

FYR MACEDONIA



Legislative framework

Legislative framework for insolvency proceedings

The main legislation governing insolvency proceedings of businesses (including individual entrepreneurs) in FYR Macedonia is the Insolvency Act of 2006 (as amended).¹

Legislative framework for insolvency office holders

The provisions on insolvency office holders (IOHs) are largely found in the Insolvency Act; nevertheless, further rules are also contained in the Rulebook on Remuneration and Compensation of Incurred Expenses of the Insolvency Office Holders and the Manner of Determination of their Value;² the Code of Ethics for Bankruptcy Trustees;³ the Rulebook on Professional Standards for Bankruptcy Proceedings⁴, the Rulebook on the Manner of Selection of a Bankruptcy Trustee under the Electronic Selection System⁵

Types of insolvency procedures

There is one gateway into insolvency of businesses that are insolvent or threatened with insolvency. This may lead either to (i) liquidation, with the purpose of liquidating the debtor's business; or (ii) reorganisation, with the aim of concluding a reorganisation agreement among the debtor and its creditors. The debtor may also file for insolvency and simultaneously submit a reorganisation plan.

Institutional framework

Under the Insolvency Act, the key players in insolvency proceedings in FYR Macedonia are the court⁶ through the insolvency judge, the IOH, the Chamber of Insolvency Trustees (Chamber) and the creditors (acting as a whole in the assembly of creditors or as represented by the creditors' committee). The Chamber does not have an active role in the bankruptcy procedure itself. It is responsible for the supervision and discipline of the IOHs.

The court (being the competent ordinary court where the debtor has its registered place of business) through the insolvency judge decides on the opening of the insolvency proceeding, any appeals and petitions filed by creditors or the IOH, and it supervises the activities of the IOH in insolvency proceedings.

The **IOH, known as the insolvency trustee**, is appointed as a general rule by the court on a random electronic basis, but can also be selected by creditors in some cases: (i) when the bankruptcy procedure is initiated by a proposal from a creditor, or (ii) when at the first reporting hearing, the creditors decide to dismiss the appointed IOH and appoint a new IOH. In these cases the bankruptcy judge appoints the IOH which has been proposed by the creditors. The insolvency trustee, among other matters, represents the debtor in the insolvency proceeding, takes over and manages the debtor's property, and, in the context of liquidation, proposes a plan for the distribution of assets. An interim insolvency trustee may also be appointed by the court. The work of the insolvency trustee is overseen by the court i.e. the insolvency judge, the chamber and creditors.

Creditors meet as an **assembly of creditors** which is general meeting of creditors, convened by the insolvency judge, upon the proposal of the insolvency trustee, creditors' committee or creditors representing at least one-fifth of the claims by value (except for the first and last meeting which is convened by the judge without any proposal). The assembly of creditors, among other matters, discusses the annual balance sheet, confirms any plan on distribution of assets and at its first meeting decides whether the court appointed insolvency trustee should remain in service or a replacement should be proposed.

The **creditors' committee** is a body established by the court i.e. the insolvency judge before the first assembly of creditors for the purpose of protecting the creditors' interests and its members are appointed by the court i.e. the insolvency judge upon a proposal made by the bankruptcy trustee.⁷ The main tasks of the creditors' committee are observing the insolvency proceedings, checking the amount of available funds, examining the reports of the insolvency trustee and, upon request, providing the assembly of creditors with information on the status of the proceeding.

Assessment overview/strengths and weaknesses

Based on the results of the assessment, a developed legal framework appears to exist for the IOH profession in FYR Macedonia, 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 FYR Macedonian IOH professional framework	Weaknesses of the FYR Macedonian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> IOHs are required to obtain a licence (either as a natural person or as a legal entity) from the Ministry of Economy. An official list of authorised IOHs is published on the web site of the Ministry of Economy. 	
Regulation, supervision and discipline:	<ul style="list-style-type: none"> A wide range of sanctions for IOH misconduct may be imposed by the Chamber of 	<ul style="list-style-type: none"> There is no single dedicated regulatory body for IOHs. Regulatory and

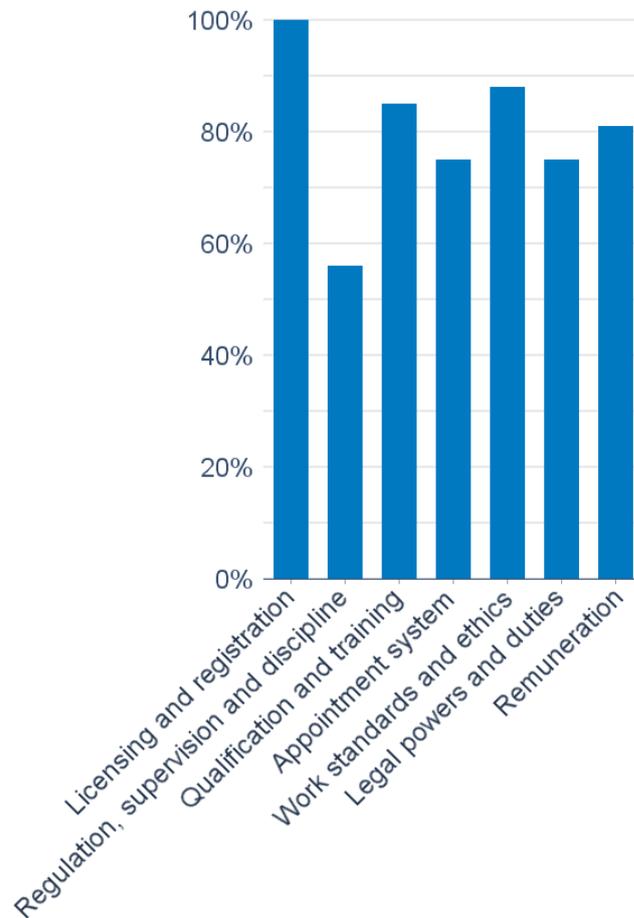
Benchmarks	Strengths of the FYR Macedonian IOH professional framework	Weaknesses of the FYR Macedonian IOH professional framework
	<p>Insolvency Trustees (including reprimands and fines) while the court may dismiss the IOH from a particular case and the Ministry of Economy is entitled to revoke the IOH's licence.</p>	<p>supervisory tasks are carried out by the Ministry of Economy, the court i.e. the insolvency judge and the Chamber of Insolvency Trustees and the creditors' committee. Disciplinary powers may only be imposed by the Chamber of Insolvency Trustees or the court.</p> <ul style="list-style-type: none"> • Although the Ministry of Economy carries out monitoring of IOH activities through the Chamber of Insolvency Trustees, this monitoring is not regular. • There is no single complaints system; nevertheless, the Ministry of Economy has authority to examine the work of an IOH at the request of a third party having legal interest. Complaints may also be filed with the Chamber of Insolvency Trustees and the Court in the form of appeals regarding the procedural actions taken by the IOH in a bankruptcy procedure, where the Insolvency Law allows for such appeal.
<p>Qualification and training:</p>	<ul style="list-style-type: none"> • A relevant tertiary qualification is necessary for IOHs. • IOHs are required to pass a specific exam for entry to the profession. • There is a requirement for prospective IOHs to undertake preparatory training of 30 hours before passing the exam, which is organised by the Chamber of Insolvency Trustees. • Criminal convictions will be a bar to the entry into the profession from December 	<ul style="list-style-type: none"> • IOHs are required to carry out work experience but not necessarily in a field relevant for IOH activities (in other words, for at least three or five years' work experience, if they received their degree in law/economics/business administration or in other commercial discipline, respectively).

Benchmarks	Strengths of the FYR Macedonian IOH professional framework	Weaknesses of the FYR Macedonian IOH professional framework
	<p>2014, from which point criminal checks will be carried out on prospective IOHs.</p> <ul style="list-style-type: none"> • There is a continuing training requirement for renewal of the IOH's licence. 	
Appointment system:	<ul style="list-style-type: none"> • Creditors have influence over the appointment of the IOH where the insolvency proceeding was initiated by a creditor and can request the replacement of the court appointed IOH (at the first meeting of the assembly of creditors). 	<ul style="list-style-type: none"> • The automatic selection system by the court does not necessarily ensure that the most suitable candidate is appointed.
Work standards and ethics:	<ul style="list-style-type: none"> • There is a comprehensive code of conduct containing ethical rules and a Rulebook on professional standards. • Both sets of rules are binding on all IOHs and breach of these rules may result in disciplinary consequences (including the revocation of an IOH's licence). 	<ul style="list-style-type: none"> • There is no regular monitoring of IOHs' compliance with professional / ethical rules; nevertheless monitoring may take place based on a complaint.
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs have strong powers to manage the debtor's property in an autonomous way; however, certain acts shall be approved by the court or, in case of the sale of assets, by the creditors. • IOHs have the power to request the provision of information and delivery up of any assets from the debtor and the delivery up of assets by third parties and state bodies. • IOHs are required to provide the creditors with regular (monthly) reports. 	
Remuneration:	<ul style="list-style-type: none"> • IOH remuneration is governed by a rulebook that sets out minimum and maximum amounts for IOH 	

Benchmarks	Strengths of the FYR Macedonian IOH professional framework	Weaknesses of the FYR Macedonian IOH professional framework
	fees. <ul style="list-style-type: none"> IOH remuneration enjoys priority over unsecured and priority claims. 	

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

FYR Macedonia



Key recommendations

As illustrated in the chart above, FYR Macedonia appears to have a well-developed legal framework for the IOH profession which covers the majority of the key elements of the profession. Nevertheless, there are certain areas where reforms are particularly needed: regulation, supervision and discipline and appointment system.

- 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 regulatory body could monitor the activities of IOHs on a regular basis.
- The establishment of a formal complaints procedure (operated by a dedicated regulatory body) should also be considered.
- The IOH appointment procedure should be reviewed in order to provide a more fair and transparent appointment system for the protection of stakeholders' interests.

¹ Adopted in 2006 and published in Official Gazette of the Republic of Macedonia 34/2006, 126/2006, 84/2007, 47/2011, 79/2013, 164/2013, 29/2014, 98/2015 and 192/2015.

² Published in the Official Gazette of the Republic of Macedonia number 47/2014.

³ Published in the Official Gazette of the Republic of Macedonia number 119/2006.

⁴ Published in the Official Gazette of the Republic of Macedonia number 119/2006.

⁵ Published in the Official Gazette of the Republic of Macedonia number 47/2014.

⁶ There is no special insolvency court per se. There is a special bankruptcy department within the principal courts that has competence over insolvency procedures

⁷ Creditors, at the first assembly of creditors, may appoint new the members of the creditors' committee replacing the members appointed by the court, the number of which cannot exceed seven.