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INSOLVENCY OFFICEHOLDERS FORUM

Summary of the survey on the state of affairs of European insolvency office holders and recommendations for minimum standards

*Survey conducted from December 2015 to May 2016 on behalf of and
presented to the European Commission, DG Justice in July 2016 by the*

Co-Chairs of the INSOLVENCY OFFICEHOLDERS FORUM:

**Marc André, France
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„Die Auslese des Verwalters ist die Schicksalsfrage des Konkurses.“

Prof. Ernst Jaeger¹

Introduction:

The survey was conducted amongst selected members of INSOL Europe with relevant practical experience either as insolvency office holder (“IOH”) or professional with broad experience in insolvency and/or restructuring matters. Responses could be collected in the meantime covering 22 European jurisdictions.

The **questionnaire** sent to the respondents is attached hereto as **Annex 1**.

Annex 2 is including a **one page tableau** for easy reference and overview, highlighting the key findings, key observations, but key difference of each jurisdiction reviewed.

Having reviewed the answers and based on their own experience the Co-Chairs of the IOH Forum want to highlight as introduction the following key observations that should always be borne in mind when reviewing or assessing the situation of IOHs across Europe:

- Compared to other similar professionals like lawyers and accountants the profession is quite small but must deal with a wide range of cases ranging from over-indebted consumers ranging to multi-national groups of companies with turnovers of billions of Euros.
- The profession falls largely on individuals, often with close nexus to the court, or exercising quasi judicial functions.
- IOHs are working with entities, entrepreneurs at the cusp of viability, thus, at moments of tension and stress.
- They are tasked with making difficult and far reaching decisions, often in very short time frames.
- They are exposed to personal liability.
- IOHs are practising in many different models, and come from different backgrounds.
- IOHs largely form sophisticated professional bodies, but variations do exist.
- The snapshot of this survey does not and was not intended to capture how the profession works in each jurisdiction, nor the glue that helps it function. Nor the role of the profession nor its direction of travel or evolution in each jurisdiction or economy, either in terms of addressing the NPL issue that is prevalent in certain parts of Europe or as a stepping stone to live side restructuring techniques. Nor in terms of fuelling good practice or effective economic change. Showcasing these important issues would be another task to perform and a vital prerequisite to fully understand the profession before thinking of changes or the introduction of additional rules.

¹ “The choosing of the insolvency administrator is the fateful question of the insolvency proceedings”, Ernst Jaeger, Professor for Civil Procedural Law at University of Leipzig, Emeritus in 1935

As a key result we understand that nevertheless the professions works on various similar standards but always under sensitive circumstances. It must be stressed that even if the same principles are overlapping for certain jurisdictions, they are then again totally differing in other countries reviewed.

RECOMMENDATION 1:

As a consequence the IOH Forum is not deeming the profession fit and ripe for introducing narrow and all too common minimum standards or principles – and this in particular based on the constant changes of the insolvency framework based on law reforms and changes of the market and economic climate overall which is already challenging the profession and therefore the functioning of the insolvency system. It must be understood that in some jurisdiction IOHs can look back on long lasting traditions and evolution lines whereas in other jurisdiction the concept of an IOH not just working as a liquidator and distributor of assets is quite a new phenomenon.

However, the IOH Forum would deem it extremely helpful to **enhance the approximation of the professions by the professionals themselves**. Any assistance to facilitate exchange of knowhow, best practice standards and generally knowledge exchange, e.g. by means of peer reviews and the possibility to earn CPE points not only in the respective home jurisdiction but across the EU would be extremely helpful, indeed welcomed and would automatically lead to the desired harmonization on the long run, but just not on top down approach but by a real bottom up evolution including the affected professionals and not by imposing rules that might even affect the well-functioning of this sensitive area of the whole capital market.

While the survey and this summary report were finalized the IOH forum was provided with the „*Study on a new approach to business failure and insolvency, Comparative legal analysis of the Member States' relevant provisions and practices (Tender No. JUST/2014/JCOO/PR/CIVII/0075)*“ by Leeds University with regards to IOHs making reference to an assessment by the EBRD, namely the “*Assessment of Insolvency Office Holders: Review of the Profession in the EBRD region*” (2014).

As a result the Leeds University study concluded, that „*the European Union could leverage the work of these other organisations with a view to formulating a set of rules for adoption on a pan-European basis. For instance, the principles developed by EBRD could provide a useful starting point for discussion on a common European framework.*“ Therefore, These general principles were promoted not only as such but even given the nature of “rules” by this study. As such these eight “rules” need to be cited here:

“EBRD / Leeds University Rules”

- 1) **Licensing and Registration** - *IPs should hold some form of official authorisation to act.*
- 2) **Regulation, supervision and discipline** - *given the nature of their work and responsibilities, IP should be subject to a regulatory framework with supervisory, monitoring and disciplinary features.*
- 3) **Qualification and training** - *IPs candidates should meet relevant qualification and practical training Standards. Qualified IPs should keep their professional skills updated with regular continuing training.*

- 4) **Appointment system** - there should be a clear system for the appointment of IPs, which reflects debtor and creditor preferences and encourages the appointment of an appropriate IP candidate.
- 5) **Work standards and ethics** - the work of IPs should be guided by a set of specific work standards and ethics for the profession.
- 6) **Legal powers and duties** - IPs should have sufficient legal powers to carry out their duties, including powers aimed at recovery of assets belonging to the debtor's estate.
- 7) IPs should be subject to a duty to keep all stakeholders regularly informed of the progress of the insolvency case.
- 8) **Remuneration** - a statutory framework for IP remuneration should exist to regulate the payment of IP fees and protect stakeholders. The framework should provide ample incentives for IPs to perform well and protection for IP fees in liquidation.

RECOMMENDATION 2:

Based on the IOH forum's own research certain general principles are applicable in all covered jurisdictions and are commonly used for certain topics concerning IOHs. If, what the IOH forum is not fully in agreement with, minimum standards should be imposed on the profession, the diversity must be seen and acknowledged for various other aspects, however.

Therefore, any further assessment of general principles and as a consequence common minimum standards - as far as developed in accordance with the reality of the profession and based on thorough assessments including the affected professionals and organizations duly representing the profession - are highly appreciated. But in any event all such minimum standards must be double checked by the reality, the actual daily work and circumstances of the profession and insofar with respect to the relevant topics they should cover.

Now, while certain of these eight rules as set out above are matching such reality test as well by the observations as set out in the survey undergone by the IOH forum very well, other principles are neglecting relevant facts and are not in compliance with the actual situation in certain European jurisdictions.

Generally supporting harmonization by means of approximation we therefore would recommended to use these rules as minimum standards only in a revised version. For this purpose we have commented and revised these "rules" in **Annex 3** and are recommending to considering the eight rules in this amended version as a potential set of minimum standards as consolidated and set out in **Annex 4 – Minimum Standards as proposed by the IOH-Forum**.

The Co Chairs want to thank the contributors to the survey and Prof. Marta Flores and Emmanuelle Inacio. Without their help this summary would not exist.

EXECUTIVE SUMMARY OF FINDINGS

TYPES OF INSOLVENCY OFFICE HOLDER

Some countries exclusively recognise one kind of IOH.

But most of the examined countries harbour different types of IOH depending on the:

- Purpose of insolvency proceedings (mainly rescue or liquidation);
- The nature of the debtor (but in some States, the IOHs are chosen from the same list, irrespective of whether the proceedings refer to a consumer or to a business corporation);
- In some countries, an IOH is appointed on an interim basis by the court before insolvency proceedings commence. The powers and functions of that person may differ slightly from the ones assigned to the final IOH, notwithstanding the fact that, generally, the interim IOH is later appointed as final IOH if the proceedings commence.

TYPES AND SIZE OF THE PROFESSION

The types of insolvency administration can be classified in accordance with two general models; a public model and a private/professional model:

- In a “public” model, IOHs are specialized public servants who are integrated in the country’s public administration.
- The “private” model can take different shapes:
 - The purely professional model is one consisting of IOHs that are grouped into self-regulatory bodies, that set the requirements for joining them and that organize access to their service according to technical standards, thereby exercising a monopoly on entry in the profession.
 - Another variant grants access to the insolvency profession to members of pre-existing bodies of lawyers and/or accountants, often by establishing further eligibility requirements.

These two models may themselves have further variations:

- The bodies of IOHs may be private or have a semi-public side, and
- in some jurisdictions the State has assumed the organization or the supervision of a national exam to qualify professionals to act as IOHs.

In almost all the States (except for Switzerland), a private model applies. Generally, no restrictions exist on the size of the profession, other than the qualifying requirements.

PRACTISING NORMS

In general, the IOHs range from senior partners of the global law and accountancy firms, to sole practitioners who run their own small and micro-businesses. In between these extremes, generally there are many medium-sized firms, either:

- specializing in restructuring and insolvency, or
- providing such services as part of a range of accountancy, audit and other financial or legal services.

QUALIFICATION, TRAINING AND ENTRY INTO THE PROFESSION

There are different approaches so as to ensure appropriate qualifications:

- Requirement for certain professional qualifications (a University degree in Law and/or Economics, for instance);
- Examinations and certifications;
- A licensing system (which may either be administered by a government authority or by a professional body). Obtaining the license may require passing an examination, a special training, or a certain level of experience;
- Membership of professional associations;
- Requirements for certain levels of experience (generally specified in numbers of years) in relevant areas (finance, accounting and law, for example), as well as experience in the conduct of insolvency proceedings;
- A combination of several of the above.

PROFESSIONAL BODIES

- IOHs are subject to their qualifications often belonging to qualified professions, mainly as lawyers or accountants. Normally, these professionals are by virtue of their original profession members of Professional Bodies, such as Bar Associations or Associations of Accountants/Auditors, which set and enforce minimum professional and ethical standards and guidelines.
- In some countries, however, specific Professional Bodies exist with regard to IOHs in this specific regard, giving place to a superposition of Professional Bodies. Membership to these bodies may be either voluntary or compulsory. Additionally, these bodies are either public entities or completely private. It should be noted that the Professional Bodies do not always have regulatory or supervisory powers over IOHs.
- In one country (France), IOHs are specialized and regulated professions members of a Professional Body.

CONTINUING PROFESSIONAL EDUCATION (CPE)

The majority of the 22 States surveyed follow take into consideration CPE for IOHs:

- In some of the reviewed countries, a specific CPE is mandatory for IOHs, and its organisation is carried away either by Professional Bodies and Associations, or by the Government itself.
- In some countries, CPE is required for lawyers and accountants, but not specifically for IOHs.
- Where CPE for IOHs is not an obligation, it is normally possible to undertake it on a voluntary basis.

BODY CORPORATE OR INDIVIDUAL

- In many of the surveyed States, the IOH must be a natural person.
- However, some States do provide that a legal person may also be eligible for appointment, subject to certain requirements such as:
 - That the individuals to undertake the work on behalf of the legal person are appropriately qualified;
 - That the legal person itself is subject to regulation;
 - That the court has to be informed about the natural person in charge (i.e., the identity of the natural person who will represent the legal entity must be disclosed to the court);
 - That the shareholders and/or employees need to meet the requirements to be an IOH.

SANCTION FOR ACTING AS AN IOH WITHOUT PROPER AUTHORIZATION

A unanimous answer in all the countries surveyed is that a person acting as an IOH without proper authorisation is highly unusual and unlikely.

BONDING AND INSURANCE

- Many of the surveyed countries do not require any kind of arrangement for IOHs to cover those losses.
However, in those countries, despite the fact that no statutory requirements are set in place for IOHs, in practice the IOHs do have said insurance, generally due to any of the following circumstances:
 - because insolvency courts require it in order to appoint the IOH;
 - because the associations of IOHs require it for their members;
 - because IOHs are a subset of another profession (mainly lawyers or accountants) who are obliged to hold insurance; or
 - because they do it on a voluntary basis.
- In many countries, however, some kind of insurance is specifically required for IOHs.
 - The arrangements to cover the losses caused by the IOH depend on the State, and may be in the form of for example:
 - personal indemnity insurance, usually with the establishment of a minimum covered amount;
 - a general or specific bond or guarantee underwritten by an approved insurance company or financial institution;
 - a compensation fund, financed by annual levies or calls on all IOHs.

In some countries, the cost of the bond/insurance is borne by the insolvent estate, although in many others this cost is borne by the IOH him/herself. Uncommonly, the costs are shared between the estate and the IOH.

Where specific bonding/insurance requirements are set, the level of the bond and amount of insurance covered is normally established in the insolvency law or by the relevant professional association or regulatory body.

APPOINTMENT OF IOHS

Determination of the pool of potential candidates

The determination of the pool of potential candidates is directly related to the qualifications, training and other requirements needed to entry the profession.

Selection of an IOH

- In many of the jurisdictions that have been reviewed, the court selects the IOH. The selection may be done:
 - either from a list of appropriately qualified professionals at the discretion of the court;
 - or (ii) by reference to a roster or rotation system.
- Other selection systems are based on the initial decision of the petitioning private parties (creditors and debtor).

Appointment of the selected IOH

- The formal appointment of the IOH is generally carried out by the court.
- But some countries provide a mixed model, according to which the court initially appoints an insolvency representative but later:
 - creditors may replace him/her by another individual of their choice, or
 - where a stakeholder (creditor or the debtor's managers or shareholders) make the appointment but other stakeholders have the right to ask the court to appoint a substitute.

REMUNERATION

Nature of the remuneration system

In the 22 countries surveyed:

- fees are freely agreed by the parties (remuneration determined based on market mechanisms) or
- established by a third party (a court or an Agency, normally pre-established by regulation).

Criteria to determine fees

The examined jurisdictions have approached the issue of determining an insolvency representative's fees in broadly two different ways, or a combination or variations of them:

- scale or commission based on the estate (value of assets and/or liabilities or on percentages of assets realized and/or funds distributed),
- and/or time spent.

Scale or commission fees may be set and operated in different ways:

- The scale or commission may be set by legislation or code for insolvencies generally, or freely determined in individual insolvencies by the court/creditors.
- Fees may be based on a percentage of the assets realized and/or funds distributed;
- There may also be a descending scale based on the total value of the assets of the insolvency estate; or a combined scale based on assets and liabilities.
- There may be a minimum threshold amount which recognizes the cost of complying in any event with statutory requirements applicable in all cases, and with or without an overriding maximum.
- All the previous possibilities may be complemented with the consideration of other circumstances that imply a higher (or a lower) degree of difficulty, and that can be used to increase (or decrease) the amounts resulting from the scales. Possible examples of factors that may be taken into consideration are:
 - the number of employees;
 - the number of creditors;
 - the location of productive centres in different countries;
 - the assumption of the actual administration of the business (as opposed to a debtor in possession situation), etc.

Fees based on time spent, are the system in some of the countries reviewed.

Marginally, some countries provide for **set amounts** (fixed fees or lump sums) under certain circumstances. Those fees are certain, but they may also be arbitrary or require some prior assessment of the work involved in a context where in many, particularly larger, insolvencies there may be many uncertainties.

Approval and review of the fees

Generally, the court is entitled to approve the remuneration:

- When the remuneration is fixed by the creditors, the court has normally the power to review the amount at the IOH's request.
- When the remuneration is set by the court in the first instance, most laws provide that the IOH can appeal the decision. In some States, also creditors and the debtor him/herself can challenge the remuneration.

Means of payment

- In most of the States surveyed, the insolvent estate must bear the remuneration of the IOH. The most common source of payment are the unencumbered assets of the insolvent estate.
- Some countries also levy a surcharge on creditors making initial application to commence insolvency proceedings to cover initial costs.

Priority to the payment of the IOH remuneration

There are several situations:

- there is absolute priority to the payment of the IOH remuneration;
- there is priority to the payment of the IOH remuneration over the claims of the creditors.
- the IOHs' claim yields to the claims of some secured creditors.

Impecunious cases

When there is not enough to pay the IOH's fees, there are several possible answers:

- debtor-related person/entities pay;
- creditors assume the cost;
- the insolvency practitioner loses – totally or partially – his/her right to the fees;
- public authorities fund the insolvency representative; or
- there is a fund set up to pay in these situations.
- It also possible that, if the payment of the costs of the proceedings is unlikely since the beginning (because the insolvency estate threats not to be enough to cover the costs of the procedure), the proceedings do not commence at all.

Reimbursement of expenses

Some countries provide for the reimbursement of the proper expenses incurred by the IOH in the course of the proceedings.

PERSONAL LIABILITY OF IOHs

Creditors and other interested parties can be recompensed in the event of intentional damage caused by fraud, defalcation or other malpractice.

Additionally, IOHs are generally made accountable for breaching their duty to act with due care (i.e., for negligent performance).

Finally, when regulating the IOH's liability, some States differentiate between:

- liability for damage caused to the estate and
- liability for damage directly caused to one of the parties to the insolvency proceedings (or, more generally to other relevant stakeholders, mainly creditors and the debtor him/herself).

RELEASE OF IOHs FROM LIABILITY

The release from liability is related to the:

- rendering of accounts at the end of the mandate,
- statute of limitations, or
- circumstances that may exclude liability,
- limitation of the IOH's personal liability by using special clauses in agreements or contracts.

INDEPENDENCE

All the 22 surveyed States have provisions dealing with issues of objectivity, impartiality and independence (or what may generally be referred to as conflicts of interest and duty) arising from a prior or a continuing business or personal relationship or other involvement with any of the parties.

Generally, the regulation specifies the relationships or involvements which may give rise to an actual or potential conflict.

These relationships may not only be present but also may have taken place some time ago (during the 2, 3 or 5 previous years prior to the opening of the insolvency proceedings).

Most countries impose an obligation to disclose existing or potential conflicts of interests.

Where an issue of potential conflict might still arise, it might be addressed in several ways, depending on the nature of the potential conflict:

- If the conflict is permanent, not to appoint the person or, if the situation arose after appointment, the person should be removed. An alternative is the disclosure to all parties of prior or continuing relationships which might give rise to the risk or appearance of conflict, followed by the approval of the appointment in the knowledge of such relationships.
- If the conflict refers only to a specific situation, it can be tackled by the appointment of one or more "special" IOHs to deal with those aspects of the insolvency where there might be seen to be the risk or appearance of conflict.

ANNEX 1 - Questionnaire

- **Types Of Insolvency Office Holder**

Identify the types of Insolvency Office Holder (IOH) undertaking winding up proceedings, trustee/creditor in possession restructuring proceedings, with a short description of each role.

- **Size Of The Profession**

Identify the approximate size of the IOH profession noting those entitled to take appointments and those actively taking appointments. Identify any restrictions on the size of the profession.

- **Practising Norms**

Provide a brief overview of the style in which members typically carry on business, whether as sole practitioners, in specialist firms or as part of diverse professional service firms.

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

Describe the qualifications required to undertake the IOH role, the extent to which professional examinations are required, the typical 'apprentice or training period' required of a professional before undertaking appointments.

Describe the subject matter of any examinations, together with the responsible examining body. Specify the typical % sitting the examinations and passing.

- **Professional Bodies**

Identify whether IOHs are typically members of a specialist profession, or a subset of another (e.g., lawyers or accountants).

List the professional bodies of which IOHs may typically be members, indicating those which undertake regulatory activity within a statutory framework and those that undertake activity outside a statutory framework (e.g., best practice and/or compulsory minimum standards for member entry criteria).

Regulatory activity may typically comprise: setting and enforcing minimum professional standards, specifying ethical standards, requiring members to undertake minimum annual continued professional education, reviewing on a periodic basis IOHs compliance with minimum standards (case conduct reviews), adjudicating complaints regarding member's conduct, levying fines and impositions on members and excluding members from membership and other.

Identify the regulatory activity undertaken by professional bodies.

Identify the approximate dates of foundation of the professional bodies, or emerging bodies.

- **Continuing Professional Education ("CPE")**

Specify any minimum requirement for continuing professional education (number of hours per year) and the types of activity eligible for continuing professional education.

Indicate whether the CPE requirement is set within a statutory framework (by professional bodies undertaking statutory regulation) or outside a statutory framework (e.g., by professional bodies who require best practice but not within a statutory framework).

- **Body Corporate Or Individual**

Identify whether an IOH may be a body corporate, or must be an individual.

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

Specify the consequences of acting as an IOH without proper authorisation.

- **Bonding And Insurance**

Identify the surety requirements, if any, that an IOH must maintain in respect of appointments.

Identify the requirements of IOHs to maintain professional indemnity insurance.

Identify the market that is used to provide professional indemnity insurance, and whether IOHs self-syndicate any element of insurance.

- **Appointment Of IOHs**

For each class of IOH identify the general methods of selection and criteria for appointment to the role.

- **Remuneration**

For each class of IOH identify the methodologies of remunerating the IOH (hours and rates, % of assets, % of distribution, etc.). Identify who determines the methodology. Identify any party or parties with a right to review and challenge remuneration. Identify any requirements or guidelines for the provision of information regarding remuneration and analysis to supervising committees, creditors or courts.

Identify any market norms relating to IOHs' remuneration.

- **Personal Liability Of IOHs**

Identify any areas where an IOH may be typically exposed to personal liability in carrying out his / her functions

- **Release Of IOHs From Liability**

Identify the mechanism or convention by which an IOH is released from liability in respect of an assignment undertaken, and any exceptions to the release granted.

Where there is no mechanism for a statutory release from liability describe the market norms that in practical terms absolve an IOH from past acts

- **Independence**

Set out the applicable standards relating to IOHs independence from the debtor, and / or creditors or other parties.

ANNEX 3 – Revised Minimum Standards

- 1) **Licensing and Registration** - *IPs should hold some form of official authorisation to act.*

Remark:

The question of holding any form of official authorization is not a general issue but an issue relevant for each individual case. IOHs are representing debtors or debtors' estates on an individual basis and not generally. Insofar, the question of authorization is part of the legal duties (see No. 6 below) and should be covered there. In any case certain member states just do not know any form of licensing at all, therefore this principle should be worded differently and in the way of the alternative proposal below.

Alternative Proposal:

Licensing and Registration – IOH licensing and registration should be governed by the Member States. Member States should be free to have IOHs licensed and registered as such, i.e. as a profession of its own, or as members of other professions (e.g. as lawyers or chartered accountants), and by self-regulated or public bodies, or by agencies or courts.

- 2) **Regulation, supervision and discipline** - given the nature of their work and responsibilities, IP should be subject to a regulatory framework with supervisory, monitoring and disciplinary features.

Remark:

This principle is fully acceptable and of high importance. We only would recommend the following amendment.

Alternative Proposal:

... features. Member States should be free how to organize such supervision and disciplinary actions and whether and to which extend to delegate such supervision and disciplinary actions to IOHs' self-regulated or public bodies, to agencies or to courts.

- 3) **Qualification and training** - IPs candidates should meet relevant qualification and practical training Standards. Qualified IPs should keep their professional skills updated with regular continuing training.

Remark:

This principle can be supported completely. In the light of the IOH forum's first recommendation (see Introduction) only a amendment is recommended.

Alternative Proposal:

... training. Member States should encourage cross-border training and exchange of knowledge and best practice standards. For this purpose any CPE system in the Member States should encourage and allow for theoretical and practical training in other Member States.

- 4) **Appointment system** - there should be a clear system for the appointment of IPs, which reflects debtor and creditor preferences and encourages the appointment of an appropriate IP candidate.

Remark:

It triggers great concerns that the appointment is according to this principle a pure question of the preferences of debtor and the creditors. Other stakeholders and affected parties, e.g. employees, or the concept of an IOH as an independent officer (of the court) are not mentioned at all. And most importantly and despite the actual situation in the Member States even the general issue of independence is not even mentioned with a word in this "rule". It is therefore strongly recommended to use the following alternative wording.

Alternative Proposal:

Appointment system - there should be a clear system in the Member States for the appointment of IOHs safeguarding the independence and avoiding conflicts of interest for the appointee. As far as not harming the general independence of the specific IOH the appointment system in each Member State may formally vary, but may reflect debtor and creditor preferences with regards to the skills and experience of the IOH and should encourage the appointment of an appropriate IOH candidate.

- 5) **Work standards and ethics** - the work of IPs should be guided by a set of specific work standards and ethics for the profession.

Remark:

Such principle can be supported fully. An alternative wording is not required.

- 6) **Legal powers and duties** - IPs should have sufficient legal powers to carry out their duties, including powers aimed at recovery of assets belonging to the debtor's estate.

Remark:

Here, the issue of formal authorization should be added.

Alternative Proposal:

Legal powers and duties - IOHs should have sufficient legal powers and standing to carry out their duties, including powers aimed at recovery of assets belonging to the debtor's estate. IOHs should hold some form of official authorization making sure that the identification of an IOH as the responsible person for the assets he is responsible for is possible and to be acknowledged in all Member States

- 7) **[Transparency]** IPs should be subject to a duty to keep all stakeholders regularly informed of the progress of the insolvency case.

Remark:

A high level of transparency is necessary and required. As it may hamper the fair and efficient conduction of insolvency proceedings the transparency should only be owned to such stakeholders which are as debtor or creditor a legal party to the proceedings.

Alternative Proposal:

Transparency – Member States should take care, that IOHs are subject to a duty to keep all parties to the proceedings regularly informed of the progress of the insolvency case.

- 8) **Remuneration** - a statutory framework for IP remuneration should exist to regulate the payment of IP fees and protect stakeholders. The framework should provide ample incentives for IPs to perform well and protection for IP fees in liquidation.

Remark:

This principle can be supported, but it is not understandable why such protection should be granted only in liquidation cases and would not be applicable in going concern, reorganization and insolvency plan scenarios.

Alternative Proposal:

... The framework should provide ample incentives for IOHs to perform well and protection for IP fees in all types of insolvency proceedings, including but not limited to preliminary, hybrid and restructuring proceedings.

ANNEX 4 – Minimum Standards as proposed by the IOH Forum:

- 1) **Licensing and Registration** -IOH licensing and registration should be governed by the Member States. Member States should be free to have IOHs licensed and registered as such, i.e. as a profession of its own, or as members of other professions (e.g. as lawyers or chartered accountants), and by self-regulated or public bodies, or by agencies or courts.
- 2) **Regulation, supervision and discipline** - Given the nature of their work and responsibilities, IOHs should be subject to a regulatory framework with supervisory, monitoring and disciplinary features. Member States should be free how to organize such supervision and disciplinary actions and whether and to which extend to delegate such supervision and disciplinary actions to IOHs' self-regulated or public bodies, to agencies or to courts.
- 3) **Qualification and training** - IOHs candidates should meet relevant qualification and practical training Standards. Qualified IOHs should keep their professional skills updated with regular continuing training. Member States should encourage cross-border training and exchange of knowledge and best practice standards. For this purpose any CPE system in the Member States should encourage and allow for theoretical and practical training in other Member States.
- 4) **Appointment system** - There should be a clear system in the Member States for the appointment of IOHs safeguarding the independence and avoiding conflicts of interest for the appointee. As far as not harming the general independence of the specific IOH the appointment system in each Member State may formally vary, but may reflect debtor and creditor preferences with regards to the skills and experience of the IOH and should encourage the appointment of an appropriate IOH candidate.
- 5) **Work standards and ethics** - the work of IOHs should be guided by a set of specific work standards and ethics for the profession.
- 6) **Legal powers and duties** - IOHs should have sufficient legal powers and standing to carry out their duties, including powers aimed at recovery of assets belonging to the debtor's estate. IOHs should hold some form of official authorization making sure that the identification of an IOH as the responsible person for the assets he is responsible for is possible and to be acknowledged in all Member States
- 7) **Transparency** – Member States should take care, that IOHs are subject to a duty to keep all parties to the proceedings regularly informed of the progress of the insolvency case.
- 8) **Remuneration** - a statutory framework for IP remuneration should exist to regulate the payment of IP fees and protect stakeholders. The framework should provide ample incentives for IOHs to perform well and protection for IOH fees in all types of insolvency proceedings, including but not limited to preliminary, hybrid and restructuring or reorganization proceedings.

INSOL Europe
Insolvency Office Holders Forum - Draft Working Paper

	Germany	United Kingdom	France	Italy	Spain
Size (No. of OH's) Size>2,000 500<=Size<=2,000 Size<500	3,410	1,745	Judicial Administrators - 111 Judicial Liquidators - 309	Institute of Chartered Accountants - 27,000 Bar association - N/K	Estimated 5,000
Appointment Court only Ratified by the Court A combination of methods of appointment	Court	CVA - nominated by director, liquidator or administrator and ratified by creditors Administration - Company, Directors, Court CVL - nominated by directors, ratified by creditors Compulsory Liquidation / Bankruptcy - Court/Official receiver IVA - nominated by debtor, ratified by creditors	Court	Court	Listed companies - National Securities Market Commission; All other - Court
Person and/or Corporate OH Corporate only Corporate or Person Person only	Person	Person	Person	Person	Person, Corporate
Types of firms Small specialist Sole to medium/large	Lawyers / Accountants	Sole practitioners - large firms	Small specialist	Individual	Individual lawyers/economists - large firms.
Professional Bodies	- Chambers of Lawyers ("BRAK") - Tax Advisors ("BSTBK") - German Bar Association ("DAV") - Chamber of Chartered Accountants ("WPK")	ACCA, ICAEW, CARB, ICAS, IPA, LSS, SRA	Garde des Sceaux (French Ministry of Justice) National Council of Judicial Administrators and Judicial Liquidators	-Institute of Chartered Accountants -Bar Association	-Bar association or -Association of Economists.
Entry requirements for OH No qualification required Professional/other qualification required Professional qualification required and/or pass insolvency exam	-Lawyer -3 to 10 years' experience in the field -Work in a firm with several employees who have specialised in insolvency law, labour law, corporate law and tax	- Pass professional JIEB exams, or -hold equivalent qualifications from European Economic Area State. - 600 hours experience in three years before applying for licence.	-High school diploma -4 year university degree (law, finance, economics) -professional exam -Completion of trial period -Professional aptitude test	No specific qualification to become IOH. Normally professionals (Accountant or Lawyer).	Lawyer with 5 yrs experience (or?) economist with 5 yrs experience. Court can also appoint a legal entity to be a practitioner.
Training / CPE No requirements	- DAV 10 hours a year - VID 30 hours a year	Must achieve targets set for education that are confirmed nationally.	Not known	Institute specific requirements	None specific to insolvency. Only mandatory training from professional body.
Sanction for Acting as Unauthorised OH	Rare because the IOH is appointed by the Insolvency Court. If IOH has cheated about his qualification - criminally liable, liable for damages and fraud	Sanction from body	Not known	Not possible because the IOH is nominated by the bankruptcy Court	Imprisonment 6 months - 2 years
Bonding / Liability insurance May have Must have	No statutory requirement for surety / indemnity insurance. IOH's tend to hold Professional Indemnity Insurance	Must hold a bond and professional indemnity insurance.	Insurance required	Every professional must have a professional indemnity insurance	€800,000 - €4,000,000 depending on: -experience -if company is listed -if com
Remuneration Time costs % of assets Other A combination	Time costs Also dependent on - % of estate - Number of creditors - Complexity of case (dealing with securities, employee issues)	-Fixed fee -Time cost -% of assets -A combination of the above	Normally at percentage of realisations or turnover	% on active realised and recovered assets - the court approves the remuneration	% of assets and % of liabilities
Release None/other Court Time	None but limited by IOH using special clauses in agreements and contracts	Discharged from liability when they have left office.	Not known	None	Not known

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	Netherlands	Sweden	Belgium	Austria	Denmark
Size (No. of OH's) Size>2,000 500<=Size<=2,000 Size<500	c.800	400	N/K	1,296	N/K - but Attorneys act as OH, 6,000 Attorneys admitted to the bar.
Appointment Court only Ratified by the Court A combination of methods of appointment	Court	By court	Court	Court	Court
Person and/or Corporate OH Corporate only Corporate or Person Person only	Person	Person	Person	Person, Corporate	Person
Types of firms Small specialist Sole to medium/large	Large law firms - sole practitioners. Many medium sized restructuring/insolvency firms	Small to large law firms	Large - small law / accountancy firms	Small/Niche firms	Sole practitioners to large law firms
Professional Bodies	Courts have discretion in appointing a bankruptcy trustee. Most insolvency practitioners members of INSOLAD. Dutch lawyers are admitted to the Dutch Bar Association and subject to disciplinary law	Swedish bar Association and also Swedish Reorganization and Administrator's Organization.	None insolvency specific but typically subsets of: - Attorneys (e.g. Brussels bar - Accountants (Associations of Accountants and Tax Consultants) - Auditors (Association of Auditors) - Bailiffs (National Chamber of Bailiffs) - Notaries Public (National Chamber of Notaries Public	Not specific Tax, Law, Audit, Other professionals	The Association of Danish Insolvency Practitioners Work and standards of OHs overseen by Bankruptcy Court and Danish Bar Association respectively.
Entry requirements for OH No qualification required Professional/other qualification required Professional qualification required and/or pass insolvency exam	Most district courts require that these lawyers: - have completed one or more specialist courses on insolvency law provided by the Dutch Association of Insolvency Practitioners - can demonstrate proven experience in dealing with insolvency law.	Member of the Swedish Bar Association, unless a member of Akordcentralen (but must be acting practitioner for several years). Different regions require different levels of experience.	Bankruptcy liquidations - Court list Judicial administrator - no specific conditions / training Debt mediator - 3 years' relevant experience or 60 hours' special training Liquidator - Court must approve Provisional administrator - appointed by president of the court	No specific qualification to become IOH. Normally professionals (Accountant or Lawyer). Trustworthy person with knowledge of business and insolvency	Attorney A non-compulsory certification scheme by The Association of Danish Insolvency Practitioners is also available.
Training / CPE No requirements	Must demonstrate they are maintaining continuing professional education.	18 hours of structured learning per year.	None insolvency specific	4 annual seminars	Min. 54 units (each of 45 minutes) of continuing education over a 3 year period.
Sanction for Acting as Unauthorised OH	Issue unknown in Netherlands as district courts have sole and absolute discretion in appointing IOHs	N/A - court appointments	N/A - all appointments are made by the Court	Liable for monetary losses as a result of dereliction	None
Bonding / Liability insurance May have Must have	Requirement of the DBA that lawyers hold professional indemnity insurance	Professional Indemnity Insurance a requirement	No obligation, however, strongly recommended.	€0.4 - 2.4m	Professional Indemnity Insurance a requirement
Remuneration Time costs % of assets Other A combination	Proceeds of the assets of the insolvent estate Basis of time and hourly rates determined by the courts	Proceeds of assets. If no funds available Swedish state will pay (set amounts).	Bankruptcy Liquidator - % of assets Judicial administrator - time costs Debt mediator - fixed amount determined royal decree Liquidator - time costs Provisional administrator - time costs	% of assets Decreasing pro-rata	Approved by the Bankruptcy Court
Release None/other Court Time	IOH cannot be discharged from liability	Not known	Once liability and taxes of OH's fees and costs are settled?	None but general supervision of OH by Court	Three years from time the loss was incurred.

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	Ireland	Greece	Portugal	Czech Republic	Romania
Size (No. of OH's) Size>2,000 500<=Size<=2,000 Size<500	656	N/K	354	500	3724 (2814 active)
Appointment Court only Ratified by the Court A combination of methods of appointment	Debtor/creditor/petitioner nominates, court makes the appointment	Court	Court - creditors can freely substitute the appointed IOH	Court	Court
Person and/or Coporate OH Corporate only Corporate or Person Person only	Person	Person, Corporate	Person	Person, Corporate	Corporate
Types of firms Small specialist Sole to medium/large	Accountancy firms / sole practitioners	Sole practitioners	Sole practitioners/partnership	Large to sole practitioners. Attorneys / Tax Advisors / Auditors	Professional limited liability companies, personal limited liability companies and individual practices
Professional Bodies	IOHS are usually accountants and member of either Chartered Accountants Ireland or the Association of Chartered Certified Accountants	The Bar Code of Lawyers	Regulated and supervised by the Commission for the Supervision of Court Auxiliaries	Chamber of Specialists for Crisis Management and Insolvency in the Czech Republic Association of Insolvency Administrators	The National Organisation for Insolvency Practitioners (UNPIR)
Entry requirements for OH No qualification required Professional/other qualification required Professional qualification required and/or pass insolvency exam	1. Member of a prescribed accountancy body and hold a practicing certificate issued by that body 2. A solicitor who holds a practicing certificate issued by the Law Society of Ireland 3. A member of a professional body recognised by a supervisory authority 4. A person qualified under the laws of another EEA state 5. A person with practical experience of winding ups and knowledge of relevant laws	Attorney at law with min. 5 years' experience.	1. Academic degree and professional experience 2. Training period 3. Approval in the final exam organised by the CSCA	Masters degree in Economics or Law Pass Special Insolvency Exam (written and oral) 3 years' relevant professional practice Clean record	1. Economic or law degree 2. 3 years of experience in law or economic field 3. Pass exam organised by the National Training Institute for Insolvency Practitioners
Training / CPE No requirements	CPD regulation: 20 hours of structured and 50 hours of unstructured	None	Have to attend training courses and seminars, CSCA yet to enact the regulation regarding continuing professional education	General statutory obligation of continuous professional education	20 hours per year, which can be obtained by participating in The National Training Institute for Insolvency Practitioners' seminars or conferences
Sanction for Acting as Unauthorised OH	Liable on summary conviction: fine up to EUR 5,000 and/or imprisonment up to 12 months Liable on conviction on indictment: fine up to EUR 500,000 and/or imprisonment up to 10 years	Rare as Court appoints OH but in such cases, Code of Lawyers applies.	Fine up to EUR 250,000. Imprisonment up to 2 years. Unlikely as IOHs appointed from an official list.	Suspension or termination of right to practise. Cancellation of licence. Fine max. 200,000 CZK.	Criminal sanctions - unlikely as IOH registers are publicly accessible
Bonding / Liability insurance May have Must have	Person must have professional indemnity insurance	No requirement	Do not need to hold a bond but must have an insurance policy for civil liability.	Min. 1m CZK multiplied by number of OHs	No surety requirements that an IOH maintain in respect of appointments. National Organisation for Insolvency Practitioners requires members to hold professional indemnity insurance
Remuneration Time costs % of assets Other A combination	Basis of time	Dependent on: -Size of estate -Time costs -Distribution to creditors	Fixed remuneration EUR 2,000. Variable remuneration is % of value obtained from the proceeds of the assets, range from 0.1%-7%, court can adjust if exceeds EUR 50,000	Determined by number of reviewed, registered claims and proceeds distributed to creditors. Specific amounts regulated by Ministry of Justice	Proceeds of assets. If the procedure lacks assets and has no means of sustaining the procedure costs, the costs will be sustained by a national fund.
Release None/other Court Time	Deed of discharge or by filing their final returns	3 year limit on claims (from the time the victim becomes aware of the damage and the act).	Liability is subject to limitation up to two years after the claimant was aware of its right, case is limited to two years after the IOH has ceased to carry out their functions.	In relation to breach of duty -released if damage could not be prevented in OH duties In relation to liability to a creditor - released if OH proves he could not have known that the insolvency estate would not be sufficient for satisfaction of the creditor's claim	Once IOH have left office and insolvency procedure has been closed

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	Slovak Republic	Luxembourg	Bulgaria	Lithuania	Latvia	Estonia
Size (No. of OH's) Size>2,000 500<=Size<=2,000 Size<500	1769	30	240	540 individuals 338 legal persons	330	N/K
Appointment Court only Ratified by the Court A combination of methods of appointment	For bankruptcy process random electronic selection is performed. For restructuring the debtor can choose.	Court	Bankruptcy Court	Court	Nominated by Insolvency Administration - court then appoints the IOH	Court
Person and/or Corporate OH Corporate only Corporate or Person Person only	Person, Corporate	Person	Person	Person, Corporate	Person	Person
Types of firms Small specialist Sole to medium/large	legal person, lawyer, tax advisor	Medium - small law firms, use of independent firms when required	Sole practitioners	Sole practitioners	Small/Medium firms / sole practitioners	Sole practitioners to large law firms
Professional Bodies	Association of Insolvency Office Holders in the Slovak Republic (but membership is voluntary).	No specified bodies, either members of the Bar Association or of the IRE (Institute of Auditors)	Ministry of Justice	Authority of Audit, Accounting, Property Valuation and Insolvency (part of Ministry of Finance)	The IOH Association performs training, licensing, relicensing, suspension and termination of licenses	The Chamber Estonian Bar Association Estonian Board of Auditors
Entry requirements for OH No qualification required Professional/other qualification required Professional qualification required and/or pass insolvency exam	University education in law or economics, pass exam prescribed by the Ministry and training.	No specific qualifications	- Independent - Postgraduate degree in Economics or Law and 3 years' service in the field of his speciality - Passing of examination under Art. 655a, Para 1	1. Be of good repute 2. Hold a social science degree or equivalent degree in law or economics or a lawyer's professional qualifications degree 3. Have a work record of at least five years as a head of an enterprise over the last seven years 4. Pass a qualification exam 5. Have a command of the Lithuanian language	Licensed by the Association of Certified Insolvency Administrators of Latvia - must pass an exam	Bankruptcy Act (BA) - Training and exam (except for Advocates, auditors and bailiffs). Reorganisation Act (RA) and Debt Restructuring and Debt Protection Act (DRDPA) - Trusted by the Court and the Debtor
Training / CPE No requirements	IOHs expected to participate in lectures, seminars, conferences and book publishing. IOH needs to achieve CPE credits level each year.	No Specific requirements, although some requirements exist for lawyers/accountants, but this is not linked to the practice	1 annual education course	At least 24 hours per year training	Undergo continued professional education - require 50 points within a relicensing period (1 point for 1 hour listened by the IOH, 2 points for 1 hour taught by the IOH)	40 hours per year
Sanction for Acting as Unauthorised OH	Civil offence of EUR 5,000	No sanction -but as appointed by the Court or suggested by the Financial Regulator they cannot be unauthorised person	Imprisonment up to 1 year or fine of BGN 100 - 300	Not possible	Practically impossible for an individual who is not properly authorised IOH to be able to act - due to publicly accessible register and procedure of appointment	Rare as Court appoints OH but in such cases, civil liability for damages
Bonding / Liability insurance May have Must have	Must conduct a liability insurance agreement.	No specific figure for lawyers. No obligation for indemnity insurance. The Bar insurance is up to EUR 1m	BGN 10,000 for one insurance event BGN 25,000 in aggregate for all claims	Compulsory professional civil liability insurance.	The minimum limit on the extent of insurance cover must be EUR 42,600	BA - Min €63,910
Remuneration Time costs % of assets Other A combination	Lump sum fee initially and then on the value of assets subject to court approval.	Ruled by grand-ducal decree dated 18 July 2003. Big cases, the Court may accept provisions and work performed on hourly rates	Time costs % of assets	Assets Time costs	1. Insolvency estate 2. Financial means provided by creditors 3. Insolvency proceedings deposit	Time costs Scaled rate based on estate size % of claims reorganised
Release None/other Court Time	Released if damage could not be prevented in OH duties. In relation to liability to a creditor - released if OH proves he acted with professional due.	No statutory release. Court will approve certain acts of the IOH (e.g. disposal of assets.)	Within 14 days of final report being submitted to the Court (provided no objections)	IOH must compensate all losses.	If losses are established by a court judgement, then the general statute of limitation is applicable to claims against the IOH	None

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