



This time we bring you a real scoop. Insolvency law, legal status and remuneration of the insolvency practitioners, has completely changed in Poland!

Judge Anna Hrycaj, who presented this subject at the ACC conference in Warsaw last year, and who was asked to adapt her presentation to the needs of our journal, was obliged to write a new article, because Poland was surprised a couple of weeks ago by a new law...

So, we are proud to offer you an analysis of the new requirements for becoming an IP in Poland.

If you have any questions, please write to florica.sincu@free.fr or fsincu@etude-didier.com for further information.

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

We have already looked at the legal status and remuneration of insolvency practitioners in France, Austria and Latvia. Here we discuss what happens in Poland

The legal status of the Insolvency Practitioner (IP) in Poland is soon to be regulated not only by the provisions of the Bankruptcy and Rehabilitation Law, 28 February 2003, but also by the provisions of the Polish law on IPs which was enacted by the Polish Parliament on 9 May 2007. Here is the latest news on becoming an IP in Poland.



Access to the profession

There are three categories of IPs in Poland:

- The liquidator (*syndyk*), who is appointed in the case of insolvency involving the liquidation of the debtors' estate;
- The court supervisor (*nadzorca sądowy*), who is appointed in the case of insolvency with the possibility of making an arrangement with creditors

and the court does not deprive the debtor of the right to administer the estate;

- The receiver (*zarządca*), who is appointed in the case of insolvency with the possibility of making an arrangement with creditors, but the debtor is deprived of the right to administer the estate.

According to current provisions, the access to the profession of an IP is rather easy. The new law on insolvency practitioners tightens the criteria concerning this issue and states that the licence will be conferred by the Minister of Justice. A candidate will be able to acquire the licence when:

- He/she is the citizen of the EU member state or the EFTA member state;
- He/she knows Polish language sufficiently enough to fulfil his/her functions in insolvency proceedings;

- He/she has the full legal capacity to act;
- He/she is under 65;
- He/she received higher education qualifications and obtained an MA or any other correspondent title in the member states mentioned above;
- He/she has an unblemished reputation;
- In the period of 15 years before filing the petition to obtain the licence, he/she has managed or part-managed an enterprise for at least three years,
- He/she has not been convicted of an offence, including a fiscal offence;
- He/she has not been accused of committing an offence that was prosecuted by the public prosecutor;
- He/she is not on the list of insolvent debtors administered by the National Court Register;
- He/she passed an exam;
- He/she is not considered unable to work in the understanding of the national insurance law.

The most important change introduced by this new law is the obligation to pass an exam. The exam will contain legal, economic and financial issues with more importance placed on the Bankruptcy and Rehabilitation Law. In my opinion this exam should also cover cross-border insolvency proceedings issues.

Those successful in getting the licence will be put on a list administered by the Minister of Justice. The list and the information about the people on it will be sent to the Chief Justice of every district court. The bankruptcy court or the judge commissioner will be able to appoint the IP from this list.



Appointment

At present and until the new law is enforced, the possibility of being appointed as an IP in a particular insolvency proceeding is regulated by The Order of The Minister of Justice, 16 April 1998.

The IP is appointed by the bankruptcy court. The appointment is included in the declaration of insolvency. An IP can also be appointed in a case when the previous IP was dismissed or died (Article 170 of The Law on Bankruptcy and Rehabilitation). In the latter case, the new IP is appointed by a judge-commissioner.

The IP can be dismissed by a judge-commissioner if he/she does not perform their obligations well enough or if he/she is unable to fulfil them.

According to Article 157 of The Law on Bankruptcy and Rehabilitation, the liquidator, the court supervisor and the receiver may be the person holding the appropriate licence. The IP may also be a company or a partnership whose shareholders or partners bear liability for its obligations by their entire estate without limitation, or members of a managing body representing a company or a partnership which is in possession of such licence. In accordance with Article 157 section 3 of The Law on Bankruptcy and Rehabilitation, the procedure of granting a licence is specified by a different law, which has been passed by Parliament, but has not come into force yet (www.sejm.gov.pl). This new law has caused a big debate amongst insolvency practitioners because it is completely different from current existing provisions.



Costs and remuneration

The new law also introduces some amendments to the Polish Bankruptcy and Rehabilitation Law. Some of these amendments concern the remuneration of the IP. Currently the remuneration of the IP is settled by the bankruptcy court. According to Article 162.2, the amount of the remuneration may not exceed the value of 5% of the insolvent estate's funds. The amounts obtained from the sale of the property and rights encumbered by mortgage, pledge and registered pledge are assigned for the satisfaction of those creditors whose claims were secured on the transferred property or rights. Therefore these amounts are not included in the funds of the insolvent estate (Article 336) and they are not taken into consideration by the court while making the decision about the remuneration of the IP. It is unfair because a lot of work is needed to sell the secured property and rights and the value of these should influence the amount of the IP remuneration.

The new law reduces the maximum amount of the IP remuneration to 3% but at the same time it introduces the principle that the basis for counting the total value of remuneration will not only be the value of the insolvent estate's funds but also the value of the amounts obtained from selling the secured assets. The law also introduces a maximum amount of IP remuneration that is independent from the total value of the insolvent estate. So the amount of the remuneration cannot exceed the amount of 140 average monthly wages in the enterprise sector without payment of bonuses from profits in the fourth quarter of the previous year. In the case when there are no funds in the insolvent estate, the total amount of the remuneration counting in months cannot be more than the average monthly wages in the enterprise sector.

According to the new law, in determining the final amount of remuneration, the court should take into consideration the degree of satisfaction of the creditors, the work expenditure, the cost of employing additional workers by the IP and the duration of the insolvency proceedings.



Control body

In Poland there is no external body to control the actions of an IP. The liquidator, the court supervisor and the receiver exercise their functions under the supervision of the judge-commissioner. This rule is expressed in Article 152 of the Bankruptcy and Rehabilitation Law which states that the judge-commissioner shall direct the course of the proceedings, supervise the activities of the IP and designate acts which the IP is not permitted to execute without the judge's permission or the approval of the creditors' committee. The judge-commissioner is able to rebuke the IP for violations which he/she has committed. The most important power of the judge-commissioner is the right to dismiss the IP if he/she does not perform obligations well enough.

The law on insolvency practitioners introduces new forms of supervision by the judge-commissioner by amending the new Article 169a to the Bankruptcy and Rehabilitation Law. This article states that the judge-commissioner may reprimand the IP and in the event that the IP does not correct his/her errors, the judge-commissioner may fine the IP. The fine can not exceed the 30,000zł (about 750 Euros).

It is for this reason that there is no need for any external body to control how the IP fulfils his/her obligations in insolvency proceedings.

Conclusion

The new law is almost ready, but the legislative process is not over yet. However, it is hoped that it will bring new and better solutions for the functioning of insolvency practitioners in Poland.



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