

BELARUS



Legislative framework

Legislative framework for insolvency proceedings

The Law of the Republic of Belarus of 13 July 2012 No. 415-3 on Economic Insolvency (LI) is the main legislation governing the insolvency of legal entities and registered sole proprietors. Procedural rules relating to insolvency are contained in the Economic Procedural Code of the Republic of Belarus of 15 December 1998 No. 219-Z (EPC). Insolvency legislation is not applicable to certain legal entities of a strategic nature.¹

Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are found in the LI; however, other laws are relevant, including the Resolution on some matters related to the qualification of persons for the position of IOHs in insolvency (bankruptcy) proceedings;² Resolution Governing the Procedure on Fixing the Remuneration of IOHs³ and the Resolution on the Examination of IOHs.⁴

Types of insolvency procedures

Following a petition by the debtor or creditors to commence insolvency proceedings under the LI, an initial protective procedure is opened for a limited period. Its aim is to enable the court to establish whether the grounds for the opening of insolvency proceedings exist and to safeguard the assets of the debtor (through the appointment of a temporary IOH).⁵ On termination of the protective procedure, the court may decide to open insolvency proceedings aimed at either: (i) rehabilitation or (ii) liquidation of the debtor. An amicable settlement agreement between the creditors and the debtor may be adopted at any stage after the commencement of insolvency proceedings, subject to court approval.⁶

Institutional framework

Pursuant to the EPC, the key players in insolvency proceedings in Belarus are the commercial court, the IOH, and the creditors (acting as a general body and, to the extent applicable, as represented by the creditors' committee).

In Belarus insolvency proceedings are overseen by the competent court (being the commercial court where the debtor has its registered place of business). The court directs and controls the proceedings from opening to closure. It decides, among other matters, on the initiation and termination of the insolvency proceedings and the appointment or dismissal of the IOH.

The IOH, known as the insolvency manager, can be either a natural person or a legal entity and is appointed by the court on the recommendation of the creditors, the debtor (where the debtor has initiated the procedure) and (only in specific cases indicated in the LI) state authorities.⁷ The insolvency manager takes control of and manages the property of the debtor and is, inter alia, entitled to request information from relevant parties and initiate legal proceedings on behalf of the debtor. The activities of the insolvency manager are closely controlled and monitored by the court.

The general body of creditors has a number of responsibilities. These include the protection of creditors' claims, adoption of decisions on the approval (and modification) of the recovery or liquidation plan and formation of the creditors' committee. The insolvency manager may convene a general meeting of creditors on his own initiative or if the creditors' committee or one third of the creditors so request. Votes at the general meeting of creditors are granted to unsecured creditors only (secured creditors are entitled to vote with respect to the unsecured part of their claims).

A creditors' committee must be formed at the first general meeting of creditors if there are more than 10 creditors. Otherwise formation of a creditors' committee is optional. The creditors' committee is entitled to convene the general meeting of creditors, make recommendations to creditors relating to the performance of the insolvency manager and is empowered to request information necessary for assessing the financial condition of the debtor.

Assessment overview/strengths and weaknesses

Based on the results of the assessment, a legal framework exists for the IOH profession in Belarus, which at first appearance displays a number of key strengths. Nevertheless, the framework would benefit from further improvements to address certain areas of weaknesses and thus further improve IOH capacity and performance.

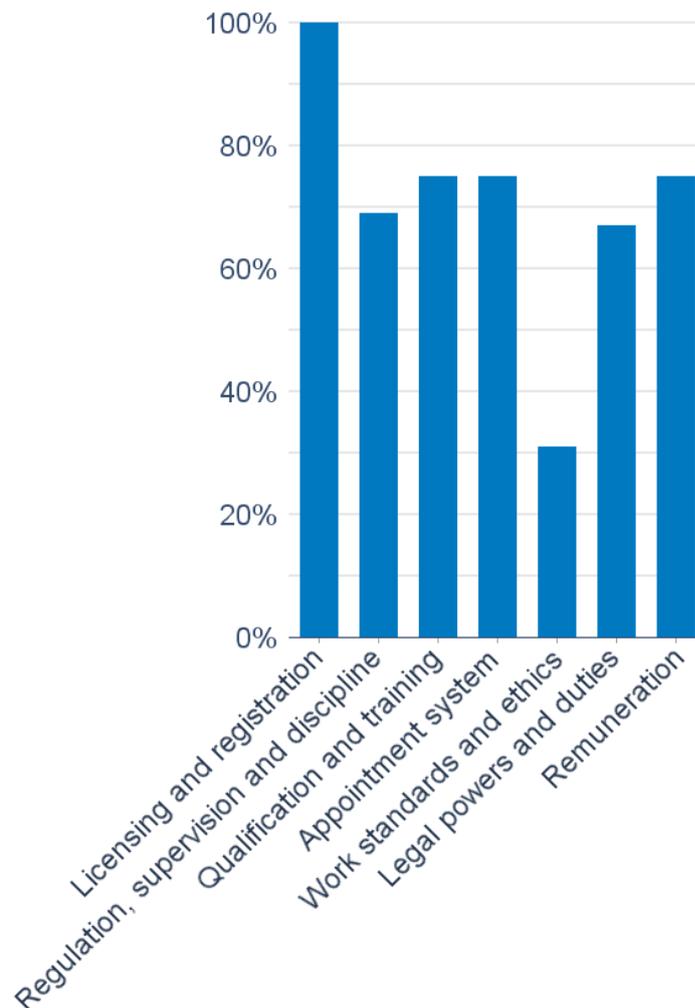
Benchmarks	Strengths of the Belarusian IOH professional framework	Weaknesses of the Belarusian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to obtain a certificate (which has a validity period of three years). • A list of certified IOHs is easily accessible to all third parties, and is available online. 	
Regulation, supervision and discipline:	<ul style="list-style-type: none"> • A dedicated unit within the Ministry of Economy, the 	<ul style="list-style-type: none"> • There is no official complaints system for IOH

Benchmarks	Strengths of the Belarusian IOH professional framework	Weaknesses of the Belarusian IOH professional framework
	<p>Department for Financial Rehabilitation and Bankruptcy, is the main body responsible for matters relating to the regulation, supervision and discipline of IOHs. It has branches in all major cities.</p> <ul style="list-style-type: none"> The Department for Financial Rehabilitation and Bankruptcy appears to monitor the performance and activities of IOHs on a regular basis. 	<p>misconduct, although complaints may be filed before the court, and in certain cases, the creditors' committee.</p> <ul style="list-style-type: none"> The Department for Financial Rehabilitation and Bankruptcy does not have a significant disciplinary function and can only revoke the licence of the IOH. Other sanctions (fines and, reprimands) can only be imposed by the court.
Qualification and training:	<ul style="list-style-type: none"> IOH candidates are required to pass a specific examination and interview for entry to the profession organised by the department within the Ministry of Economy. Criminal checks are required for prospective IOHs (persons convicted of an intentional criminal offence cannot practise as IOHs). Continuing educational training is required for renewal of the IOH's certification. 	<ul style="list-style-type: none"> A tertiary qualification is required; however it is not necessarily required to be in a field relevant for IOH activities; candidates without a law or economics degree must complete three months training with the department. There is no requirement for prospective IOHs to have insolvency-related work experience, although they must have more than three years' prior business work experience.
Appointment system:	<ul style="list-style-type: none"> Creditors have some influence over the appointment of the IOH: they can ask the court to appoint a specific IOH and propose a replacement IOH to the court. 	<ul style="list-style-type: none"> Although creditors can make recommendations to the court on the appointment of the IOH, other parties including the debtor can also make recommendations and the court is not obliged to follow such recommendations. In cases of disagreement between the parties, the court appoints the IOH at its own discretion.
Work standards and ethics:		<ul style="list-style-type: none"> There is no professional code of conduct covering professional and/or ethical rules, although a number of conduct-related provisions are found in different pieces of legislation and an association of IOHs exists.

Benchmarks	Strengths of the Belarusian IOH professional framework	Weaknesses of the Belarusian IOH professional framework
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs have significant powers to manage the debtor's property in insolvency¹⁰; nevertheless, the sale of assets needs to be carried out based on a liquidation plan adopted by the creditors. • IOHs have clear powers and duties set forth in legislation which enables them to request cooperation from the debtor and parties connected to the debtor and the provision of information from state bodies. Failure to cooperate may trigger a fine or criminal liability. • IOHs are required to provide regular monthly reports to the court and the department (but not to creditors or other insolvency stakeholders). • IOHs are entitled to hire specialists on a contractual basis (such as auditors, accountants, etc.). • The IOH has to submit a monthly report on his actions to the court and the Bankruptcy Regulatory Authority. 	<ul style="list-style-type: none"> • Third parties are not under a specific obligation to cooperate with the IOH. • There is no regular statutory reporting requirement as IOHs are only required to report to creditors if requested.
Remuneration:	<ul style="list-style-type: none"> • Minimum amounts of remuneration are established by law and the court may grant an additional remuneration (that may be either an additional quarterly remuneration or an additional fee at the end of the procedure), which is reportedly awarded relatively frequently in practice.¹¹ • Remuneration of IOHs forms part of the costs of the proceedings and is settled in priority to all other claims. 	

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

Belarus



Key recommendations

As illustrated in the chart above, Belarus appears to have developed a legal framework for IOHs which covers some of the key elements of the profession. Nevertheless, there are certain areas where reforms are particularly needed: regulation, supervision and discipline; qualification and training; appointment system; work standards and ethics and legal and powers and duties.

- The strengthening and greater centralisation of regulatory functions under the Department for Financial Rehabilitation and Bankruptcy would likely ensure a more consistent and effective approach to IOH regulation. In this respect the establishment

of a formal complaints procedure should be considered.

- Relevant professional education, as well as practical insolvency-related work experience, should be required for prospective IOHs in order to enhance the performance of IOHs and the status of the profession as a whole.
- Consideration should be given to limiting the wide discretion of the court to select and appoint the IOH and thereby ensure an appointment system that reflects stakeholders, and particularly creditors' views.
- A comprehensive and publicly available code of professional conduct for IOHs of a binding nature should be adopted to provide useful guidelines and principles for IOH professional activities.
- A direct reporting obligation to creditors on a regular basis by the IOH should be introduced to ensure greater transparency and to act as a further check and balance.

¹ Article 3 of LI.

² Resolution of the Council of Ministers of the Republic of Belarus No. 14 of 8 January 2013 (as amended) "On some matters related to the qualification of persons for the position of insolvency office holders in insolvency (bankruptcy) proceedings".

³ Resolution of Council of Ministers of the Republic of Belarus of 28 February 2007 N 260 (as amended on 30 December 2010). Resolution No 60 of 26 January 2013 on the approval of the Regulation on fixing and payment of salary to temporary (crisis) manager, performing activity on the basis of the contract is furthermore applicable to IOHs performing their activities on the basis of a contract with a state authority.

⁴ Resolution of Council of Ministers of the Republic of Belarus of 8 January 2013 N 14.

⁵ Article 39 of LI.

⁶ Article 152 of LI.

⁷ Article 64 of LI.

⁸ IOHs are required to obtain a qualification certificate issued by the Rehabilitation and Insolvency Department of the Ministry of Economy. A qualification certificate may have three classes – A, B, C (depending on the size of a company under bankruptcy; i.e. A certificate allows the IOH to manage a company up to 100 employees; B – up to 1000; C – without limitations)

⁹ http://www.economy.gov.by/ru/restructuring-insolvency/new_url_896402376.

¹⁰ Nevertheless, the IOH has to request authorization from the creditors committee, if such property is state-owned.

¹¹ The IOH's remuneration is paid before unsecured claims and priority claims. If the property of a debtor is insufficient to cover the IOH remuneration, it may be paid from the state budget.