

ALLEN & OVERY



Everything you need to know about becoming an Insolvency Practitioner in the Slovak Republic

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1 Introduction

Performing the function of an insolvency practitioner (the **IP**) means being a crucial figure in insolvency proceedings and having special competencies in relation to both a debtor and creditors.

The legal framework regulating the profession of IPs is contained in:

- Slovak Act No. 8/2005 Coll. on insolvency practitioners, as amended (the **Act on Insolvency Practitioners**);
- Slovak Act No. 7/2005 Coll. on bankruptcy and restructuring, as amended (the **Insolvency Act**);
- Decree No. 291/2005 Coll. of the Ministry of Justice of the Slovak Republic on educational framework of practitioners in the area of bankruptcy and restructuring (the **Decree 291**);
- Decree No. 665/2005 Coll. of the Ministry of Justice of the Slovak Republic on the execution of certain provisions of the Insolvency Act (the **Decree 665**);
- Decree No. 666/2005 Coll. of the Ministry of Justice of the Slovak Republic on the office code of insolvency practitioners (the **Decree 666**).

There are several categories of IPs, depending on the type and stage of insolvency proceedings.

Preliminary IP

A preliminary IP is appointed by the court after the commencement of bankruptcy proceedings if there are doubts that the assets of the debtor will be sufficient to cover at least the costs of the proceedings. The function of the preliminary IP is terminated on the declaration of bankruptcy or the termination of bankruptcy proceedings due to the lack of assets. The main task of the preliminary IP is to determine the scope of a debtor's assets. If bankruptcy is declared, the preliminary IP usually keeps its mandate and is appointed as a bankruptcy IP, unless the IP is dismissed by the court (for more details, please refer to section 3.2 below).

Bankruptcy IP

A bankruptcy IP performs its function from the moment of the declaration of bankruptcy until the termination of bankruptcy proceedings or termination of the function on other grounds. On one hand, the bankruptcy IP manages the debtor's assets, acts in the debtor's name and on its account and represents the debtor before the courts of law and in other proceedings. On the other hand, the IP's main role is to procure the satisfaction of the creditors' claims to the greatest possible extent by realisation of the debtor's assets in bankruptcy proceedings. At the same time, the bankruptcy IP should act in such a way that the costs related to the proceedings are kept to a minimum.

The position of the creditors is superior and the bankruptcy IP cannot be regarded as their representative: creditors are entitled to (either directly or via creditors' bodies) give the bankruptcy IP binding instructions regarding the administration and realisation of a debtor's assets. Creditors also have a right to decide on replacement of the bankruptcy IP. Other tasks of the bankruptcy IP include collecting and registering creditors' claims in the list of claims, verifying the claims and deciding on their denial or acknowledgment. It also organises creditors' meetings and creditors' committee meetings.

IP in proceedings involving the discharge of debts of private individuals

Discharge of debts is a legal instrument available during bankruptcy proceedings to natural persons whose assets are insufficient to satisfy claims against the bankruptcy estate. In proceedings involving the discharge of debts, an IP performs its function in the course of a three-year trial

period starting from the permission for the discharge proceedings and ending with the publication in the Commercial Gazette of a resolution on termination of the trial period or a resolution on the discharge of debts. The supervisory function of an IP materialises in the fact that certain legal acts of a debtor are subject to the prior written consent of the IP during the trial period. At the end of each year of the trial period, the debtor is also obliged to provide the IP with funds in the amount determined by the court, which the IP subsequently distributes to creditors. During the trial period, the IP reports to the court on whether the debtor fulfils his/her obligations.

Restructuring IP

A restructuring IP performs its function on the basis of an authorisation from a debtor or, with the consent of the debtor, as a nominee of a creditor. The restructuring IP is picked by the debtor or the creditor (as applicable) from the list of IPs maintained by the Ministry of Justice of the Slovak Republic (the **Ministry**). The IP must first prepare a restructuring opinion. The aim of the restructuring opinion is to find out whether the restructuring of the debtor is feasible, ie whether the debtor can survive as a going-concern and the creditors will be better off compared to bankruptcy. The debtor or the creditor (as applicable) can then file a petition with the court requesting permission for the restructuring. If the court permits the restructuring, it will appoint the person who prepared the restructuring opinion to serve as the restructuring IP. The main duties of the restructuring IP include approving legal acts of the debtor which exceed ordinary legal acts, collecting and registering creditors' claims in the list of claims, verifying the claims and deciding on their denial or acknowledgment. It also organises creditors' meetings and creditors' committee meetings. Other responsibilities include participating in the preparation of the restructuring plan and supervision of the debtor's business. The function of the restructuring IP is terminated on the publication in the Commercial Gazette of a resolution on termination of the restructuring proceedings or on the suspension of the proceedings.

Supervisory IP

The function of a supervisory IP may be established by the mandatory section of a restructuring plan. The main duties of the supervisory IP include approving legal acts within the scope and under the conditions specified by the restructuring plan, supervising the fulfilment of the restructuring plan and the activities of the supervised debtor and regularly reporting to the court and creditors' committee. The supervision is performed within the period following the termination of the restructuring until the restructuring plan has been fully completed and is terminated on the publication of a notice regarding the termination of the supervision or a declaration of bankruptcy.



2_ Access to the profession

Section 2 of the Act on Insolvency Practitioners defines an IP as “a natural person or legal entity listed in the list of IPs maintained by the Ministry (the **List of IPs**)”.¹ In other words, upon meeting the criteria specified in sections 2.1 and 2.2 below, both natural persons and legal entities are eligible to submit a petition to the Ministry to be included in the List of IPs. The list of IPs consists of three sections: a list of restructuring IPs, a list of bankruptcy IPs for legal entities, and a list of bankruptcy IPs for natural persons. Each potential IP may decide whether it wishes to be listed in each of the sections or only in some of them.

2.1_Natural persons

To become listed in the List of IPs, a candidate who is a natural person must meet the following requirements:

- be a citizen of the Slovak Republic or another EU/EEA member state;
- have a full legal capacity;
- have permanent residence in the Slovak Republic or another EU/EEA member state;
- be trustworthy² and of a high moral standing;³
- be professionally qualified, ie have a master’s degree in law or economics and pass a qualification exam.

2.2_Legal entities

A legal entity must fulfil the following criteria to be listed in the List of the IPs:

- legal form: be a public partnership/limited liability partnership;⁴
- non-competition: none of the partners can be a partner in another legal entity listed in the List of IPs;
- partners have qualified as IPs – natural persons as outlined in section 2.1 above;

- each partner is entitled to act individually and without limitation on behalf of the public company/limited partnership;
- location: have a seat in the territory of the Slovak Republic; and
- partners must be trustworthy and of high moral standing.⁵

2.3_Office premises

In addition to the requirements specified in sections 2.1 and 2.2, a candidate needs to evidence by a lease agreement or an ownership certificate that it has office premises available to perform its duties. The office must be established in the district of any regional court in which the candidate intends to practice.

2.4_Continuous professional development

IPs have an obligation to continuously develop and expand their professional skills and knowledge necessary for the due performance of their practice. Such development is subject to the supervision of the Ministry and consists of attending lectures, seminars and conferences, giving lectures, publication activity, self-study and practical performance of the function of the IP.

1. The List of IPs is available at <http://www.justice.gov.sk/Stranky/Registre/Zoznamy-vedene-MS-SR/Zoznam-spravcov.aspx>

2. Trustworthiness is defined in Section 21(3) of the Act on Insolvency Practitioners and relates mainly to disciplinary sanctions, criminal sanctions and other sanctions of similar character. It is evidenced by a personal statement of a candidate.

3. High moral standing means that a candidate cannot have been sentenced for specific criminal offences which status is evidenced by an extract from the criminal record.

4. Partners (or part of the partners) in public partnerships and limited liability partnerships are personally liable to the full extent for the commitments of the partnership.

5. Please note that there are slight modifications in requirements applicable to foreign legal entities (e.g. to have an establishment/branch in the territory of the Slovak Republic; a full liability of one or more shareholders for commitments of the legal entity, etc.)

Professional development is certified every year by a certain positive balance of credit points allocated in accordance with the Decree 291.

2.5_Liability and insurance

IPs have to act with professional care⁶ and bear civil liability for any damage caused in connection with the performance of their mandate by themselves or their employees or other authorised persons unless they prove that the damage could not have been avoided, even with them making every possible effort to prevent the damage. Examples of cases in which an IP's liability for damage

would arise include (a) denial of a filed claim which is subsequently confirmed by the court, (b) incurring ineffective or unthrift costs and expenses in connection with the administration or realisation of the assets or management of a debtor's business, and (c) failure to recommend restructuring of the debtor if the restructuring was feasible (and vice versa). IPs must be insured against any such damage and the insurance claim is enforceable directly from the insurer. The state shall not be liable for any damage caused by an IP.

3_Appointment and dismissal

3.1_Appointment

In bankruptcy proceedings

An IP is appointed by the court on the basis of a random selection made by technical and programme means approved by the Ministry. The appointed IP must be listed in the List of IPs and shall have its office premises in the district of the competent regional court which has jurisdiction over the relevant debtor.⁷ The IP must be disqualified by the court from performing its function if doubts may arise regarding its impartiality in a particular case (ie if there is a potentiality of a conflict of interests). The IP must evaluate its connection to the case continuously and with professional care.

In restructuring proceedings

An IP is appointed by either a debtor or a creditor (with the consent of the debtor) and must be chosen from the persons listed in the List of IPs and have its office premises in the district of the competent regional court.

3.2_Dismissal

In bankruptcy proceedings

The court will dismiss an appointed IP from its mandate if it continuously or materially breaches its obligations, or if a lawful restriction exists preventing the IP from performing its function. The court will dismiss the IP and appoint another IP if it is approved by majority of creditors at the first creditors' meeting. The court may also dismiss the IP on the basis of a petition submitted by the creditors' committee or a secured creditor, or, in special circumstances, by the IP.

In restructuring proceedings

An IP's breach of its obligations has a different effect in restructuring than it does in bankruptcy as, instead of dismissing the IP, the court will terminate the restructuring, initiate bankruptcy proceedings, declare bankruptcy and appoint a bankruptcy IP in accordance with the procedure specified in section 3.1.

6. Acting with professional care means acting with care adequate to the function or position of the acting person who takes into account all available information that relate to or can affect its acting.

7. The jurisdiction is determined on the basis of a district of the debtor's seat or place of business, or, if not applicable, of its address.

4 *Control body*

The supervision of an IP's due performance of its function has two dimensions:

- (a) With regard to particular insolvency proceedings, it is in the hands of the court and the creditors' bodies involved.
- (b) The general control body is the Ministry. General supervision is performed by means of (i) regular, occasional or intentional mocks in the IP's office, and (ii) using other techniques to obtain and

evaluate information about the IPs. The aim of the mocks is to verify compliance with legal and professional standards and to assess the objective status, mainly deficiencies, consequences of these deficiencies, and the persons liable for the deficiencies. The Ministry is entitled to impose a sanction of up to EUR5,000 for an IP's breach of its obligations or, in the event of a more serious breach, to remove an IP from the List of IPs.

5 *Remuneration and its calculation*

An IP's right to remuneration is set out in the Insolvency Act. The specific mechanism for calculating remuneration is further elaborated on in the Decree 665.

Bankruptcy

Prior to the first creditors' meeting, an IP is entitled to a flat-rate remuneration which shall be determined by the court upon the proposal of the IP. The amount of the flat-rate remuneration is as follows:

- (a) for a declaration of bankruptcy over the assets of a natural person: EUR663.88;
- (b) in other cases:
 - (i) EUR2,323.57 if the value of the assets in the bankruptcy estate does not exceed EUR33,193.92;
 - (ii) EUR4,647.15 if the value of the assets in the bankruptcy estate exceeds EUR33,193.92 but does not reach EUR99,581.76;
 - (iii) EUR6,638.78 in all other cases.

The flat-rate remuneration is a priority claim, thus taking priority over all other claims against the bankruptcy estate. After the first creditors' meeting, the IP's remuneration is calculated as a percentage of the proceeds obtained

as a result of the realisation of the debtor's assets, ie the only factors taken into account are the IP's ability (whether objective or subjective) to realise the concerned assets and the character of the concerned assets. In other words, different regimes will apply to realise different categories of assets. The percentage range fluctuates between 1% and 16%, or 25% in case of a successful exercising of the right to avoid certain legal acts. Under the applicable formula, the higher the amount of realised assets, the lower the percentage would be. The maximum amount of the IP's remuneration is EUR331,939.19.

Restructuring

In restructuring, an IP's remuneration is subject to an agreement with a debtor.

In conclusion, the remuneration amounts an IP can potentially earn are abstract and cannot be generalised as they depend on the type of proceedings and the amount and type of assets being sold. The parties involved in the restructuring are generally free to agree on any amount of remuneration, while the calculation of remuneration in bankruptcy proceedings is subject to the applicable provisions of the Decree 665.

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