



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

Isabelle Didier introduces the first in a series of articles about IPs' legal status and remuneration

Getting into the profession

For anybody thinking about becoming an IP you need to first establish what qualifications are required. You also need to know other factors an employer may consider such as, relevant work experience, whether you have had any convictions and if you have your own liability insurance.

There are two main areas an insolvency practitioner can begin working in – administration or liquidation. Judicial administrators and judicial liquidators both have a monopoly on all proceedings, representing a sort of public service of justice.

A strict set route into the profession does not allow for any flexibility. A typical example of entering the profession is, after

having graduated high school and college (baccalaureate + 4 years) a candidate may apply for an exam which will permit him/her to go into training for the profession. No experience is necessary at this stage. If successful he/she must train with an approved IP for a minimum of 3 years (maximum 6 years). After the apprenticeship period, a good result in the exams concludes the training and they become an insolvency practitioner.

All practising IPs should be on the IP register with details of the area they are working in. A clean criminal record is required and subscription to the professional insurance company (*'Caisse de Garantie'*) is required, to cover any damage caused to third persons.

EUROFENIX has begun a study on the legal status and remuneration of insolvency practitioners (IPs) in as many European countries as possible. The study followed the Warsaw INSOL Europe conference in May where delegates showed a particular interest in the topic.

This will be the first of several articles covering the subject and will focus on France. The information for the article has been supplied by Isabelle Didier, French practitioner and president of the GRIP21 Association.

The series of articles will not be exhaustive and if you have a question or want to voice an opinion on the subject the editorial team would be happy to hear from you, please email confeurope@hotmail.fr

Finding a position as an IP

So you have passed your exams and are ready for your first job. You will no doubt have a few questions. Is there an official list you should be on? Are there areas you can specialise in as an insolvency practitioner? Who appoints an IP? What about conflicts of interest? What about an IP's independent view?

After having successfully passed the final exam a candidate tries to be appointed to a Court of Appeal. Only after obtaining this appointment will he or she be included in the national professional lists. There are two lists; one for administrators and one for liquidators. Sometimes a candidate can wait a long time before they are appointed and can start practising. This is due to the fact that

there is no limit to the number of practitioners allowed to qualify. As a result there is not a surplus of jobs for qualified practitioners.

Legally no specialisation is required but an IP's reputation may be seen as beneficial to those appointing an IP for certain types of cases.

So who appoints an IP? IPs are appointed by a civil or bankruptcy court, where insolvency proceedings take place. Before payments not being met are recognised, the representative of a company in difficulty may suggest an IP or an expert for designation by the President of the Court for:

- a) a conciliation procedure
- b) an 'ad-hoc' mandate (in other words, counselling).

In order to avoid all conflict of interests, it is important to note that the two professions are incompatible with one another and with all other professions. The only exception to the rule is that a judicial administrator can also practice as a lawyer. But strict rules dictate that the appointment of practitioners who may have private interests in the proceedings is not allowed.

Independence for a practitioner may exist only outside judicial proceedings when as a conciliator or 'ad-hoc' trustee, his remuneration is negotiated directly with the company seeking his help and approved by the court. Where insolvency proceedings have started, the practitioner is appointed by the court, which fixes or approves the remuneration leaving no room for negotiation.

The official body for IPs

Is there a control body which oversees the work of IPs and what powers do they have?

The official body is The National Council of the Judicial Administrators and Judicial Liquidators (CNAJMJ). The CNAJMJ, which was set up to oversee IPs responsibility for managing funds belonging to others, has a council made up equally of administrators and liquidators. IPs are also accountable to their chartered accountant, the judges in charge of cases and the Public Attorney.

The CNAJMJ defends the interests of the two professions. It also checks if practitioners honour all their obligations, organises professional training and exams and arranges the control of IP's practices by their peers, every two years. The council also must send the Minister of Justice an annual report detailing its accomplishments.

How much does an IP get paid?

After getting the work the next stage is to establish how your work is valued. You need to know exactly what is expected of you and who decides what you get paid.

A statutory pay scale for IPs is in place which is based on the job an IP is appointed to. The scale is in line with the 3rd decree of the law of January 25 1985. However if the IP is asked to fill in the role of 'ad hoc' trustee or councillor, a price is established by the IP with the debtor and a contract is drawn up but the court must be asked to approve the amount.

According to the French law the tasks of a **judicial administrator** may cover everything from simple surveillance to the total replacement of the debtor in the management of the company; he may also be controller of the plan.

The judicial liquidator may be the creditors' representative, which involves gathering the claims and representing collectively the creditors, he can be charged with the realisation of all the assets with the aim of distributing the proceeds to the creditors, or with the execution of the plan.

As '**ad-hoc**' trustee or as **councillor**, the practitioner's tasks are defined by contract with the debtor, which can be very simple or quite complex.

The civil or the commercial court decides, by observing the decree mentioned above, what should happen. However the court has complete ruling when certain levels are reached. In the case of pre-insolvency intervention, fees are established between the debtor searching for advice and the IP by contract; subsequently the court is asked to approve the fee decided upon.

How to calculate remuneration

The main factors taken into account are:

- 1) **On a task to task basis (an administrative point of view)?**
- 2) **by the importance of the assets realised?**
- 3) **by appreciation of the successful operation (more value to the profession)?**
- 4) **what happens when the company has no assets?**

1 and 2) A statutory scale is applied in France, corresponding to an administrative vision of the profession: task by task is taken into account: number of claims checked, number of employees treated, etc...

To put it simply the calculation is a very complex matter. The IP's remuneration is calculated by the function of the company's assets, following a defined scale, as follows:

- a) **A fixed amount of €2,287 per case;**
- b) **an amount calculated on the basis of the number of employees treated;**
- c) **an amount calculated on the basis of the assets realised (decreasing in layers – of not much interest for the IPs implied in large or medium-sized insolvencies);**
- d) **an amount calculated on the basis of the number of claims checked.**

3) As the remuneration is decreasing in layers, the IP who will work hard to sell the assets at a better price will not see his remuneration improve. There is no notion of "success fee" in France. If an IP acts as conciliator or 'ad-hoc' trustee this is different, because remuneration is fixed by contract.

4) Before the decree of June, 10 2004, if the insolvent company had no assets, the IP was not remunerated. Now the judicial liquidators are remunerated to close such proceedings (€1,500 per case). The money comes from a Financing Fund at the *Caisse des Dépôts et Consignations* (CDC). This special 'deposit and consignment' bank has the monopoly to manage all the accounts of companies under insolvency proceedings. A part of the proceeds obtained from these accounts form the Financing Fund.

Learning from best practice

What are the best ways we can learn from best practice?

Insolvency proceedings do not represent a ghetto of the law. There is a need to have IPs of great skill, who should be paid according to the quality of their work and the degree of satisfaction of debtors and creditors. There are cases where difficulties are so great that only the particular efficiency and talent of the practitioner is the key to success.



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