

# KAZAKHSTAN



## Legislative framework

### Legislative framework for insolvency proceedings

The Law of the Republic of Kazakhstan on Rehabilitation and Bankruptcy (as amended, the LB)<sup>1</sup> is the main legislation governing the insolvency of businesses, including both legal entities and sole traders. Insolvency legislation is not applicable to certain legal entities, including state companies.

### Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are found in the LB; however, other laws are relevant, including the Rules on Registration of Rehabilitation Managers and Bankruptcy Trustees, the Rules on the Appointment and Removal of Rehabilitation Managers and Bankruptcy Trustees and on Professional Development of Rehabilitation Managers and Bankruptcy Trustees.<sup>2</sup> The Resolution on the Minimum Amounts of Basic Administrator Remuneration<sup>3</sup> and the Rules on Payment of Basic Administrator Remuneration set forth further provisions relating to the remuneration of IOHs.<sup>4</sup>

## Types of insolvency procedures

There are two types of insolvency procedures: (i) bankruptcy, aimed at liquidating the debtor's business; or (ii) rehabilitation, with the objective of restoring the debtor's solvency by means of a rehabilitation plan agreed with its majority creditors.<sup>5</sup> An accelerated (in other words, pre-packaged) rehabilitation plan may be adopted under the LB.

An amicable settlement agreement between creditors and the debtor may be adopted at any stage after commencement of insolvency proceedings.

## Institutional framework

The key players in insolvency proceedings in Kazakhstan are the insolvency court (and the judge), the IOH, and the creditors (acting as a general body of creditors and, to the extent applicable, as represented by the creditors' committee).

In Kazakhstan insolvency proceedings are overseen by the competent court (being the ordinary court where the debtors' headquarters are registered). The court decides, among other matters, on the initiation and termination of insolvency proceedings and resolves all disputes between the parties to the insolvency proceedings. The court appears to have limited oversight of IOH activities.

The IOH, known as the bankruptcy trustee or rehabilitation manager is appointed by the Tax Committee for Administration of Rehabilitation and Bankruptcy (a body organised under the Ministry of Finance), based on the nomination of the creditors' meeting.<sup>6</sup> Prior to such an appointment, a temporary manager or trustee is appointed by the court.<sup>7</sup> The IOH takes control of and manages the property of the debtor and is, inter alia, entitled to request information from relevant parties and perform transactions on behalf of the debtor subject to approval by the creditors at the creditors' meeting.

The bankruptcy trustee draws up a plan for the sale of the debtor's property and makes settlements with the creditors, if the creditors' committee so decides, while the rehabilitation manager formulates and implements the rehabilitation plan.

The general body of creditors has a number of responsibilities. These include, inter alia, the election of the members of the creditors' committee and (in rehabilitation proceedings only) the representative of creditors to oversee the work of the rehabilitation trustee.<sup>8</sup> It is also responsible for filing and submitting a petition to the court on the implementation, prolongation or termination of any rehabilitation proceeding, determining the amount of remuneration of the IOH. The meeting of the general body of creditors is convened on the request of the debtor, IOH, creditors' committee or creditors representing ten per cent of all the claims either by value or by number.

The creditors' committee monitors the conduct of the relevant insolvency proceeding and the activities of the IOH, and approves any administrative costs of the procedure.

## Assessment overview/strengths and weaknesses

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

Benchmarks	Strengths of the Kazakh professional framework	Weaknesses of the Kazakh professional framework
Licensing and registration:	<ul style="list-style-type: none"> <li>IOHs are required to be registered with the Tax Committee for Administration of Rehabilitation and Bankruptcy organised</li> </ul>	

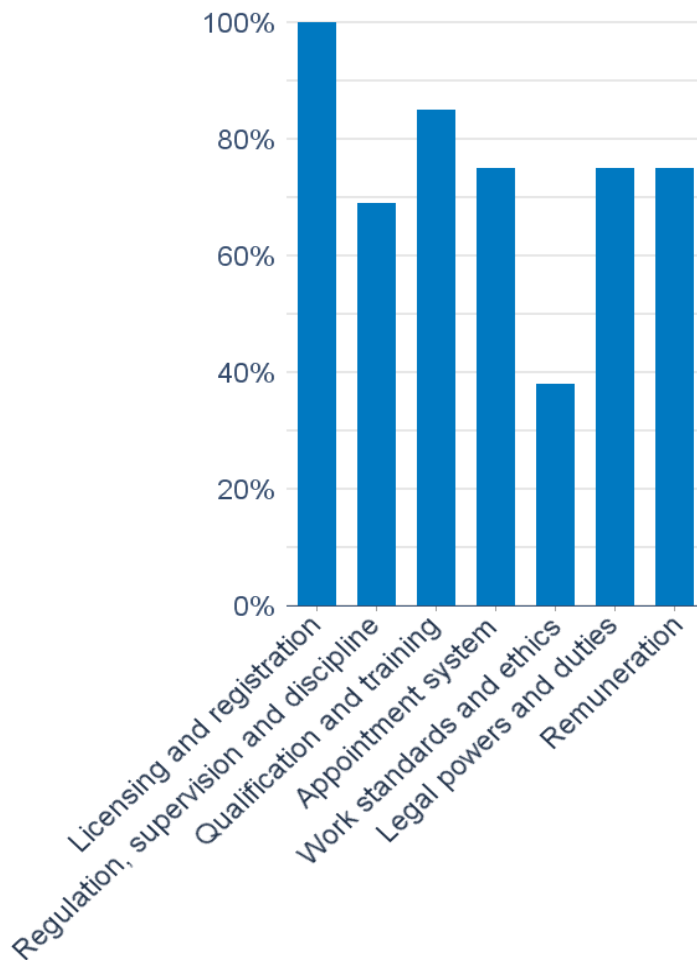
Benchmarks	Strengths of the Kazakh professional framework	Weaknesses of the Kazakh professional framework
	<p>under the Ministry of Finance.</p> <ul style="list-style-type: none"> <li>• A centralised list of registered IOHs is easily accessible to all third parties and is available online.</li> </ul>	
<p><b>Regulation, supervision and discipline:</b></p>	<ul style="list-style-type: none"> <li>• A dedicated unit within the Ministry of Finance, the Tax Committee for Administration of Rehabilitation and Bankruptcy, is the main body responsible for matters relating to the regulation, supervision and discipline of IOHs. The creditors' committee also plays a strong role in the supervision of the IOHs in specific proceedings.</li> </ul>	<ul style="list-style-type: none"> <li>• Although the Tax Committee for Administration of Rehabilitation and Bankruptcy appears to monitor the performance and activities of IOHs, such monitoring does not appear to be regular.</li> <li>• There is no official complaints system regarding IOH conduct or performance, although complaints may be filed before the court and in certain cases before the Tax Committee for Administration of Rehabilitation and Bankruptcy.</li> <li>• There is no wide range of sanctions available for IOH misconduct, nonetheless the Tax Committee for Administration of Rehabilitation and Bankruptcy is entitled to dismiss the IOH or impose administrative penalties (fine).</li> </ul>

Benchmarks	Strengths of the Kazakh professional framework	Weaknesses of the Kazakh professional framework
<b>Qualification and training:</b>	<ul style="list-style-type: none"> <li>• A tertiary qualification is required in either law or economics.</li> <li>• IOHs are required to pass a specific examination for entry into the profession organised by the Tax Committee for Administration of Rehabilitation and Bankruptcy.</li> <li>• Criminal checks are required for prospective IOHs before admittance to the profession.</li> <li>• Continuing educational training is apparently required from IOHs in law, finance or law every three years; however, there appears to be no sanctions for non-compliance and/or further guidance as to the context of such training.</li> </ul>	<ul style="list-style-type: none"> <li>• No insolvency work experience with a practising IOH is required prior to qualification although IOHs are required to have at least three years' prior work experience in law, finance or economics.</li> </ul>
<b>Appointment system:</b>	<ul style="list-style-type: none"> <li>• Creditors have influence over the appointment of the IOH in so far as the creditors' committee can propose a candidate of its choice to the Tax Committee for Administration of Rehabilitation and Bankruptcy for appointment; however, the Tax Committee for Administration of Rehabilitation and Bankruptcy is not obliged to accept such proposal in the event of a disagreement and may require creditors to put forward another IOH candidate.</li> </ul>	
<b>Work standards and ethics:</b>		<ul style="list-style-type: none"> <li>• There is no professional code of conduct covering professional and/or ethical rules, although a number of conduct-related provisions are found in different pieces of legislation.</li> </ul>
<b>Legal powers and duties:</b>	<ul style="list-style-type: none"> <li>• IOHs have significant powers to manage the</li> </ul>	<ul style="list-style-type: none"> <li>• There is no regular statutory reporting</li> </ul>

Benchmarks	Strengths of the Kazakh professional framework	Weaknesses of the Kazakh professional framework
	<p>debtor's property in insolvency; nonetheless the sale of assets needs to be carried out based on a plan for the sale of debtor's assets adopted by the creditors.</p> <ul style="list-style-type: none"> <li>• The debtor is under a general duty to cooperate with the IOH. Third parties and state bodies are required to provide information to the IOH for the recovery of debtor's assets. Administrative fines (and in respect of the debtor, criminal liability) may be imposed in case of failure to cooperate.</li> <li>• IOHs are required to provide regular monthly reports to the creditors' committee in rehabilitation.</li> </ul>	<p>requirement in liquidation and IOHs are required to report to creditors only on their request.</p>
<b>Remuneration:</b>	<ul style="list-style-type: none"> <li>• A statutory framework for IOH remuneration exists, consisting of a fixed monthly fee and additional payment based on asset recoveries.</li> <li>• Remuneration of IOHs forms part of administrative expenses of the insolvency and is settled ahead of all creditors' claims.</li> </ul>	

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

### Kazakhstan



## Key recommendations

As illustrated in the chart above, Kazakhstan appears to have developed a legal framework for IOHs 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; work standards and ethics; and legal powers and duties.

- The strengthening of the regulatory functions of the Tax Committee for Administration of Rehabilitation and Bankruptcy and more regular and thorough monitoring of the work of IOHs by the Tax Committee for Administration of Rehabilitation and Bankruptcy would ensure a more consistent and effective approach to IOH regulation. In this regard, the establishment of a formal complaints procedure (operated by the Tax Committee for Administration of Rehabilitation and

Bankruptcy) should be considered.

- Comprehensive and publicly available rules of professional and ethical conduct of a binding nature should be adopted to provide useful guidelines and principles for IOH professional activities and ethical behaviour.
- A regular reporting obligation by the IOH to creditors in liquidation by the IOH should be introduced to ensure greater transparency and access to information for stakeholders.

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<sup>1</sup> No.176-V dated 7 March 2014.

<sup>2</sup> No. 189 approved by the order of the Deputy Prime-Minister of the Republic of Kazakhstan - Ministry of Finance of the Republic of Kazakhstan dated 28 April 2014, registered in the Registry of legal enactments of the Republic of Kazakhstan under No. 9478 and published on 2 July 2014.

<sup>3</sup> Approved by the Resolution of the Government of the Republic of Kazakhstan on 2 July 2014 no. 759.

<sup>4</sup> Approved by the Resolution of the Government of the Republic of Kazakhstan on 2 July 2014 no. 759.

<sup>5</sup> Article 73 of the LB.

<sup>6</sup> The meeting of creditors provides information on nominated persons to the Tax Committee for Administration of Rehabilitation and Bankruptcy, which then appoints the bankruptcy trustee and the rehabilitation manager, if it has no objections against these candidates.

<sup>7</sup> The temporary manager acts within rehabilitation proceeding for the purposes of drawing up a list of creditors' claims and approving transactions which are out of regular commercial operations. The temporary trustee gathers the information on financial standing of debtor as well as conducts bankruptcy proceedings prior to appointment of bankruptcy trustee.

<sup>8</sup> Article 13 of LB.