

SLOVAK REPUBLIC



Legislative framework

Legislative framework for insolvency proceedings

The Act on Bankruptcy and Restructuring, No. 7/2005 Coll. (as amended, the ABR) is the main law governing the insolvency of businesses, including sole traders, in the Slovak Republic.

Legislative framework for insolvency office holders

In addition to the ABR, other laws regulate the IOH profession, including Act No. 8/2005 Coll. on Insolvency Administrators (as amended), Decree of the Ministry of Justice of the Slovak Republic No. 665/2005 Coll. on Execution of Certain Provisions of Act No. 7/2005 Coll. on Bankruptcy and Restructuring (as amended), Decree of the Ministry of Justice of the Slovak Republic No. 291/2005 Coll. on the Educational Code for Insolvency Administrators in the Area of Bankruptcy and Restructuring (as amended) and Decree of the Ministry of Justice of the Slovak Republic No. 666/2005 Coll. on Office Schedules for Insolvency Administrators (as amended).

Types of insolvency procedures

Under the ABR, there are two types of insolvency procedures in the Slovak Republic for businesses that are cash flow insolvent or over-indebted: (i) bankruptcy,¹ with the purpose of liquidating the debtor through a sale of its assets and collective satisfaction of creditors' claims; and (ii) restructuring, a debtor-in-possession procedure,² aimed at maintaining the business activities of the debtor by means of a restructuring plan agreed with majority creditors. Restructuring proceedings can also be initiated where the debtor is in a state of threatened insolvency (both cash flow insolvency and over-indebtedness).

If the court opens restructuring proceedings, any ongoing bankruptcy proceedings are automatically suspended until the conclusion of the restructuring proceedings. Restructuring proceedings may also be opened by the court during the preliminary phase of bankruptcy proceedings, at any time prior to the court's declaration of the debtor's bankruptcy.

Institutional framework

Pursuant to the ABR, the key players in insolvency proceedings in the Slovak Republic are the insolvency court (and the judge), the insolvency office holder (IOH) and creditors (acting as members of the assembly of creditors and as represented by a creditors' committee).

In the Slovak Republic proceedings under the ABR are directed and overseen by the competent court (being the district court located in the area where the debtor has its registered office or permanent home address).³ The court directs and controls the proceedings from opening to closure. It decides, among other matters, on the initiation and termination of insolvency proceedings, as well as the appointment and replacement of the IOH. The court oversees the activities of the IOH on a case-by-case basis.

The IOH, known as the bankruptcy administrator or restructuring administrator is appointed on the opening of bankruptcy or restructuring proceedings. The initial bankruptcy administrator is appointed by the court on a random basis through a process of electronic selection; however, the assembly of creditors can elect another bankruptcy administrator (by majority vote) at its first meeting. Creditors may only request the replacement of the bankruptcy administrator at a later stage in the proceedings if certain conditions are met, for example where the bankruptcy administrator has repeatedly or seriously breached his statutory obligations. The restructuring administrator is chosen and appointed by the debtor (or by the creditor(s) with the debtor's consent).

Bankruptcy proceedings

The bankruptcy administrator, among other matters, registers the creditors' claims, assumes management of the debtor's business and is required to provide information to the creditors during the course of the proceedings. The activities of the bankruptcy administrator are supervised by the court. A preliminary bankruptcy administrator may be appointed for the period between the initiation of the bankruptcy proceedings and the court's decision on the opening of the bankruptcy for the sole purpose of ascertaining whether the debtor's property is sufficient to cover the costs of the proceedings.

The assembly of creditors is the general body of creditors convened by the bankruptcy administrator. The bankruptcy administrator is required to convene the first meeting of the assembly of creditors within 55 days of the opening of the bankruptcy. Other meetings are convened by the bankruptcy administrator at his initiative or at the request of the court, the creditors' committee or creditors representing 10 per cent of all voting rights. The assembly of creditors decides, among other matters, on the appointment of the members of a creditors' committee.

The creditors' committee is established by unsecured creditors (and secured creditors for the unsecured portion of their claims) at the first assembly of creditors and consists of three or five members. If the first assembly of creditors is not quorate or does not elect the creditors' committee, the powers of the creditors' committee are exercised by the court until the creditors' committee is duly elected. The committee is entitled to give binding instructions and recommendations to the bankruptcy administrator in connection with the management

and sale of the debtor's property and may request information from the bankruptcy administrator relating to the management of the debtors' assets.

Restructuring proceedings

In restructuring proceedings one of the roles of the restructuring administrator is to draw up a restructuring opinion in order to ascertain whether the prerequisites for the debtor's restructuring are met. Such opinion must be filed with the petition to court for restructuring proceedings. The restructuring administrator, among other matters, registers the creditors' claims, supervises the debtor's business during the restructuring and authorises any legal acts of the debtor.

The assembly of creditors is the general body of creditors convened by the restructuring administrator. The administrator shall convene a meeting of the assembly of creditors within 30 days from receiving permission from the court for the restructuring. The assembly of creditors created in course of the restructuring proceedings has, in general, similar powers to the assembly in bankruptcy proceedings and decides on the appointment of the members of a creditors' committee.

The creditors' committee consists of three or five members elected by the assembly of creditors. Individual nominations for the members of the creditors' committee are submitted by the restructuring administrator with a view to securing a balanced representation of secured and unsecured creditors. Where the court permitted restructuring on a creditor's petition, the creditor that filed the petition for restructuring is always a member of the creditors' committee; where the petition for a restructuring opening was filed by several creditors, their joint representative shall be a member of the creditors' committee. The restructuring plan is first approved by the committee, and subsequently by all creditors at the approval meeting and is confirmed by the court.

Assessment overview/strengths and weaknesses

Based on the results of the assessment, a partially developed legal framework appears to exist for the IOH profession in the Slovak Republic, which on the face of it, plays certain strengths. Nevertheless, such framework would benefit from further improvements to address a few important areas of weaknesses and thereby strengthen the IOH profession.

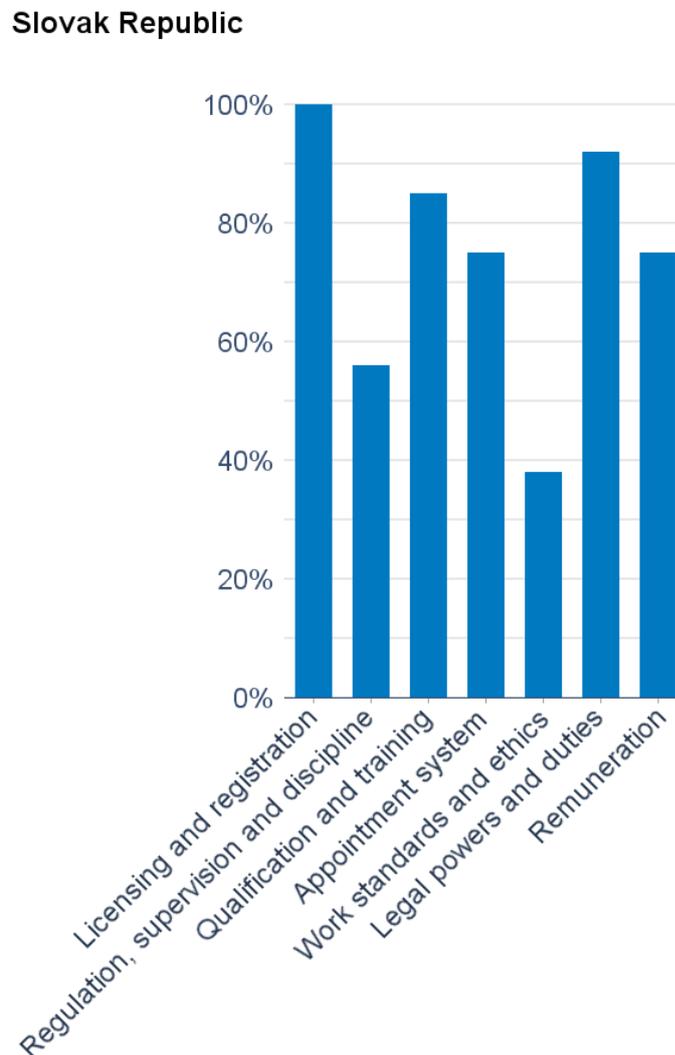
Benchmarks	Strengths of the Slovak Republic's IOH professional framework	Weakness of the Slovak Republic's IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> IOHs are required to be registered with the Ministry of Justice. An official list of authorised IOHs is easily accessible and published on the web site of the Ministry of Justice. 	
Regulation, supervision and discipline:	<ul style="list-style-type: none"> Various sanctions for IOH misconduct are available: the Ministry of Justice may 	<ul style="list-style-type: none"> There is no dedicated regulatory body; nevertheless, the Ministry

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	<p>suspend or remove the IOH from the list and impose fines and the court may dismiss the IOH in a particular case.</p>	<p>of Justice appears to play the main role in matters relating to regulation, supervision and discipline, assisted by the court.</p> <ul style="list-style-type: none"> • There is no express legal requirement for regular monitoring of the activities of IOHs, although monitoring by the Ministry of Justice appears to take place on a random basis. • There is no official complaints system, although a complaint against an IOH's conduct may be filed with the competent court or the Ministry of Justice.
Qualification and training:	<ul style="list-style-type: none"> • Prospective IOHs need to have obtained a higher-education degree from economics or law. • IOHs are required to pass a specific examination for entry to the profession organised by the Ministry of Justice (and undertake prior to the exam a specialised course organised by the Ministry of Justice). • Criminal conviction is a bar to entry into the profession and criminal checks are carried out. • IOHs are required to participate in continuing training (a minimum of 60 credits is needed over a period of two years). 	<ul style="list-style-type: none"> • No "on the job" practical training is required of prospective IOHs.
Appointment system:		<ul style="list-style-type: none"> • In bankruptcy proceedings the initial IOH is appointed by the judge based on a system of random selection. Nevertheless, the assembly of creditors by majority vote can select a different IOH at its first meeting.

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Work standards and ethics:		<ul style="list-style-type: none"> • There is no code of professional and ethical conduct for the profession.
Legal powers and duties:	<ul style="list-style-type: none"> • Bankruptcy administrators have strong powers to manage the debtor's property in an autonomous way, but are required to comply with the instructions of the creditors' committee (and the court in limited cases) regarding the sale of any assets from the debtor's estate. • Bankruptcy administrators are required to provide creditors with regular reports every 90 days or otherwise at the request of the creditors' committee in bankruptcy, whereas in restructuring where a supervisory IOH is appointed, reports need to be filed monthly both with the creditors and the court. • There is a general statutory requirement for third parties, state authorities, the debtor and creditors to cooperate with the bankruptcy administrator, who may inspect relevant records, documents and assets and require these to be handed over. Failure to comply with the request may result in a fine and (in respect of debtor's management) may also give rise to criminal liability. 	
Remuneration:	<ul style="list-style-type: none"> • A clear legislative framework (tariff system) applies to the calculation of bankruptcy administrators in bankruptcy proceedings, but may not be incentivising in cases where there is a high volume of work.⁴ • IOH remuneration forms part of the procedural costs and is paid in priority to 	

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	unsecured claims and priority claims, such as amounts owed to the state and to employees.	

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



Key recommendations

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

- 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 than a more passive system of regulation by the courts and government authorities. Such a regulatory body could

monitor the activities of IOHs on a regular basis.

- The establishment of an enhanced formal complaints procedure (operated by a dedicated regulatory body) should also be considered.
- Practical work experience for prospective IOHs should be introduced in order to enhance the performance of IOHs and the status of the profession as a whole.
- A comprehensive and publicly available code of professional conduct for IOHs of a binding nature should be adopted to provide useful ethical and professional guidelines and principles for IOH professional activities.

¹ Bankruptcy proceedings in the Slovak Republic consist of two stages: the first stage is initiated by a petition for declaration of bankruptcy on which, if the statutory requirements are met, the court decides on the initiation of the bankruptcy proceeding; the second stage commences with the court's decision on declaration of the debtor's bankruptcy.

² The debtor remains entitled to dispose with its property and to act in its own name and on its own behalf; however there are certain statutory limitations regarding the scope of the debtor's legal acts (primarily in order to avoid the reducing of the debtor's assets necessary for the restructuring accomplishment). The debtor is required to limit the performance of its activities to "common legal acts" in other words, to such acts which are necessary and inevitable for proper operation of the debtor's activities. For other acts the IOH's prior approval is required, on the condition that such a legal act will improve the value of the debtor's assets or is necessary to achieve the purpose of the restructuring.

³ Insolvency proceedings are overseen by a special insolvency unit within the district court.

⁴ In the restructuring proceedings, the remuneration of IOH is determined on the basis of an agreement between the IOH and the debtor (or a creditor after being authorised to draw up the opinion before filing a petition for the opening of restructuring proceedings). Generally, the agreement shall consist of two parts. The first part shall include the remuneration for preparing the opinion and the second part remuneration for the performance of the function of the restructuring administrator (if the court opens the restructuring proceedings).