

# MOLDOVA



## Legislative framework

### Legislative framework for insolvency proceedings

Insolvency proceedings for legal entities and entrepreneurs in Moldova are governed by the Insolvency Act No. 149 dated 29 June 2012 (the IA). A few provisions regarding insolvency office holders (IOHs) continue to be regulated by the Civil Procedure Code of 2003.

### Legislative framework for insolvency office holders

The main provisions relating to IOHs are found in the IA. Further provisions applicable to the profession are found, among other laws, in the Government Decision of the Republic of Moldova No. 1717 dated 27 December 2002 on the Approval of the Rules on Remuneration of Insolvency Administrators and the Law on Authorised Administrators adopted by the Moldovan Parliament on 18 July 2014.<sup>1</sup>

## Types of insolvency procedures

There is one gateway into insolvency proceedings under Moldovan law available to businesses that are insolvent (illiquid or over-indebted) or at risk of insolvency. Filing of an insolvency petition usually results in a preliminary observation period during which the court examines the grounds for opening insolvency proceedings.<sup>2</sup> An IOH is appointed to supervise or, in some cases, manage the debtor during such period. Opening of insolvency proceedings may lead to: (i) bankruptcy, with the purpose of liquidating the debtor's assets and satisfying its liabilities; or (ii) restructuring of the debtor involving the preparation, approval, implementation and enforcement of a plan to address the financial and economic difficulties of the debtor.<sup>3</sup> Simplified bankruptcy and accelerated restructuring procedures are also available in certain circumstances.

## Institutional framework

Pursuant to the IA, the key players in insolvency proceedings in Moldova are the insolvency court, the creditors (acting as a general body and through the creditors' committee) and the IOH.

In Moldova insolvency proceedings are controlled and supervised by the competent court (being the second instance court – Court of Appeal – in the district where the debtor has its registered place of business) and the judge. The court directs and controls the proceedings from opening to closure. It decides, among other matters, on the initiation and termination of the proceedings and on the appointment, dismissal or replacement of the IOH. The court also decides on any appeals submitted by the debtor, the creditors' committee or any interested parties and is responsible for approving the reorganisation plan.

The IOH is appointed by the court, taking into account the candidature proposed by the party who has filed the insolvency petition, either as an administrator (during the preliminary phase and in the restructuring procedure) or as a liquidator (in bankruptcy). The IOH is empowered, inter alia, to examine the activities of the debtor, manage, administer and supervise the debtor, develop a restructuring plan at the request of creditors and organise the sale of any of the debtor's assets (as applicable).

Creditors acting as a general body are responsible for the election of the creditors' committee and may decide on any termination of the debtor's business activities and its liquidation, as well as the adoption of a restructuring plan. Creditors oversee the work of the IOH and are entitled to request certain information from him.

A creditors' committee may be formed by a majority creditor decision and, prior to the first general meeting of creditors, also by the court. It consists of three to five creditors representing the largest unsecured or partially secured claims and is required to meet on a monthly basis (and otherwise at the request of the president of the committee, the IOH or at least two members of the committee). The creditors' committee represents the interests of the creditor body, monitors the activities of the IOH and may provide support or assistance to the IOH in the management of the debtor's property. The creditors' committee is supervised by the court.

## Assessment overview/strengths and weaknesses

Based on the results of the assessment, a partial legal framework exists for the IOH profession in Moldova. Nevertheless, this would benefit from further improvements to address certain key areas of weaknesses and thus further improve IOH capacity and performance.

| Benchmarks                  | Strengths of the Moldovan IOH professional framework  | Weaknesses of the Moldovan IOH professional framework |
|-----------------------------|---|---|
| Licensing and registration: | <ul style="list-style-type: none"> <li>IOHs are required to obtain a license from the Authorisation and Disciplinary Commission.<sup>4</sup></li> </ul> |   |

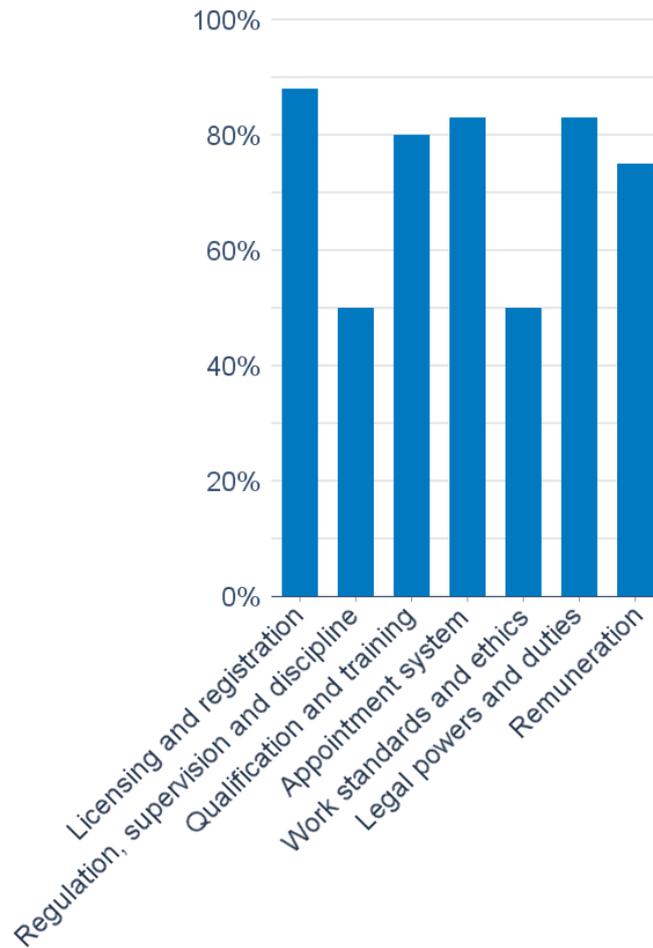
| Benchmarks                                     | Strengths of the Moldovan IOH professional framework  | Weaknesses of the Moldovan IOH professional framework   |
|--|---|---|
|  | <ul style="list-style-type: none"> <li>An official list of authorised IOHs is published on the web site of the Ministry of Justice.</li> </ul>  |   |
| <b>Regulation, supervision and discipline:</b> | <ul style="list-style-type: none"> <li>The court has the power to impose a fine, to dismiss the IOH from a particular case, and/or issue a reprimand, although in practice supervision and disciplinary powers do not appear to be widely exercised.</li> <li>The Authorisation and Disciplinary Commission is the main supervisory body for IOHs' discipline.</li> </ul>   | <ul style="list-style-type: none"> <li>No dedicated regulatory body exists for the regulation, supervision and discipline of IOHs, although the Ministry of Justice plays an active role in regulatory matters, together with the IOHs Union and other IOH associations.</li> <li>There is no legal requirement for regular monitoring of the performance/activities of IOHs. The court and the creditors monitor the work of the IOHs on a case-by-case basis.</li> <li>There is no complaints system, although complaints may be filed before the court.</li> </ul> |
| <b>Qualification and training:</b>             | <ul style="list-style-type: none"> <li>IOH candidates are required to undergo a 12-month theoretical and practical training programme and to pass a qualification exam.</li> <li>IOHs are required to have at least three years' work experience in one of their areas of university study.</li> <li>Criminal conviction is a bar to the entry into the profession.</li> <li>IOHs are required to participate in continuing professional training of at least 30 hours per annum. Failure to comply with this requirement may lead to suspension of the IOH's authorisation.</li> </ul> | <ul style="list-style-type: none"> <li>Although a tertiary qualification is required, this does not necessarily have to be in a relevant discipline, for example it can be in administration or in a technical discipline such as engineering (as well as in law, economics and finance).</li> </ul>  |
| <b>Appointment system:</b>                     | <ul style="list-style-type: none"> <li>Creditors may nominate the IOH following a creditor application for insolvency, propose the replacement of an IOH selected by the</li> </ul>   | <ul style="list-style-type: none"> <li>Where there is no debtor/creditor input and the court makes the appointment at random, the IOH may not necessarily be</li> </ul>   |

| <b>Benchmarks</b>                 | <b>Strengths of the Moldovan IOH professional framework</b>  | <b>Weaknesses of the Moldovan IOH professional framework</b>   |
|-----------------------------------|--|--|
|                                   | <p>debtor at the commencement of the insolvency process following a debtor application for insolvency and (in limited circumstances) propose the replacement of an appointed IOH later in the proceedings.</p> <ul style="list-style-type: none"> <li>• The court can only refuse an appointment where the IOH does not meet the requisite legal requirements.</li> </ul>  | <p>the right fit since there are no guidelines for the selection of IOHs by the court.</p>   |
| <b>Work standards and ethics:</b> | <ul style="list-style-type: none"> <li>• A Professional Code of Conduct was approved by IOHs' Union Congress in November 2015. The Commission for Ethics and The IOHs' Commission for authorization and discipline examines complaints against IOHs.</li> </ul>  | <ul style="list-style-type: none"> <li>• It is not clear how closely compliance by IOHs with work standards and ethics will be monitored in practice.</li> </ul> |
| <b>Legal powers and duties:</b>   | <ul style="list-style-type: none"> <li>• IOHs have relatively wide powers to manage the debtor's business in an autonomous way, although creditor (or court) participation and approval is required at all the main stages of the proceedings and, subject to limited exceptions, for the sale of any assets of the debtor.</li> <li>• IOHs have strong statutory powers and duties to request information and access to general cooperation including the provision of information from the debtor, all public state authorities and third parties, legal entities, officials and natural persons. IOHs have a special right of garnishment to collect in the debtor's assets. Non-compliance is punishable by a fine, but enforcement appears to be difficult in practice.</li> <li>• IOHs are required to report</li> </ul> |  |

| Benchmarks           | Strengths of the Moldovan IOH professional framework  | Weaknesses of the Moldovan IOH professional framework |
|----------------------|---|---|
|                      | <p>to creditors at the beginning and end of an insolvency case and provide relevant information to the creditors' committee on request at any time.</p> <ul style="list-style-type: none"> <li>IOHs must report on a regular (quarterly) basis to the court (such report is made available to the creditors).</li> </ul>  |   |
| <b>Remuneration:</b> | <ul style="list-style-type: none"> <li>There are clear statutory provisions regarding remuneration of IOHs consisting of a fixed fee (determined by way of negotiation, but subject to a minimum amount established by law) and an additional fee.</li> <li>Creditors have relatively strong oversight over IOH remuneration (within the confines of the statutory system).</li> <li>Remuneration of IOHs is settled in priority to preferential and unsecured claims and it forms part of the procedural costs.</li> </ul> |   |

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

## Moldova



## Key recommendations

- As illustrated in the chart above, Moldova appears to have a developing legal framework for IOH profession which covers some of the key elements of the profession. A number of weaknesses under the old system, including the lack of registration requirement for IOHs and the absence of any continuing training requirement and the lack of a code of professional conduct are to be addressed pursuant to the new Law on Authorised Administrators. In addition to implementing the proposals in the new law there are certain areas where reforms are still needed, including: regulation, supervision and discipline; qualification and training; and appointment system.
- Notwithstanding the streamlining of responsibilities regarding IOHs into a number of government commissions, further consideration should be given to the creation of a single dedicated regulatory body for IOHs. Experience demonstrates that centralising regulatory powers in an active regulatory body is more effective at enhancing IOH

professional standing and performance, since it can monitor the activities of IOHs on a regular basis. As part of the establishment of such regulatory body, a separate complaints procedure operated by that entity should be considered.

- Certain provisions should be introduced to clarify the IOH appointment procedure, reduce the level of court discretion and provide a fair and transparent appointment system for the protection of the stakeholders' interests.

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<sup>1</sup> Published on 3 October 2014 in the Official Gazette, effective from 1 January 2015. This law introduced a new system of partial self-regulation of the IOH profession, which shall be organised by means of a National Union and consulted by the Ministry of Justice, the body vested with regulation, supervision and control powers of the activity of IOHs. Several specialised commissions will be established including the Authorisation and Disciplinary Commission which shall include members of the IOHs Union, as well as representatives of the Ministry of Justice, Ministry of Economy, and scholars. The Deontology and Professional Training Commission shall be established as a body of the IOHs union.

<sup>2</sup> If the debtor requests the opening of restructuring proceedings or liquidation and the court delivers a judgment on commencing insolvency in this respect, the observation period shall not be applied (Article 21 (6) of the IA).

<sup>3</sup> Article 2 of IA.

<sup>4</sup> The other responsible bodies for the issuance of license are the members of the IOHs Union, as well as representatives of the Ministry of Justice, Ministry of Economy, and scholars. Prior to the new Law on Authorised Administrators, there was no licensing system for IOHs and no centralised list or registry of authorised IOHs, although active IOHs needed to petition to be included in the list of IOHs maintained by each court to obtain appointments. Such a list can be accessed online or inspected at the court's premises.