**INSOL Europe Survey**

**Insolvency Office Holders in Slovakia**

**January 2016**

1. **Types of Insolvency Office Holder**

Insolvency Office Holders (IOHs) for bankruptcy or restructuring proceedings are registered in the list of IOHs maintained by the Ministry of Justice of the Slovak Republic (hereinafter referred to as the “Ministry”), which is divided into the following sections:

* Restructuring Insolvency Office Holders;
* Bankruptcy Insolvency Office Holders for legal entities;
* Bankruptcy Insolvency Office Holders for natural persons.

The Slovak Act on Bankruptcy and Restructuring differentiates between bankruptcy proceedings (*konkurzné konanie*), restructuring proceedings (*reštrukturalizačné konanie*) and personal bankruptcy (*oddlženie*).

**Bankruptcy** proceedings are aimed at debtor’s liquidation and satisfying the creditors from the sale of debtor's assets. They are compulsory in case of over-indebtedness and voluntary in case of insolvency.

**Restructuring** proceedingsare voluntary proceedings aimed at debtor’s recovery enabling the debtor to continue to carry out its activities. The debtor's liabilities are being restructured based on a restructuring plan.

**Personal bankruptcy** proceedings concern insolvent natural persons.

1. **Size of The Profession**

Upon the accessible statistics of the Ministry, the current number of IOHs registered in the list of IOHs is 1769. We are not aware of any upper limit on the number of IOHs and there is no statutory restriction on the size of profession.

1. **Practising Norms**

An IOH can be either a natural person or a legal person.

A legal person may act as an IOH provided that at least some of its shareholders are liable with their entire property for its obligations (i.e. general partnership (in Slovak: *verejná obchodná spoločnosť*) or limited partnership (in Slovak: *komanditná spoločnosť*)). In addition, an IOH may, at the same time, exercise profession of an attorney of law or a tax advisor. Thus, an attorney's office or a tax advisor’s office can also act as an IOH (if established in the required form).

If a legal person applies for registration in the List of Insolvency Office Holders, its shareholders need to meet the requirements defined above. The same applies accordingly to legal persons established under foreign law.

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

The conditions required for an IOH to carry out the function include

(i) a satisfactory university education in law or economy

(ii) integrity and

(iii) reliability.

In addition, a candidate for an IOH shall successfully pass the examination upon the completion of additional education prescribed by the Ministry:

After successfully completing the university education in law or economy, the candidate must undertake a professional preparatory training upon the conclusion of which an IOH examination needs to be passed by the candidate. Professional preparatory training is provided by professionals in practice and in theory of law and economy, who are approved by the Ministry.

Examination

Examination is divided into an oral and a written part. The written part consists of a written test and a written solution of a case study. The maximum of points that an applicant can achieve is 300 (case study is worth 180 points), whereby the participant must reach at least 210 points in order to pass the exam.

The oral exam consists of 2 questions, 1 from law and 1 from economy. The test contains 60 questions from law and economy. In a case study, the participant must suggest a solution to the described hypothetical or real situation; use of legal statutes is allowed. Statistics on the success rate of the applicants is not publicly available.

1. **Professional Bodies**

IOHs in Slovakia may become members of the Association of Insolvency Office Holders in the Slovak Republic (in Slovak: *Združenie konkurzných správcov Slovenskej republiky*).

Membership in the Association is voluntary and possible upon the payment of an entry fee. Pursuant to the Act. No. 83/1990 Coll. on the Association of Citizens, the Association is registered in the relevant register of the Ministry of Internal Affairs of the Slovak Republic.

1. **Continuing Professional Education**

IOHs are obliged to regularly deepen and extend their knowledge and expertise necessary for performing properly all activities of an IOH, especially with regard to the changes and development in the area of administration of insolvent entities.

Continuing professional education (“CPE”) includes participation in lectures, seminars, scientific conferences, as well as involvement in publishing, lecturing, self-study activities and practical performance of an IOH activity.

IOHs prove their proper performance of CPE by credit points they gained. The Ministry evaluates the performance of CPE every other year. If the IOH does not gain the required number of credit points during the evaluation period, the Ministry orders a re-examination of the IOH.

The Ministry is allowed to order a re-examination of all IOHs in the event of a fundamental change of legislation in the area of IOHs’ activities.

1. **Body Corporate Or Individual**

The function of an IOH can be exercised by a natural person as well as by a legal entity. The majority of registered IOHs are natural persons. The requirements for an IOH being either a natural or a legal person are as follows:

Natural person:

* citizenship of the Slovak Republic or another Member State of the EU/EEA;
* full legal capacity
* permanent residence in the territory of the Slovak Republic or of another EU Member State
* clear criminal record and trustworthiness
* professional competence

Legal entity:

* limited partnership/*komanditná spoločnosť (*as shareholders with unlimited liability – *komanditisti)* or general partnership/*verejná obchodná spoločnosť*)
1. **Sanction For Acting As An IOH Without Proper Authorisation**

Pursuant to the on Insolvency Office Holders (Act No. 8/2005), anyone acting as an IOH without proper authorisation commits a civil offence (in Slovak: *priestupok*), which is dealt with by the Ministry. Such conduct shall be sanctioned with a fine of up to EUR 5,000.

1. **Bonding And Insurance**

An IOH is legally obliged to conclude a liability insurance agreement and submit it to the Ministry. If an IOH does not prove to have concluded a liability insurance agreement, the Ministry shall delete the IOH from the List of IOHs. The IOH is also obliged to inform the Ministry about any changes in the liability insurance agreement (amendments, termination, etc.) without delay, otherwise a fine may be awarded.

Any potential harmed party can claim the compensation directly from the insurance company.

1. **Appointment of IOHs**

The appointment procedures of IOHs vary subject to the type of legal proceedings.

The IOHs in the **bankruptcy** proceedings are appointed by the competent bankruptcy court using a random electronic selection process. The selection is limited only to IOHs whose offices are located in the district of the competent court.

The IOHs can be appointed as a preliminary receiver (with the main task to examine the financial status of the debtor) or as a regular receiver. The first creditors' meeting may revoke the appointed regular receiver for any reason; the following creditors’ meetings may only do so in cases set out in the Bankruptcy and Restructuring Act.

In case of **restructuring** proceedings, the debtor is free to choose an IOH of its own choice. However, the choice is limited only to IOHs whose offices are located in the district of the competent court.

An IOH cannot be appointed in the proceedings if any doubt regarding its impartiality arises with respect to the case or parties involved in the proceedings.

1. **Remuneration**

In **bankruptcy**proceedings, the activity of a preliminary receiver and a regular receiver prior to the first creditors' meeting is remunerated by a lump-sum fee. The preliminary receiver as well as the person who filed application for bankruptcy (person who has paid the advance charge for the receiver’s remuneration) shall have the right to file an objection against the court resolution on defining the fee.

The fee of a regular receiver after the first creditor’s meeting will depend on the value of the sold assets. The remuneration is awarded by the court upon an application of the IOH. The IOH shall have the right to object against the court’s decision in case the court has not accepted his application in full amount.

In each case, the fee has to be approved by the court. The court is allowed to reduce or not to award the remuneration if an IOH has violated its duties within the proceedings or caused delay in the proceedings and if objections have been raised regarding the proposal on distribution of proceeds. The IOH is entitled to file an appeal if the remuneration was not awarded in the full amount.

There is no special regulation with respect to IOH's remuneration in ***restructuring*** proceedings; such remuneration is subject to the agreement between the IOH and the creditors/debtor.

1. **Personal Liability Of IOHs**

Legislation on IOHs defines that an IOH is responsible for damage caused either in connection with performing IOH’s activities personally, or in connection with performing IOH's activities by an employee of an IOH or by a person entrusted with performing individual actions related to IOH's activities.

1. **Release Of IOHs from Liability**

According to the Act on IOHs, an IOH can be released from liability provided he proves that he could not have prevented the damage by any means even when exercising all effort.

The Act on Bankruptcy and Restructuring specifies further that an IOH is liable to creditors as well as to other persons for damage which has been caused by inappropriate and inefficient investments into administration, inefficient liquidation of assets or managing enterprise, unless he proves that he acted with professional due care.

1. **Independence**

IOHs are obliged to perform their duties independently and impartially. IOHs are not allowed to accept any gifts or advantages from a person involved in the case.

IOHs shall refuse any gift or any other advantage from a third person, if it could be reasonably assumed that it has been provided by this person with the intention to influence the impartiality of an IOH in terms of making decisions or forming its opinions.