

A map of South-Eastern Europe showing the Adriatic Sea to the west and the Black Sea to the east. The map is light blue with black outlines for countries and water bodies. The text is overlaid on the map.

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

**A REGIONAL REPORT ON
INSOLVENCY OFFICE HOLDERS IN SOUTH-EASTERN EUROPE**

June 2007

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COUNTRIES OF SOUTH EASTERN EUROPE COVERED BY THIS REPORT



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INSOLVENCY OFFICE HOLDERS IN SOUTH EASTERN EUROPE

1. INTRODUCTION

This is a report of the results of a comparative survey that has reviewed the manner in which the laws of eight south eastern European countries make provision for the qualifications, licensing, appointment, removal/retirement/replacement, standards of work and conduct, discipline and remuneration of office holders in insolvency cases.

The term 'office holder' means a person who is appointed to administer an insolvency case and includes a trustee, liquidator, administrator, reorganiser and so forth.

The eight countries are Albania, Bosnia and Herzegovina, Bulgaria, FYR Macedonia, Montenegro, Romania, Serbia, and Slovenia (the 'survey countries').

The survey was conducted in 2005-6. It has been conducted as part of a project that is providing technical assistance to the government of Serbia in relation to insolvency office holders generally. The terms of reference of that project provide for a '*review of the insolvency legislation of the survey countries, with particular reference to the licensing and duties of office holders*'.

The survey (and the project) was made possible with funding provided by the Swiss State Secretariat for Economic Affairs (SECO).

2. IMPORTANCE

The relevant law of each of the survey countries provides for the appointment of an office holder upon the opening or commencement of every insolvency case. Office holders may, thus, be expected to perform an important function in the administration of insolvency cases. It is, therefore, of considerable importance that the respective laws of those countries make adequate provision for the general eligibility, qualifications, standards of conduct and practice and regulation of such office holders.

The principal purpose of the survey is to determine whether and the extent to which the respective laws of the survey countries make such provision.

3. METHODOLOGY

The survey was conducted by reference to a basic check-list of matters concerning office holders that may be found in the legislative provisions (or other form of regulation, such as a self-governing professional regime) of countries in which the employment of office holders in insolvency cases has been consistently practised for some time. Those matters fall conveniently into seven broad areas that are detailed below under 'scope of the survey'. A detailed questionnaire (comprising some thirty issues) was compiled to examine the areas in each of the survey countries. Responses to the questionnaire were gathered by reference to the law and practice of each survey country. It is this information that forms the basis for this report. The questionnaire and responses were also used as the basis for assessing the degree of compliance with the basic standards and rating the survey countries according to the assessment results. That information is also provided in this report.

3. RELEVANT LAW

The relevant laws of the survey countries upon which the comparative survey was based are set out in Appendix I to this report. The survey has been conducted on the basis of relevant laws in force as at 31 December 2006. See appendix 1 for details of the new regulations introduced by Romania after that date.

4. SCOPE OF THE SURVEY

The survey covered the following areas:

- A. Qualifications** – Because of the tasks that an office holder might be expected to perform, the responsibilities that an office holder will have and the trust that is reposed in an office holder, it should be the case that an office holder should have some fundamental qualifications. These includes general ability and intelligence, experience, professional knowledge and good character. The questions raised were thus directed at such things as: What are the basic qualifications required of a person who might seek to become an 'office holder'? Must the person have educational standards? What experience must the person have? Does the person have to undertake an insolvency based examination? Are there disqualification criteria?
- B. Licensing** – Most professions are regulated by a system of licensing. Office holders should be regarded as a professional body of persons. So, questions were directed at: Does the regime provide that an office holder must be licensed or registered? Who is responsible for that function? For how long is the period of registration? Is it renewable without further criteria? What does a license cost?

- C. Appointment in an insolvency case** – It is important that the process for determining an appointment of an office holder to an insolvency case has regard to the need for transparency and impartiality, that both creditors and debtor have a real interest in who might be appointed, and that there may be a possible need for particular skills and ability in particular cases. This part of the survey therefore asked the following questions: How is an office holder appointed to an insolvency case? Who makes that appointment? Are there rules or guidelines governing the selection of an office holder? Are there disqualification criteria in respect of appointment to a particular case? Can an appointment be reviewed?
- D. Removal/retirement/replacement of office holder** – In the same way that the appointment process is important so also is the process of removal/retirement and replacement. The survey questioned: What are the criteria for the removal of an office holder from a case? Who may remove or seek removal? Does the regime provide for retirement/death of an office holder? What is the process for replacement? Are there provisions for transmission of a case from office holder to office holder?
- E. Standards of work and conduct** – Standards are the most useful way of both establishing and measuring the level of performance expected of office holders. Thus in this part of the survey the questions were directed at: Does the law provide criteria for the standards of work competence expected of an office holder? Does it provide standards of conduct? Does the law provide for supervision or check of the work of an office holder?
- F. Regulatory and disciplinary matters** – The level of trust, responsibility and work standards required of office holders requires a commensurate level of potential regulation and discipline, as exemplified in the following: Can disciplinary action be taken against an office holder? What are the criteria? Who may take such action? Who determines a disciplinary action? What penalties or sanctions may be imposed?
- G. Remuneration** – Reward: the level of it and the manner in which it may be determined formed the final part of the survey as follows: On what basis may an entitlement of an office holder to remuneration be determined? Who determines the amount? Is a review of any such determination possible?

6. BENEFITS OF SURVEY

The review was limited to providing general answers to the above issues, in particular to show whether these most fundamental issues were dealt with in the relevant law. That provides a useful basis of comparison between the survey countries and highlights areas in which the laws and systems of some one or more countries may be considered strong or deficient. The latter may be drawn to the attention of the relevant ministry or regulatory authority in such countries.

The survey will also be of interest to the ‘consumers’ of insolvency regimes in the survey countries since the ‘effectiveness’ of those regimes will largely depend on the manner in which office holders handle insolvency cases. Although this survey does not seek to examine or evaluate any such ‘effectiveness’, clearly a regime that provides for appropriate qualifications, licensing and standards of conduct in respect of office holders is likely to be more effective than one that does not.

Finally, each of the survey countries has been assessed against the EBRD guidelines of best practice [*EBRD Principles in respect of the Qualifications, Appointment, Conduct, Supervision and Regulation of Office Holders in Insolvency Cases*]. This is reported in chapter 10.

7. PERSONS ENGAGED IN THE SURVEY

The idea for the survey was that of Mahesh Uttamchandani, former Senior Counsel at the EBRD and now Senior Counsel and Head of Global Insolvency and Creditor Rights Initiative, World Bank. The methodology and general conduct of the survey was the product of the work of the international consultants to the EBRD, Messrs Neil Cooper and Ronald Harmer. On the ground research and verification was conducted by Vladislav Tamburkovski. The survey was completed under the guidance of Jay Allen, Senior Counsel, EBRD.

8. PRESENTATION OF RESULTS

The following analysis of results presents, firstly, the relevant legislative response of each survey country to the areas that were examined, and, secondly, a summary of the approaches and any notable variations.

A. QUALIFICATIONS

Albania: Any individual *experienced in business affairs* is eligible for appointment.

Bosnia & Herzegovina: An applicant needs ‘appropriate level of *education*’, successful completion of the professional *examination* set by Minister of Justice.

Bulgaria: An applicant requires a *university degree* in law, economics, accounting, finance, business; no adverse *criminal convictions* or undischarged bankrupt; and the successful completion of the professional *examination* set by Minister of Justice.

FYR Macedonia: Applicants may be any person/partnership/corporation with a *university degree* (non-specified discipline); appropriate business experience; a minimum 5 years of *work experience* in commercial sector; successful completion of the professional bankruptcy administrator *examination*; no adverse *criminal conviction*. For a company, it must employ a licensed bankruptcy administrator, a lawyer and an economist.

Montenegro: Applicants require a *university degree*; have 3 years *experience*; be a *licensed accountant, auditor, or lawyer* or have training and experience appropriate to the needs of the case; and no adverse *criminal convictions*.

Romania: Applicant needs to be a ‘practitioner’ in bankruptcy and reorganisation which requires a *degree* in law or economics; 3 years of professional *experience*; and successful completion of the *examination* set by the professional office holder body¹.

Serbia: An applicant requires a *university degree*; must be an ‘entrepreneur’; must have 3 years *working experience*, no adverse *criminal conviction*, and the successful completion of the *examination* in bankruptcy and other areas.

Slovenia: An applicant needs *university degree* in law, business or other relevant field; successful completion of the *examination*; no adverse *criminal convictions*; 3 years *working experience*; and *be a citizen* of Slovenia.

Summary

- **Education:** 6 countries require a *university degree*, 2 countries do not (Albania, Bosnia & Herzegovina both specify ‘appropriate level of education’). The requirement of specified disciplines varies from country to country (there is a range including accounting, law, economics, business and engineering).
- **Experience:** 7 countries require *work experience*, although the type and duration (2 – 5 years) vary; most are general, such as ‘business’ experience, only one specifies experience in insolvency related work. Bosnia & Herzegovina does not require work experience.

¹ See appendix 1 for details of the new regulations introduced by Romania after the date of this survey.

- **Examination:** 6 countries require the successful completion of an **examination** (variously conducted by the Ministry of Economics, Ministry of Justice or a professional body (Romania). 2 countries (Albania, Montenegro) have no examination requirement.
- **Character:** 5 countries specify no relevant **criminal convictions**. 3 countries do not (Albania, Bosnia & Herzegovina, Romania, although it is possibly the case that a relevant criminal conviction might operate to disqualify as a result of the application of some other law).
- **Extra criteria:** 1 country (Slovenia) has a **citizenship** requirement.
- **Particular rules:** Some countries have **particular rules** (for example, FYR Macedonia, for company office holders where a company must employ a licensed bankruptcy administrator, a lawyer and an economist; Romania where a licensed office holder must carry on that business to the exclusion of other competing forms of business).

Comment

The majority of countries provide appropriate qualification criteria, in the sense that five of the countries all stipulate education, experience, examination and character criteria.

The respective laws of Albania and Bosnia & Herzegovina appear, however, to be deficient in this area.

B. LICENSING/REGISTRATION

Albania: *no licensing* requirement.

Bosnia & Herzegovina: *no licensing* requirement.

Bulgaria: *Licensing is required* through Ministry of Justice and European Integration. The license is for *1 year*; renewable, and the fee is €25.

FYR Macedonia: *Licensing is required* through Ministry of Economy. The license is for *2 years*. And candidates must attend *continuing education programme* and pass *further exams to renew*. The fee is €500.

Montenegro: *Licensing is required* through Ministry of Justice.

Romania: *Licensing is required through professional office holder body called the National Union of the Practitioners of Insolvency of Romania. The registration fee is 500 RON and license fee 300 RON².*

Serbia: *Licensing is required through Bankruptcy Supervisory Agency (a government office under the Ministry of Economy). The license for 3 years and the fee is €700, renewable.*

Slovenia: *licensing required through Ministry of Justice. The fee is €330.*

Summary:

- **Requirement for licensing:** 6 countries **require** an office holder to be **licensed**, usually through a government ministry or other body (in Romania it is through a professional body). Neither Albania nor Bosnia & Herzegovina have a requirement for a license.
- **Licensing agency:** Most are either a **government ministry or a government agency**. The Serbian Bankruptcy Supervisory Agency appears to be the most advanced agency. In Romania a professional body is responsible for licensing.
- **Duration:** Licences **vary in their duration**. There is no limit in Romania, 3 years Serbia, and 1 year Bulgaria. They are renewable. FYR Macedonia requires a further examination and continuing education compliance.
- **Fees:** Fees **vary considerably**, particularly where there is a licensing agency involved. The range appears to be from Euro 25 to Euro 700 (Serbia).

Comment:

Six countries require an office holder to be licensed. The period of duration of a license varies.

If licensing is considered a necessary or an appropriate form of regulation, then the laws of Albania and Bosnia & Herzegovina are deficient.

² See appendix 1 for details of the new regulations introduced by Romania after the date of this survey.

C. APPOINTMENT OF AN OFFICE HOLDER TO AN INSOLVENCY CASE

Albania: The *initial appointment* is made by the *court*. There are no guidelines *Creditors* may elect a *different office holder* at their first meeting. Office holder is *disqualified* by inappropriate relations with debtor or a creditor.

Bosnia & Herzegovina: The *initial appointment* is made by the *court*. No guidelines. *Creditors* may elect a *different office holder* at their first meeting.

Bulgaria: The *creditors nominate* and the *court appoints*. *Disqualified* by inappropriate relationship with debtor or a creditor.

FYR Macedonia: The *court* makes *initial appointment* on the *proposal of a creditor* with a 'mandate'. *Creditors* may appoint a *different office holder* at their first meeting. *Disqualified* by inappropriate relationship with a creditor or the debtor.

Montenegro: The *court* makes *initial appointment*. Court must change appointment and appoint office holder proposed by 60% of creditors at their first meeting. No guidelines. *Disqualified* by inappropriate relationship with debtor or creditor or judge.

Romania: The court makes *initial*, apparently temporary, *appointment*. No guidelines. That appointment must be *confirmed by assembly of creditors* or, if the creditors propose a different office holder, the court must make a new appointment accordingly. Discrepancies in this process can cause uncertainty. *Disqualified* by inappropriate relationship with debtor or creditor.

Serbia: The *court* makes the *initial appointment*. No guidelines. The *creditors cannot challenge or change* the appointment. *Disqualified* for inappropriate relationship with debtor or creditor.

Slovenia: The *court* makes the *initial appointment*. No guidelines. An *appeal* against the appointment may be made. *Disqualified* for inappropriate relationship with debtor or creditor.

Summary:

- **Court selection:** In all countries the *initial appointment* is made by the *court*.
- **Guidelines for selection:** There are *no guidelines* for such selection, except in Bulgaria (creditors nominate) and FYR Macedonia (mandated creditor may nominate).

- **Review/appeal of appointment:** In 5 countries the *creditors* may vote for the *removal* of the court appointee and appoint their own choice of office holder. In one country an appeal may be made (Slovenia) and in Serbia the creditors cannot change or challenge the court appointment.
- **Disqualification:** *Disqualification* because of *inappropriate relationship* with debtor or creditor is imposed in 6 countries.

Comment:

Appointment is by a court in all countries. In the majority of those countries, the court is given no selection guidelines. It may therefore be assumed that the appointment process is largely ad hoc and uncertain. All the survey countries might be considered deficient in this respect.

Bosnia & Herzegovina may be considered deficient because it does not prescribe disqualification criteria based on inappropriate previous or existing relationships with debtor or creditor.

D. REMOVAL/RETIREMENT/REPLACEMENT

Albania: *Removal* is by the *court*. The *grounds* for removal are *vague and uncertain* ('good reason'). There is *no provision for retirement or death*. It appears that the *creditors* may *appoint a replacement* office holder. *No provisions for the transition/transmission*, including the transfer of records, information etc., from one office holder to another.

Bosnia & Herzegovina: *Removal* is by the *court*. The *grounds* for removal are *vague and uncertain* ('if there is an important reason'). There are *no provisions for retirement or death*. It appears that the *creditors* may *appoint a replacement* office holder. *No transition/transmission provisions*.

Bulgaria: *Removal* is by the *court*. The *grounds* are *specific* and include failure to take up the appointment, judicial disability, inability to perform the work, at the request of 50% of creditors (by value of claims). There are *provisions for retirement and death*. The court must convene a meeting of *creditors* to *appoint a replacement office holder*. There are *provisions* directed at enabling an *appropriate transition/transmission*.

FYR Macedonia: *Removal* is by the *court*. The *grounds* are *specific* and include inability to perform duties, failure to sell property within specified period, bias, failure to insure etc. There are *provisions for retirement and death*. It appears that

the *creditors* may *appoint a replacement* office holder. There are *provisions* directed at enabling an *appropriate transition /transmission*.

Montenegro: *Removal* is by the *court*. The *grounds* for removal are *vague and uncertain* ('where adequate cause is shown'). There are *provisions for retirement and death*. The *court appoints a replacement*. There are *provisions* directed at enabling an *appropriate transition/transmission*.

Romania: *Removal* is by the *court*. The *grounds* for removal are *vague and uncertain* ('due cause'). The provisions for *retirement and death* of an office holder are *vague*. The *court appoints a replacement*. There are *provisions* directed at enabling an *appropriate transition/transmission*.

Serbia: *Removal* is by the *court*. The *grounds* are *specific* and include failure to perform duties, failure to insure, failure to obtain necessary consents and permissions etc. There is also a provision that enables a committee of creditors to seek the removal of an office holder. There are *provisions for retirement and death*. There are *no provisions* relating to *transition/transmission*.

Slovenia: *Removal* is by the *court*. Some *grounds* of removal are *specific* (include failure to comply with duties) but otherwise *vague* ('other legitimate reasons'). There are *provisions for retirement and death*. There are *provisions* relating to *appropriate transition/transmission*.

Summary:

- **Court involvement:** In all countries **removal** from office is by a **court**
- **Grounds:** In 4 countries the **grounds for removal are vague** (for example, 'good reason', 'an important reason')
- **Replacement:** A **replacement** office holder is either chosen by the creditors or by the court
- **Retirement/death:** Most countries have **provisions** regarding the **retirement or death** of an office holder (Albania and Bosnia & Herzegovina have no such provisions)
- **Transition/transmission:** Most countries have **basic provisions** for **transition/transmission** but these are not, in the main, entirely satisfactory.

Comment:

The grounds for removal are not satisfactory in any country, particularly in those countries that use vague criteria, such as 'for good reason'.

Not enough attention has been paid to the need for compelling co-operation between a removed office holder and a replacement office holder.

E. STANDARDS OF WORK PERFORMANCE, CONDUCT AND SUPERVISION

Albania: There are *no* work performance or conduct *standards*. The *work* of an office holder is under the *supervision and control* of the *court and a committee of creditors*.

Bosnia & Herzegovina: The law contains some non-comprehensive *work performance standards*. There are *no standards of conduct*. The *work* of an office holder is under the *supervision of a court*.

Bulgaria: There are *no* work performance or conduct *standards* except for a vague general standard that requires an office holder to exercise powers 'with the diligence of a prudent merchant'. The *work* of an office holder is under the *supervision and control* of the *Minister of Justice*.

FYR Macedonia: *Comprehensive work performance and conduct standards* have been determined by the law and the Chamber of Bankruptcy Administrators. The *work* of an office holder is under the *supervision and control* of the *court and a committee of creditors*.

Montenegro: There are *no* work performance or conduct *standards*. The law makes *no provision* concerning the *supervision* of the *work* of an office holder.

Romania: There are *no* work performance or conduct *standards* except for a vague general standard that requires an office holder to take an 'oath of diligence'. The *work* of an office holder is under the *supervision and control* of the *court*.

Serbia: *Comprehensive national work performance and conduct standards* have been developed under the law by the Bankruptcy Supervisory Agency. The *work* of an office holder is under the *supervision* of the *Bankruptcy Supervisory Agency*.

Slovenia: There are *no* work performance or conduct *standards* except for a vague general standard that requires an office holder to carry out duties ‘conscientiously’ and exercise the ‘diligence of a prudent merchant’.

Summary:

- **Detail:** Only two countries (Serbia and FYR Macedonia) appear to have developed ***comprehensive ‘codes’*** or standards of work and conduct practices.
- **General:** The rest rely on ***vague general standard criteria*** (example, Slovenia – to be ‘conscientious’ and act with the ‘diligence of a prudent merchant’).
- **No standards:** Two countries (Albania and Montenegro) appear to have ***no standards*** at all.

Comment:

In view of the fact that in all of the survey countries the insolvency laws are young and the ‘profession’ of office holder has only recently commenced and developed, there is a clear need for appropriate detailed standards to guide office holders in their work and to provide the basis on which their work can be measured and assessed.

The respective laws of Albania and Montenegro may be considered deficient in this area.

F. DISCIPLINE

Albania: *Disciplinary action* may be taken against an office holder who ‘does not *fulfil his duties*’. The *action* may be taken *by a court*. The *sanction is a fine*.

Bosnia & Herzegovina: There are *no disciplinary provisions* regarding office holders in the law.

Bulgaria: *Disciplinary action* may be taken against an office holder who ‘*fails to exercise his duties or who exercises them poorly*’. The *action* may be taken *by a court*. The *sanction is a fine*.

FYR Macedonia: *Disciplinary action* may be taken against an office holder who ‘*fails to exercise his duties or who exercises them poorly*’. The *action* may be taken *by the Chamber of Administrators*. The *sanction is a fine*.

Montenegro: There are *no disciplinary provisions* regarding office holders in the law.

Romania: *Disciplinary action* may be taken against an office holder who ‘*does not fulfil or fulfils his duty late*’. The *action* may be taken *by a court*. The *sanction is a fine* or recovery of any losses caused by the above. A new regulation allows the National Union of the Practitioners of Insolvency of Romania to *suspend the status of an office holder* who does not follow the code of ethics of the National Union³.

Serbia: The law *does not specify disciplinary provisions* regarding office holders. The *Bankruptcy Supervisory Agency* may *action* disciplinary matters. The *sanction is to withdraw/not renew a licence*.

Slovenia: *Disciplinary action* may be taken against an office holder who ‘*fails to comply with the duties of an office holder*’ or in case ‘*of the existence of other legitimate reason*’. The *action* may be taken *by a court*. The *sanction is removal from the case*.

Summary:

- **Criteria:** Most ***discipline*** provisions relate to ***broad, general failure to exercise duties*** properly. No countries have appropriate detailed provisions.
- **Disciplinary powers:** Most ***disciplinary proceedings*** are subject to ***court*** proceedings (cf. Serbia where a government agency has the power to sanction).
- **Sanctions:** Most ***sanctions are fines*** (cf. Serbia where a license may be withdrawn and Slovenia, removal from case).

Comment:

In general there is an inadequate discipline regime. Either the grounds for disciplinary action are general and vague (‘fails to exercise duties or exercises them poorly’) or the type of sanctions that might be imposed are inadequate (a ‘fine’ in the case of a clear dereliction of duty is hardly adequate).

There is too much concentration on discipline arising within the context of a particular case, rather than viewing discipline as often the aggregate conduct in a number of cases.

³ See appendix 1 for details of the new regulations introduced by Romania after the date of this survey.

G. REMUNERATION

Albania: *Basis* for calculation of remuneration is *value of the estate*. *Size and complexity* of the case can be taken into account. *Court determines* amount subject to *appeal by office holder, debtor or creditors*

Bosnia & Herzegovina: The *basis* for remuneration is *determined by regulations*. The *amount* in each case is *determined by a court* subject to contest (review) by creditors

Bulgaria: The *basis* for remuneration is *determined by taking account of sale of assets*. The *amount* in each case is *determined by a meeting of creditors* or in default by a *court*

FYR Macedonia: The *basis* for remuneration is *determined by taking account of sale of assets*. The *amount* in each case is *determined by a court with the consent creditors*

Montenegro: The *basis* for remuneration is *determined by taking account of assets administered in a liquidation and by contractual consensus with the creditors in a reorganisation*. The *amount* in either case may be appealed to *court*

Romania: The *basis* for remuneration is *determined by taking account of assets administered in a liquidation*. If there are insufficient funds to pay the remuneration, it may be *paid out of a special fund* established by the government. The *amount* is determined by a *court*

Serbia: *Basis* for calculation of remuneration is *value of the estate*. *Size and complexity* of the case can be taken into account. *Court* may decrease the amount, but provides no guidelines

Slovenia: *Basis* for calculation is '*working fees*', taken into account with speed and other criteria. The *amount* is determined by a *court*

Summary:

- **Basis:** *Remuneration* is largely **based on value/sale of assets**
- **Other factors:** In some countries **account** may be **taken of additional factors**, such as complexity, speed of handling
- **Determination:** In most countries the **amount** of remuneration is **determined by a court**

Comment:

The basis for the calculation of remuneration is quite confined (value of assets). This takes no account of skills in terms of efficiency, time, added value, complexity. All countries need to review the remuneration aspects of their respective laws.

It should also be observed that there are not enough alternatives to the court determination of the amount of remuneration (for example, by reference to the general body of creditors or a creditors committee).

9. OVERALL ASSESSMENT

It will be clear from the above summaries that there is a considerable degree of compliance which is encouraging, taking into account the relevant infancy of both the insolvency laws of the relevant countries and the 'profession' of insolvency office holders in those countries. As a whole the region shows considerable and important development in the area generally

Appendix II presents a scored assessment of the survey countries in relation to the seven core areas that were examined. The results are reflected in the following summary of compliance:

1. FYR Macedonia	High
2. Bulgaria	High
3. Slovenia	High
4. Serbia	Medium
5. Romania ⁴	Medium
6. Albania	Low
7. Montenegro	Low
8. Bosnia & Herzegovina	Low

It is very gratifying that five of the eight countries obtained high to high or medium compliance scores. FYR Macedonia obtained the highest result. Its law and practice as regards insolvency office holders provides an excellent model.

So too do various aspects of some other countries (for example, Serbia, as regards the office holder regulatory agency regime).

⁴ See appendix 1 for details of the new regulations introduced by Romania after the date of this survey.

The Romanian model is primarily 'self-regulating' and provides an important and interesting alternative to government operated regulatory schemes. The Romanian model may well provide a guide to possible future developments as the experience and professionalism of insolvency office holders develops in the region.

Unfortunately, Albania, Bosnia and Herzegovina and Montenegro were all rated at a low level of compliance. That must adversely affect public confidence in the office holder system. A considerable amount of development and reform needs to be undertaken in both Albania and Bosnia and Herzegovina. Montenegro could easily correct the areas in which it is presently deficient.

10. COMPARISON WITH THE EBRD INSOLVENCY OFFICE HOLDER PRINCIPLES

Subsequent to the initiation and conduct of the survey, the EBRD developed a comprehensive set of principles for insolvency office holders. These appear at **Appendix III**. A full assessment of the office holder regimes of the eight survey countries based on those EBRD Insolvency Office Holder Principles cannot be made. The survey did not involve some of the EBRD Office Holder Principles (for example, principles dealing with the release/discharge of an office holder; the requirement for professional insurance or bond cover; and a code of ethics for office holders). In some other areas the EBRD Office Holder Principles cover greater criteria than that covered in the survey. Notwithstanding, and as mentioned earlier, the opportunity has been taken to perform a quasi-assessment based on the relevant EBRD Office Holder Principles. The results are very similar to the survey assessment. The EBRD Office Holder Principles are in **Appendix IV**.

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30 April 2007

LIST OF RELEVANT INSOLVENCY LAWS AND REGULATIONS**ALBANIA**

Law on Bankruptcy (May 23 2002).

BOSNIA AND HERZEGOVINA

Law on bankruptcy proceeding (Official Gazette 29/03) (the Law); Rules and regulations of the exam and the program of the exam for bankruptcy administrator; Regulations of the costs remuneration and reward of the experts, temporary bankruptcy administrator, bankruptcy administrator and members of the creditors committee.

BULGARIA

Commercial Law (Part IV, Head 42)(SG 48/1991, amend. 25/1992, 61 and 103/1993, 63/1994, 63/1995, 42, 59, 83, 86 and 104/1996, 58, 100 and 124/1997, 52 and 70/1998, 33, 42, 64 81, 90, 103 and 114/1999, 84/2000, 28, 61 and 96/2002, 19, 31 and 58/2003, 31, 39, 42, 43, 66, 103 and 105/2005); Order No. 3 by the Ministry of Justice, Ministry of Economy and Ministry of Finance from 27.06.2005 for the selection, qualifications and control of the trustees.

FYR MACEDONIA

Bankruptcy Law; Standards of the professional conduct and work performance; Code of ethics; Rules and regulations of the professional exam; Program of the professional exam of the bankruptcy administrator and continuous education; Rules and regulations of cost remuneration and reward of the bankruptcy administrator; Statute of the Chamber of Bankruptcy Administrators -All pending approval by the Minister of Economy.

MONTENEGRO

Law on Business Organizations Insolvency (2002) and Regulation on the procedure for licensing of bankruptcy administrators (2002).

ROMANIA

Law 64/1995 (Bankruptcy Law), as amended by: Law 99/1999 and Law 149/204; Government Ordinance 79/1999 (The Activity of Bankruptcy and Reorganization Practitioners), as approved by Law 505/2002 together with Ordinance Regarding the Organisation of Insolvency Practitioners 922 November 2006) and the regulations made by the National Union of the Practitioners of Insolvency of Romania. Since the completion of this survey, Romania has introduced new legislation (15/12/06, published and taking effect on 01/ 02 /07) to deal with Licensing/Registration under the control of the National Union of the Practitioners of Insolvency of Romania (NUPIR) (*Uniunea Nationala a Practicienilor in Insolventa din*

Romania or UNPIR) which has a registration fee of 500 RON individual entity / 800 RON legal entity) and a yearly membership fee (300 RON / 2000 RON respectively) in place of the 'licensing fees', since both are requirement to obtaining/maintaining the practitioner status. Under the new *Emergency Ordinance of the Romanian Government regarding the organization of insolvency practitioners* (22/11/06), the 5 years practical experience requirement for those seeking to take the mandatory UNPIR examination has been reduced to 3 and needs to be specific to economics or law, while the requirement for an accounting qualification, though intuitive, has been removed. The new Regulation *for the Organization and Operation of the UNPIR*, Art 41 allows of the Union to suspend the status of practitioner of any member who does not follow the UNPIR Code of Ethic.

SERBIA

Bankruptcy Proceedings Act (2004) (the 'Law'); Law on Bankruptcy Supervisory Agency (2004) ('BSA Law'); Regulation establishing National Standards for Administering The Bankruptcy Estate (2005); National Standards 1-10 (2005); Code of Ethics for bankruptcy Administrators (2005) ('Ethics Code'); Regulation on Professional Examination (2005) ('Exam regulation'); Regulation on Remuneration (2005) ('remuneration regulation')

SLOVENIA

Compulsory Settlement, Bankruptcy and Liquidation Act (Official Gazette of the Republic of Slovenia No. 67/1993, 74/1994, Constitutional Court Decision: 8/1996, Constitutional Court Decision: U-I-114/95, 25/1997-ZJSRS, 39/1997, 1/1999-ZNIDC, 52/1999, 101/2001, Constitutional Court Decision: Up-148/01, 42/2002-ZDR, 58/2003-ZZK-1)

RESULTS OF OFFICE HOLDER SURVEY SCORED

APPENDIX II

Section	Subject	maximum score	ALBANIA	BOSNIA AND HERZEGOVINA	BULGARIA	MACEDONIA	MONTENEGRO	ROMANIA	SERBIA	SLOVENIA
1	The qualifications necessary to become eligible for appointment as an office holder	7	2	2	7	7	5	5	7	5
2	The appointment of an office holder to an insolvency case	4	4	4	3	4	3.5	1.5	3	4
3	The removal/retirement of an office holder from an insolvency case	2	0.5	0.5	2	2	0.5	1.5	2	2
4	The replacement of an office holder in an insolvency case	3	2	1	3	3	2	1.5	1	2
5	The duties and responsibilities of an office holder in an insolvency case	3	1	2	1	3	0	3	3	3
6	The discipline of an office holder in an insolvency case	4	4	0	4	4	0	4	3	4
7	The remuneration of an office holder in an insolvency case	3	2	3	3	3	3	3	3	3
Total		26	15.5	12.5	23	26	14	19.5	22	23

Compliance

low low high high low medium medium high

Note 1 The questionnaires were completed in 2006 and are subject to revision as a result of legislative changes

Note 2 The maximum score for each section is shown in the third column and is based on the number of questions in the survey that relate to that topic. The compliance ratings were determined as follows:

Overall compliance	
up to 18	low
19 - 23	medium
24 to 28	high

COMPARING RESULTS WITH EBRD INSOLVENCY OFFICE HOLDER PRINCIPLES

Principle	Subject	ALBANIA	BOSNIA AND HERZEGOVINA	BULGARIA	MACEDONIA	MONTENEGRO	ROMANIA	SERBIA	SLOVENIA
1	Qualifications & Licensing Generally	1	1	3	3	2	2	3	2
2	Appointment in an Insolvency Case	3	3	3	3	3	1	3	3
3	Review of Office Holder Appointment	3	3	0	3	2	0	0	3
4	Removal, Resignation & Death of Officer Holder	1	1	2	3	2	2	3	3
5	Replacement of Office Holder	2	1	3	3	2	2	1	2
6	Standards of Professional And Commercial Conduct	0	2	1	3	0	3	3	3
7	Reporting and Supervision	3	3	3	3	0	3	3	3
8	Regulatory and Disciplinary Functions	3	0	3	3	0	3	3	3
9	Remuneration	2	3	3	3	3	3	3	3
	Total	18	17	21	27	14	19	22	25

Assessment of laws based on EBRD Principles

low

low

medium

high

low

medium

medium

high

Note The levels of Scoring and Compliance are as follows

Scoring
0 = non compliant
1 = low compliance
2 = medium compliance
3 = high compliance

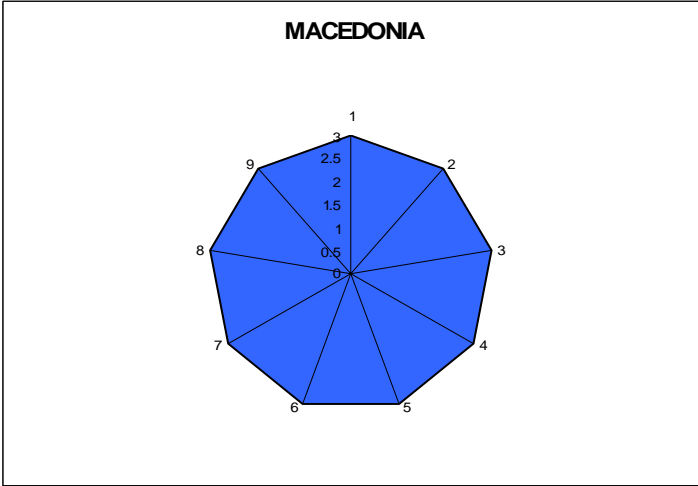
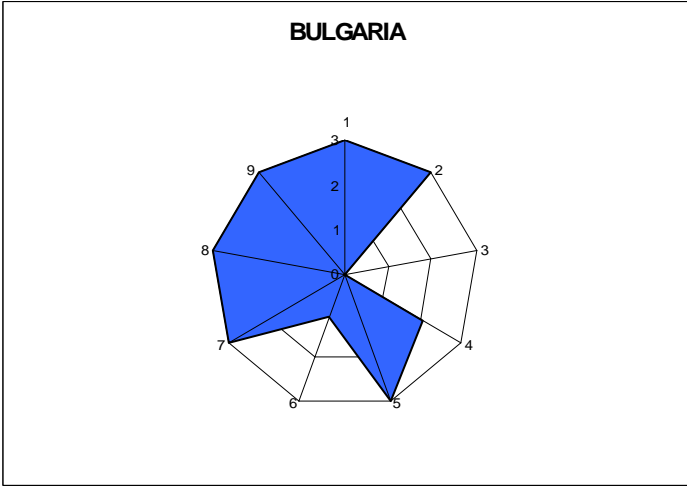
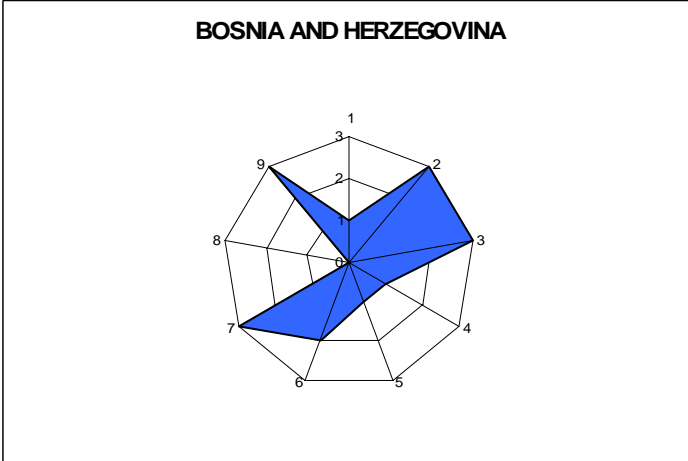
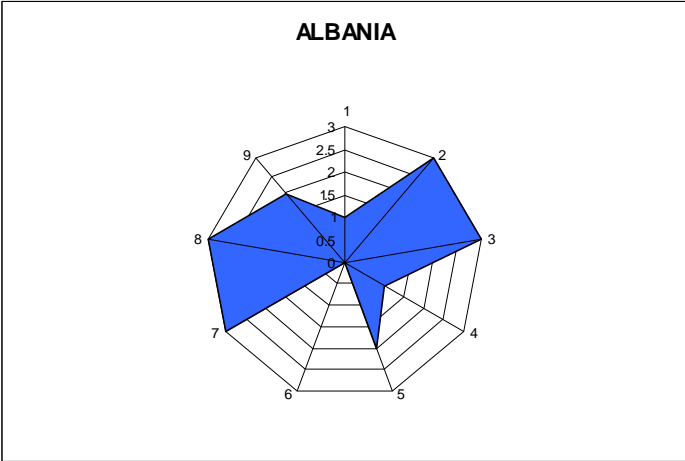
Overall compliance rating
up to 18 low
19 - 23 medium
24 to 27 high

A series of “radar graphs” have been produced to indicate graphically the degree of compliance of each state. Quite simply, the greater the area of each graph, the higher the degree of compliance. The detail for each graph can be obtained from the table above but simply the nine points on each graph represent the nine EBRD Insolvency Office Holder Principles against which the degree of compliance was judged, in accordance with the box labelled “Scoring” above. The fuller the graph, the higher the compliance with the EBRD Insolvency Office Holder Principles and the better the score

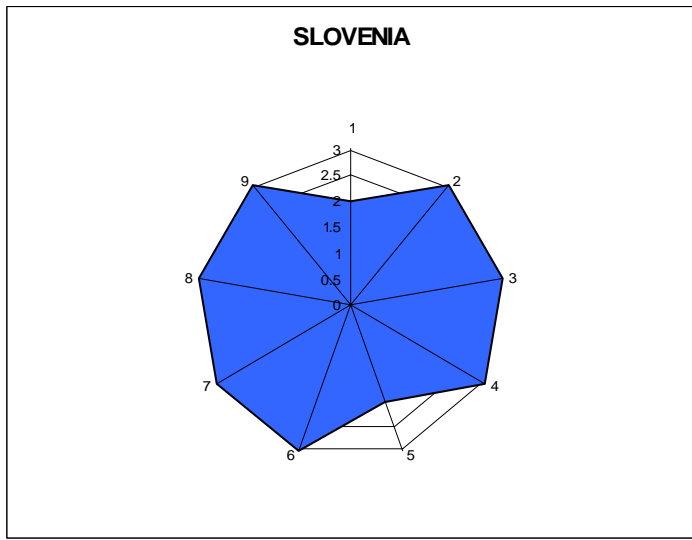
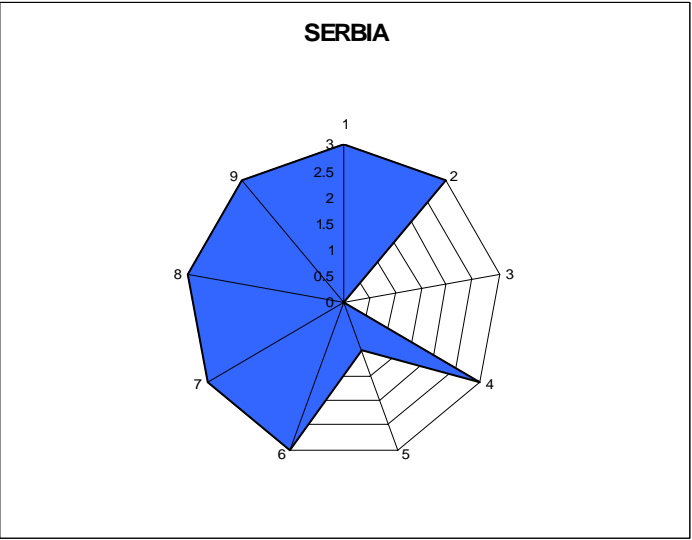
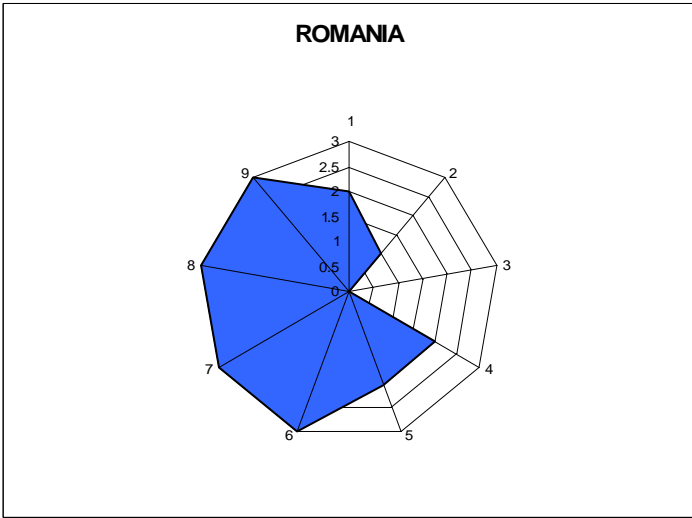
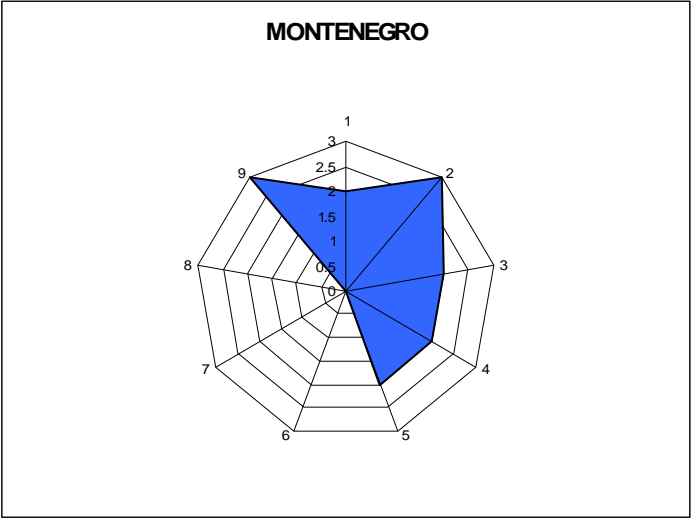
The numbers on the outer extremity of the graphs refer to the relevant EBRD Insolvency Office holder Principle.

- 1 Qualifications & Licensing Generally
- 2 Appointment in an Insolvency Case
- 3 Review of Office Holder Appointment
- 4 Removal, Resignation & Death of Officer Holder
- 5 Replacement of Office Holder
- 6 Standards of Professional And Commercial Conduct
- 7 Reporting and Supervision
- 8 Regulatory and Disciplinary Functions
- 9 Remuneration

Compliance with EBRD Insolvency Office Holder Principles



Compliance with EBRD Insolvency Office Holder Principles



EBRD INSOLVENCY OFFICE HOLDER PRINCIPLES

EBRD PRINCIPLES IN RESPECT OF THE QUALIFICATIONS, APPOINTMENT, CONDUCT, SUPERVISION, AND REGULATION OF OFFICE HOLDERS IN INSOLVENCY CASES

INTRODUCTION

The European Bank for Reconstruction and Development (EBRD) regularly conducts assessments and surveys to measure the extensiveness and effectiveness of insolvency laws in its countries of operations. These laws are measured not against arbitrary or abstract principles but, rather, against international standards and best practices as articulated in, among others, the UNCITRAL *Legislative Guide on Insolvency Law* and the World Bank's *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems*. It is axiomatic that the nature and content of insolvency laws will, and indeed must, vary from jurisdiction to jurisdiction in order to accommodate the rich variety of legal and cultural traditions.

Despite the differences of legal systems, insolvency office holders, variously called trustees, administrators, receivers, liquidators, insolvency representative, are at the heart of many insolvency systems within the EBRD countries of operation and around the world. They are required to act honestly, professionally and responsibly. They are usually given control over assets and significant authority to decide how and when assets are distributed. A properly qualified, trained and regulated cadre of office holders is essential for the transparent, effective and efficient functioning of these systems. Our assessments and surveys demonstrate, however, that many insolvency law regimes are lacking the core elements necessary for the proper functioning of such a system.

The EBRD Insolvency Office Holder Principles articulate the core elements which should be reflected in the development or reform of an insolvency legal regime that provides for the appointment of office holders. They build on the World Bank Principles and Guidelines and the UNCITRAL Legislative Guide, by providing greater detail and guidance on the application of the standards and practices advanced by those institutions.

These Principles seek to advance the integrity, fairness and efficiency of the insolvency law system by ensuring that appropriately qualified professionals hold office in insolvency cases. The Principles should be viewed as guidelines that provide a checklist of issues which should be considered and applied when establishing an insolvency law regime that provides for the employment of an office holder in all insolvency cases.

The Principles were conceived by Mahesh Uttamchandani, former EBRD Insolvency Counsel, and have been developed through the work of the EBRD Operation Leader Jay Allen and the EBRD consultants engaged to formulate the principles, Messrs Ronald W Harmer and Neil H Cooper.

PRINCIPLE 1 – QUALIFICATIONS & LICENSING GENERALLY

Because of the tasks that an office holder might be expected to perform, the responsibilities that an office holder will have and the trust that is reposed in an office holder, it should be the case that an office holder should have some fundamental qualifications. These include general ability and intelligence, experience, professional knowledge and good character. Further, most professions are regulated by a system of licensing. Office holders should be regarded as a professional body of persons and licensed accordingly.

The law or regulatory framework should therefore provide for:

(a) the qualifications of an office holder

Qualifications should extend to appropriate educational standards, relevant experience skills and good character elements. Certain factors (for example, a criminal conviction for a serious offence such as fraud) should disqualify a person from being eligible to apply to become an office holder.

(b) an examination in insolvency law and practice and other relevant subjects for office holder candidates

An examination about insolvency law and practice and related subjects (such as accounting) is highly desirable. The function of developing an examination curriculum, conducting examinations and continuing education (see later) may be conducted by a government body or a recognised autonomous professional body.

(c) the licensing or registration of a candidate who satisfies the qualification standards

The function of licensing/registration may be conducted by a government body or a recognised autonomous professional body.

(d) a register of licensed/registered office holders

This should be a public register to which access should be available to every court having jurisdiction in insolvency cases and also by public search. This should be maintained by the authority undertaking the licensing function referred to above.

(e) a requirement for continuing education for office holders

See comment under (b) above. This is a common feature of most professional bodies and should apply to the office holder profession.

(f) the renewal of a license or registration

This may be set as appropriate. Renewal should be subject to a number of factors, such as satisfactory conduct of insolvency cases, satisfactory continuing education achievements.

(g) the licensing of a corporate body

This should only be permitted if:

- the above qualifications will apply to the principals of such a corporate body, and
- those principals are personally responsible and accountable for the conduct of the corporate body

PRINCIPLE 2 – APPOINTMENT IN AN INSOLVENCY CASE

There is a need for a predictable and fair process for the appointment of an office holder to an insolvency case .

Accordingly, the law should state:

(a) the grounds upon which an office holder may be ineligible for appointment

This is not concerned with the general qualifications of an office holder. It is concerned about whether some factor exists that would make it undesirable or inappropriate to appoint a particular office holder in a particular case. Relevant factors would include that a proposed office holder is a creditor of the debtor, conflict of interest, or an absence of independence from the debtor [which may include factors such as (but not limited to) an existing or recent close connection or professional relationship with the debtor (or, in the case of a corporate debtor, its officers, or shareholders) or with a major creditor of the debtor].

(b) the body who may appoint such a office holder

This could be a court or other relevant authority or other body (such as the general creditor body or creditors committee).

(c) in the case of an appointment by a court [or other relevant authority], clear guidelines concerning the manner in which the court should select such an office holder

This might involve the selection of an office holder according to a strict rota taken from the register of office holders. It might also involve the nomination of an office holder by the party who has the carriage of the insolvency proceedings (for example, the debtor or an applicant creditor). It might also involve the referral by the court of the issue of appointment to the general body of creditors.

(d) in the case of an appointment by the general body of creditors or a committee of creditors, the manner in which such appointment may be made

This would normally require provision for a formal meeting and determination by resolution according to a required majority vote.

(e) in the case of an appointment by the debtor or a representative of a debtor, the manner in which such appointment may be made

This would normally require provision for a formal appointment and notification. In the case of an appointment by a corporate debtor it might require a resolution of shareholders or directors.

(f) that there is no restriction upon the number of cases in respect of which an office holder may be appointed

This is necessary to remove any doubt that office holders may be engaged in a number of insolvency cases at the same time.

PRINCIPLE 3 – REVIEW OF OFFICE HOLDER APPOINTMENT

It is important that the process for determining an appointment of an office holder to an insolvency case has regard to the need for transparency and impartiality and that both creditors and debtor, who have a real interest in who might be appointed, have the opportunity to oppose or complain about an appointment.

Accordingly, the law should facilitate the review of a decision to appoint an office holder by:

(a) providing the grounds upon which an appointment may be reviewed

The grounds would include conflict of interest or other absence of independence, inability to properly administer the case (by reference to expertise, experience and resources) and so forth.

(b) providing a process for a review

In the case of a review of a court appointment this would require an appeal against the decision to appoint the office holder. In the case of an appointment by the general body of creditors (or a committee of creditors), the review would have to be conducted by a court or other relevant tribunal or authority. The process needs to be one that can be conducted speedily and transparently.

(c) if an appointment is set aside, providing for the appointment of another qualified office holder

It is clearly necessary that upon the removal of an office holder, a replacement office holder should be immediately appointed. The law should specify the means to achieve this. It may impose the same rules and procedure for selection as for an initial appointment of an office holder.

PRINCIPLE 4 – REMOVAL, RESIGNATION & DEATH OF OFFICER HOLDER

It may be expected that there will be cases in which the parties in interest may wish to remove an office holder from office and other cases in which an office holder may wish to retire from office or may die.

Accordingly, the law should provide for:

(a) the resignation of an office holder from office

It may be anticipated that, for whatever reason or cause, an office holder may wish to resign an appointment. The law should facilitate that and state the process that must be followed, including the contemporaneous initiation of a process for the appointment of a new office holder.

(b) the grounds upon which an office holder may be removed from an insolvency case

These would normally include incompetence, negligence, breach of duty, fraud and undue delay.

(c) the process for the removal of an office holder

This should normally involve an application to the relevant court or a relevant authority by a concerned party (the debtor, creditors or a regulatory authority) and the conduct of a speedy and transparent hearing.

PRINCIPLE 5 – REPLACEMENT OF OFFICE HOLDER

In the same way that the initial appointment process is important so also is the process of appointment of a replacement.

Accordingly, in any case where an office holder dies, retires or is removed, the law should provide:

(a) for the prompt appointment of a new office holder to replace the former office holder

As to appointment of a new office holder see comments under Principle 3 (c) above.

(b) that the new office holder is entitled, without delay, to the assets, books and records of the debtor in the possession of the former office holder

This is an important part of the transition/transmission process. The former office holder should be required to account for his/her trusteeship of the estate and affairs of the debtor to the incoming office holder.

(c) that the new office holder is entitled, without delay, to the books and records of the former office holder that concern or are related to the previous conduct of the administration of the insolvency case by the former office holder

This is directed at records that have been kept in relation to the administration of the estate and affairs of the debtor by the displaced office holder.

(d) that the retiring or removed office holder must co-operate with and assist the new office holder in the transfer and transmission of the conduct of the insolvency case

This should be provided for as a general and continuing obligation. Enforcement provisions may be necessary.

PRINCIPLE 6 – STANDARDS OF PROFESSIONAL AND COMMERCIAL CONDUCT

Standards are the most useful way of both establishing and measuring the level of performance expected of office holders.

Accordingly, the law should:

(a) by primary legislation, provide basic, fundamental standards that are critical to proper professional and commercial conduct on the part of office holders

The purpose of such basic standards is to establish basic standards of conduct for all office holders applicable in every case (for example to act honestly, to act diligently, to comply with professional standards). Then, to regulate and guide an office holder in the conduct of his/her work, a sub-set of professional standards are required. They would normally be made by secondary legislation in the form of rules or regulations, or by a recognised professional body of office holders that requires members of the professional body to comply with them.

(b) by secondary legislation (or otherwise), provide standards relating to:

• **reports**

This should deal with reports on the administration of the insolvency case to creditors and a court or other relevant authority and should detail the contents of and time requirement for such reports.

• **initial collection and safeguarding of assets**

This should cover things like identifying assets, insuring of assets, inventory of assets, taking control of bank accounts and so forth.

• **trading of the debtor's business subsequent to the commencement or opening of the insolvency proceedings**

This should cover such elements as the conditions under which trading may be continued; the liability for continuing obligations of the debtor; the records to be kept; and accounting for taxes on trading.

• **keeping of records**

This should be directed toward the maintenance of records of the administration of the case.

• **convening and conduct of creditors meetings**

This should be directed at content, publication of notices and timing of meetings, conduct of meetings, election of chair person, proposal of resolutions, conduct of voting and so forth.

• **sale and other disposal of assets**

This should deal with the alternative methods of sale, the conduct of an auction, the conduct of a tender, the conduct of a private sale and etc.

• **opening and operation of bank accounts**

This should cover the separation of estate funds from those of the office holder, safeguarding, investment and use of estate funds.

- **reorganisation plan contents and explanatory memorandum**

This should supplement any legislation regarding the information to be contained in and explanation of a plan.

PRINCIPLE 7 – REPORTING AND SUPERVISION

Creditors, the debtor and others with an interest in an insolvency case (for example, a court or regulatory body) are entitled to be regularly informed about the progress of the case and that relevant information is available to them. This may be best facilitated through reports. This also provides a basis upon which the work of an office holder and the progress of an insolvency case may be monitored.

Accordingly, the law should provide:

- (a) that an office holder provide regular reports on the work undertaken and progress of the administration of the insolvency case**

Although this is mentioned in relation to standards under Principle 6 above, it is essential that the principal legislation require appropriate reporting by an office holder to enable those affected by the insolvency case to be kept informed.

- (b) for the appointment, in appropriate cases, of a committee of creditors who may ‘oversee’ the work of an office holder**

This is not to encourage interference in the performance of the work of an office holder, rather to enable a group of creditors to consider the progress and quality of the work. It can sometimes be achieved by close consultation between the office holder and the committee in relation to the more important matters that arise. A committee of creditors will not be appropriate in all cases. Factors to be considered in determining the need include the size of the estate relative to the expense of a committee, the number of creditors and so forth.

- (c) that the performance of an office holder in an insolvency case be monitored**

This should not be required in respect of every case, but, rather, would be something that is capable of being instituted on an ‘ad hoc’, sample or ‘for cause’ basis.

PRINCIPLE 8 - REGULATORY AND DISCIPLINARY FUNCTIONS

The level of trust, responsibility and work standards required of an office holder requires a commensurate level of potential regulation and discipline.

Accordingly, the law should:

- (a) provide for a government or other body (including a recognised professional association) to have appropriate regulatory, investigatory and disciplinary powers in respect of office holders**

The question to be decided in each jurisdiction is what body should have the power.

(b) provide for the grounds upon which the conduct of an office holder may be investigated

It is suggested that rather than provide broad general grounds (such as ‘for good reason or cause’), the law should detail more specific behaviour (such as a failure to comply with a relevant duty or standard).

(c) provide for the powers of such a regulatory body, including the power to:

- **investigate the conduct of an office holder upon a referral from a court, upon the complaint of an affected third party or on its own motion**

This is intended to apply in a case in which the conduct of an office holder should be considered in the context of his/her eligibility to continue as an office holder. It is not intended to usurp the function of a court, for example, in considering a complaint from an affected third party in relation to a particular insolvency case.

- **intervene and be heard on any application to a court concerning the conduct of an office holder or for the removal of an office holder from an insolvency case**

It is important that a court should have the assistance of a regulatory body (an ‘industry’ view) in cases in which an office holder has been alleged to have engaged in misconduct or where a court is asked to consider the removal of an office holder from an insolvency case.

- **impose disciplinary measures upon an office holder in respect of whom misconduct has been established**

It may not be always appropriate that the regulatory body should have a power to impose penalties or sanctions. It might be preferable to refer any findings of the regulatory body to a court for a consideration of the appropriate penalty to be imposed.

(d) provide that disciplinary powers include a power to:

- **impose a fine upon an office holder**
- **suspend the license or registration of an office holder**
- **terminate the registration or license of an office holder**
- **require that an office holder compensate third parties who have been affected by the misconduct of an office holder**
- **require that the office holder undergo further education and training**

The above remedies and sanctions are not intended to be exhaustive.

(e) provide for a right of appeal from the exercise of a disciplinary power

The livelihood of an office holder should be respected and any decision that, directly or indirectly, affects that livelihood should be capable of review or appeal.

PRINCIPLE 9 – REMUNERATION AND EXPENSES

Reward: the level of it and the manner in which it may be determined is a critical part of an insolvency office holder regime. Without it there will be no office holders.

Accordingly, the law should provide:

- (a) for the entitlement of an office holder to be remunerated for work done by the office holder and to recover expenses properly incurred in an insolvency case**

It is axiomatic that a private office holder should be entitled to be remunerated and that expenses properly incurred in the conduct of the case should be reimbursed.

- (b) that the entitlement for remuneration of an office holder may be determined by a court, relevant authority or other institution (for example, a committee of creditors)**

These can be alternatives or they may create a hierarchy – for example, if creditors fail to resolve the issue, the court may do so.

- (c) the basis upon which the remuneration of an office holder may be calculated**

This needs careful consideration and a balance is needed between remuneration based on ‘time’ and a percentage of realisations and/or distributions.

- (d) an appropriate mechanism for the review/appeal against the determination of the remuneration payable to an office holder**

Depending on the approach taken in (b) above, this may be an appeal to a court or other authority.

- (e) for the payment of such remuneration out of the assets of the estate of the debtor including payment on account during the progress of the case**

Another possible source is some form of fund established by the government.

- (f) an appropriate level of priority for the payment of such remuneration ahead of other claims**

With the possible exception of secured creditor claims, there should be no claims that have priority for payment before the remuneration of an office holder. To provide otherwise would run the certain risk of deterring office holders from accepting appointments.

PRINCIPLE 10 – RELEASE OF OFFICE HOLDER

The law should provide that, subject to any objection by a regulatory body or an interested party, an office holder may be released from his/her appointment as office holder in an insolvency case

The law may provide that this may occur upon the expiry of a term of years (for example, X years from the payment of a final dividend to creditors or from the filing of final accounts or report) or by order of the court upon the application of the office holder. The effect of such a release is, normally, that it formally terminates the appointment of the office holder to the insolvency case. It may also release the office holder from all claims and liability in respect of things done or not done in the administration of the insolvency case.

PRINCIPLE 11 – INSURANCE & BONDING

The law should require that an office holder must at all times maintain a bond or professional indemnity insurance cover to protect third parties against negligence or breach of duty or fraud by an office holder

This is necessary and is consistent with the requirement for such insurance in most professions.

PRINCIPLE 12 - CODE OF ETHICS

The law should encourage and facilitate the development of a code of ethics for office holders, preferably through a professional body

Such a code should deal with appropriate conduct as, for example:

- the need for impartiality
- the need for integrity and accountability
- the need for independence
- the need to avoid the perception of possible conflicts of interest
- the need for proper conduct between office holders (as, for example, if they are competing for appointment to an insolvency case).

The law could compel the application of a 'code' of ethics, either by setting that code or requiring that a code that has been established by a professional body be recognised as binding on office holders.