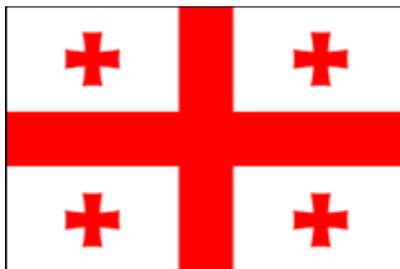


# GEORGIA



## Legislative framework

### Legislative framework for insolvency proceedings

The main law regulating insolvency proceedings for businesses (including individual entrepreneurs) is the Law of Georgia on Insolvency Proceedings (LIP).<sup>1</sup> Additional provisions with respect to entrepreneurs are found in the Law of Georgia on Entrepreneurs.<sup>2</sup>

### Legislative framework for insolvency office holders

Provisions on insolvency office holders (IOHs) are found in the LIP and in the Law of Georgia on Enforcement Proceedings (LE) as well as in other pieces of legislation, including the Decree of the Minister of Justice No. 144 on certain payment and fee provisions relating to IOHs.<sup>3</sup>

## Types of insolvency procedures

There is one gateway into insolvency proceedings under the LIP for insolvent businesses and businesses threatened with insolvency. Insolvency proceedings may lead either to: (i) bankruptcy, with the purpose of liquidating the debtor's business upon the request of the debtor; or (ii) restructuring, with the aim of concluding a restructuring plan between the debtor and its majority creditors, resulting in rehabilitation of the debtor. The decision on whether to opt for bankruptcy or restructuring of the debtor is taken by a special body, the Conciliation Council in the preliminary phase of insolvency proceedings.<sup>4</sup>

## Institutional framework

Pursuant to the LIP, the key players in insolvency proceedings in Georgia are the insolvency court (and the insolvency judge), the state insolvency trustee, the representative of the insolvency trustee, the IOH and creditors (acting as a whole at the general meeting of creditors or as represented by a creditors' committee).

The competent court (being a court of second instance) decides on the opening of any insolvency proceedings. It has some oversight over the proceedings, including the appointment of the IOH and determines any dispute between the parties. There are two appellate courts in Georgia and these both have jurisdiction over insolvency proceedings:

Tbilisi City Court and Kutaisi City Court (depending on where the registered headquarters of the debtor are located).

The state insolvency trustee, the National Bureau of Enforcement (NBE) established under the Ministry of Justice, is automatically appointed administrator of the insolvency proceedings. The NBE appoints at its own discretion a representative to act on its behalf in the relevant proceedings. The NBE representative takes control of management of the debtor's business for the preliminary phase of the insolvency procedure and is charged with examining and evaluating the debtors' assets and liabilities and providing the court with information about the insolvency proceedings upon request.

The IOH is known as the bankruptcy manager, or the rehabilitation manager, depending on the type of the proceedings. The bankruptcy manager is appointed by the creditors within three days of the opening of the proceedings. He takes over management of the debtor's business and represents the debtor during the proceedings. If the bankruptcy manager is not appointed by the general meeting of creditors, then the NBE is appointed as bankruptcy manager by the court. The rehabilitation manager is appointed by the creditors in restructuring proceedings and is approved by the court. The roles and responsibilities of the rehabilitation manager and the extent to which management of the debtor may continue in their role are determined by the general meeting of creditors.

The general meeting of creditors (except for the extraordinary meeting) is convened by the state insolvency trustees (or the bankruptcy or rehabilitation manager) and chaired by the judge. The first meeting of creditors, inter alia, decides on the appointment of the creditors' member of the Conciliation Council, the selection of the bankruptcy or rehabilitation manager and the establishment of the creditors' committee.

The creditors' committee is an optional body which may be established by the general meeting of creditors. The LIP does not provide detailed provisions on its powers and duties, since these are determined by the general meeting of creditors, acting by simple majority vote.

## Assessment overview/strengths and weaknesses

Based on the results of the assessment, a partly developed legal framework appears to exist for the IOH profession in Georgia, 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.

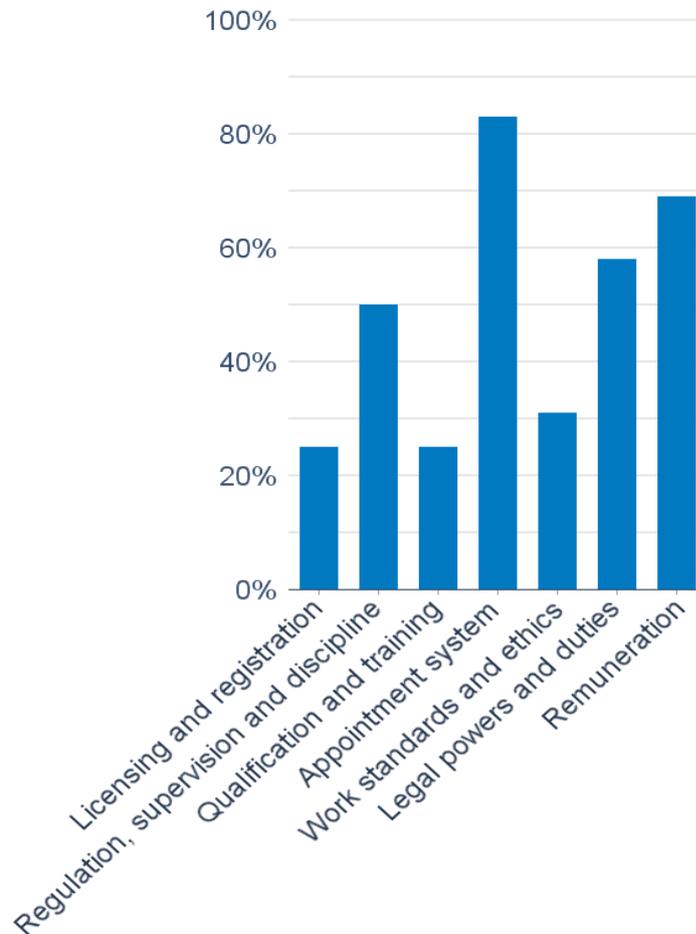
Benchmarks	Strengths of the Georgian IOH professional framework	Weaknesses of the Georgian IOH professional framework
Licensing and registration:		<ul style="list-style-type: none"> <li>• IOHs are not required to have a formal authorisation to act either in the form of a licence or registration.</li> <li>• There is no official list of IOHs.</li> </ul>

Benchmarks	Strengths of the Georgian IOH professional framework	Weaknesses of the Georgian IOH professional framework
<b>Regulation, supervision and discipline:</b>		<ul style="list-style-type: none"> <li>• There is no dedicated regulatory body for IOHs.<sup>5</sup></li> <li>• There is no legal requirement for regular monitoring of the performance/activities of IOHs. Investigation by the court may take place on an ad hoc basis based on a complaint within the context of specific proceedings.</li> <li>• There is no separate complaints procedure, however complaints can be filed against IOHs with the court.</li> <li>• The Ministry of Justice and the court only have powers and can impose sanctions on IOHs for misconduct under the general civil, administrative and criminal codes.</li> </ul>
<b>Qualification and training:</b>		<ul style="list-style-type: none"> <li>• No tertiary qualification is required for IOHs.</li> <li>• IOH candidates are not required to pass a specific examination for the entry to the profession.</li> <li>• There is no requirement for prospective IOHs to carry out work experience with an authorised IOH.</li> <li>• Criminal conviction for intentional crimes is not a bar to the IOH profession (it only applies to NBE employees who are public servants).</li> <li>• There is no continuing training requirement for IOHs.</li> </ul>
<b>Appointment system:</b>	<ul style="list-style-type: none"> <li>• Creditors may have a determining influence over the appointment of the IOH (the court is entitled to refuse the appointment of the nominated IOH only if</li> </ul>	<ul style="list-style-type: none"> <li>• There are no detailed guidelines on the appointment of IOHs.</li> </ul>

Benchmarks	Strengths of the Georgian IOH professional framework	Weaknesses of the Georgian IOH professional framework
	<p>he does not meet the legal requirements), but in cases of disagreement the NBE is appointed.</p>	
<b>Work standards and ethics:</b>		<ul style="list-style-type: none"> <li>• There is no code of conduct covering professional and/or ethical rules binding on IOHs; however, the LIP and the LE contain certain professional conduct provisions to be followed by IOHs.</li> </ul>
<b>Legal powers and duties:</b>	<ul style="list-style-type: none"> <li>• Debtors must provide information and deliver up assets; third parties must also deliver up assets and in each case criminal sanctions apply for failure to cooperate with the IOH.</li> </ul>	<ul style="list-style-type: none"> <li>• IOHs have certain powers to manage the debtor's property; however, the sale of any assets of the debtor is carried out by the NBE.</li> <li>• Third parties and connected parties, for example shareholders, are not under any general duty to cooperate with the IOH and provide information.</li> <li>• IOHs are required to provide the court and creditors with reports only upon request, unless otherwise is agreed by the IOH and the creditors.</li> </ul>
<b>Remuneration:</b>	<ul style="list-style-type: none"> <li>• IOH remuneration enjoys priority over unsecured claims and the claims of any preferential creditors such as the state of employees.</li> </ul>	<ul style="list-style-type: none"> <li>• There are no rules or guidelines covering remuneration of private IOHs (it is subject to the agreement between the IOH and the creditors). A statutory framework for remuneration only applies to NBE representatives.</li> </ul>

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

### Georgia



## Key recommendations

As illustrated in the chart above, Georgia appears to have an underdeveloped legal framework for the IOH profession which covers only some of the key elements of the profession. There are certain areas where reforms are particularly needed, including: licensing and registration; regulation, supervision and discipline; qualification and training; appointment system; work standards and ethics; legal powers and duties and remuneration.

- A licensing and registration system should be introduced so that IOHs are appointed exclusively from the list(s) maintained by a dedicated body to ensure the integrity of the profession and in recognition of the specialist nature of the work.

- 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. In this regard, the establishment of a separate complaints procedure operated by a dedicated regulatory body should be considered.
- Specific entry exams to the IOH profession, relevant 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.
- Criminal checks should be introduced to enhance the moral integrity of the profession.
- 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 regular reporting requirement (including to creditors) would provide greater transparency and access to information for stakeholders.
- Statutory provisions regarding the definition and method of calculation of remuneration of IOHs should be introduced.

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<sup>1</sup> Adopted on March 28, 2007 by the Parliament of Georgia, No: 4522-IS.

<sup>2</sup> Adopted on October 28, 1994 by the Parliament of Georgia, No: 577-IS.

<sup>3</sup> Dated 30 July 2010.

<sup>4</sup> The Conciliation Council is a collegial body of three members appointed by the debtor and the creditors. It is established at the first general meeting of creditors.

<sup>5</sup> In respect of NBE employees that act as IOHs, in certain cases the NBE is the main regulatory authority.