

LATVIA



Legislative framework

Legislative framework for insolvency proceedings

The Latvian Insolvency Law (LIL) effective from 2010 (as amended) and the Latvian Civil Procedure Law (LCPL) effective from 1999 (as amended) regulate the insolvency of legal entities and natural persons.¹

Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are found in the LIL, which contains detailed provisions regarding the profession. In addition, the following regulations adopted by the Cabinet of Ministers regulate the profession of the IOHs: (i) Regulation No. 1005 Regulation Regarding the Procedure for Third Party Liability Insurance of an Insolvency Administrator and Minimum Amount of Coverage Thereof, adopted on 26 October 2010; (ii) Regulation No. 1003 Regulation Regarding the Activity Report of an Insolvency Administrator and the Procedure for Execution Thereof, adopted on 26 October 2010; (iii) Regulation No. 1001 Procedure Under Which the Insolvency Administration Office Chooses and Recommends to the Court Candidates to the Position of an Insolvency Administrator, adopted on 26 October 2010; and (iv) Regulation No. 1038 Procedure for Training of Candidates to the Position of an Insolvency Administrator and Certification of Insolvency Administrators, adopted on 9 November 2010.

Types of insolvency procedures

There are two types of procedures under the LIL: (i) liquidation, for businesses that are cash-flow insolvent, in other words, unable to pay their debts as they fall due. This involves the sale of the debtor's assets and/or business in satisfaction of creditors' claims ("insolvency proceedings") and (ii) reorganisation ("legal protection proceedings"), a debtor in possession procedure for businesses at threat of cash-flow insolvency, in other words, which may not fulfil their debts as they fall due. This is aimed at achieving a reorganisation of the debtor's financial affairs by means of a reorganisation plan agreed between the debtor and its majority creditors.

Institutional framework

Insolvency proceedings

Pursuant to the LIL, the key players in insolvency proceedings in Latvia are the insolvency court (and the insolvency judge), the insolvency administrator, creditors acting at a creditors' meeting, the debtor's representative, the insolvency administration and the Latvian Association of Certified Administrators. There is no separate creditors' committee.

All proceedings under the LIL are overseen by the competent court (being the district level court where the headquarters of the business are registered) and the insolvency administration. The court directs and controls the proceedings from opening to closure. It decides, among other matters, on the initiation and termination of proceedings and on the appointment, resignation or dismissal of an insolvency administrator.

The IOH, known as the insolvency administrator, is appointed by the court on the recommendation of the insolvency administration. The administrator takes control of the debtor's business and property and ensures that the proceedings are led in an effective and lawful manner.

The insolvency administration is a state agency, which inter alia, examines complaints regarding insolvency administrators' actions and may impose certain legal duties on administrators, such as requiring administrators to provide information and explanations.

The representative of the debtor, whose participation in insolvency proceedings is mandatory, is appointed by the insolvency administrator. His main duties include attendance of the meetings of the assembly of creditors and court hearings and the provision of certain information and documents (including the debtor's organisational, personal and accounting documents) to the insolvency administrator. The representative of the debtor may file a complaint regarding the decision of the assembly of creditors or the insolvency administrator and can bring an action before the court.

Creditors act collectively at a creditors' meeting led by the insolvency administrator. The administrator convenes the creditors' meeting at his own initiative and otherwise if three creditors or one creditor representing at least ten per cent. of votes so request, or if the secured creditor requests dismissal of the administrator. Votes at the creditors' meeting are only granted to unsecured creditors and to secured creditors for the unsecured part of their claims. The creditors' meeting has the power to decide, inter alia, on the remuneration of the administrator, any proposal for the removal of administrator, the extension of a deadline for the sale of the debtor's property, and authorises expenditure by the administrator in connection with the proceedings.

Legal protection proceedings

The key players in the legal protection proceedings are the debtor, the insolvency administrator, the court and the creditors (divided into secured and unsecured groups for voting purposes). There is no separate creditors' committee.

As for insolvency proceedings, all proceedings are overseen by the competent court. The insolvency administrator is appointed by the court on the recommendation of the debtor,

subject to the debtor receiving prior majority creditor consent or otherwise by the insolvency administration. The administrator plays a supervisory role and ensures that the debtor's management complies with the aim of the proceedings and the reorganisation plan. In legal protection proceedings, creditors are requested to give their consent to the legal protection proceedings action plan. The plan is submitted by the debtor to creditors asking creditors to provide a written response (and raise objections) within a specified period of time.

Assessment overview/strengths and weaknesses

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

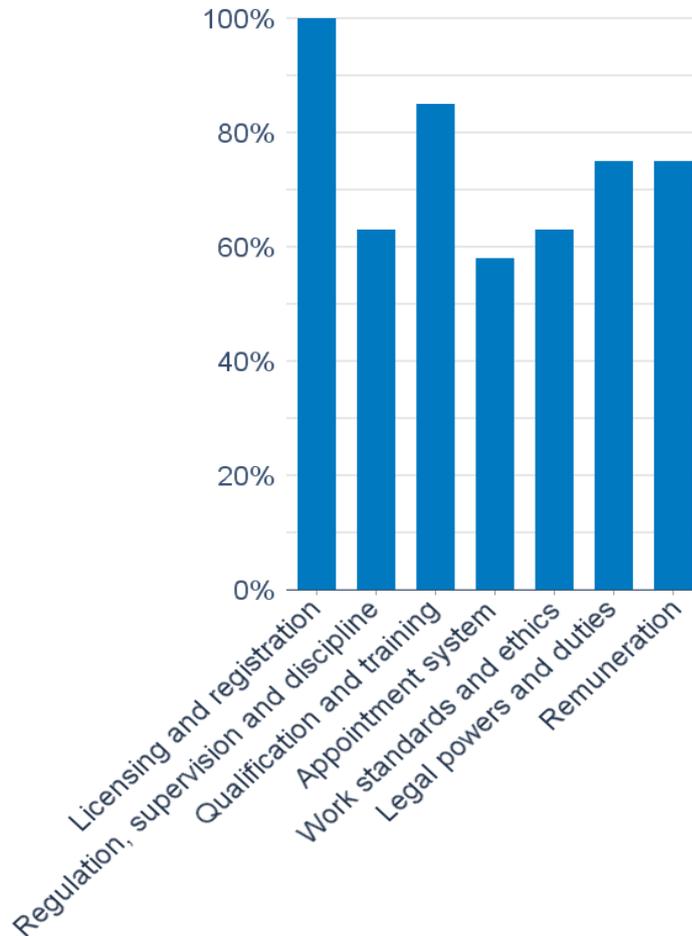
Benchmarks	Strengths of the Latvian IOH professional framework	Weaknesses of the Latvian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to obtain a certificate (valid for two years) to act from the Latvian Association of Certified Administrators. • A list of certified IOHs is available online. 	
Regulation, supervision and discipline:	<ul style="list-style-type: none"> • Supervision of the IOH is the primary task of the insolvency administration, assisted by the court. • A complaints system for IOH misconduct is operated by the insolvency administration. 	<ul style="list-style-type: none"> • No legal requirement exists for the regular monitoring or supervision of IOH activities. • Sanctioning power for IOH misconduct is limited. The court only has the power to suspend or dismiss the IOH from a particular case for IOH misconduct, while the Latvian Association of Certified Administrators is only entitled to revoke the IOH's licence.
Qualification and training:	<ul style="list-style-type: none"> • IOHs are required to pass a specific examination for entry to the profession organised by the Latvian Association of Certified Administrators and to take part in post-qualification theoretical training (at least 50 hours every two years). • Criminal checks are required for prospective IOHs before admittance to the profession (persons 	<ul style="list-style-type: none"> • The tertiary educational requirement for prospective IOHs is narrow and restricted to a law degree. • There is no requirement for IOH candidates to carry out work experience with a certified IOH.

Benchmarks	Strengths of the Latvian IOH professional framework	Weaknesses of the Latvian IOH professional framework
	<p>convicted of an intentional criminal offence cannot practice as IOHs).</p>	
Appointment system:	<ul style="list-style-type: none"> • A majority of creditors must approve the debtor selected IOH candidate in legal protection proceedings. • Creditors may request that the court replaces the IOH if the IOH is not efficient. 	<ul style="list-style-type: none"> • The court appoints the IOH on recommendations of the insolvency administration (in legal protection proceedings only in the absence of a debtor nomination), but selection by the insolvency administration is made on a randomised basis, reducing predictability and stakeholder input. • Creditors do not have any power to influence the selection of the IOH in insolvency proceedings and are reliant on the debtor nominating a candidate in legal protection proceedings (the acceptance of the majority of creditors is needed).
Work standards and ethics:	<ul style="list-style-type: none"> • A code of ethics applies to IOHs who are members of the Latvian Association of Certified Administrators. 	<ul style="list-style-type: none"> • Although there is a code of ethics for IOHs, it is binding only on the members of the Latvian Association of Certified Administrators and it is not clear how regularly the Latvian Association of Certified Administrators monitors compliance with the code and whether there are any sanctions for breach. • There are no detailed professional conduct rules for IOHs, such as guidance with the management of the debtor's estate and sale of any property.

Benchmarks	Strengths of the Latvian IOH professional framework	Weaknesses of the Latvian IOH professional framework
Legal powers and duties:	<ul style="list-style-type: none"> • In insolvency proceedings IOHs have a reasonable amount of autonomy, particularly with regard to management of the debtor's property, but IOHs must prepare a plan for sale of the debtor's assets and creditors can raise objections. • IOHs have rights to require cooperation (including to provide information and deliver up any assets of the debtor) from the debtor and request information from state and government authorities. Failure to comply with the request may result in a fine or criminal sanctions. • IOHs have regular (quarterly) reporting obligations to creditors in insolvency proceedings. 	<ul style="list-style-type: none"> • Third parties are not under a statutory duty to cooperate with the IOH. • There is no statutory minimum reporting requirement in legal protection proceedings.
Remuneration:	<ul style="list-style-type: none"> • A statutory framework for IOH remuneration in insolvency proceedings applies involving a flat (minimum) fee and an additional fee consisting of a certain percentage of recovered, pledged and non-pledged assets respectively. • Remuneration of IOHs is settled in priority to all unsecured and preferential creditors. 	<ul style="list-style-type: none"> • There is no statutory guidance for remuneration of IOHs in legal protection proceedings, although they are usually paid a monthly fee.

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

Latvia



Key recommendations

As illustrated in the chart above, Latvia appears to have developed a legal framework for the IOH profession with a number of strengths as referred above. However, the areas where reforms are particularly needed are in: regulation, supervision and discipline; qualification and training; appointment system; and work standards and ethics.

- Further consideration should be given to amplifying the role of the insolvency administration in regulating and supervising the activities of IOHs on a regular basis outside of the context of specific insolvency proceedings.
- The introduction of a wider range of sanctions (reprimand/warning/fine) for IOH misconduct should be considered to complement existing sanctions in place for more

serious cases of misconduct.

- Further input from creditors in appointing IOHs in insolvency proceedings should be considered to allow for key stakeholder input.
- Consideration should be given to introducing work experience with a practising IOH for prospective IOHs in order to enhance the performance of the profession and the status of the profession as a whole.
- The existing code of ethics should be reviewed and made binding on all IOHs. At the same time a comprehensive code or set of professional standards for IOHs of a binding nature should be adopted to provide useful practical guidelines and principles for IOH professional activities, for example, sale of assets.

¹ Comprehensive changes to the LIL are expected to be introduced in the autumn of 2014.