

POLAND



Legislative framework

Legislative framework for insolvency proceedings

The Law on Bankruptcy and Restructuring adopted on 28 February 2003 (as amended, the LBR) contains the general legal framework relating to the insolvency of business, including individual entrepreneurs.

Legislative framework for insolvency office holders

In addition to LBR, provisions relating to insolvency office holders (IOHs) are to be found in the Act on Licensing of Court Receivers adopted on 15 June 2007 (as amended).

Types of insolvency procedures

There is one gateway into insolvency proceedings under the LBR, which may result in the liquidation of the debtor or an arrangement with creditors.

Consequently, the court may adopt two types of decisions for insolvent businesses: it may decide on the initiation of bankruptcy proceedings involving either (i) bankruptcy with liquidation of the debtor's property; or (ii) bankruptcy with the option of concluding an arrangement (which can either be a debtor-in-possession proceeding or a proceeding in which the IOH replaces the existing management). If no arrangement is reached in bankruptcy with the option of concluding an arrangement, the court will order the liquidation of the debtor.

The LBR also provides for voluntary reorganisation proceedings, initiated by the debtor at risk of insolvency, which is aimed at concluding an arrangement with the creditors.

Voluntary reorganisation is supervised by the court through the appointment of a court supervisor.¹

Institutional framework

Pursuant to the LBR, the key players in insolvency proceedings in Poland are the insolvency court, the judge commissioner, the IOHs and the creditors, acting through the assembly of creditors and as represented by the council of creditors. The LBR provides for the possibility of appointing a temporary court supervisor or administrator for securing the debtor's assets and to convene the preliminary meeting of creditors.

Bankruptcy is declared by the competent insolvency court (being the regional court where the principal establishment of the debtor is located). Such declaration is made by a panel of three judges. Once bankruptcy is declared, bankruptcy proceedings are run by one judge known as the judge commissioner.

The judge commissioner leads the insolvency proceeding after the declaration of bankruptcy and supervises the activities of the IOH and requires that certain actions of the IOH are only exercised with his consent (including continuing the business of the debtor, private sale of assets, raising credit/loans, settling disputed claims), calls the IOH to account for any breach/violation, confirms or hears appeals from creditors, assesses the three monthly reports and accounts of the IOH, confirms or modifies liquidation "plan" and dismisses the IOH for breach or non performance of his obligations and duties.

The IOH can either be appointed as a court receiver (when bankruptcy with liquidation of the debtor's assets is declared), as a court supervisor (when bankruptcy with the option of concluding an arrangement is declared); or as an administrator (when bankruptcy with the option of concluding an arrangement is declared but the bankrupt debtor is deprived of its rights to manage its assets). In bankruptcy the tasks and duties of IOHs vary depending on the type of insolvency proceedings. The court receiver takes over the management of the debtor's assets, secures and ultimately liquidates such assets, whereas the court supervisor primarily takes a supervisory role. The administrator, *inter alia*, takes over management of the bankruptcy estate and secures it against damage. A temporary IOH may be appointed for the protection of debtor's assets.

Creditors meet as the assembly of creditors at the outset of bankruptcy proceedings. Such assembly is presided over by the judge commissioner. A council of creditors composed of three or five members and one or two deputies may be established by the judge commissioner for the provision of assistance to the IOH and for the inspection of his activities. A council of creditors is mandatory if creditors representing at least one fifth of all liabilities request its establishment.

Assessment overview/strengths and weaknesses

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

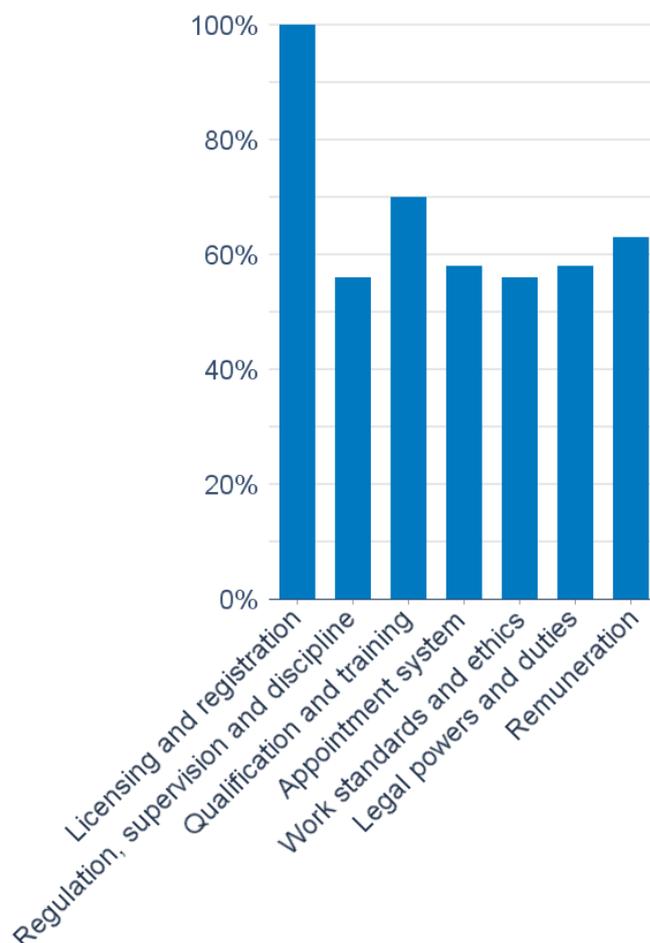
Benchmarks	Strengths of the Polish IOH professional framework	Weaknesses of the Polish IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to be registered with the Ministry of Justice. • An official list of authorised IOHs is published on the 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 and no legal requirement for regular monitoring of the performance/activities of IOHs. Regulatory functions are performed by the Ministry of Justice with the assistance of the judge commissioner. • Discipline and sanctioning power is split between the judge commissioner who has the power to dismiss the IOH, issue a warning and/or impose a fine, and the Ministry of Justice, which has the authority to suspend the IOH or withdraw his licence. The court also has the authority to determine the IOH's civil liability. • There is no official complaints system (except for the request of the council of creditors to dismiss the IOH), and disciplinary measures are taken by the judge commissioner and the Ministry of Justice ex officio, even though interested parties may inform these bodies on IOH misconduct.
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 Ministry of Justice. • Prospective IOHs must prove that they managed 	<ul style="list-style-type: none"> • Tertiary qualification requirements are not specified. • There is no continuing training requirement for registered IOHs.

Benchmarks	Strengths of the Polish IOH professional framework	Weaknesses of the Polish IOH professional framework
	<p>an estate in bankruptcy or, alternatively, an undertaking or a separate part of an undertaking in the European Economic Area for at least three years.</p> <ul style="list-style-type: none"> • Criminal checks are required for prospective IOHs before admittance to the profession. 	
Appointment system:	<ul style="list-style-type: none"> • Creditors at the first assembly of creditors can suggest an IOH candidate to be appointed by the court, but the court is not bound to follow such suggestion. 	<ul style="list-style-type: none"> • There is no express provision governing the selection/appointment of IOHs by the court (apart from certain exclusions to prevent the appointment of a connected/partial IOH). • Creditors only have a limited right to influence the replacement of a court appointed IOH.
Work standards and ethics:	<ul style="list-style-type: none"> • A code of ethics applies to IOHs that are members of the voluntary association of IOHs. 	<ul style="list-style-type: none"> • There is no code of professional conduct or ethics binding for all IOHs; however, a code of ethics has been adopted by the voluntary association of IOHs. • The association is only entitled to impose sanctions for breach on member IOHs.
Legal powers and duties:	<ul style="list-style-type: none"> • Creditors, the debtor and state bodies are required by law to provide information and deliver up any assets of the debtor to the IOH, while third parties may be requested to cooperate with the IOH only by the court. 	<ul style="list-style-type: none"> • Different legal powers and duties for IOHs apply according to the nature of the proceeding; however, the IOH is under the strong supervision and oversight of the judge commissioner, including the sale of debtor's assets. • There is no regular reporting requirement for IOHs to creditors, nonetheless, creditors may request information from the IOH at any time.
Remuneration:	<ul style="list-style-type: none"> • A statutory framework applies for IOH remuneration that consists of a lump sum payment that 	

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	<p>may be increased by the court and sets out caps on IOH fees.</p> <ul style="list-style-type: none"> • Remuneration of IOHs is settled in priority to all unsecured and priority creditors. 	

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

Poland



Key recommendations

As illustrated in the chart above, Poland appears to have developed a legal framework for the IOH profession which covers some key elements. Nevertheless, there are certain areas where reforms are particularly needed including: regulation, supervision and discipline; qualification and training; appointment system; work standards and ethics and remuneration.

- Further consideration should be given to establishing 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.
- The establishment of a formal complaints procedure (operated by a dedicated regulatory body) should be considered.
- Relevant professional education for prospective IOHs as well as regular continuing educational training for registered IOHs should be introduced in order to enhance the performance of IOHs and the status of the profession as a whole.
- Certain provisions should be introduced in the LBR to clarify the IOH appointment procedure and to provide a more fair and transparent appointment system for the protection of stakeholders' interests. Further creditor input in the selection of the IOH would be desirable.
- A comprehensive and publicly available code of professional conduct for IOHs of a binding nature covering both ethical and professional standards should be adopted to provide useful guidelines and principles for IOH professional activities.
- Remuneration provisions should be reviewed in order to simplify the existing cap system and create greater opportunities for stakeholders, for example creditors to monitor the remuneration of the IOH.

¹ The court supervisor concludes an agreement with the debtor that is the basis for his remuneration; nevertheless, the remuneration is governed by statutory provisions.