

Issues and challenges facing insolvency office holders in Europe

Emmanuelle Inacio takes a closer look at the Insolvency Officers Forum and current issues and challenges facing the profession



EMMANUELLE INACIO
INSOL Europe Technical Officer



INSOL EUROPE HAS SEEN A GROWING INTEREST FROM MEMBERS ACROSS EUROPE TO REFLECT AND REACT ON CURRENT ISSUES AND CHALLENGES FACING THE PROFESSION



The Insolvency Office Holder-project (“IOH Project”) is an initiative of Leiden Law School, initiated in early 2013 and commissioned by INSOL Europe.

It researched (the possibilities for) the development of a set of principles and best practices for insolvency office holders (“IOH”) by comparing multilateral treaties and soft law recommendations and national legislation within Europe.

In close collaboration with an Academic Committee and a Review & Advisory Group of insolvency practitioners and judges, Professors J.A.A. Adriaanse and I.S. Wuisman and Senior Researcher Dr. Bernard Santen from Leiden Law School designed the Statement. The process towards the Statement has been documented in three reports¹. The draft INSOL Europe Statement of Principles

and Guidelines for Insolvency office holders in Europe contains 7 Principles and 33 Guidelines² and is meant to serve as a sound benchmark for the profession, a means to strengthen public confidence in the profession on the market, and a forum for debate on possible future binding rules for IOHs on a European level.

As the Council of INSOL Europe has seen a growing interest from the association’s members across Europe to reflect and react on current issues and challenges facing the profession of insolvency office holders throughout Europe, Catherine Ottaway, Past-President of INSOL Europe announced, during the 2014 Annual Congress in Istanbul, the decision of INSOL Europe to create a new forum focused on IOHs: the “Insolvency Office Holders Forum” (“IOH Forum”).

Three practicing office

holders have agreed to co-chair, support and steer the Forum through its initial stages: Stephen Harris (Ernst & Young, UK); Marc André (Etude Marc André, France) and Daniel F. Fritz (hww hermann wienberg willhelm, Germany).

Therefore, the co-chairs, together with the executive of INSOL Europe, are currently evaluating how best to meet the interests, needs and expectations of insolvency office holders amongst INSOL Europe’s membership in an appropriate way.

In addition, the European Commission is currently working on a common EU legislative framework regarding the harmonisation of the European Insolvency Law and will present a legislative proposal by autumn 2016 which will cover *inter alia* common minimum rules for insolvency practitioners with the aim of allowing both easier

exercise of this profession in different Member States and setting standards that can ensure the proper conduct of these professionals³.

The inaugural meeting of the IOH Forum took place during the INSOL Europe Annual Congress in Berlin on 1st October 2015 where the commissioning of a review of the regulatory framework across Member States was decided, in order to help to learn more about the diversity, common ground and actual needs of the professionals⁴.

The day after, the Insolvency Office Holder Forum held a panel session where together with the audience the current status of affairs of the European insolvency practitioners was discussed, seeking to understand whether the profession was under pressure and fitted for innovation. The IOH Forum also conducted an interactive poll asking the audience how the Guidelines, protocols, law reforms and harmonisation suited the European insolvency practitioners.

What emerged from the poll was that the audience was very divided regarding the need for European legislation, guidelines and harmonisation of IOH at EU level. On the contrary, the IOH Forum was strongly called to assist the profession by identifying and solving “real” problems arising in everyday practice.

As a result, as first mission, the IOH Forum has undergone to gather comprehensive information about the *status quo* of the profession in all the European Member States and to put together a questionnaire. The Survey aimed to summarise, for each EU Member State:

- (i) the types of insolvency office holders;
- (ii) the size of the profession;
- (iii) the practising norms;
- (iv) the qualification training and entry into the profession;
- (v) the professional bodies;
- (vi) the continuing professional education (“CPE”);
- (vii) whether an IOH may be a body corporate or an individual;

- (viii) the sanction for acting as an IOH without proper authorisation;
- (ix) bonding and insurance;
- (x) the appointment of IOHs;
- (xi) their remuneration;
- (xii) personal liability of IOHs;
- (xiii) the release of IOHs from liability; and
- (xiv) their independence.

22 reports have been produced from the following EU Member States: Austria (Norbert Abel from Abel Rechtsanwälte); Belgium (Bart De Moor from Strelia Law Firm); Bulgaria (Peneva Miglena from Georgiev, Todorov & Co. Law Offices); Czech Republic (Ernst Giese from Giese & Partner); Denmark (Piya Mukherjee from Horten Law Firm); Estonia (Peter Viirsalu from Varul); France (André Marc from Etude Marc André); Germany (Axel Bierbach from MHBK Rechtsanwälte, Daniel Fritz from hww hermann wienberg wilhelm and Robert Haenel from Anchor Rechtsanwälte); Greece (George Bazinas and Yiannis Sakkas from Bazinas Law Firm); Ireland (Jim Luby and Enda Lowry from McStay Luby); Italy (Goffredo Caverni from Goffredo Caverni); Latvia (Edvins Draba from Sorainen); Lithuania (Ieva Strunkiene from Trinitis); Luxembourg (Martine Gerber from Dentons); The Netherlands (Krijn Hoogenboezem from Boekel); Portugal (Nuno Salazar Casanova and David Sequeira Dinis from Uría Menéndez – Proença de Carvalho); Romania (Radu Lotrean from CITR); Slovakia (Slavomir Cauder from Giese & Partner); Spain (Vicente Estrada from Forest Partners); Sweden (Niklas Körling from Wistrand); Switzerland (Sabina Schellenberg from Froriep) and United Kingdom (Alastair Beveridge from AlixPartners).

A high level review of the responses identifying relevant sub-classes of findings across jurisdictions, where appropriate, was written by Marta Flores (Universidad Autónoma de Madrid) and Emmanuelle Inacio (Université du Littoral Côte d’Opale) and delivered to the

IOH Forum on 16 May 2016.

The Survey of Certain Regulation for Insolvency Office Holders was presented by the president of INSOL Europe, Alberto Núñez-Lagos, at the conference organised by the European Commission on 12 July 2016 titled “Convergence of Insolvency Frameworks within the European Union - the Way Forward” and was very well received.

Finally, a Summary Report has been written up by the IOH Forum containing the key findings of the Survey and Recommendations that have been submitted together with the Survey to the DG Justice and Consumers of the European Commission on 25 July 2016.

The second meeting of the IOH will take place immediately before the start of the INSOL Europe Annual Congress in Cascais on Thursday 22 September 2016. A panel session is also programmed on Friday 23 September 2016, where the IOH Forum will present the highlights from the Insolvency Office Holder Survey undertaken by INSOL Europe, the dovetail with the EC Insolvency consultation process and the emerging themes. ■

Footnotes:

- 1 These can be retrieved from <http://www.tri-leiden.eu/project/categories/ioh-project/>.
- 2 Available at: <https://www.insol-europe.org/ioh-forum-documents>.
- 3 According to the EC Inception Impact Assessment – Initiative on Insolvency of 3 March 2016 (http://ec.europa.eu/justice/civil/commercial/insolvency/index_en.htm).
- 4 With a three-year sponsorship from the law firm Edwin Coe LLP (www.edwincoe.com).



THE IOH FORUM WAS STRONGLY CALLED TO ASSIST THE PROFESSION BY IDENTIFYING AND SOLVING “REAL” PROBLEMS ARISING IN EVERYDAY PRACTICE



For updates on new technical content recently published on the INSOL Europe website, visit:

www.insol-europe.org/technical-content/introduction or contact Emma on: technical@insol-europe.org