

KYRGYZ REPUBLIC



Legislative framework

Legislative framework for insolvency proceedings

The Law of the Kyrgyz Republic on Bankruptcy No. 74 dated 15 October 1997 (as amended, the LB) is the main legislation governing the insolvency proceedings of insolvent businesses, including individual entrepreneurs.

Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are found, inter alia, in the LB. These are supplemented by other laws and regulations, including the Law of the Kyrgyz Republic on Licensing and Permits System No. 195 dated 19 October 2013; the Decree of the Government of the Kyrgyz Republic No. 865 dated 30 December 1998 on the Order of Using Bankruptcy Process Procedures, the Regulation on the Order of Appointment of Administrators by the Bankruptcy Authority No. 584 dated 22 August 2002, the Instruction on Reporting by Administrators That Carry Out Bankruptcy Procedures No. 143 dated 7 April 2011 and the Rules of Conducting Bankruptcy Proceedings No. 865 dated 30 December 1998.

Types of insolvency procedures

Under the LB, there are a number of different insolvency procedures including: (i) special administration, resulting in the liquidation of the insolvent legal entity or restructuring of the legal entity involving a change in ownership and organisation of the business into one or more new legal entities for the purpose of a subsequent sale for the benefit of creditors;¹ (ii) rehabilitation, aimed at the restoration of the solvency of either legal entities or individual entrepreneurs, through the agreement of a rehabilitation plan; and (iii) financial restructuring (sanation) aimed at the economic recovery of the debtor. A voluntary settlement may be agreed at any stage of the proceedings between the debtor and its creditors.

Special administration and rehabilitation can also take place extra-judicially within the framework and conditions established by the LB. Nevertheless, proceedings with respect to individually entrepreneurs cannot be conducted extra-judicially.

Institutional framework

Pursuant to the LB, the key players in insolvency proceedings in the Kyrgyz Republic are the insolvency court (and the judge), the IOH and the creditors (acting as a general body and as represented by the creditors' committee).

Insolvency proceedings under the LB are overseen by the competent court (being the ordinary court where the headquarters of the debtor are registered). The court directs and controls the proceedings from opening to closure. It decides, among other matters, on the initiation and termination of proceedings and the appointment, resignation or dismissal of the temporary IOH.

The IOH, known as the administrator, can be appointed as: (i) a special administrator (or liquidator) in special administration; or (ii) an external administrator in rehabilitation proceedings.² The administrator is appointed by the Department for Bankruptcy Affairs under the Ministry of Economy of the Kyrgyz Republic within five days of receipt of the judgment on the opening of the insolvency proceeding. Any creditor or the debtor has the right to propose a particular administrator. A temporary administrator may be appointed by the court at the outset of the insolvency proceedings for the protection of the debtor's assets.

The special administrator takes over management of the debtor and its assets and analyses the debtor's financial condition. The main purpose of the special administrator is to liquidate the debtor's assets and distribute the proceeds amongst the creditors. The primary function of the external administrator is implementation of the rehabilitation plan. On his appointment, the powers of the debtor's management and shareholders cease, unless otherwise stipulated in the rehabilitation plan.

Creditors, acting as a whole, are convened at a meeting of creditors for the first time by creditors, the debtor or the administrator (depending on the procedure). Creditors are entitled to make any lawful decisions relating to the obligations of the debtor, provided that these do not interfere with the role of the court and the activities of the administrator. Creditors meet as a general body every three months during insolvency proceedings at the place of the debtor unless otherwise prescribed by the creditors, the administrator or the bankruptcy authority. A creditors' committee may be formed following a decision by a simple majority of creditors by value and consists of three to seven creditor representatives. The creditors' committee oversees the activities of the administrator and is entitled to receive information from the administrator relating to the financial condition of the debtor and the progress of the proceedings and to summon a general meeting of creditors to express its 'non-confidence' in the administrator.

Assessment overview/strengths and weaknesses

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

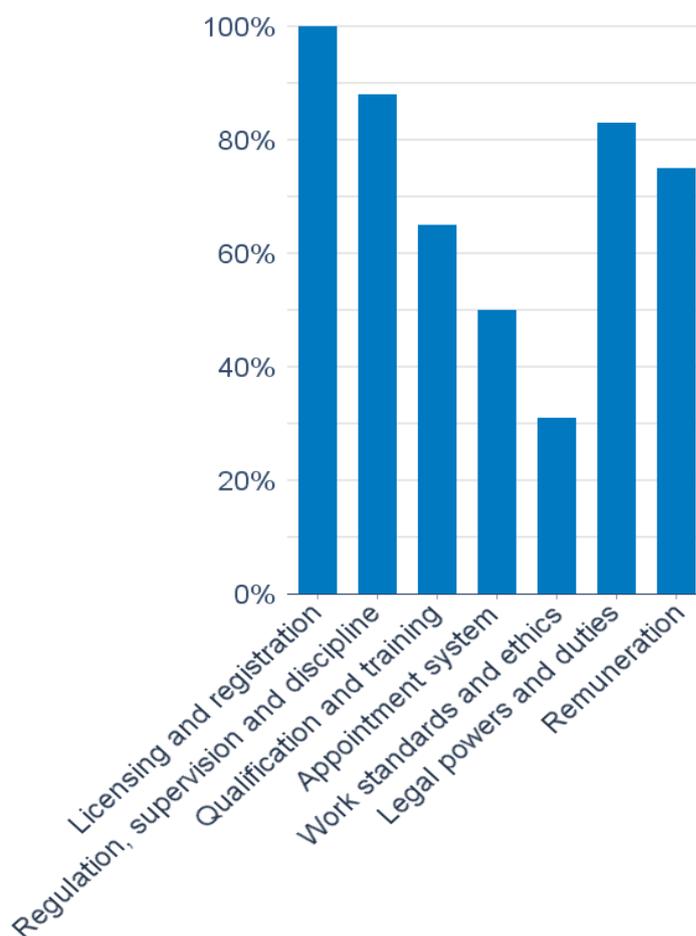
Benchmarks	Strengths of the Kyrgyz IOH professional framework	Weaknesses of the Kyrgyz IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to obtain a licence, issued by the Department for Bankruptcy Affairs under the Ministry of Economy. • An official list of IOHs is kept by the Ministry of Economy. It is easily accessible to all third parties and is available online. 	
Regulation, supervision and discipline:	<ul style="list-style-type: none"> • A single dedicated body, the Department for Bankruptcy Affairs, is responsible for the regulation, supervision and discipline of IOHs. However, the court and the creditors' committee also monitor the work of IOHs within specific proceedings. • Regular monitoring of the performance of activities of IOHs by the Department for Bankruptcy Affairs is provided by law, through the reports submitted by the IOH, but the time periods are not specified. • An official complaints system exists operated by the Department for Bankruptcy Affairs, although complaints may also be filed with the court. • The Department for Bankruptcy Affairs is responsible for disciplining IOHs and can impose the following sanctions: fine, suspension of licence, revocation of licence or dismissal from the insolvency case.³ 	
Qualification and training:	<ul style="list-style-type: none"> • Prospective IOHs are required to pass a specialised examination organised by the Department for Bankruptcy Affairs. • Prospective IOHs are required to undertake specialised training. New 	<ul style="list-style-type: none"> • A tertiary qualification is a general requirement for prospective IOHs but this does not need to be in a relevant discipline. • No "on the job" training with licensed IOHs is necessary, although candidates need to have at least three years'

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	<p>regulations are to be adopted which will prescribe the duration of such training.⁴</p> <ul style="list-style-type: none"> IOH candidates must prove the lack of criminal record by way of certificate. 	<p>work experience after graduation.</p> <ul style="list-style-type: none"> There is no continuing training requirement; nonetheless IOHs are required to go through an evaluation process every three years to maintain their licence.
Appointment system:	<ul style="list-style-type: none"> In extra-judicial special administration and rehabilitation proceedings IOHs are appointed by the meeting of creditors. 	<ul style="list-style-type: none"> In judicial special administration and rehabilitation proceedings IOHs are appointed by the Department for Bankruptcy Affairs, although creditors and the debtor may nominate candidates. If there is more than one nominee, the appointment is decided by the Department for Bankruptcy Affairs through a competitive process.
Work standards and ethics:		<ul style="list-style-type: none"> There is no code of professional conduct and/or ethics for the IOH profession; however, professional standards are specified in the LB and detailed regulations are set forth in Rules of conducting bankruptcy proceedings.
Legal powers and duties:	<ul style="list-style-type: none"> IOH have the necessary legal powers to manage the debtor's property in an autonomous way with very minor limitations set forth by the legislation (for example, any real estate asset sold by the IOH must be valued by an independent expert unless otherwise agreed by the creditors). IOHs are required to provide regular reports (monthly) to the court and the Department for Bankruptcy Affairs and otherwise on request. 	<ul style="list-style-type: none"> IOHs are entitled to request cooperation from the debtor and parties connected to the debtor and state bodies, but not from unconnected third parties. Persons who act unlawfully may be held criminally liable and administrative or financial sanctions may be imposed.
Remuneration:	<ul style="list-style-type: none"> IOH fees are governed by a statutory framework by which IOHs receive a fixed monthly payment (which can be decreased by the court on reasonable grounds by 	

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	<p>petition of the creditors or the Department for Bankruptcy Affairs) and an additional payment (subject to a maximum percentage of distributions).</p> <ul style="list-style-type: none"> IOH fees are paid before unsecured and preferential claims such as state taxes and employees. 	

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

Kyrgyz Republic



Key recommendations

As illustrated in the chart above, the Kyrgyz Republic appears to have a relatively developed legal framework for the IOH profession, which covers some key elements. Nevertheless, there are a couple of minor areas where reforms are particularly needed, including: qualification and training; appointment system; work standards and ethics and legal powers and duties.

- A tertiary qualification from a relevant discipline and “on the job” practical training with a practising IOH should be considered for prospective IOHs, as well as regular mandatory continuing educational training for licensed IOHs in order to enhance the professional qualifications and performance of the profession as a whole.
- The judicial IOH appointment procedure should be reviewed to ensure that it provides a fair and transparent appointment system that enables suitable candidates to be appointed as IOHs.
- 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.
- Additional requirements for cooperation by third parties would enhance the investigation powers of the IOH and could facilitate the recovery of assets belonging to the debtor's estate.

¹ Special administration may also result in the bankruptcy of the individual entrepreneur.

² A special administrator and an external administrator are also appointed in extra-judicial special administration and external administration respectively.

³ As the IOH is not an employee of the department it appears that no official reprimands/warnings can be issued by the Department for Bankruptcy Affairs under the Ministry of Economy to an IOH.

⁴ Training for IOH candidates used to be of one month's duration.

⁵ The fixed monthly payment is equal to 20 times the minimum wage by law.