



HOW TO BECOME
AN INSOLVENCY PRACTITIONER
IN LATVIA

Riga 2013

Bunkus Law Firm
12-5 Alberta street, Riga, Latvia, LV-1010
Ph.+371 67359755, fax +371 67359757, office@bunkus.lv, www.bunkus.lv

I Access to the Profession

Only individuals are allowed to become insolvency practitioners (hereinafter – IPs) in Latvia, subject to certain conditions. In order to obtain a certificate of an IP, a candidate must pass a professional examination and must conform to the following requirements:

- 1) Minimum age of 25 years;
- 2) Second level higher vocational education in jurisprudence and the qualification of a lawyer or a higher academic education in jurisprudence and an academic degree;
- 3) Fluency in Latvian at the highest level;
- 4) At least three years work experience in the profession of a lawyer or profession comparable thereto following the acquisition of the education and qualification referred to above;
- 5) Completed training course.

An IP may not be a person:

- 1) Whose certificate has expired upon a removal from his/her duties less than five years ago;
- 2) Who has had his IP certificate annulled;
- 4) Who has been found guilty of committing an intentional criminal offence or for whom criminal proceedings for committing an intentional criminal offence have been terminated for reasons other than exoneration of the person;
- 5) Who has had insolvency proceedings of a natural person commenced within the last five years;
- 6) Who has been a member of the administrative body of a legal person and has caused the insolvency proceedings of this legal person due to the neglect thereof or deliberately;
- 7) Who, based on the decision in a disciplinary matter, has been excluded from the number of attorneys at law or the assistants thereto, released from the office of the public prosecutor or discharged from the office of a sworn bailiff, the office of the assistant thereto or the office of a judge, until five years have passed from the day when the decision of the disciplinary matter has come into effect.

IPs have mandatory civil indemnity insurance for losses caused by their actions to creditors or other persons.

Since IPs are lawyers by their qualification, they are often members of the Latvian Bar, as well.

IPs perform their duties in insolvency proceedings, personal bankruptcies and in restructurings (legal protection proceedings, both in-court and out-of-court).

An administrator has the right to empower another administrator to substitute him or her within the scope of one calendar year for a period not exceeding 60 days.

A complete list of IPs can be found at https://www.ur.gov.lv/urpubl?act=MNP_URADM_ALL&I=LV.

II Appointment

Insolvency proceedings/bankruptcy

IP's are nominated according to a roster, maintained by the state institution Insolvency Administration (*Maksātnespējas administrācija*). The Insolvency Administration juxtaposes the list of debtors in respect to which insolvency proceedings have been initiated with the list of IP's in the territory of an appropriate district court and nominates the IP's candidate. The court appoints the IP commencing the insolvency proceedings of a debtor. The purpose of this system is to ensure an accidental nomination of IP candidates.

Restructuring

The debtor may agree with creditors on the IP's appointment in the in-court restructuring. If no agreement is reached, the court appoints the IP in an order described above. In the out-of-court restructuring, the debtor is obliged to reach an agreement with creditors on this matter before the submission of its application to the court.

III Restrictions in Fulfilling IP's Duties and Removal of an IP

The law states several conditions under which an IP may not undertake and fulfil his or her duties: if the IP is a suspect, accused or a defendant in criminal proceedings connected to his or her actions during the insolvency/restructuring proceedings, if the IP is in a situation of conflict of interests with respect to the debtor or creditors, has a personal interest in the proceedings, other circumstances causing justified doubts regarding the impartiality thereof etc.

An IP can be removed by the court on its own initiative, by application of the Insolvency Administration or the IP or at the proposal of the creditors' meeting. In the latter case the court may remove an IP if the IP has not ensured the effective course of insolvency proceedings.

IV Control Body

There are two bodies that govern different aspects of the IP's profession.

A self-governing body – the Association of Certified Insolvency Administrators of Latvia (*Latvijas Sertificēto maksātnespējas procesa administratoru asociācija*) - authorizes IPs, conducts the examination, issues certificates, performs the re-certification of IPs and terminates the operation of certificates.

A state institution - the Insolvency Administration – supervises the work of IP's and examines complaints brought against them.

Besides, certain decisions of IP's made in the course of proceedings are subject to court supervision.

IV Remuneration

Insolvency Proceedings

There are several possible sources of funding of IP's remuneration. First, an IP receives his remuneration from the insolvency estate. If it is not possible to cover IP's remuneration from the insolvency estate, then it can be covered from financial means provided by a creditor or a group of creditors, a debtor's representative, other persons or by the IP himself/herself. If this option is not available, too, then, upon an IP's request, the remuneration can be covered from an insolvency proceedings deposit (c. EUR 570), paid by an insolvency proceedings applicant before the initiation of insolvency proceedings and held by the Insolvency Administration.

Unless the IP agrees with the sponsor or the creditors' meeting otherwise, he/she is entitled to fixed remuneration in the amount of two minimum monthly wages (c. EUR 570) and *pro rata* remuneration from the debtor's property amounting either to 10 % of funds from the recovered property or an amount intended for paying to the creditors, depending on the stage of the proceedings.

Besides, there are special provisions on the remuneration for the sale of encumbered property. It is measured from the amount payable to the secured creditor and amounts to 15 % for the sum up to LVL 3 000 (c. EUR 4 285), from LVL 3 000 to LVL 10 000 - LVL 450 (c. EUR 640) plus 10 per cent of the amount payable to the creditor exceeding LVL 3 000, etc.

Personal Bankruptcy

An IP receives fixed remuneration at the start of the proceedings, paid by the debtor (c. EUR 570), and remuneration from the insolvency estate as in the insolvency proceedings. Furthermore, in cases, specified in the law, an administrator receives remuneration for legal help provided to the debtor or creditors, upon their request.

Restructuring

An IP receives his/her remuneration set at one minimum monthly wage (c. EUR 285) per month, if an agreement between an IP and the debtor does not provide otherwise.

V Liability of an IP

An IP shall be liable for losses caused to the state, the debtor, creditors or other persons due to the fault of the IP or an authorised representative thereof.

The actions against the IP may be brought in the court not later than within a year after the termination of the restructuring or insolvency/bankruptcy proceedings.

If the IP has caused damage by his action to the State, debtor, creditors or other persons and it is stated by the court judgment in the criminal case, the general limitation period of the action (10 years) is referred to the actions brought against the IP.

Creditor or a group of creditors that represent at least 10 % from the unsecured creditors are entitled to bring an action against the IP for the benefit of the debtor if the IP has caused damage to it.

An IP shall have civil liability insurance of his or her activities with a minimum amount of LVL 30 000 (ca. EUR 42 700).

VI Continuous Professional Development

IPs undergo re-certification every 2 years. In order to obtain re-certification an IP must have a certain positive balance of points, calculated for their professional activity and qualification courses attended.

Attorney at Law
LL.M **Mārtiņš Bunkus**
Ph.: +371 67 359 760
Mob.: +371 26 535 145
E-mail: martins@bunkus.lv

Associate
LL.M **Edvīns Draba**
Ph.: +371 67 359 755
Mob.: +371 26 309 028
E-mail: edvins@bunkus.lv

The present report contains information regarding general insolvency and restructuring proceedings in Latvia and does not cover special insolvency and restructuring regimes existing in respect of banks, insurance companies and other specific entities.