

# LITHUANIA



## Legislative framework

### Legislative framework for insolvency proceedings

The Law on Bankruptcy No. IX-216 of 2001 (as amended, the LB) and the Law on Restructuring of Enterprises No. IX-218 of 2001 (as amended, the LR) set forth the legal framework for business insolvency and restructuring. The LR only applies to legal persons.

### Legislative framework for insolvency office holders

In addition to the LB and the LR, legislative provisions relating to insolvency office holders (IOHs) are contained in the Resolution of the Government of the Republic of Lithuania on the forced sale auction of assets owned by the company in bankruptcy;<sup>1</sup> the Resolution of the Government of the Republic of Lithuania on insolvency administrator selection rules;<sup>2</sup> the Resolution of the Government of the Republic of Lithuania on the list of recommended costs for administration of bankruptcy and the rules of determination of the bankruptcy administrator's remuneration fee;<sup>3</sup> the Order of the Minister of Economy on Monitoring of the Performance of Insolvency Administrators;<sup>4</sup> the Order of the Minister of Economy approving the Code of conduct for IOHs;<sup>5</sup> and the Order of the Minister of Economy on monitoring of the performance of restructuring administrators.<sup>6</sup>

## Types of insolvency procedures

On the basis of LB, there are two types of bankruptcy procedures: (i) undertaken by the court and (ii) run out of court.

Following a declaration of the debtor's bankruptcy under the LB, the court adopts a judgment to put the debtor into liquidation, aimed at the sale of the debtor's business and assets, if no court judgment to conclude a settlement agreement between the debtor and its creditors is adopted within three months of the confirmation of creditors' claims.<sup>7</sup>

Restructuring of businesses may be carried out under the LR, a debtor-in-possession procedure, for debtors in financial difficulties or which will be in financial difficulties in three months but which have not discontinued their business activities.<sup>8</sup> The LR's key objective is to settle the debts of these businesses and avoid bankruptcy (liquidation) through the application of certain economic, technical, and organisational measures.

## Institutional framework

## **Law on Bankruptcy**

The key players in insolvency proceedings in Lithuania are the insolvency court (and the insolvency judge), the IOH and the creditors (acting as an assembly of creditors, and, to the extent applicable, as represented by the creditors' committee).

Insolvency proceedings under the LB are overseen by the competent court (being the regional 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 or dismissal of the IOH.

The IOH, known as the insolvency administrator, can be either a natural person or a legal entity (provided it employs at least two professionals with an insolvency administrator licence). The insolvency administrator, *inter alia*, takes over and manages the debtor's property, represents the debtor, and directs its economic and commercial activities. He convenes the general meeting of creditors and is entitled to require certain information from the debtor and governmental bodies. The insolvency administrator may be assisted by an assistant administrator.

Creditors convene at a general assembly to decide on the establishment (and members) of the creditors' committee, to investigate any creditors' complaints regarding the conduct of the insolvency administrator, to request any reports from the insolvency administrator and to determine the level of the insolvency administrator's fees.

The creditors' committee supervises the activities of the insolvency administrator and protects the interest of the creditors. Its rights and duties, as a general rule, are established by creditors as a whole at their general meeting.

## **Law on Restructuring of Enterprises**

The key players in enterprise restructuring proceedings are the court, the restructuring administrator, creditors and also the management bodies of the debtor. Enterprise restructuring proceedings under the LR are overseen by the competent court (being the regional court where the enterprise's registered office is located). It decides, among other matters, on the initiation and termination of proceedings and the appointment or dismissal of the restructuring administrator.

The restructuring administrator can be either a natural person or a legal entity. The restructuring administrator, *inter alia*, manages implementation of the restructuring plan, supervises the activities of the debtor's management body, convenes and participates in meetings and is entitled to require certain information from the management body and meeting (committee) of creditors. He supervises the activities of the debtor's management bodies during the restructuring proceedings.

Creditors convene at a general meeting in order to approve the restructuring plan and its amendments, determine the conduct of the proceeding and apply to the court for any implementation term extension to the plan.

The management body of the debtor prepares the guidelines of an enterprise restructuring plan. The guidelines must be approved by the meeting of the shareholders/participants in the debtor, its owner or, in respect of a state or municipal enterprise, an institution exercising the rights and duties of the owner.

## Assessment overview/strengths and weaknesses

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

Benchmarks	Strengths of the Lithuanian IOH professional framework	Weaknesses of the Lithuanian professional framework
<b>Licensing and registration:</b>	<ul style="list-style-type: none"> <li>• IOHs are required to obtain a licence issued by the Authority of Audit, Accounting, Property Valuation and Insolvency Management under the Ministry of Finance (there are separate licences for IOHs and assistance IOHs).</li> <li>• A list of licensed IOHs is easily accessible to all third parties and is available online on the web site of the Authority of Audit, Accounting, Property valuation and Insolvency management under the Ministry of Finance.</li> </ul>	
<b>Regulation, supervision and discipline:</b>	<ul style="list-style-type: none"> <li>• The Authority of Audit, Accounting, Property valuation and Insolvency management is the main body responsible for matters relating to the regulation, supervision and discipline of IOHs (but the court and the creditors also play a strong role in the supervision and discipline of IOHs).</li> <li>• The Authority of Audit, Accounting, Property valuation and Insolvency management monitors</li> </ul>	<ul style="list-style-type: none"> <li>• Sanctioning power is split between the court (which can impose fines or dismiss the IOH) and the Authority of Audit, Accounting, Property valuation and Insolvency management (which can issue a reprimand and revoke an IOH's licence).</li> </ul>

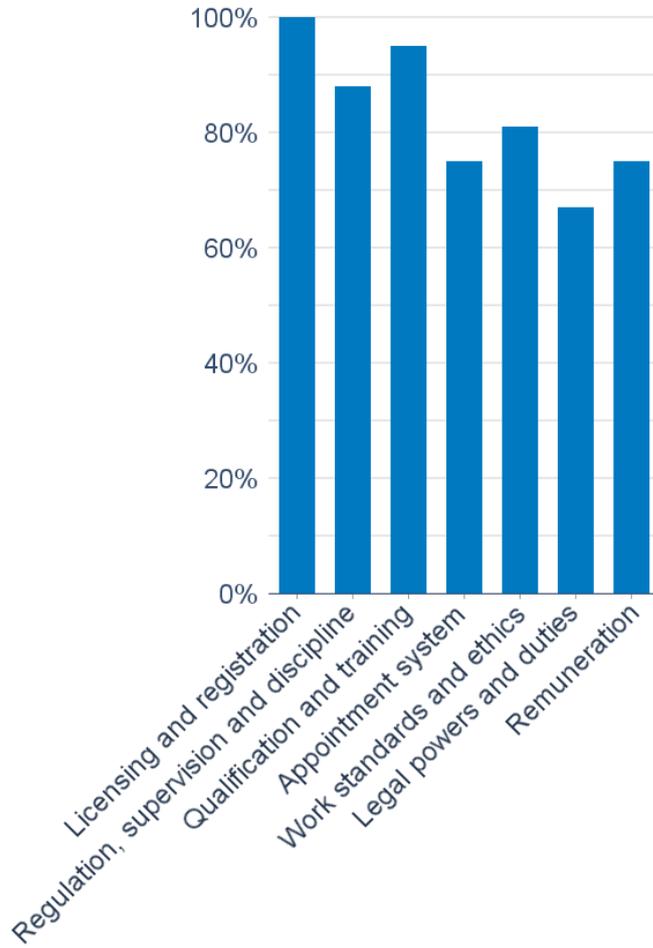
Benchmarks	Strengths of the Lithuanian IOH professional framework	Weaknesses of the Lithuanian professional framework
	<p>IOH activities on a regular basis (based on a schedule) and also on an ad hoc basis, but there are no minimum statutory monitoring requirements.</p> <ul style="list-style-type: none"> <li>• A separate complaints system is operated by the Authority of Audit, Accounting, Property valuation and Insolvency management. Complaints can be also filed against IOHs' conduct with the court.</li> </ul>	
<b>Qualification and training:</b>	<ul style="list-style-type: none"> <li>• A relevant tertiary qualification is required (law or economics) up to Master's level or, alternatively candidates need to have a lawyer's professional qualification.</li> <li>• IOHs are required to pass a specific examination for entry into the profession organised by the Authority of Audit, Accounting, Property valuation and Insolvency management.</li> <li>• Candidates need to have at least two years' experience as an assistant IOH in the previous three years prior to admission or alternatively five years as a CEO in the previous seven years prior to admission or to be appointed as an attorney at law or as a bailiff.</li> <li>• A criminal conviction for finance (business) related crimes and other serious crime is a bar to the entry into the profession. Criminal checks are carried out.</li> <li>• IOHs are required to participate in continuing training of not less than 24 hours per year.</li> </ul>	

Benchmarks	Strengths of the Lithuanian IOH professional framework	Weaknesses of the Lithuanian professional framework
<p><b>Appointment system:</b></p>	<ul style="list-style-type: none"> <li>• If the bankruptcy is run out of court, the IOH is appointed by the creditors' meeting from the list drawn up by the institution authorised by the Government.</li> <li>• On the basis of LR, IOH is appointed by the court. The management body of the debtor is entitled to nominate a candidate for the position of IOH with approval of the shareholders/participants in the debtor, its owner or, in respect of a state or municipal enterprise, an institution exercising the rights and duties of the owner.</li> </ul>	<ul style="list-style-type: none"> <li>• The IOH is selected randomly by an electronic system reducing predictability and stakeholder input. Nonetheless the court can take into account experience and workload of the IOH.</li> </ul>
<p><b>Work standards and ethics:</b></p>	<ul style="list-style-type: none"> <li>• There is a publicly available Code of Conduct that contains ethical rules that is binding by law.</li> <li>• The Authority of Audit, Accounting, Property valuation and Insolvency management carries out scheduled and non-scheduled monitoring on the compliance with the Code of Conduct (non-scheduled monitoring activities are mostly based on a complaint).</li> <li>• Breach of the Code of Conduct may lead to a reprimand or licence revocation.</li> </ul>	<ul style="list-style-type: none"> <li>• The Code of Conduct does not detail professional standards/rules.</li> </ul>

Benchmarks	Strengths of the Lithuanian IOH professional framework	Weaknesses of the Lithuanian professional framework
<p><b>Legal powers and duties:</b></p>	<ul style="list-style-type: none"> <li>• IOHs have powers to manage the debtor's property in an autonomous way; nevertheless, sale of assets is subject to court approval in certain cases.</li> <li>• IOHs are entitled to request the transfer of all assets and documents from the debtor and cooperation from all natural and legal persons. In practice, however, third parties may only cooperate with the IOH following an application by the IOH to court.</li> <li>• Creditors have an adequate oversight on IOH fees as they set the level of IOH remuneration that may be reviewed by the court.</li> <li>• IOH remuneration forms part of the procedural fees and is paid before unsecured and secured claims and priority claims, such as state taxes and employees.</li> <li>• Rules for approval of the remuneration fee for the bankruptcy administrator have been adopted by the Government of the Republic of Lithuania.</li> </ul>	<ul style="list-style-type: none"> <li>• IOHs are not required to provide regular reports to the court and creditors, although they report to creditors at the beginning of the case and reports are to be submitted thereafter anytime on the court's or creditors' request.<sup>10</sup></li> <li>• Sanctions for non-cooperation with the IOH would only be implied if the request for cooperation is set out in a court ruling.</li> </ul>

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

### Lithuania



## Key recommendations

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

- Statutory minimum/regular monitoring requirements of IOHs by the Authority of Audit, Accounting, Property valuation and Insolvency management should be considered.
- The appointment system should be reviewed to consider the various alternative approaches with a view to ensuring an appointment system that properly reflects

stakeholders, and in particular creditors' views.

- Consideration should be given to expanding the existing code of conduct for IOHs to include professional standards/rules (in addition to the existing ethical guidelines) in order to provide useful guidance for IOH professional activities.
- IOHs should be required to provide regular reports to the court and creditors to enhance the transparency and accountability of the insolvency proceedings.

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<sup>1</sup> Dated 17 April 2013 (Žin., 2013, No. 42-2053, as amended).

<sup>2</sup> Dated 9 July 2014 (TAR., 2014, No. 2014-10141, as amended)

<sup>3</sup> Dated 28 April, 2016 (TAR., 2016, No. 2016-10664, as amended)

<sup>4</sup> Dated 30 March 2012 (Žin., 2012, No.41-2012, as amended).

<sup>5</sup> Dated 2 December 2010 (Žin., 2010, No. 143-7340, as amended)

<sup>6</sup> Dated 2 December 2010 (Žin., 2010, No 143-7339, as amended)

<sup>7</sup> A settlement agreement may be concluded if it is signed by creditors representing not less than two-thirds by value of claims and the administrator, subject to the consent of the owner(s) of the business.

<sup>8</sup> According to the LR, managing bodies of the debtor shall, within their competence defined in the founding documents of the enterprise and other documents regulating the activities of enterprise, in compliance with the restructuring plan and restrictions established in LR and the court ruling, manage, use and dispose of all the assets owned or held in trust by the enterprise and manage the activities of the enterprise. The activities of management bodies are supervised by the court appointed restructuring administrator.

<sup>9</sup> The Code is divided into two parts governing IOHs' behaviour prior to bankruptcy/restructuring proceedings and during bankruptcy/restructuring proceedings.

<sup>10</sup> In restructuring proceedings whilst there is no formal requirement for IOHs to provide regular reports to the court and to creditors, creditors can apply to the debtor's management body and the IOH directly for information about the restructuring; subject to satisfaction with certain conditions, such information request may also include information of a commercially sensitive nature.