

# KOSOVO



## Legislative framework

### Legislative framework for insolvency proceedings

Insolvency proceedings in the Republic of Kosovo (Kosovo) are governed by the Law on the Liquidation and the Reorganisation of Legal Persons No. 2003 /4 of 13 March 2003 (LRL) and the Law on the Reorganisation of Certain Enterprises and Their Assets No. 04/L- 035 of 26 October 2011.

### Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are found, in addition to the aforementioned laws, inter alia, in the Regulation No. 22/2012 on Determining Special Qualifications, Rewards and Compensation and Bankruptcy Administrators' Licensing Procedures<sup>1</sup> and the Administrative Instruction No. 1/2013 on the Programme of the Exam for Bankruptcy Administrators.<sup>2</sup>

The IOH is a newly regulated profession in Kosovo, and further implementing rules will likely be adopted to supplement the legal framework.<sup>3</sup>

## Types of insolvency procedures

There is one gateway into insolvency proceedings under Kosovan law available to legal entities that are bankrupt (in other words, which have failed to pay their debts when they fall due) that may lead either to: (i) liquidation aimed at liquidating the debtor's business; or (ii) reorganisation, with the objective of concluding a reorganisation plan between the debtor and its majority creditors.

## Institutional framework

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

In Kosovo insolvency proceedings are controlled by the competent court (that is the economic division of the district court where the headquarters of the debtor are registered) and the judge. The court directs and controls the proceedings from opening to closure.<sup>4</sup> The court decides, among other matters, on the initiation and termination of proceedings and the appointment and remuneration of the IOH. The court is responsible for organising the first general meeting of creditors.

The IOH, known as the insolvency administrator, is appointed by the court within two days after the opening of proceedings. He is entitled to take over management of the assets of the debtor, convene and chair the meeting of creditors, initiate legal proceedings on behalf of the debtor and represent the debtor in any formal capacity. An interim insolvency administrator may be appointed, if the court finds it necessary for the protection of creditors' interests.

The general body of creditors is mentioned in the LRL; however, the law does not contain detailed provisions on its powers and duties. The LRL sets forth that further procedural rules shall be adopted with respect to the general body of creditors and the creditors' committee. Such implementing rules have not been issued yet.<sup>5</sup>

A creditors' committee may be formed on the decision of the general body of creditors consisting of three to five members from among the creditors representing the largest unsecured or partially secured claims. The creditors' committee receives a copy of the insolvency administrator's monthly reports, may request information from the debtor and its representatives and initiate legal actions to declare certain transactions of the debtor null and void.

## Assessment overview/strengths and weaknesses

Based on the results of the assessment, a partially developed legal framework exists for the IOH profession in Kosovo, which would benefit from further major improvements to address certain key areas of weaknesses and thus further improve IOH capacity and performance.

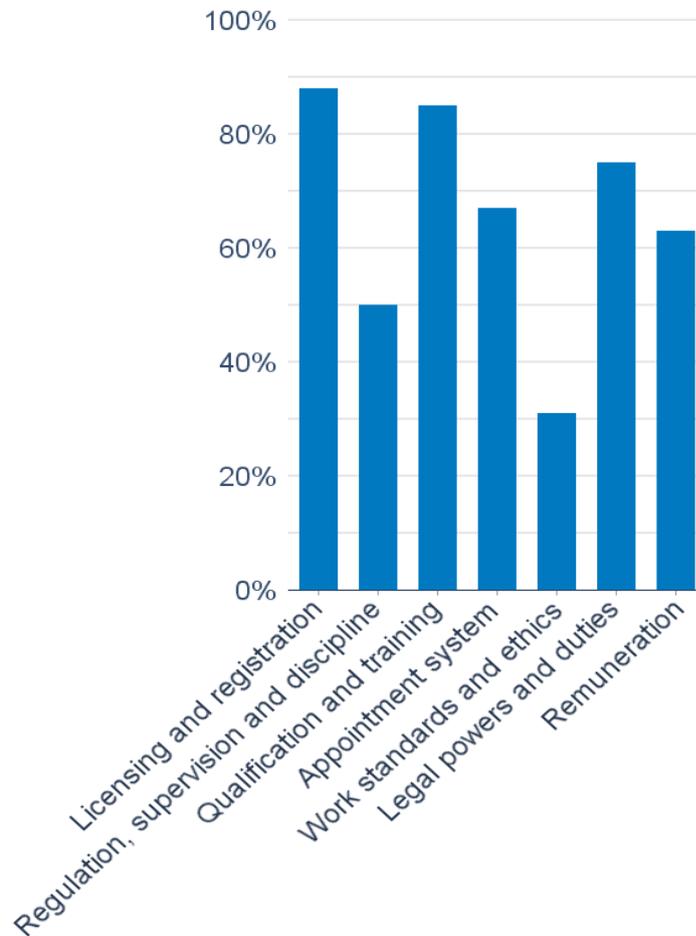
Benchmarks	Strengths of the Kosovan IOH professional framework	Weaknesses of the Kosovan IOH professional framework
<b>Licensing and registration:</b>	<ul style="list-style-type: none"> <li>• IOHs are required to obtain a licence issued by the Ministry of Justice.</li> <li>• An official list of authorised IOHs exists and is<sup>6</sup> accessible online.</li> </ul>	

Benchmarks	Strengths of the Kosovan IOH professional framework	Weaknesses of the Kosovan IOH professional framework
<b>Regulation, supervision and discipline:</b>		<ul style="list-style-type: none"> <li>• There is no single dedicated regulatory body responsible for all matters of regulation, supervision and discipline for IOHs. These tasks are carried out to a certain extent by the Ministry of Justice and the court.</li> <li>• There is no legal requirement or practice of regular monitoring of the performance/activities of IOHs by the Ministry of Justice.</li> <li>• There is no separate complaints system operated by a dedicated body. Nevertheless, complaints regarding an IOH's conduct can be filed with the court.</li> <li>• The Ministry of Justice has the power to impose a limited range of sanctions (fine and revocation of licence) for IOH misconduct and there are reservations about the strength of the Ministry of Justice as regulator.</li> </ul>
<b>Qualification and training:</b>	<ul style="list-style-type: none"> <li>• A relevant tertiary qualification is required from prospective IOHs (higher education degree in law or economics/finance).</li> <li>• IOHs are required to pass a specific examination for entry to the profession organised by the Ministry of Justice.</li> <li>• IOHs are required to have work experience of at least five years in law or economics; or three years of experience in insolvency procedures.</li> <li>• Criminal conviction is a bar to the entry into the profession.</li> </ul>	<ul style="list-style-type: none"> <li>• Continuing training sessions are organised by the Ministry of Justice, but they are not compulsory.</li> </ul>

Benchmarks	Strengths of the Kosovan IOH professional framework	Weaknesses of the Kosovan IOH professional framework
<b>Appointment system:</b>		<ul style="list-style-type: none"> <li>• There is no clear system for the appointment of IOHs. The court appoints the IOH at its discretion from the list (there is a very small number of licensed IOHs in Kosovo).<sup>7</sup></li> <li>• Creditors do not have an express influence over the appointment of the initial IOH. Nevertheless, they may propose at any time the replacement of a specific IOH and the appointment of a new IOH.</li> </ul>
<b>Work standards and ethics:</b>		<ul style="list-style-type: none"> <li>• There is no single 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 strong powers to manage the debtor's business in an autonomous way. Nevertheless, certain IOH actions may be subject to prior court and/or creditor approval, including the sale of assets.</li> <li>• IOHs are required to submit monthly regular reports to the court (which report is available to the creditors).</li> <li>• Creditors may request relevant information from the IOH.</li> </ul>	<ul style="list-style-type: none"> <li>• Although IOHs are entitled to request cooperation from the debtor, non-cooperating third parties may be held liable for the concealment of assets only.</li> </ul>
<b>Remuneration:</b>	<ul style="list-style-type: none"> <li>• Remuneration of IOHs forms part of the procedural costs and is settled in priority to unsecured and preferential claims (but after court fees).</li> </ul>	<ul style="list-style-type: none"> <li>• There is no detailed system prescribed by law for the calculation of IOH remuneration. The court approves the IOH fees based on the time spent and taking into account the volume of the work, the value of assets and the commercial outcome achieved by the IOH in the particular insolvency case.<sup>8</sup></li> </ul>

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

### Kosovo



## Key recommendations

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

- 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 regulatory body could

monitor the activities of IOHs on a regular basis.

- The establishment of a separate complaints procedure operated by a dedicated regulatory body should be considered.
- Regular continuing trainings for licensed IOHs should be introduced in order to enhance the performance of IOHs.
- The IOH appointment procedure should be reviewed to enable creditors to participate in the appointment process in certain circumstances.
- 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.
- Further provisions should be included in the statutory framework to strengthen the IOHs' ability to investigate the recovery of the debtor's assets (including the duty of third parties to cooperate with and provide information to the IOH).
- Statutory provisions regarding the definition and amount of remuneration of all IOHs should be clarified.

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<sup>1</sup> Issued on 17 October 2012.

<sup>2</sup> Issued by the Minister of Justice on 16 April 2013.

<sup>3</sup> IOHs are licensed from the end of 2013.

<sup>4</sup> Article 5 of LRL.

<sup>5</sup> As of the date of this report.

<sup>6</sup> [http://www.md-ks.net/repository/docs/MD\\_1101200520422900\\_backup.pdf](http://www.md-ks.net/repository/docs/MD_1101200520422900_backup.pdf)

<sup>7</sup> At the time of this report only 11 IOHs had a licence in Kosovo.

<sup>8</sup> Article 10 of the Regulation No. 22/2012 on Determining Special Qualifications, Rewards and Compensation and Bankruptcy Administrators' Licensing Procedures.