

ALBANIA



Legislative framework

Legislative framework for insolvency proceedings

The Law No. 8901, dated 23 May 2002 on Bankruptcy (as amended, the LB) is the main legislation governing the insolvency proceedings of businesses (including both legal entities and entrepreneurs).¹

Legislative framework for insolvency office holders

The main legislative provisions relating to insolvency office holders (IOHs) are found in the LB and are supplemented by other laws, including the Order of the Minister of Justice, No. 26, dated 14 January 2013 on the Detailed Rules for the Supervision and Inspection Procedures of Insolvency Administrators; Decision of the Council of Ministers No. 197, dated 13 April 2007 on the Criteria and Conditions for the Establishment of the Insolvency Administrator's Compensation and Reimbursement of Expenses; Government Decision No. 125, dated 6 February 2013 on the Approval of the Code of Ethics for the Insolvency Administrators; and the Decision of the Council of Ministers No. 124, dated 6 February 2013 on National Standards of Administration of the Bankruptcy Estate.

Further provisions relating to the Bankruptcy Supervision Agency are found in the Regulation on the definition of specific rules for the internal organisation and operation of the Bankruptcy Supervisory Agency and the Regulation on the definition of specific rules for the procedures and terms of the organisation of the test on licensing of the insolvency administrators.

Types of insolvency procedures

Under the LB, there is one gateway into insolvency proceedings for businesses that are illiquid, threatened with illiquidity and, in respect of legal entities, over-indebted. This can lead to (i) settling the debtor's obligations through the sale and liquidation of the debtor's business and assets; or (ii) a reorganisation plan to continue the debtor's business concluded between the debtor and its majority creditors, voting in groups according to their rights and financial interests. A reorganisation plan may be submitted at any time in insolvency proceedings before the final creditors' meeting.²

Filing of the petition for opening of insolvency proceedings gives rise to a preliminary phase, ending on the adoption of the decision by the court on the opening of the insolvency proceedings, during which a temporary IOH may be appointed.

Institutional framework

Pursuant to the LB, the key players in insolvency proceedings in Albania are the insolvency court (and the insolvency judge), the IOH and creditors (acting as a general body or as represented by the creditors' committee).

In Albania insolvency proceedings under the LB are overseen by the competent court (being the commercial division of the competent district court where the headquarters of the debtor are registered). The court directs and controls the proceedings from opening to closure. It decides, among other matters, on the initiation and termination of proceedings and the appointment, resignation or dismissal of an IOH. The court may at any time request the IOH to provide specific data or reports on the progress of administration of the case and must request at least one report from the IOH every three months.

The IOH, known as the administrator, is appointed by the court at its own discretion, although the general body of creditors can propose his replacement. The IOH administers the bankruptcy estate. In addition to taking control of and managing the debtor's property, he is entitled to request certain information from the debtor and to initiate legal proceedings on behalf of the debtor. The activities of the IOH are closely overseen by the court and the creditors' committee. The new Albanian Bankruptcy Supervision Agency also supervises the conduct of IOHs.³

The general body of creditors is convened by the court at the outset of the insolvency case and thereafter on the request of the creditors' committee, the IOH or creditors representing one-fifth of all the claims by value. The general body of creditors decides on any formation of a creditors' committee.

A creditors' committee may be established on the decision of the general body of creditors; however, the court is also entitled to establish the creditors' committee before the first meeting of the general body of creditors (in which case the creditors can decide whether or not to maintain the creditors' committee). The creditors' committee supports and oversees the work of the insolvency administrator. It is entitled to receive information from the IOH on the overall management of the case and to check books and other documents necessary for assessing the financial condition of the debtor. Its members are entitled to remuneration.

Assessment overview/strengths and weaknesses

Based on the results of the assessment, a detailed legal framework exists for the IOH profession in Albania, which prima facie, displays a number of key strengths. Nevertheless, the framework is new and under development. It would benefit from further improvements to address certain key areas of weaknesses and thus further improve IOH capacity and performance.

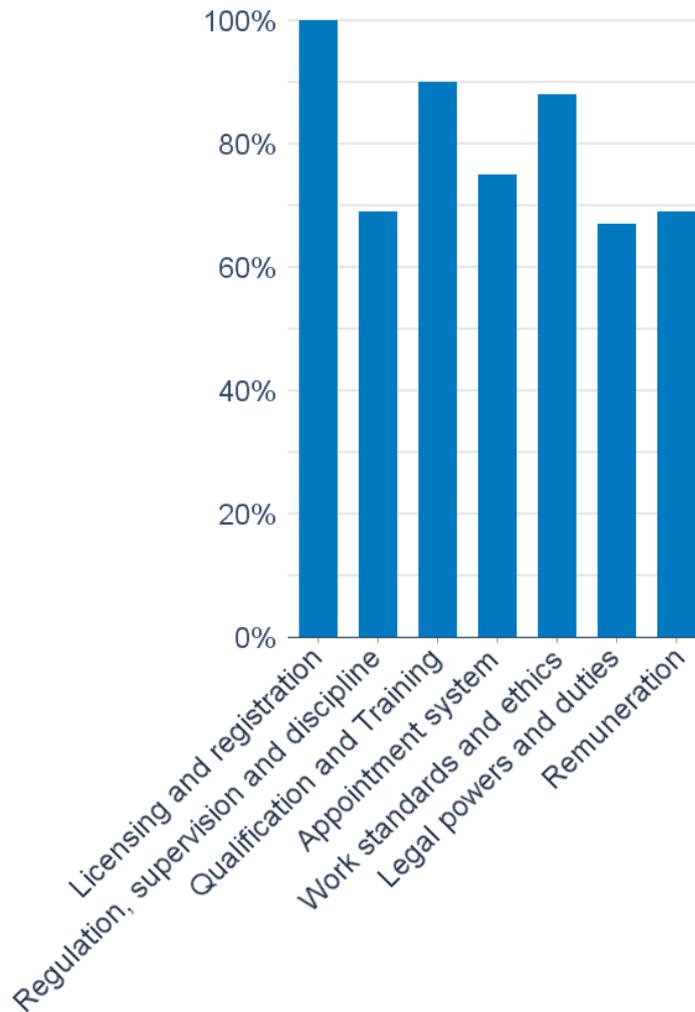
Benchmark	Strengths of the Albanian IOH professional framework	Weaknesses of the Albanian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> IOHs are required to obtain a licence, which is valid for two years. A list of IOHs is kept by the Albanian Bankruptcy Supervision Agency. It is easily accessible to all third parties and is available online. 	
Regulation, supervision and discipline:	<ul style="list-style-type: none"> A single dedicated institution, the Albanian Bankruptcy Supervision Agency organised under the Ministry of Justice, has been created to act as the central authority for the regulation, supervision and discipline of IOHs. In addition, the court and the creditors' committee play a role in the supervision and discipline of IOHs. 	<ul style="list-style-type: none"> The Albanian Bankruptcy Supervision Agency, while empowered with matters of supervision and regulation, does not monitor the activities of IOHs on a statutory prescribed periodic basis, although ad hoc supervision appears to take place and IOHs must send quarterly reports to the Albanian Bankruptcy Supervision Agency. There is no separate, centralised complaints system. Complaints can be filed with the Albanian Bankruptcy Supervision Agency, the creditors' committee and the court. Nevertheless, a separate complaints procedure operated by the Albanian Bankruptcy Supervision Agency is expected to be established. Sanctioning power is currently split, with the court able to issue fines and discharge the IOH and the Albanian Bankruptcy Supervision Agency only able (at this stage) to revoke the licence of the IOH. The grounds for licence revocation by the Albanian Bankruptcy Supervision Agency are unclear.
Qualification and training:	<ul style="list-style-type: none"> A relevant tertiary qualification in law or 	<ul style="list-style-type: none"> IOH candidates are not required to have prior "on

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	<p>economics discipline is required.</p> <ul style="list-style-type: none"> • Prospective IOHs are required to pass a specialised examination organised by the Albanian Bankruptcy Supervision Agency. • Candidates must establish a clear criminal record. • Renewal of the IOH's licence is dependent on participation in continuing educational training but no minimum hours are prescribed by legislation. 	<p>the job" work experience with a practising IOH; although they must undertake some pre-examination training and have professional experience of not less than 10 years in business.</p>
Appointment system:	<ul style="list-style-type: none"> • Creditors cannot influence the appointment of the temporary and permanent IOH, but the general body of creditors can propose his replacement (the court can only refuse the creditors' nomination if such a person would be "unqualified" for the execution of such office). 	<ul style="list-style-type: none"> • Subject to the ability of the creditors to request the court for the removal of the IOH, the IOH is appointed at the court's discretion. • There are no guidelines in the LB on selection criteria to be taken into account by the court when appointing the temporary IOHs.
Work standards and ethics:	<ul style="list-style-type: none"> • A professional code of ethics and national standards of administration of the bankruptcy estate exist and are binding on all IOHs. • Compliance with the code of ethics and national standards of administration of the bankruptcy estate is monitored by the Albanian Bankruptcy Supervision Agency, although such monitoring is carried out on a case-by-case basis. 	
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs have the necessary legal powers to manage the debtor's property in an autonomous way, subject to some limitations, including the requirement for the prior 	<ul style="list-style-type: none"> • Third parties are not subject to any statutory obligations to cooperate with the IOH. The IOH must rely on the court for any assistance in actions for recovery of the

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	<p>approval of the creditors' committee for the sale of debtors' assets.</p> <ul style="list-style-type: none"> • The debtor and parties connected to the debtor are required to cooperate with the IOH and provide information. A fine or criminal liability may be imposed on the debtor or parties connected to the debtor for the concealment of debtor's assets. • Reports must be submitted by the IOH every three months to the court in liquidation. 	<p>debtors' estate.</p> <ul style="list-style-type: none"> • IOHs are only required to report to creditors if requested in liquidation i.e. there is no regular statutory reporting requirement.. In reorganisation the IOH is required to file reports with the court and creditors only on an annual basis.
Remuneration:	<ul style="list-style-type: none"> • IOH fees are regulated by law, which provides for remuneration according to a sliding scale percentages based on the value of assets sold and/or otherwise collected by the IOH and the total liabilities of the bankruptcy estate after the closure of the insolvency proceedings. Separate rules govern IOH remuneration for assistance in reorganisation plans. • IOH fees are protected by a minimum level of remuneration. • Remuneration of IOHs is part of bankruptcy costs and is settled before any claims on the bankruptcy estate (including any preferential and unsecured claims). 	

The following chart shows us the quality of legal framework related to IOHs in the key areas as listed below.

Albania



Key recommendations

As illustrated in the chart above, Albania appears to have developed a legal framework for the IOH profession which covers the majority of the key elements of the profession. Nevertheless, there are a couple of minor areas where reforms are particularly needed (in the following order): regulation, supervision and discipline, qualification and training, appointment system and legal powers and duties.

- The envisaged strengthening and centralisation of regulatory functions under the Albanian Bankruptcy Supervision Agency is likely to ensure a more consistent and effective approach to IOH regulation. In this respect the centralised, formal complaints procedure to be operated by the Albanian Bankruptcy Supervision Agency, should be implemented.

- Insolvency-related work experience with a practising IOH should be introduced at a future date once the IOH profession is more established, to further enhance the performance of IOHs and the status of the profession as a whole.
- Certain provisions should be introduced to clarify and give creditors a role in the appointment of the temporary and permanent IOH and to provide a more fair and transparent appointment system for the protection of stakeholders' interests that would allow the suitable candidates to get appointed as IOHs.
- Regular reporting requirements for IOHs to creditors and other relevant stakeholders (including the court) would facilitate creditor oversight over the IOH's activities and the transparency of administration of the insolvency case.
- Powers for IOHs to request cooperation from third parties (and sanctions for non-compliance) should be introduced to facilitate the recovery of assets belonging to the debtor's estate.

¹ Based on the information received from the Albanian Supervision Agency, a further modification of the LB may be expected in the near future.

² Article 181 of the LB.

³ The Albanian Bankruptcy Supervision Agency began operations in April 2012.