

SERBIA



Legislative framework

Legislative framework for insolvency proceedings

The Law on Bankruptcy of the Republic of Serbia of 2009 (as amended, the LOB) is the main legislation governing the insolvency of legal entities in Serbia.¹

Legislative framework for insolvency office holders

Provisions relating to insolvency office holders (IOHs) are largely found in the LOB. In addition, the Code of Ethics for Bankruptcy Administrators (Official Gazette of the Republic of Serbia, No. 11/10 of 5 March 2010) and the Regulation Establishing the National Standards for Administering the Bankruptcy Estate (Official Gazette of the Republic of Serbia, No. 13 of 12 March 2010) contain provisions relating to the professional conduct of IOHs. Remuneration of IOHs is governed by the Regulation on the Basis and Criteria for Determining Bankruptcy Administrators' Award and Reimbursement of their Expenses (Official Gazette of Republic of Serbia No. 1/2011 (as amended)). Provisions concerning the role of the regulatory body for IOHs, the Bankruptcy Supervision Agency (the BSA), are found in the Law on Bankruptcy Supervision Agency of 2004 (as amended, the LBSA) and the Regulation on the Manner of Supervision of Bankruptcy Administrators (Official Gazette of the Republic of Serbia, No. 35/2010)..

Types of insolvency procedures

There is one gateway into insolvency proceedings under the LOB, which allows for both the liquidation and reorganisation of businesses on insolvency or threatened insolvency, in other words, where the business is illiquid or over-indebted or is threatened by illiquidity. The LOB also permits a "pre-packaged" reorganisation plan to be proposed by the debtor with the support of its majority creditors on filing a petition for the opening of proceedings under the LOB.

Institutional framework

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

In Serbia insolvency proceedings are court-driven and overseen by the competent court (being the commercial court where the registered office of the business is located). The court directs and controls insolvency proceedings from opening to closure. It appoints a judge who, among other matters, rules on the initiation of (preliminary) insolvency proceedings, establishes whether grounds for insolvency exist and appoints or, if necessary, dismisses the IOH. The judge decides on the proposed reorganisation plan (subject to approval by the requisite majority of classes of creditors) and passes the resolution on the distribution of proceeds.

The IOH, known as the bankruptcy administrator, is appointed by the insolvency judge and is required to represent the debtor and manage its business, take all necessary actions to protect the debtor’s property, and submit to the insolvency judge, the creditors’ committee and the BSA regular reports on the course of the proceedings and the state of the bankruptcy estate. In reorganisation proceedings, the bankruptcy administrator, inter alia, may prepare the reorganisation plan and is required to provide an opinion on its feasibility.² In liquidation proceedings, the bankruptcy administrator manages the sale of the debtor’s assets and distribution of any proceeds in satisfaction of creditors’ claims. The LOB provides for the ability of the insolvency judge to appoint an interim IOH if needed (for example, on the request of the person, which proposed the commencement of the insolvency proceedings).

Creditors meet as an assembly of creditors on the request of the bankruptcy administrator or creditors whose whole claims exceed 20 per cent of the total amount of all creditors’ claims at the outset of insolvency proceedings. The first creditors’ assembly elects the members of the creditors committee (and can subsequently dismiss such members). It also may adopt the decision on the bankruptcy of a company at its first session if 70 per cent of the creditors vote for such decision. The assembly reviews the reports of the bankruptcy administrator on the course of the proceedings and the state of the bankruptcy estate, together with the reports of the creditors’ committee.

The creditors’ committee supports the work of the bankruptcy administrator by, among other matters, giving opinions on whether the business operations of the debtor should be continued and how certain assets should be sold if they are not sold by public auction. The creditors’ committee also approves decisions on important matters, such as the entry of the debtor into transactions such as loans, credits, the purchase of high-value equipment, leases, as well as decisions on the financial statements of the debtor. The committee also reviews the reports of the bankruptcy administrator.

Assessment overview/strengths and weaknesses

Based on the results of the pilot assessment, a comprehensive legal framework exists for the IOH profession in Serbia. This framework, on the face of it, displays certain strengths. Nevertheless, it would benefit from minor improvements to address a few areas of weaknesses and further improve IOH capacity and performance.

Benchmarks	Strengths of the Serbian IOH professional framework	Weaknesses of the Serbian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> IOHs are required to obtain a licence from the 	

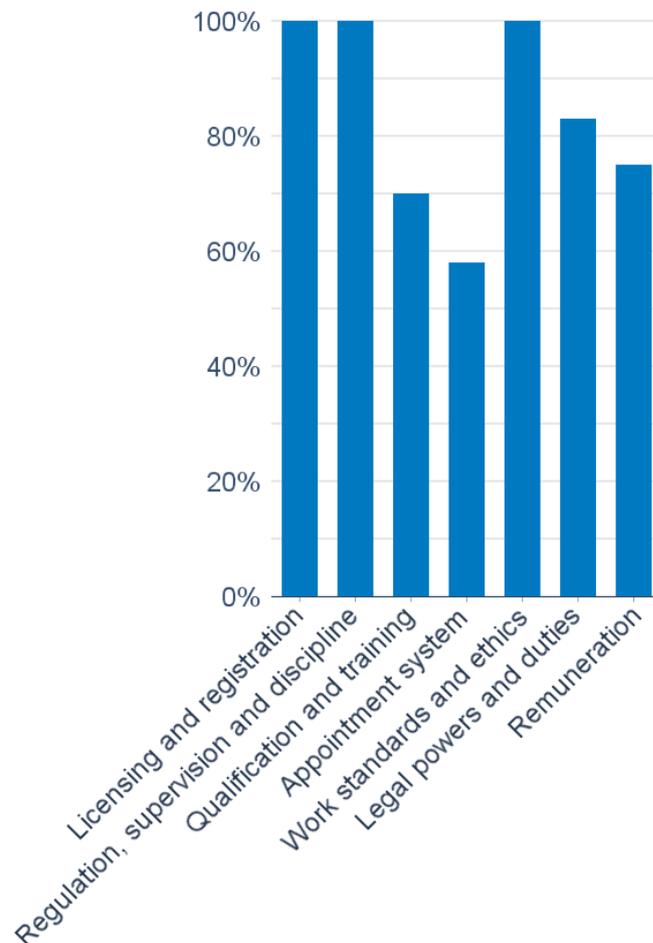
Benchmarks	Strengths of the Serbian IOH professional framework	Weaknesses of the Serbian IOH professional framework
	<p>regulator, the BSA.</p> <ul style="list-style-type: none"> An official list of authorised IOHs is available online with the BSA. 	
Regulation, supervision and discipline:	<ul style="list-style-type: none"> The BSA, a governmental agency, plays an active role in the regulation, supervision and discipline of IOHs. Regular inspections of IOHs are carried out by the BSA (once every three years and otherwise for cause). The BSA runs a complaints procedure, which is easily accessible by third parties. The BSA can issue a range of sanctions depending on the level of IOH misconduct (including reprimands/warning, fines, suspension and cancellation of permission to act). The court has the power to dismiss an IOH from a particular case. 	
Qualification and training:	<ul style="list-style-type: none"> IOHs are required to pass a specific examination for entry into the profession organised by the BSA. A licence cannot be issued to a person against whom criminal proceedings were conducted ex officio or who is convicted of certain criminal offences or under arrest and proof of a clean criminal record is required.³ 	<ul style="list-style-type: none"> Although a university degree is required for prospective IOHs, this does not need to be in a relevant field. Work experience with a licensed IOH is an option, but is not compulsory for all prospective IOHs. Continuing training for licensed IOHs is not directly required by law for practising IOHs.⁴
Appointment system:	<ul style="list-style-type: none"> Creditors can ask the judge to dismiss the IOH and appoint a new IOH on the request of at least three quarters of members of the creditors' committee. 	<ul style="list-style-type: none"> Selection of the IOH is made on a random basis by the court without stakeholder input.
Work standards and ethics:	<ul style="list-style-type: none"> There is clear and comprehensive guidance 	

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	<p>for IOH in work standards and ethics. A set of professional standards and a code of professional ethics have been implemented into secondary legislation.</p> <ul style="list-style-type: none"> • Compliance with work standards and ethics is monitored regularly by the BSA and disciplinary sanctions may be imposed for breach. 	
Legal powers and duties:	<ul style="list-style-type: none"> • The IOH has certain powers to manage the debtor's property and business in an autonomous business way. Nonetheless, prior creditor committee approval is needed for any direct sale of the debtor's property and sale of the debtor as a legal entity. • The debtor, certain parties connected to the debtor (e.g. proxies and advisers) are required to provide the IOH with all necessary information and deliver up any assets of the debtor to the IOH. Public registries are under a general duty to provide data on the debtor's assets and rights while third parties may be requested to deliver up assets belonging to the debtor's estate to the IOHs. Non-cooperating debtors, management and advisors are liable to the creditors for any damage caused by withholding information/data. • The IOH is required to provide quarterly reports to the bankruptcy judge, the creditors' committee and the BSA. 	<ul style="list-style-type: none"> • There appears to be no obligations on third parties to provide information to IOH and no effective sanctions against third parties that fail to cooperate with the IOH.
Remuneration:	<ul style="list-style-type: none"> • A statutory framework (tariff) applies to IOH remuneration in liquidation, 	

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	<p>which may be increased based on the complexity or duration of the case or the degree of settlement of the creditors' claims.</p> <ul style="list-style-type: none"> • The creditors' committee may request the increase or (together with secured creditors) decrease of IOH remuneration, subject to approval of the insolvency judge. • Remuneration of IOHs is considered a cost of the bankruptcy proceedings and is settled in priority to all unsecured and priority creditors. The only expenses paid ahead of IOH remuneration are court expenses of the proceedings. 	

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

Serbia



Key recommendations

As illustrated in the chart above, Serbia appears to have developed an efficient legal framework for the IOH profession. Minor reforms that could further improve performance and development of IOHs include:

- Relevant professional education, compulsory work experience with practising IOHs for prospective IOHs, as well as compulsory regular continuing educational training for licensed IOHs, should be introduced in order to enhance the performance of IOHs and the status of the profession as a whole.
- Revision of the appointment system for IOHs is recommended to allow creditors to participate in the selection process of the initial IOH and have greater powers to

remove a non-performing IOH.

- Consideration should be given to providing IOH's with further powers to require relevant third party cooperation (access to information and assets).

¹ Please note that amendments were adopted to the LOB on 1 August 2014 and came into force on 13 August 2014.

² Under the LOB, the reorganisation plan may be filed by the debtor, the IOH and creditors with at least 30 per cent of the total of secured and unsecured claims towards the debtor or the owner of at least 30 per cent of the share capital of the debtor.

³ The person applying for the licence must provide confirmation from the relevant authority (court) that criminal proceedings were not commenced against him as well as a written statement that he was not convicted of any crimes or if so, then the details of such crimes.

⁴ If an IOH cannot demonstrate that he has practised as a bankruptcy administrator or has performed other professional activities relating to bankruptcy for the two years prior to his licence renewal application, then, as an alternative in order to obtain a licence renewal, he can submit proof that he "annually attended at least three professional seminars or courses on the conduct of bankruptcy proceedings organised or recognised by the authorised organisation".