

HUNGARY



Legislative framework

Legislative framework for insolvency proceedings

The Act XLIX of 1991 on Bankruptcy and Liquidation Proceedings (as amended, the BA) is the main legislation governing the insolvency proceedings of legal entities that are insolvent or threatened with insolvency.

Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are found, inter alia, in the BA, which details the major requirements relating to the profession; however, other laws, including the Act V of 2013 on the Civil Code, Act V of 2006 on the Companies Procedures; the Governmental Decree No. 114/2006 (V. 12) on the list of liquidators; and the Ministerial Decree (IRM) No. 33/2009 (VIII. 26) on the forms of initiating bankruptcy proceedings are also applicable to IOHs.

Types of insolvency procedures

Under the BA, insolvency proceedings take the form of either: (i) bankruptcy proceedings against a debtor in financial difficulties, with the purpose of reorganising its debts by way of a settlement agreement; or (ii) liquidation proceedings, which usually result in the winding up of the debtor (but which can theoretically also include a settlement agreement).

Bankruptcy proceedings can only be initiated by the debtor and if no settlement is reached amongst the debtor and its creditors, the proceedings are transformed into liquidation proceedings.

Institutional framework

Pursuant to the BA, the key players in insolvency proceedings in Hungary are the insolvency court (and the insolvency judge), the IOH, and the creditors' (meeting collectively and as represented to the extent applicable by either the creditors' committee or the creditors' representative).

In Hungary insolvency proceedings under the BA are overseen by the court (being the competent court where the headquarters of the debtor are registered). The court directs and controls the proceedings from opening to closure. It decides, amongst other matters, on the initiation and termination of proceedings and the appointment, or dismissal of an IOH.

The IOH, known as the asset controller (in bankruptcy) or the liquidator (in liquidation) is a company appointed by the court using an electronic random selection process. IOH companies are required to have at least two professionals with liquidation and asset controller qualifications, two economists, two licensed auditors and two qualified lawyers. The IOH administers the proceedings. It is entitled to request the provision of certain information from the debtor, initiate legal proceedings on behalf of the debtor and take control over and manage the property of the debtor (in liquidation).¹ The activities of the IOH are controlled and monitored by the court and the creditors' committee.

Creditors meet collectively at the outset of the relevant bankruptcy or liquidation proceeding and are entitled to decide, amongst other matters, on the establishment of a creditors' committee or the appointment of a creditors' representative to present their interests before the court and the IOH and the approval of a settlement agreement in either bankruptcy or liquidation. Creditors as a group have more significant powers in bankruptcy than in liquidation.

A creditors' committee or creditors' representative is entitled to require information necessary for assessing the financial condition of the debtor from the IOH or the debtor and may oversee the work of the IOH. The creditors' committee or representative may also initiate the removal of the IOH. Their exact powers are established in an agreement concluded amongst the creditors.

Assessment overview/strengths and weaknesses

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

Benchmarks	Strengths of the Hungarian IOH professional framework	Weaknesses of the Hungarian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to participate in a tender procedure organised by the government every seven years to obtain an authorisation to act.² The provisions relating to the tender and some of the qualification requirements are included in a governmental decree. • Such a decree and the list of IOHs are easily accessible to all third 	

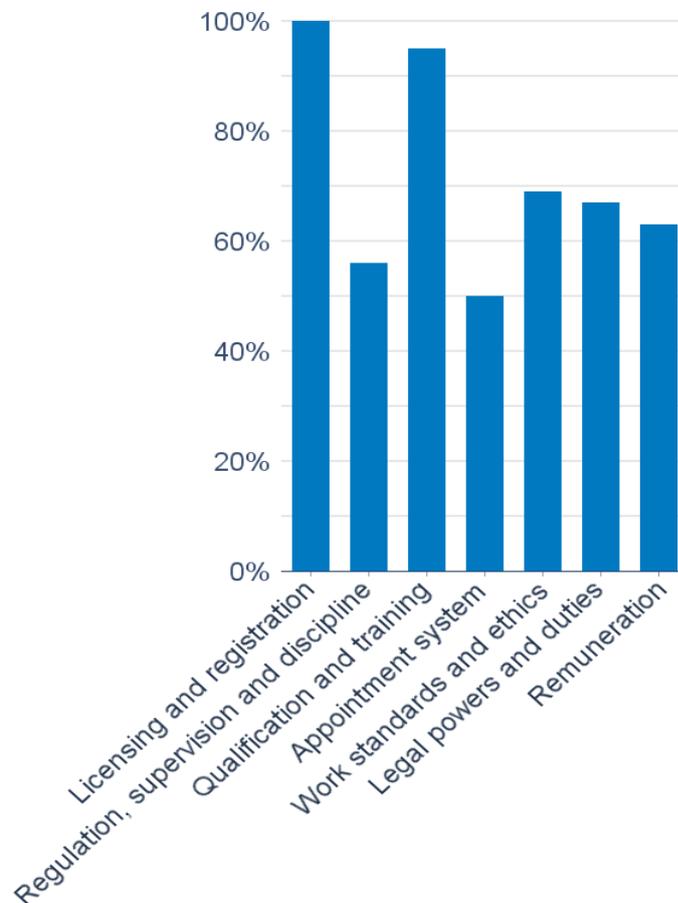
Benchmarks	Strengths of the Hungarian IOH professional framework	Weaknesses of the Hungarian IOH professional framework
	<p>parties and are available online.</p>	
<p>Regulation, supervision and discipline:</p>	<ul style="list-style-type: none"> • A range of sanctions is available for IOH misconduct. The majority of the sanctions can be imposed by the court, while the most serious sanction, i.e. the removal from the list may only be imposed by the Administrative and Judicial Office (organised under the Ministry of National Development). 	<ul style="list-style-type: none"> • There is no single dedicated institution for the regulation, supervision and discipline of IOHs. Responsibilities are shared between relevant government ministries, including the Administrative and Judicial Office, the court and the Association of Liquidators and Asset Controllers membership of which is voluntary. • Regular monitoring of the performance or activities of IOHs is not specifically required by law; nevertheless the court and the creditors monitor the work of IOHs in specific insolvency proceedings. In addition, the Administrative and Judicial Office is entitled to monitor compliance by the IOH companies comply with requirements. • There is no centralised complaints system; however, complaints can be filed with the court or with the Association of Liquidators and Asset Controllers.
<p>Qualification and training:</p>	<ul style="list-style-type: none"> • Relevant tertiary qualifications are required. • There is a specific exam for the professionals of IOH companies with liquidator and asset controller qualifications. • Professionals with liquidator and asset controller qualification must have at least one year's work experience at an IOH company to act on behalf of the IOH company in insolvency proceedings. 	

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	<ul style="list-style-type: none"> • Criminal checks are required for prospective IOHs before admittance to the profession (persons having criminal records cannot practice as IOHs). • There is a continuing training requirement at least every two years for the professionals of IOH companies with liquidator and asset controller specialisation; however, no minimum number of hours or other guidance as to such training is specified. 	
Appointment system:		<ul style="list-style-type: none"> • The automatic selection of IOH companies by the court does not necessarily ensure that the best candidate is appointed.³ • Creditors do not have influence over the appointment of the IOH (they may only propose its replacement under certain circumstances breach of law).
Work standards and ethics:		<ul style="list-style-type: none"> • There is no single comprehensive code of conduct covering professional and/or ethical rules binding on all IOHs. Nevertheless, a code of ethics and certain professional conduct rules is applicable to the members of the Association of Liquidators and Asset Controllers membership of which is voluntary.
Legal powers and duties:	<ul style="list-style-type: none"> • In liquidation IOHs have clear powers established by law (they exercise powers of the management over the debtor's assets). The IOH as a general rule acts in an autonomous way, except for certain cases where the court's or creditors' approval is needed. 	<ul style="list-style-type: none"> • IOHs are entitled to request cooperation from the debtor (including to provide information and deliver up any assets of the debtor) but not from any third parties. Non-cooperation by the debtor (management) is subject to sanctions, including a fine. • There is no regular

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	<ul style="list-style-type: none"> IOHs are required to provide regular reports (quarterly) to the creditors' committee or creditors' representative (if any) in liquidation. 	<p>reporting requirement in bankruptcy as the IOH is required to provide information to the court and creditors only upon request.</p>
Remuneration:	<ul style="list-style-type: none"> IOH fees are regulated by statutory provisions which set out a fixed calculation method that can be recalibrated according to the work carried out by the IOH. Remuneration of IOHs forms part of the procedural costs and is settled before unsecured claims and most tax claims; however, it ranks equally with employee claims and amounts owed to the employee guarantee fund. 	

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

Hungary



Key recommendations

As illustrated in the chart above, Hungary appears to have developed a legal framework for 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; qualification and training; appointment system; work standards and ethics and legal powers and duties.

- 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.

- The establishment of a formal complaints procedure (operated by a dedicated regulatory body) should also be considered.
- The existing randomised appointment system should be reconsidered to enable creditors to participate in the IOH selection process.
- Comprehensive binding rules of professional conduct for IOHs should be adopted to serve as a best practice guide for the professional activities of IOH companies and their members.
- Further powers should be granted to IOHs with respect to requiring the cooperation from third parties which could accelerate the successful recovery of debtor's assets.

¹ Bankruptcy under Hungarian law is a debtor in possession proceedings however the powers of management are split between existing management and the court appointed asset controller.

² 130 companies are listed in the governmental decree. The new list came into force on 15 March 2014.

³ After the appointment by the court, the IOH company will delegate a private individual from its employees (having liquidator and asset controller qualification) to proceed.