

BOSNIA AND HERZEGOVINA



Legislative framework

Legislative framework for insolvency proceedings

As a result of the complex democratic and governmental system of Bosnia and Herzegovina (which is divided into two entities, the Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS)), insolvency proceedings in respect of legal entities are governed by two main pieces of legislation: (i) the Law on Bankruptcy Proceedings applicable to the FBiH (as amended, the LBP)¹ and (ii) the Law on Bankruptcy Proceedings of RS (as amended).²

Further provisions applicable in the FBiH are found in the Law on Liquidation Procedure of the FBiH³ as well as in the Law on Civil Procedures.⁴ There are slight differences among the rules applicable in the FBiH and in the RS. The pilot assessment has focused primarily on the provisions applicable in FBiH and has excluded Brčko District from its scope.

Legislative framework for insolvency office holders

Provisions relating to insolvency office holders (IOHs) are largely found in the LBP. In the FBiH, a rulebook governs the fees and the amount of compensation for experts and interim bankruptcy trustees.⁵ A similar rulebook is not yet applicable to the RS. Furthermore, in both the FBiH and in the RS a rulebook governs the requirements and the procedure of professional exams for prospective IOHs.⁶

Types of insolvency procedures

There is one gateway into insolvency proceedings under the LBP, which allows for the liquidation of businesses or their reorganisation as a going concern on insolvency or threatened insolvency.

Institutional framework

Pursuant to the LBP, the key players in insolvency proceedings in FBiH are the insolvency court, the insolvency judge, the IOH and creditors (acting through an assembly of creditors and the creditors' committee). The LBP provides for the ability to appoint an interim IOH and interim creditors' committee during the initial phase of the insolvency proceedings.

In FBiH insolvency proceedings are court-driven and overseen by the competent court (being the court where the headquarters of the debtor are located).

The insolvency judge directs and controls the insolvency proceedings from opening to closure. He exercises all the rights and responsibilities relating to the proceedings, including the appointment of any expert, the IOH (known as the interim bankruptcy trustee) and the members of the interim creditors' committee. The insolvency judge supervises the work of the interim bankruptcy trustee and the subsequently appointed bankruptcy trustee.

The IOH, known as the bankruptcy trustee, can be appointed by the insolvency judge on an interim basis as a protective measure to preserve the "future bankruptcy estate". Following appointment, the interim bankruptcy trustee reports to the court on, inter alia, the existence of the grounds for opening of insolvency proceedings.

On the opening of insolvency proceedings, the obligations of the interim bankruptcy trustee are transferred to the bankruptcy trustee, who is authorised and required to take possession of the property included in the bankruptcy estate and manage it, continue the debtor's business operations subject to satisfaction of certain conditions and (if needed) liquidate the debtor's property in accordance with the decision of the assembly of creditors. In reorganisation proceedings, the bankruptcy trustee, among other matters, may submit a reorganisation plan to the insolvency court and is required to submit reports thereafter to the creditors' committee and the insolvency court on implementation of the plan.

The assembly of creditors is the general body of creditors convened by the judge on his decision to open bankruptcy proceedings and at any time on the request of the bankruptcy trustee, the creditors' committee, or at least five creditors who jointly represent one fifth by value of the filed claims. The assembly elects the creditors' committee from among its members. The creditors' committee supports and supervises the work of the bankruptcy trustee.

Assessment overview/strengths and weaknesses

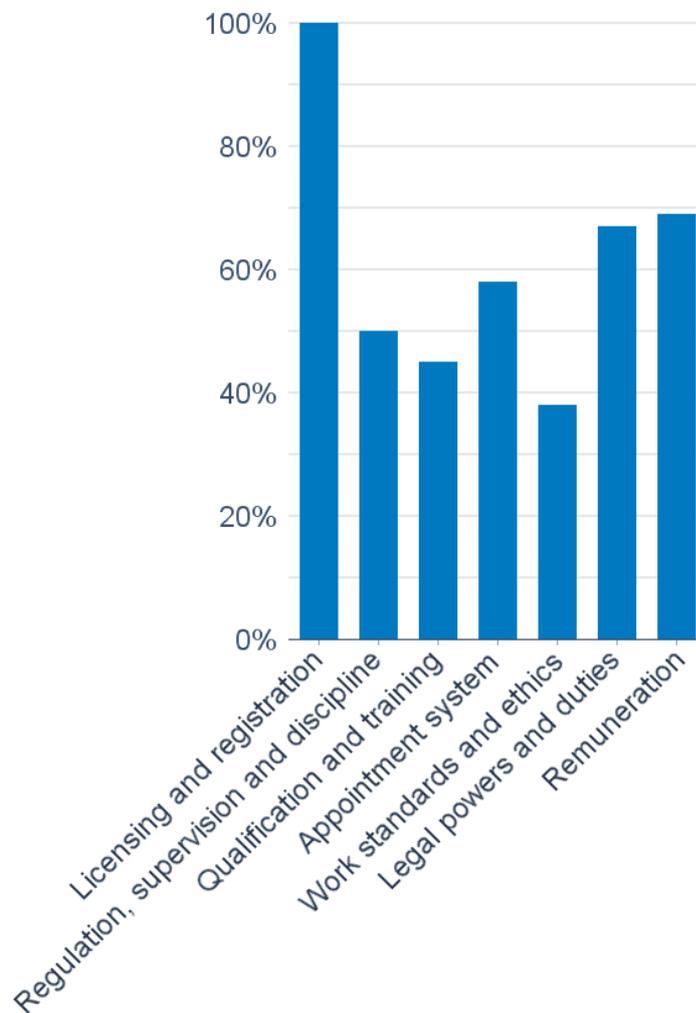
Based on the results of the pilot assessment, a partially developed legal framework exists for the IOH profession in FBiH. The framework would benefit from improvement to address certain key areas of weaknesses and thus improve IOH professional capacity and performance.

Benchmarks	Strengths of the FBiH IOH professional framework	Weaknesses of the FBiH IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to be registered. • An official list of authorised IOHs is published in the official gazette and is available online. 	
Regulation, supervision and discipline:		<ul style="list-style-type: none"> • There is no dedicated regulatory body for IOHs. The Ministry of Justice and the judge appear to play the main regulatory, supervisory and disciplinary powers over IOHs, assisted by the professional associations. • There is no legal requirement for regular monitoring of the activities of IOHs. • There is no separate complaints procedure; nonetheless, complaints about IOH performance may be filed with the Ministry of Justice, the court and/or the professional associations, which is less accessible than a complaint system operated by a dedicated regulatory body. • A wide range of sanctions does not appear to be available for IOH misconduct. The judge may impose sanctions for IOH misconduct (fine or dismissal).
Qualification and training:	<ul style="list-style-type: none"> • IOHs are required to pass a specific examination for entry to the profession organised by the Ministry of Justice. 	<ul style="list-style-type: none"> • Qualification requirements for IOHs are not well defined. • No specific training and/or work experience for prospective IOHs with a registered IOH is required. • No criminal checks are required for prospective IOHs before admittance to the profession. • Continuing training for

Benchmarks	Strengths of the F BiH IOH professional framework	Weaknesses of the F BiH IOH professional framework
		<p>registered IOHs is not required by law.</p>
Appointment system:		<ul style="list-style-type: none"> • No detailed provisions govern the selection/appointment of IOHs by the court. • Creditors have a limited right to influence the replacement of a court appointed IOH, and do not have the right to propose the initial IOH.
Work standards and ethics:		<ul style="list-style-type: none"> • There is no code of professional or ethics conduct for the profession, nonetheless, some conduct related provisions are found in the LBP.
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs generally exercise management control of the debtor but are subject to creditors' oversight for certain legal actions of special importance, for example, sale of the debtor's assets. • The debtor and creditors are required to cooperate with the IOH and the failure to cooperate may result in sanctions (such as fine). 	<ul style="list-style-type: none"> • There is no statutory requirement for cooperation with an IOH by non-creditor third parties or government institutions. • IOHs are not required to submit regular reports to stakeholders in liquidation. In reorganisation, the IOH is required to submit annual reports and the judge and creditors can request information at any time.
Remuneration:	<ul style="list-style-type: none"> • A statutory framework exists for remuneration of IOHs in the F BiH. • Remuneration of IOHs is settled in priority to all unsecured and priority creditors. 	

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

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Key recommendations

As illustrated in the chart above, areas where reforms are particularly needed in FBiH include: regulation, supervision and discipline; qualification and training; appointment system; work standards and ethics and legal powers and duties.

- Further consideration should be given to establishing a dedicated regulatory body for IOHs. Experience demonstrates that an active regulatory body is more effective at enhancing IOH professional standing and performance than a more passive system of regulation by the courts and government authorities. Such a regulatory body could monitor the activities of IOHs on a regular basis.

- The establishment of a separate complaints procedure operated by a dedicated regulatory body should be considered to improve accessibility by interested parties.
- Relevant professional education, practical insolvency work experience for prospective IOHs as well as regular continuing educational training for registered IOHs should be introduced in order to enhance the performance of IOHs and the status of the profession as a whole.
- Criminal checks for prospective IOHs should be introduced to ensure that unsuitable candidates are kept out of the profession.
- Certain provisions should be introduced in the LBP to clarify the IOH appointment procedure and to provide a fair and transparent appointment system for the protection of stakeholders' interests. Further creditor input in the selection of the IOH in insolvency proceedings would be desirable.
- 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.
- Regular reporting requirements by IOHs in bankruptcy proceedings would increase transparency of the process and the accountability of the IOH.

¹ Published in the Official Gazette of FBiH No. 29/03, 33/04 and 47/06.

² Consolidated text published in the Official Gazette of Republika Srpska No. 26/10.

³ Adopted in 2003.

⁴ Published in the Official Gazette of FBiH No. 53/03 and 19/06.

⁵ Adopted in 2008.

⁶ In the FBiH it was adopted in 2004 and amended in 2005 and 2006.