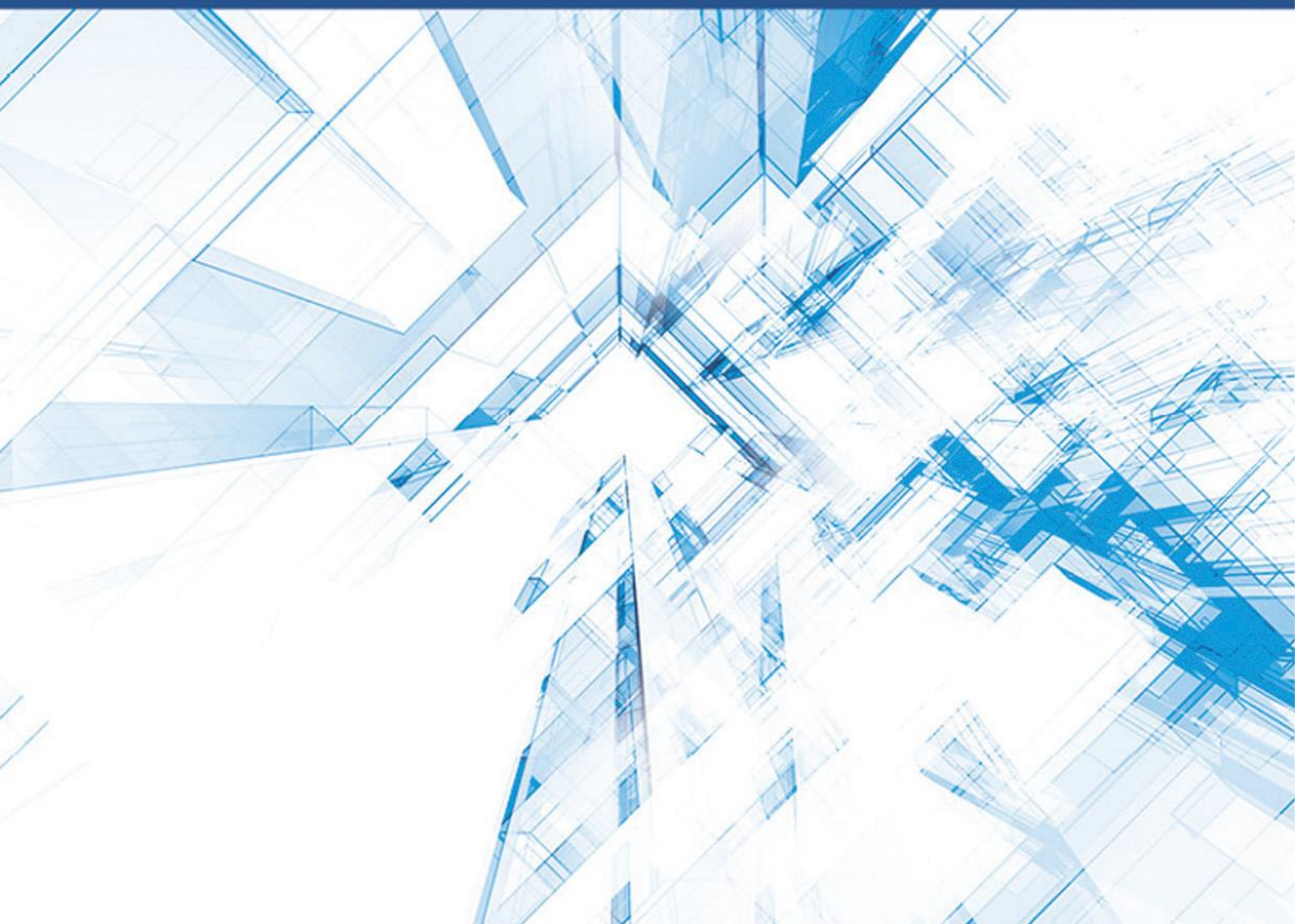


INSOL EUROPE SURVEY

REPORT ON LATVIA

22 February 2016



Types of insolvency office holder (IOH)

There is only one type of IOH in Latvia – an insolvency proceedings administrator (in Latvian – *maksātnespējas procesa administrators*). IOHs are a regulated profession and serve their duties in all kinds of insolvency procedures available in Latvia, pursuing different roles.

The insolvency procedures are as follows: corporate insolvency (serving as corporate liquidation in an insolvency situation), legal protection proceedings (corporate restructuring), out-of-court legal protection proceedings (out-of-court corporate restructuring) and personal bankruptcy.

IOHs are equated to public officials in their professional conduct.¹

Corporate insolvency

In corporate insolvency proceedings an IOH, in essence, has a duty to assess the assets of the debtor, sell them or the debtor's business as a going concern, bring actions for the recovery of the debtor's assets (including *actio pauliana*) and recovery of damages from the debtor's management, distribute the proceeds among creditors and, eventually, liquidate the debtor.

Corporate restructuring

As corporate restructuring is debtor-in-possession type proceedings, then an IOH only has a supervisory role. His or her tasks include providing an opinion on a restructuring plan and, in certain circumstances, on the credibility of creditors' claims included in it, exercising general supervision over the proceedings and filing a motion regarding termination of restructuring proceedings with the court in case the debtor is not following the restructuring plan or other obstacles for restructuring proceedings exist.

Personal bankruptcy

The aim of personal bankruptcy is to provide a fresh start possibility for an overindebted individual. In this type of proceedings an IOH is entrusted with selling debtor's assets and distributing the proceeds among creditors, as well as petitioning to the court for applying a discharge procedure in respect of the debtor if no obstacles to a discharge procedure have been established.

Size of the profession

As at 22 February 2016, there were 330 licensed IOHs. There is no statistics on the IOHs who are not actively taking insolvency appointments. However, unless an IOH obtains certain amount of points for his/her activity in restructuring or insolvency proceedings he/she may not pass relicensing (which takes place every two years).

There are no restrictions on the size of the profession, other than the licensing requirements detailed below.

Practicing norms

IOHs in Latvia mostly practice in small to medium sized law firms or as sole practitioners. Some of them work as in-house counsel. International law or accountancy firms usually do not employ IOHs.

Since absolute majority of IOHs are lawyers by their qualification, approximately half of them are members of the Latvian Bar (attorneys-at-law), as well.

¹ However, pursuant to a decision by the Constitutional Court this norm was declared void in respect to IOHs who are simultaneously attorneys-at-law to the extent that the norm is incompatible with the guarantees of professional activity of attorneys-at-law. Moreover, the norm in its entirety has been challenged before the Constitutional Court with the proceedings pending as of the date of this report.

Qualification, training and entry into the profession

An IOH is required to be licenced by the Association of Certified Insolvency Administrators of Latvia (**IOH Association**). In order to obtain a licence the person must have passed an exam organised by the IOH Association. There are certain criteria which an IOH candidate must match before taking the exam, being the age census (25 years of age), legal education (professional qualification of a lawyer or a PhD degree in law), command of Latvian language and at least three years of experience at a legal profession. In addition, a candidate must undergo vocational training by the IOH Association.

The exam consists of two parts – theoretical and practical. The topics covered include: insolvency and restructuring proceedings, civil proceedings, administrative proceedings, accountancy and finances, taxes, management of companies, employment law, record keeping, and professional ethics. The pass rate is highly volatile and lies within a range 20 % - 50 %.

Professional bodies

The IOH Association – a self-governing body established in 2003, performs training, licensing and relicensing of IOHs, as well as decides on suspension and termination of licenses. Additional function of the IOH Association is the adoption of the Ethics Code of IOHs.

Although membership in the IOH Association is not mandatory and as of the date of this report 214 out of 330 IOHs were its members, the IOH Association exercises its competence over all IOHs.

IOHs are supervised by the state institution Insolvency Administration (apart from court supervision in particular proceedings), established in 2002. The Insolvency Administration is responsible for deciding on complaints for IOHs conduct and may take respective disciplinary action, which may be establishing a violation of law in the conduct of an IOH, petitioning for the removal of an IOH from particular proceedings and initiating annulment of the license of an IOH.

The court exercises supervision over the conduct of an IOH in particular insolvency or restructuring proceedings.

Continuing professional education

IOHs have to undergo continued professional education by attending courses (seminars) either by the IOH Association or the Insolvency Administration in order to be able to pass relicensing. Pursuant to the statutory licensing requirements IOHs have to obtain 50 points within a relicensing period (every two years). One point calculated per one academic hour listened by the IOH and two points – for one academic hour taught by the IOH.

Body corporate or individual

An IOH must be an individual.

Sanction for acting as an IOH without proper authorisation

Due to the publicly accessible register of IOHs maintained by the Register of Enterprises and due to the procedure for the appointment of IOHs, it would be practically impossible for an individual who is not a properly authorised IOH to be able to act as an IOH in insolvency or restructuring proceedings.

Bonding and insurance

An IOH must maintain professional liability insurance for losses incurred by the state, debtor, creditors or other persons as a result of his/her professional conduct or negligence. A professional indemnity insurance policy must cover all proceedings administered by a given IOH for a period of one year. The minimum limit

on the extent of insurance cover must be EUR 42,600, however, an IOH is free to conclude an insurance policy with a higher limit.

A professional liability insurance cover is provided by a number of insurance firms and IOHs do not self-syndicate their cover.

Appointment of IOHs

In insolvency (both corporate insolvency and personal bankruptcy) IOHs are nominated by the Insolvency Administration according to a roster. The Insolvency Administration juxtaposes the list of debtors in respect of which insolvency proceedings have been initiated with the list of IOHs and nominates an insolvency practitioner's candidate. The court appoints an IOH commencing the insolvency proceedings of a debtor. The purpose of this system is to ensure accidental nomination of IOH candidates. Therefore, neither experience, nor reputation of an IOH is taken into account in his/her appointment.

In an in-court restructuring (legal protection proceedings) the debtor may agree with creditors on an IOH candidate. Otherwise, an IOH must be nominated pursuant to the same procedure as above.

In an out-of-court restructuring (out-of-court legal protection proceedings) the debtor must agree with creditors on an IOH candidate and this is one of the prerequisites for the successful approval of a restructuring plan in court.

Remuneration

Corporate insolvency

There are several possible sources of funding of an IOH's remuneration in corporate insolvency. First, an IOH may receive his/her remuneration from the insolvency estate (unencumbered property). If it is not possible to cover the IOH's remuneration from the insolvency estate, then it can be covered from financial means provided by a creditor or a group of creditors, a debtor's representative or other persons. If this option is not available, too, then, upon an IOH's request, the remuneration can be covered from an insolvency proceedings deposit (EUR 740), paid by an insolvency proceedings applicant before the initiation of insolvency proceedings and held by the Insolvency Administration. Unless the IOH agrees with the sponsor or the creditors' meeting otherwise, he/she is entitled to a fixed remuneration in the amount of two minimum monthly wages (EUR 740) and *pro rata* remuneration from the debtor's property amounting either to 10 % of funds from the recovered property or an amount intended for paying to the creditors, depending on the stage of the proceedings. Besides, there are special provisions on the remuneration for the sale of encumbered property. It is measured from the amount payable to the secured creditor and amounts to 15 % from the sum payable to the creditor up to EUR 4,268, from EUR 4,268 to EUR 14,228 - EUR 640.20 plus 10 % of the sum payable to the creditor exceeding EUR 4,268, etc.

Personal bankruptcy

For the performance of his/her duties for the period from the day of the appointment until the completion of the bankruptcy procedure (taking place before the discharge procedure) an IOH receives fixed remuneration in the amount of two minimum monthly wages (EUR 740). An IOH is also entitled to remuneration for the sale of the debtor's property in the same amount as in corporate insolvency.

Furthermore, an IOH may receive remuneration for the legal aid provided to the debtor in the discharge procedure. Such remuneration shall not exceed the remuneration established for the provision of State funded legal aid (legal advice).

In addition, an IOH may perform inspection of the debtor's activities within the discharge procedure upon a creditor's request. Remuneration for such inspection must be set in an agreement entered into by the IOH and the relevant creditor. If an agreement is not reached, the IOH shall receive fixed remuneration in the amount of one minimum monthly wage (EUR 370).

The IOH can agree with creditors on a different remuneration model. In this case, a decision on the IOH's remuneration has to be adopted at a creditors' meeting.

An IOH is obliged to inform creditors and the debtor (in personal bankruptcy) or the debtor's representative (in corporate insolvency) on his/her remuneration.

Restructuring

In restructuring, an IOH receives his/her remuneration set at one minimum monthly wage (EUR 370) per month, unless an agreement between an IOH and the debtor does not provide otherwise.

Personal liability of IOHs

An IOH is liable for losses incurred by the state, debtor, creditors or other persons as a result of his/her professional conduct or negligence. Claims against an IOH can be brought into court no later than a year after the termination of corporate insolvency or personal bankruptcy proceedings. However, if losses are established by a court judgement in criminal proceedings, then the general statute of limitation is applicable to claims against the IOH (10 years since the conduct that lead to losses).

In addition, a creditor or a group of creditors representing at least 10 % of the total principal amount of accepted unsecured creditors' claims are entitled to sue an IOH into court on behalf of all the debtor's creditors if an IOH has caused losses to the debtor (bankruptcy estate).

Release of IOHs from liability

Please see above on the statute of limitation as regards the IOH's liability.

Independence

There are certain provisions in the law governing conflicts of interest in the work of an IOH. In addition, IOHs are subject to the Ethics Code which requires them to identify and avoid or mitigate threats to their objectivity or integrity. Before agreeing to accept any insolvency appointment IOHs must consider whether acceptance would create any threats to the fundamental principle of objectivity via a conflict of interest or by any significant professional or personal relationships.