

MONTENEGRO



Legislative framework

Legislative framework for insolvency proceedings

The main legislation governing insolvency proceedings for legal entities and entrepreneurs in Montenegro is the Law on Bankruptcy (BA).¹

Legislative framework for insolvency office holders

In addition to the BA, further provisions relating to insolvency office holders (IOHs) are found, among other laws, in the Rulebook on the Professional Exam for Bankruptcy Trustees² and the Rulebook on Specific Principles and Criteria for Determining the Amount of Fees and Remuneration for the Work of Bankruptcy Trustees.³

Types of insolvency procedures

There is one gateway into insolvency proceedings under Montenegrin law available to businesses which are permanently unable to pay their debts or are over-indebted. Filing of an insolvency petition results in the opening of preliminary insolvency proceedings during which the court examines the case and decides whether the conditions for full insolvency proceedings are met. Full insolvency proceedings may lead either to: (i) bankruptcy, with the aim of settling the creditors' claims by selling the debtor's assets or the debtor as a legal entity; or (ii) reorganisation, involving the redefinition of creditor and debtor relations through a majority creditor approved reorganisation plan submitted simultaneously with the request for opening of proceedings or within a limited timeframe thereafter.

Institutional framework

Pursuant to the BA, the key players in insolvency proceedings in Montenegro are the insolvency court, the creditors (acting as a general body and as requested by the creditors' committee) and the IOH.

In Montenegro insolvency proceedings are overseen by the competent court (being the commercial court where the head office or place of residence of the debtor is located). The court directs and controls the proceeding from opening to closure. It decides, among other

matters, on the initiation and termination of the insolvency proceeding, the appointment and dismissal of an IOH, the approval of procedural expenses and any reorganisation plan and considers any complaints made against objections against the IOH.

The IOH, known as the bankruptcy trustee, is appointed by the court. The bankruptcy trustee represents the debtor and manages its operations. He is required to take the necessary measures to protect the debtor's assets and initiate proceedings before the court on behalf of the debtor. Any actions of the bankruptcy trustee that may significantly affect the bankruptcy estate are subject to the prior approval of the court and the creditors' committee. In preliminary insolvency proceedings, a temporary bankruptcy trustee can be appointed by the court if the court, ex officio or based on a request from the parties, finds it necessary for the protection of the creditors' interests.

Creditors acting as a general body are responsible for certain matters determined at a meeting of creditors chaired by the bankruptcy trustee. At the first creditors' meeting, creditors form the creditors' committee, discuss the statement on the financial position of the debtor prepared by the bankruptcy trustee and assess whether there is a possibility of reorganising the debtor's business. A meeting of creditors may be convened on the initiative of the bankruptcy trustee or creditors representing more than five per cent of all claims by value.

A creditors' committee is formed if the debtor has three or more creditors (unless less than three creditors agree on its formation) and consists of three to five creditors representing the largest unsecured or partially secured claims. The creditors' committee gives its consent to certain matters of importance for the bankruptcy estate (including the assumption of any financial obligations by the debtor) and oversees the bankruptcy trustee. It can object to certain actions by the bankruptcy trustee, propose the trustee's replacement and can appeal against a decision of the judge (if the decision can be appealed).

Assessment overview/strengths and weaknesses

Based on the results of the assessment, an elementary legal framework exists for the IOH profession in Montenegro. This would nevertheless benefit from further improvements to address certain key areas of weaknesses and thus further improve IOH capacity and performance.

Benchmarks	Strengths of the Montenegrin IOH professional framework	Weaknesses of the Montenegrin IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to be registered in a list maintained by the Ministry of Justice. • The official list of authorised IOHs is easily accessible online on the web site of the Ministry of Justice. 	
Regulation, supervision and discipline:		<ul style="list-style-type: none"> • There is no dedicated regulatory body for IOHs, although the Ministry of Justice and the court have

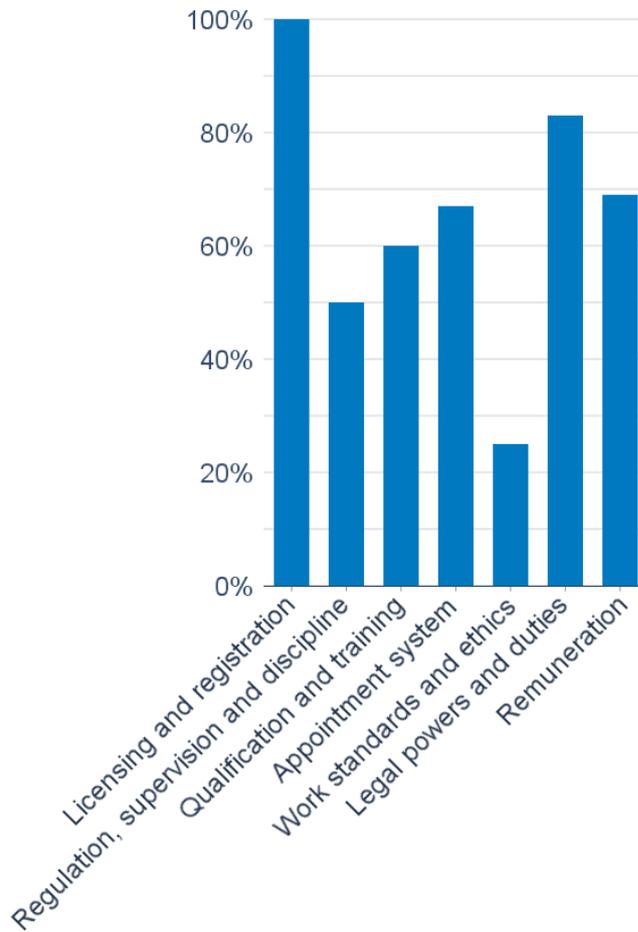
Benchmarks	Strengths of the Montenegrin IOH professional framework	Weaknesses of the Montenegrin IOH professional framework
		<p>certain regulatory powers.</p> <ul style="list-style-type: none"> • There is no legal requirement for regular monitoring of the performance/activities of IOHs. Monitoring takes place on an ad hoc basis by the court in specific proceedings. • There is no separate complaints system although complaints may be filed with the court. • A full range of sanctions is not available for IOH misconduct; the court has the power to dismiss the IOH from a particular case and the Ministry of Justice can only cancel the registration of an IOH in limited circumstances, for example, where the IOH is convicted of a crime.
Qualification and training:	<ul style="list-style-type: none"> • IOHs are required to pass a specific examination organised by the Ministry of Justice for entry into the profession. • There is a prohibition on candidates with certain criminal records being appointed as IOHs. 	<ul style="list-style-type: none"> • A tertiary qualification is required for prospective IOHs but does not necessarily have to be from a discipline relevant for IOH activities. • Although IOH candidates are required to have at least three years working experience, this does not have to be an experience with practising IOH. • There is no continuing training requirement for IOHs.
Appointment system:	<ul style="list-style-type: none"> • Creditors with over 60 per cent of claims can propose a replacement IOH candidate to the judge and creditors can appeal against the appointment of a particular IOH (in limited circumstances). 	<ul style="list-style-type: none"> • The system for the appointment of IOHs is not transparent. The court appoints the IOH at its own discretion from its official list.
Work standards and ethics:		<ul style="list-style-type: none"> • There is no professional code of conduct covering professional and/or ethical

Benchmarks	Strengths of the Montenegrin IOH professional framework	Weaknesses of the Montenegrin IOH professional framework
		rules.
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs have strong powers to manage the debtor's business in an autonomous way. Nevertheless, certain IOH actions are subject to prior court and creditor committee approval including the sale of assets. • IOHs have powers which enable them to request information and delivery up of any assets from the debtor, certain parties connected to the debtor, state authorities or other third parties. Fines may be imposed on the parties to the proceedings for failure to cooperate and/or the court may order enforcement measures in the event of failure to deliver up assets of the debtor. • IOHs are required to report regularly (quarterly) to the court and to the creditors' committee and at any time upon request. 	

Benchmarks	Strengths of the Montenegrin IOH professional framework	Weaknesses of the Montenegrin IOH professional framework
Remuneration:	<ul style="list-style-type: none"> • There is a clear system for IOH remuneration prescribed by a rulebook, which sets out maximum and guideline monthly rates. The court sets the interim and final amount of remuneration based on the value of the work, the value of the bankruptcy estate and performance of the IOH. • Remuneration of IOHs forms part of the procedural costs and is paid before unsecured and preferential claims. Where the costs of the bankruptcy proceeding cannot be settled from the bankruptcy estate, IOH remuneration shall be paid from specially designated state fund. 	

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

Montenegro



Key recommendations

As illustrated in the chart above, Montenegro 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, including: regulation, supervision and discipline; qualification and training; appointment system and work standards and ethics.

- 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. In this regard, the establishment of a separate complaints procedure operated by that regulatory body should be considered.

- A tertiary qualification requirement from an insolvency-related discipline, such as law, economics and business, relevant practical work experience and regular continuing educational training for licensed IOHs should be introduced in order to enhance the performance of IOHs.
- Certain provisions should be introduced to clarify the IOH appointment procedure, in particular to increase the role of creditors in the selection of the initial IOH and to provide a fair and transparent appointment system for the protection of stakeholders' interests.
- A comprehensive and publicly available code of conduct for IOHs encompassing ethical and professional rules of a binding nature should be adopted to provide useful guidelines and principles for IOH professional activities.
- Creditors should be given greater rights from the outset to determine the level of IOH remuneration.

¹ Published in the Official Gazette of Montenegro, No. 1/2011, dated 11 January 2011.

² Published in the Official Gazette of Montenegro, No. 28/2012, dated 5 June 2012.

³ Published in the Official Gazette of Montenegro, No. 27/2012, dated 31 May 2012.