

BULGARIA



Legislative framework

Legislative framework for insolvency proceedings

The Commerce Act, published in the State Gazette No 48 dated 18 June 1991 (as amended, the CA) and the Civil Procedure Code, published in the State Gazette No 59 dated 20 July 2007 (as amended, the CPC) provide the legislative framework for insolvency (bankruptcy) proceedings in Bulgaria.

Legislative framework for insolvency office holders

Provisions on insolvency office holders (IOHs) are found in the CA and are supplemented by Regulation no. 3 dated 27 June 2005 (the Regulation) issued by the Minister of Justice, the Minister of Economy and the Minister of Finance, which sets out certain admission criteria for the profession and continuing training requirements for IOHs.

Types of insolvency procedures

There is one gateway into insolvency proceedings under the CA, which allows for (i) the liquidation of businesses on insolvency and the sale or (ii) restructuring of businesses as part of a reorganisation plan. Businesses must be technically insolvent to be eligible to enter insolvency proceedings.

There is a preliminary phase following filing of the insolvency petition during which the court determines whether the necessary conditions are met to open insolvency proceedings.

Institutional framework

Pursuant to CA, the key players in insolvency (bankruptcy) proceedings in Bulgaria are the insolvency court, the IOH and the creditors (acting as part of an assembly of creditors and as represented by a creditors' committee).

The court (being the district court where the seat of the debtor is located) supervises the insolvency proceedings from start to close and appoints a temporary IOH at the outset of the proceedings. The first assembly of creditors is responsible for selecting the permanent IOH.

The IOH, known as the bankruptcy trustee or receiver, inter alia, exercises management control over the debtor, convenes and organises creditors' meetings and participates in any court proceedings or lawsuits on behalf of the debtor. The bankruptcy trustee is entitled to propose any reorganisation plan and is empowered to sell the property of the bankruptcy estate in liquidation. The bankruptcy trustee may not delegate his powers to others without the prior permission of the court.

Creditors meet as an assembly of creditors, convened by the court (and chaired by the judge) on the request of the debtor, the bankruptcy trustee, the creditors' committee or creditors representing one-fifth of creditors' claims by value. The assembly of creditors nominates the permanent bankruptcy trustee (and decides on any discharge of the trustee and his replacement) and elects any creditors' committee.

The assembly of creditors may appoint a creditors' committee consisting of not less than three and not more than nine members. The creditors' committee assists and supervises the activities of the IOH in managing the debtor's property.

Assessment overview/strengths and weaknesses

Based on the results of the assessment, a developed legal framework appears to exist for the IOH profession in Bulgaria, which prima facie, displays a number of strengths. Nevertheless, such framework would benefit from further improvements to address certain important areas of weaknesses and thus improve IOH capacity and performance.

Benchmarks	Strengths of the Bulgarian IOH professional framework	Weakness of the Bulgarian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to be registered with the Ministry of Justice. • An official list of authorised IOHs is easily accessible and is published on the web site of the Ministry of Justice, as well as in the official gazette. 	
Regulation, supervision and discipline:		<ul style="list-style-type: none"> • There is no dedicated regulatory body for IOHs. Although the Inspectorate under the Ministry of Justice is responsible in part for the regulation of IOHs (together with the court), it has limited capacity and is also responsible for other

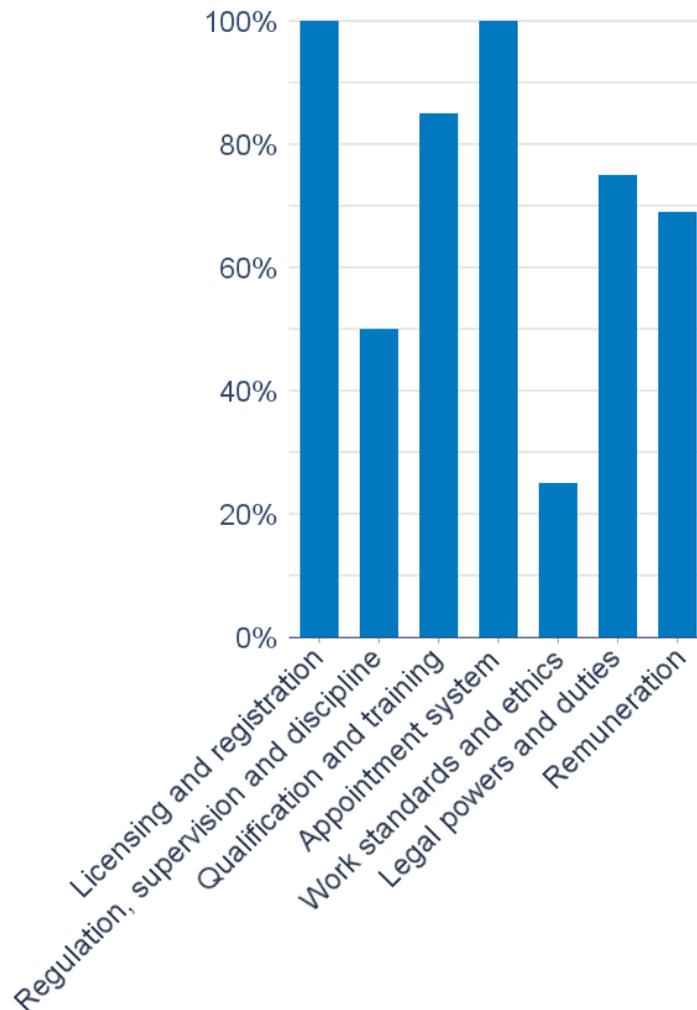
Benchmarks	Strengths of the Bulgarian IOH professional framework	Weakness of the Bulgarian IOH professional framework
		<p>professions including bailiffs and notaries.</p> <ul style="list-style-type: none"> • There is no requirement for regular monitoring of the performance/activities of IOHs and regular monitoring does not appear to take place in practice outside the framework of existing insolvency proceedings. • There is no centralised complaints system, although complaints can be filed before the court by interested parties and the Inspectorate receives complaints about IOH misconduct. • Sanctioning power is split between the Ministry of Justice, which can remove the IOH from the list and the court, which can issue fines or dismiss the IOH from a particular case.
Qualification and training:	<ul style="list-style-type: none"> • Prospective IOHs need to have obtained a relevant tertiary education (law or economics). • IOHs are required to pass a specific examination for entry to the profession organised by the Ministry of Justice. • IOH candidates are required to obtain a certificate from a court department (with the assistance of the Prosecutor in Chief's Office) evidencing that they do not have a criminal record. • Participation by IOHs in continuing training is required by the Regulation and IOHs are charged a compulsory fee for 	<ul style="list-style-type: none"> • IOH candidates do not need any prior work experience with a qualified IOH, although they need to have at least three years' prior work experience in the field of law or economics.

Benchmarks	Strengths of the Bulgarian IOH professional framework	Weakness of the Bulgarian IOH professional framework
	<p>continuing training, nonetheless the minimum number of training hours is not specified by law.</p>	
Appointment system:	<ul style="list-style-type: none"> • A creditor that has petitioned for the opening of bankruptcy proceedings may nominate a person to be appointed as a temporary IOH by the court and such person is appointed by the court in most cases. • Creditors, acting as a majority, elect the permanent IOH at the first assembly of creditors and such person is then appointed by the court. 	
Work standards and ethics:		<ul style="list-style-type: none"> • There is no code of professional conduct for IOHs.
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs appear to enjoy a reasonable degree of autonomy when managing the debtor's assets, although they need to comply with the court's and creditors' decisions in certain cases, including the sale of assets. • IOHs are entitled to request cooperation from the debtor and government bodies (also through court assistance) but not from third parties. • IOHs are subject to regular but stringent (monthly) reporting requirements and must submit monthly performance reports to the court, the creditors' committee and to any single creditor on the request of such creditor. 	
Remuneration:	<ul style="list-style-type: none"> • The assembly of creditors has a decisive role in determining the amount of IOH remuneration. 	<ul style="list-style-type: none"> • Any advisers appointed by the IOH must be paid out of the IOH's remuneration and such costs can be significant.

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	<ul style="list-style-type: none"> IOH fees form part of the procedural costs and are paid before unsecured creditors (although not preferential and secured creditors). 	

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

Bulgaria



Key recommendations

As illustrated in the chart above, Bulgaria appears to have developed a reliable legal framework for the IOH profession which covers some of the key elements of the profession. Nevertheless, there are certain areas where reforms are particularly needed including: regulation, supervision and discipline, qualification and training, work standards and ethics and remuneration.

- 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.
- In this regard the establishment of an enhanced formal complaints procedure (operated by a dedicated regulatory body) should also be considered.
- Practical work experience with practising IOHs should be introduced for IOH candidates, together with direct continuing training requirements for registered IOHs.
- 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 and to improve IOH performance.
- Greater guidance on the definition of IOH remuneration including minimum levels of remuneration could be beneficial. Further consideration should be given to coverage of the costs of IOHs, in particular any necessary costs incurred by the IOH in appointing advisers to assist the IOH with the insolvency case.