



All you need to know about becoming an Insolvency Practitioner in Europe: Austria

Hans-Georg Kantner provides us with the second in the series of articles about IPs' legal status and remuneration

In the last issue Isabelle Didier discussed the legal status and remuneration of insolvency practitioners in France. Today she invites you to see what happens in Austria: Hans-Georg Kantner from KSV1870 was one of the first to answer the questionnaire.

The series is not intended to establish a hierarchy of law systems or to suggest one or another of the systems as a universal point of reference. Isabelle is quite critical in this respect, as the monopoly exercised by French IPs is not necessarily favourable to their relationship with third parties. For instance the rapport they have with non-professional French judges, who appoint and remunerate them, can sometimes have perverse effects.

We are interested to hear your points of view – feel free to contact us at confeuropa@hotmail.com

Access to the profession

- 1) **An admission exam or obligation to graduate a certain level of studies?**
There is no formal requirement to be fulfilled. The court is requested to appoint a person “with a clean criminal record, trustworthy and experienced as well as knowledgeable in the field of insolvency law.”
- 2) **Requested experience**
Experience is important and has to be evaluated by the court in accordance with the importance of the case.
- 3) **Good name**
Yes – no criminal record and of good standing.
- 4) **Liability insurance**
Not a formal requirement.

Appointment

- 1) **Is there an official list?**
Yes, there is a list (introduced in 2002 and run by the Ministry of Justice); this list, however, is completely open and anybody interested would be able to register his or her name (for a nominal fee).
- 2) **Is there a specialisation of the insolvency practitioner?**
Yes, of the 1,000 (approximately) persons currently appointed in the Republic of Austria some 250 are exclusively or predominantly active in this field. The others regard IP as an add-on to general legal practice and 99% of IPs appointed are practising lawyers.

- 3) **Who appoints the IP?**
The bankruptcy judge.

- 4) **Conflict of interests/ Independence**
The element of independence (of debtors, creditors etc) has always been there, but was particularly stressed by an amendment to insolvency law in 2002.

Control body

- 1) **Is there a control body?**
No – as most IPs are practising lawyers, they are subject to very stringent professional ethical rules and an independent disciplinary court for lawyers. Each IP is controlled on a time-to-time basis by the bankruptcy

judge, who appointed the IP (proof of accounts and submission of progress reports).

2) Its powers

The disciplinary courts have powers up to revoking the professional licence.

Costs and remuneration

1) How are the IPs remunerated?

Remuneration comes exclusively from the bankrupt estate; in case of no assets the court will require a deposit of EUR 4,000 before opening proceedings. The remuneration is regulated by bankruptcy law; a high degree of discretion lies with the bankruptcy judges.

2) What exactly is an IP required to do?

The first task is to assess if the continuation of trading is possible without further harming the creditors. Also the IP should work out rescue or restructuring schemes for the business. If this is not possible: a swift liquidation with a fair and equitable satisfaction of creditors.

3) Who decides upon the remuneration?

The judge (with recourse by way of appeal). Any agreements between the IP and other parties (debtor, creditors committee) concerning the remuneration are explicitly prohibited.

Various ways of remuneration

1) By legal document delivered (an administrative point of view)?

The Austrian system is not primarily oriented towards remunerating specific documents or actions by the IP but rather the global success. However, the system recognises the various tasks and their respective importance. As a result a system using components was introduced by the law maker in 1999:

- A monthly fee for continuing trading set at an agreed rate between the IP and the court.
- Percentage rates of the assets realised (decreasing in layers).
- In case of restructurings (composition) a particular percentage of the financial requirement (decreasing in layers).

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- For all realisation of assets under pledge or liens, particular percentage rates (decreasing in layers) payable from the proceeds.
- An increase or decrease depending on the particular success (or lack of same), the size and complexity of the case and other factors to be taken into account. This last element allows judges some leeway in adjudicating remunerations. It is of particular importance, however, as the system of decreasing percentage rates is not designed to take into proper account very large cases. As a result doubling or trebling of the figures achieved may be necessary in very large cases. For example the layers go from 20% from the first EUR 22k in proceeds to 1% for proceeds in excess of EUR 6m.

2) By the importance of the assets realised?

The size of proceeds is the most important element, but by far not the only (cf above).

3) What happens when the company has no assets?

There is a minimum remuneration stipulated by law of EUR 2,000; judges make sure sufficient funds are in deposit (either from debtors or creditors) before opening the procedure.

4) By appreciation of the successful operation (more value to the profession)?

Yes, the success in a particular case is the most important element in remuneration and at the same time the most difficult to evaluate. In the view of KSV1870 as the largest representative of creditors in Austria, there should be great emphasis on this element – if you pay peanuts you get monkeys, is a well known saying. A good, efficient and responsible IP will create far more value than high remuneration will ever amount to, or in other words, poor work for poor remuneration is a certain way of maximising the loss for the creditors.

Austrian judges are therefore well counselled to listen to professional representatives of creditors when assessing success (or lack of same) in a particular case. IPs should never be paid in accordance with numbers of letters written, number of phone calls made or number of hours spent.

Best practices and how to apply them

We need to acknowledge the fact that IP work takes years of experience, requires a host of legal and administrative knowledge and implies a very high degree of responsibility, as no appeal process would be able to remedy mistakes made. We therefore need highly experienced professionals to carry out the work.

Secondly: 95 out of 100 cases are small or very small and would not yield particularly attractive or lavish remunerations. On the contrary, the creditors want to look at an equally professional and responsible IP-work also in small and seemingly unimportant cases. Debtors likewise have a fundamental right to be “treated” by qualified professionals and their businesses be restructured rather than destroyed or crushed by “undertakers”.

It is therefore imperative to pay out good remunerations in all cases of considerable size, as a transfer from large to small is the only way of securing that highly motivated and skilled people continue to be attracted to the profession.



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