

RUSSIA



Legislative framework

Legislative framework for insolvency proceedings

The main legislative instrument for insolvency proceedings in Russia is the Federal Law No. 127-FZ on Insolvency (Bankruptcy) of 26 October 2002 (as amended, the FLI). In addition to the FLI, separate legislation applies to the insolvency of special entities, including debtors of a strategic importance.

Legislative framework for insolvency office holders

General provisions relating to insolvency office holders (IOHs) are largely found in the FLI. In addition, further provisions relating to self-regulated organisations (the structure pursuant to which IOHs are organised in Russia) can be found in Federal Law No. 315-FZ on Self-Regulating Organisations of 1 December 2007 (the FLSRO). The framework is further regulated by binding and soft-law instruments issued by the High Arbitrazh court, among other laws, the Plenum Resolution on the Remuneration of IOHs, which is binding on the courts conducting insolvency proceedings.¹

Types of insolvency procedures

There is one gateway into insolvency proceedings under the FLI, which allows for both the liquidation and reorganisation as a going concern of businesses in financial distress. There are four main phases of the proceedings under FLI. All insolvency proceedings begin with a mandatory supervision (receivership) procedure for the purpose of preserving the debtor's property involving the appointment of an interim administrator or receiver. Depending on the decision of the assembly of creditors this is followed by: (i) financial restoration (rehabilitation) for the purpose of restoring the debtor's solvency and repaying its debts according to a payment schedule with the appointment of an administrator; (ii) external administration for the purpose of restoring the debtor's solvency by replacing the debtor's management with an external administrator; or (iii) administration or liquidation if the debtor's solvency cannot be restored, with the appointment of a liquidation administrator (receiver). Financial restoration and external administration are optional procedures that creditors may, but are not obliged to follow.

In addition, an amicable agreement can be reached at any stage between the debtor and its creditors if the debtor is still solvent for the purpose of reaching an agreement.

Institutional framework

The key players in insolvency proceedings in Russia are the insolvency court, the insolvency judge, the IOH and the creditors (acting through the assembly of creditors and as represented by the creditors' committee).

In Russia insolvency proceedings are court-driven and overseen by the competent court (being the commercial court where the headquarters of the business is registered), which acts in accordance with the rules set forth by the Commercial Procedural Code of the Russian Federation.

The court (judge) directs and controls the insolvency proceedings from opening to closure, and is required to act in accordance with the Commercial Procedural Code of the Russian Federation.

The IOH (known as the interim administrator, rehabilitation administrator, external administrator or liquidation administrator) has different tasks and duties depending on the type of proceedings. All types of IOHs perform numerous common tasks, including taking measures to protect the debtor's property, keeping a register of creditors' claims (except where a registrar is appointed for this purpose) and convening the assembly of creditors. The interim administrator and rehabilitation administrator act alongside with the debtor's ordinary management; the interim administrator performs an initial analysis of the debtor's solvency and supervises actions of the debtor's management in order to preserve the debtor's property, while the rehabilitation administrator oversees management's attempts to achieve debtor's financial rehabilitation. The external administrator and liquidation administrator, inter alia, replaces the debtor's management. The external administrator restores the debtor's solvency by its own efforts, while the liquidation administrator's key task is to liquidate the debtor's property and distribute the proceeds among the creditors.

Creditors meet as an assembly of creditors convened by the IOH. If the number of creditors is above 50, the assembly of creditors elects a creditors' committee from among its members. The assembly of creditors decides on the particular proceeding that should follow the supervision procedure, and if the procedure is unsuccessful, decides on the next phase of the proceeding and the nomination of the IOH.

The creditors' committee represents the legal interests of bankruptcy creditors and authorised bodies and is required to monitor the activities of the IOH.

Assessment overview/strengths and weaknesses

Based on the results of the pilot assessment, a legal framework exists for the IOH profession in Russia, which on the face of it, displays certain strengths. Nevertheless, such framework would benefit from further improvement in various fields to address certain key areas of weaknesses and thus improve IOH capacity and performance.

Benchmarks	Strengths of the Russian IOH professional framework	Weaknesses of the Russian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none">• An official list of authorised	<ul style="list-style-type: none">• Registration of IOHs is only

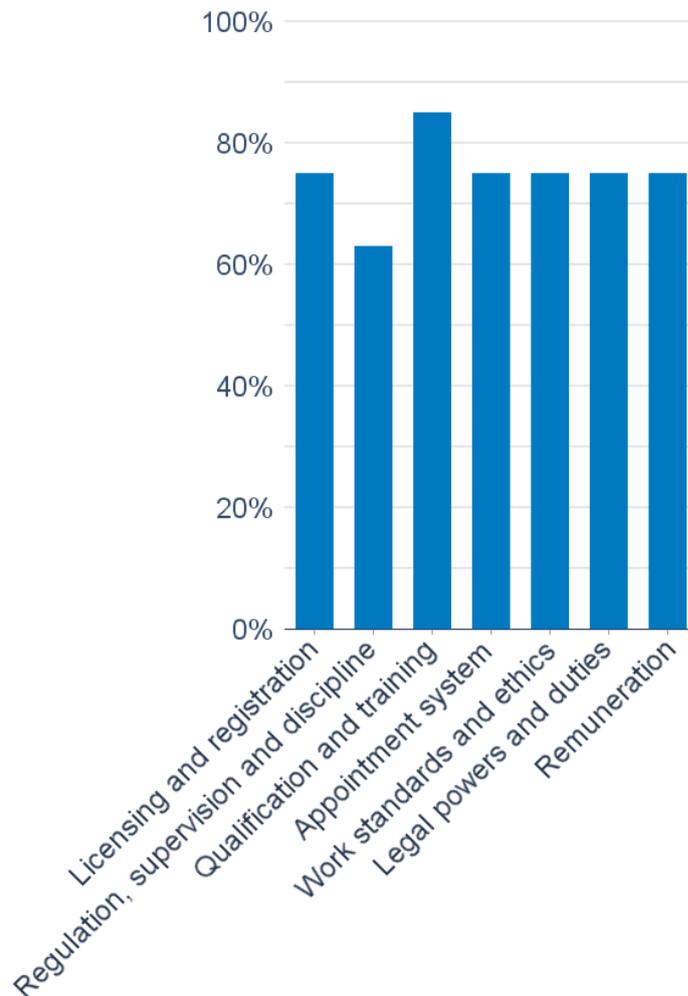
	IOHs is available online through the Federation Registration Service.	at SROs (self-regulating organisations) level and is tied with membership of a particular SRO, meaning that there is no registration system for IOHs at a federal level.
Regulation, supervision and discipline:	<ul style="list-style-type: none"> A range of sanctions can be imposed on IOHs for misconduct. Sanctions may be imposed by the SROs (such as ordering the IOH to rectify the effects of his misconduct, reprimand, fine or cancellation of IOH's membership); by the Federal Registration Service (fine or disqualification for up to three years); while the court may dismiss the IOH from the particular case. In addition, IOHs may be held liable for damages caused to the parties or their misconduct may qualify as a criminal offence. 	<ul style="list-style-type: none"> The regulation of IOHs is highly decentralised, in other words, the Federal Registration Service, regulates a number (currently 53) of SROs of qualified receivers, which in turn are responsible for regulating their members. SROs appear to monitor the performance and activities of IOHs; however, this monitoring is not centralised or standardised to create a level playing field among all SROs. There is no unified official central complaints procedure, although complaints can be made to SROs, the Federal Registration Service and/or the court.
Qualification and training:	<ul style="list-style-type: none"> IOHs are required to pass a specific examination for entry to the profession and membership of a particular SRO, organised by the relevant SRO. Previous work experience with qualified IOHs for IOH candidates as well as since 2014 IOHs are required to undertake continuing training of 24 hours per year, however, this only takes place at SRO level. Candidates cannot enter the profession if they have a conviction for a deliberate crime. 	<ul style="list-style-type: none"> The type of tertiary education requirements for prospective IOHs is not specified by law.
Appointment system:	<ul style="list-style-type: none"> Although the court has ultimate authority to confirm the IOH's appointment, creditors, if they initiate the particular insolvency procedure, may nominate 	

	<p>the IOH or an SRO (that will, in turn, select a member IOH to act in the particular case).</p> <ul style="list-style-type: none"> • Creditors and/or the debtor can request the court to dismiss a particular IOH in the event of misconduct in all types of insolvency proceedings. 	
<p>Work standards and ethics:</p>	<ul style="list-style-type: none"> • SROs are required to set professional standards binding on their IOH members, but there is no unified practice. 	<ul style="list-style-type: none"> • Although some standards have been adapted by the union of SROs of qualified receivers, such standards are not automatically binding on all IOHs, only on those SROs that are members of the union, membership of which is voluntary.
<p>Legal powers and duties:</p>	<ul style="list-style-type: none"> • IOHs have strong powers to arrange the debtor's property and to make distributions to creditors, but require creditor(s) consent to affect a sale of the debtor's property. If creditors' approval is absent, the sale needs to be carried out with court permission. • The debtor, all natural persons, legal entities and state bodies and local government institutions are required by law to provide information to the IOH and deliver up of any assets of the debtor to the IOH. Failure to cooperate may trigger a fine or disqualification (in case of state or certain corporate officers) or it may qualify as criminal offence. • IOHs are required to submit regular reports to creditors in liquidation (quarterly) or at any time on request. The creditors' committee and the assembly of creditors may request reports at any time (may set the frequency of the reports) in financial restoration and external administration, while by 	<ul style="list-style-type: none"> • Reporting is not frequent in supervision; only one report is filed by the IOH at the end of the procedure. • Only some key reports (for example, final reports issued at the end of each procedure) are filed with the court, nevertheless the court is entitled to request information from the IOH at any time.

	<p>law, only one report shall be filed at the end of these procedures.</p>	
<p>Remuneration:</p>	<ul style="list-style-type: none"> • A statutory framework governs remuneration for all types of IOHs, the amount of which consists of a fixed monthly fee (depending on the type of IOH) and an additional fee (“interest”) calculated based on the outcome of the respective proceedings. • Creditors have influence over the IOH remuneration and may grant additional remuneration as well as increase the amount of the fixed monthly fee. • 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.

Russia



Key recommendations

As illustrated in the chart above, Russia appears to have developed a legal framework for IOH profession which mostly covers the key elements of the profession. Nevertheless, there are certain key areas where reforms are needed, including: licensing and registration, regulation, supervision and discipline; qualification and training and work standards and ethics.

- Further consideration should be given to the establishment of a centralised regulatory body for IOHs. Such regulatory body could monitor the activities of IOHs on a regular basis and could provide an established, centralised approach to all matters

relating to regulation, supervision and discipline.

- The establishment of a centralised complaints procedure operated by a dedicated regulatory body should be considered. This would be an improvement on the existing complaints system whereby complaints can be addressed to a number of bodies, including the SROs, Federal Registration Service and/or the court.
- Relevant professional education requirements should be introduced in order to enhance the performance of IOHs and the status of the profession as a whole.
- Comprehensive and publicly available rules of professional and ethical conduct for IOHs of a binding nature on a centralised level should be adopted to provide best practice guidelines and principles for IOH professional activities and behaviour.

¹ 25 December 2013 No. 97, Resolution of the Plenum of the High Arbitrazh Court on Some Issues Relating to the Reward of the Insolvency Office Holders in Insolvency Proceedings.