

EGYPT



Legislative framework

Legislative framework for insolvency proceedings

Insolvency proceedings in Egypt for businesses (including sole traders) are governed by the Trade Law No. 17 of 1999 (the Trade Law). Additional provisions relating to companies may be found in the Companies Law No. 159 of 1981.

Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are contained in the Trade Law. Although the Trade Law provides for the adoption of a specific decree governing the IOH profession, as at the date of this publication no such decree had been issued. The Minister of Justice Decree No. 1184 of 1992 (the Ministerial Decree) sets out certain requirements regarding the registration of IOHs with each of the so-called preliminary courts (courts of first instance).

Types of insolvency procedures

There are two types of insolvency (bankruptcy) procedures under Egyptian law available to businesses that have discontinued paying their commercial debts after a disruption in their financial business: (i) liquidation, resulting in a sale or realisation of the debtor's assets, following a petition of the debtor, its creditors, the public prosecution or initiated by the court; or (ii) composition (also for threatened bankruptcy), aimed at reaching an agreement between the debtor and its creditors for settlement of the debtor's financial obligations, following a request from the debtor. Often the composition procedure will result in a sale of the debtor's assets, similar to liquidation.

Institutional framework

Pursuant to the Trade Law, the key players in insolvency procedures are the insolvency court (and a specialist judge), the IOH and (if appointed) the controller.

Insolvency proceedings are overseen by the competent court (being the commercial court where the headquarters of the business are registered) and the judge. The court directs and controls the procedures from opening to closure. It decides, among other matters, on the initiation and termination of proceedings and the appointment of the IOH. A specialist judge is appointed by the court to oversee each insolvency case and plays a central role in supervising the proceedings: he takes the necessary steps to protect the debtor's property and funds, convenes the creditors and chairs their meetings.¹ The judge may be replaced at any time by the court.

The IOH, known as the trustee or liquidator, is appointed in liquidation by the court acting at its own discretion, from its own list. The trustee acts as the agent or representative of both the creditors and the debtor. He is required to take control over and manage the property of the debtor and take all other actions that are necessary in the course of the insolvency proceedings. Nevertheless, the majority of the trustee's actions are subject to the prior approval of the court, including sale of debtor's business and the trustee must report directly to the insolvency judge. In composition, a composition trustee is appointed that, among other matters, supervises the debtor's management of the business, and draws up the list of creditors entitled to participate in the composition.

Although not a key player in practice in most insolvency cases, one or more controller(s) may be appointed by the judge from among the creditors to represent the creditors' interests. The controller examines the balance sheet and the reports of the debtor and assists the judge in the supervision of the trustee at the request of the judge. The controller is entitled to request information from the insolvency trustee on the development of the proceedings. In practice, the court rarely appoints a controller and creditors do not typically exercise their right to request the court to carry out such appointment.

Assessment overview/strengths and weaknesses

Based on the results of the assessment, a weak legal framework exists for the IOH profession in Egypt, which would benefit from significant improvement to address certain key areas of weaknesses and thus further improve IOH capacity and performance.

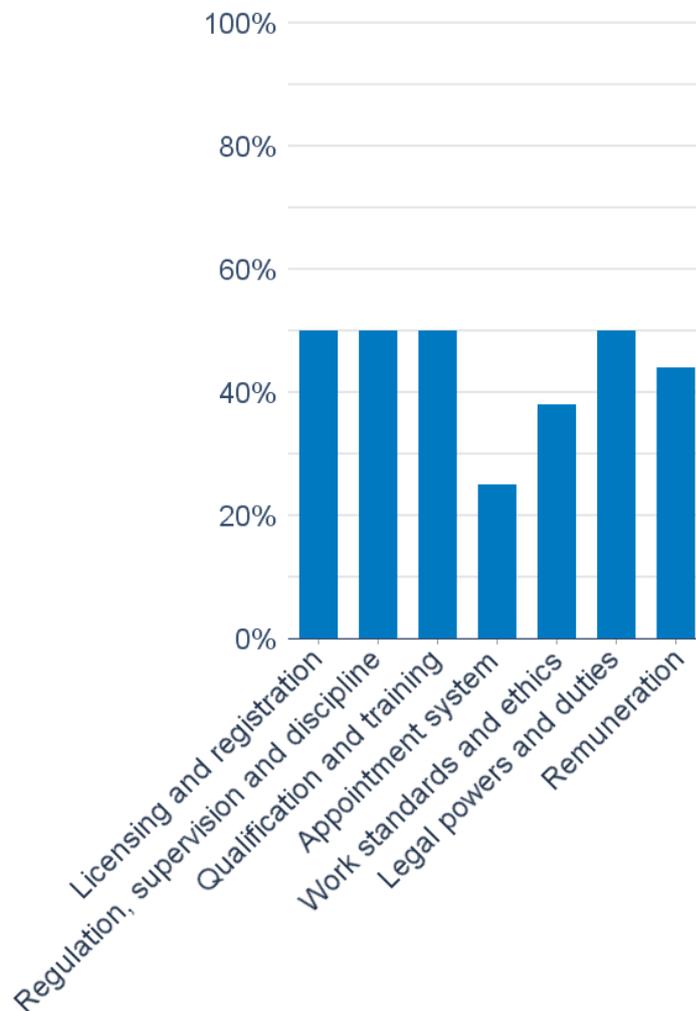
Benchmarks	Strengths of the Egyptian IOH professional framework	Weaknesses of the Egyptian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> The Trade Law and the Ministerial Decree set out certain requirements for registration of IOHs by the courts. 	<ul style="list-style-type: none"> There is no general, centralised system of registration or licensing for IOHs. IOHs must be registered with each preliminary court, which maintains its own list of IOHs that are not freely accessible. The court may only appoint IOHs from its own list.
Regulation, supervision and discipline:		<ul style="list-style-type: none"> There is no dedicated regulatory body for IOHs; the court (acting under the Ministry of Justice) plays

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		<p>the main role relating to supervision and discipline of IOHs.</p> <ul style="list-style-type: none"> • There is no legal requirement for regular monitoring of the activities of IOHs; nevertheless, IOHs are closely supervised by the judge. • There is no complaints system operated by a dedicated body, and complaints can only be filed with the court by interested parties. • Only the court can impose sanctions on IOHs and these are restricted to dismissal of the IOH and criminal sanctions applicable to public servants (which include IOHs).
Qualification and training:	<ul style="list-style-type: none"> • A relevant tertiary qualification is required for prospective IOHs (either in law or business). • There is a prohibition on candidates with criminal records acting as IOHs, if convicted for any criminal offence related to lack of trust and/or honour. 	<ul style="list-style-type: none"> • IOHs are not required to pass a specific examination for entry to the profession. • There is no requirement for prospective IOHs to carry out work experience with a registered IOH. • There is no continuing training requirement for IOHs.
Appointment system:		<ul style="list-style-type: none"> • The court appoints the IOH at its own discretion from its list of IOHs. There is no guidance on appointment of the IOH by the court. • Creditors do not have any influence over the appointment of the initial IOH by the court (but may propose that the court replaces its appointed IOH).
Work standards and ethics:		<ul style="list-style-type: none"> • There is no code of professional conduct covering professional

Benchmarks	Strengths of the Egyptian IOH professional framework	Weaknesses of the Egyptian IOH professional framework
		and/or ethical rules for the IOH profession.
Legal powers and duties:	<ul style="list-style-type: none"> The IOH does not have any express statutory powers to facilitate the recovery of the debtor's assets, although parties may be required to cooperate with reference to the general criminal offence of concealment of assets. 	<ul style="list-style-type: none"> IOHs do not have strong powers to manage the debtor's business in an autonomous way and most of their actions are subject to prior approval of the judge, including the sale of assets. IOHs are not required to report on a regular basis to the judge. Nevertheless, IOHs are required to provide information to creditors acting as "controllers", but in practice controllers are rarely appointed.
Remuneration:	<ul style="list-style-type: none"> Remuneration of IOHs is settled in priority to unsecured claims and forms part of the procedural costs of the insolvency case, but ranks alongside preferential claims. 	<ul style="list-style-type: none"> There is no statutory system for IOH remuneration. The court approves IOH fees based on calculations in the report submitted by the IOH to the court. IOH remuneration ranks equally with other preferential claims (for example, tax and employees' claims), which may reduce the amount of IOH remuneration in practice.

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

Egypt



Key recommendations

As illustrated from the chart above, Egypt appears to have an underdeveloped legal framework for the IOH profession, which covers only some of the key elements of the profession. Reforms are needed in all main assessment areas, as follows:

- Although IOHs must be registered in the relevant preliminary court register, the registration system is not transparent and is highly decentralised. The registration system should be improved to enable IOHs to be appointed exclusively from a centralised list and ensure the integrity and consistency of the profession.

- Further consideration should be given to the creation of a dedicated regulatory body for IOHs. Experience demonstrates that an active regulatory body is more effective at enhancing IOH professional standing and performance. Such a regulatory body could monitor the activities of IOHs on a regular basis.
- Specific entry exams and relevant practical insolvency work experience with a practising IOH 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 lay the foundation for an IOH profession.
- The IOH appointment procedure should be revised to provide a fair and transparent appointment system which reflects stakeholders', and particularly creditors' interests. Creditor input on the selection and appointment of IOHs would be desirable.
- A comprehensive and publicly available code of professional conduct of a binding nature should be adopted for the IOH profession to establish useful professional and ethical guidelines for IOH professional activities.
- An enhanced set of powers and duties for IOHs, including with respect to the recovery of assets belonging to the debtor's estate, would facilitate the more effective management of the insolvency case by IOHs.
- Statutory provisions regarding the definition and amount of remuneration of IOHs should be introduced and IOH remuneration ring-fenced and given priority over preferential claims.

¹ Article 578 of the Trade Law.