

SLOVENIA



Legislative framework

Legislative framework for insolvency proceedings

The Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (as amended, IPA) is the framework legislation governing insolvency of business entities in Slovenia.¹

Legislative framework for insolvency office holders

In addition to the IPA, a number of other secondary laws govern the insolvency office holder (IOH) profession, including the Rules on the Tariff for Assessing the Remuneration and Reimbursement Costs of Administrators in Insolvency Proceedings;² the Rules on Preparing the List of Administrators;³ the Rules on the Proficiency Examination for Performing the Function of Administrator in Insolvency Proceedings;⁴ and the Statute establishing the Chamber of Insolvency Administrators of Slovenia.⁵

Types of insolvency procedures

There are two main types of insolvency procedures in Slovenia for businesses that are insolvent or unable to settle their liabilities when they fall due under the IPA: (i) bankruptcy proceedings, aimed at liquidating the debtor, and (ii) compulsory settlement proceedings (in other words, reorganisation proceedings that can be simplified, regular or modified proceedings, depending on the size of the company), in which a settlement plan including a plan for financial restructuring can be adopted. A further pre-insolvency preventive restructuring procedure for large and medium-sized companies exists, but this does not involve the appointment of an IOH.

Following an insolvency petition, there is a preliminary phase during which the court decides whether the conditions exist for opening full insolvency proceedings.

Institutional framework

Pursuant to the IPA, the key players in insolvency proceedings in Slovenia are the insolvent debtor, the insolvency court (and the insolvency judge), the IOH, and creditors, acting individually or as represented by the creditors' committee.⁶

In Slovenia insolvency proceedings under the IPA are overseen by the competent court (that is the commercial court where the headquarters of the business are registered). The court directs and controls proceedings from opening to closure and decides, among other matters, on the initiation and termination of the insolvency proceedings and the appointment, replacement of an insolvency administrator. It supervises the activities of the insolvency administrator and may give him binding instructions relating to the management of the insolvency proceedings.

The IOH, known as the insolvency administrator, is appointed by the court in its decision on the opening of the insolvency proceedings. The insolvency administrator, inter alia, manages debtor's business (if the debtor is in bankruptcy) or supervises the debtor's business (if the debtor is in a compulsory settlement), verifies declared creditors' claims and is entitled to file lawsuits on behalf of the debtor (if the debtor is in bankruptcy) and is generally required to provide information to the participants in the proceedings. The activities of the insolvency administrator are supervised by the Ministry of Justice, the Chamber of Insolvency Administrators, the court, the creditors' committee, as well as individual creditors.

A creditors' committee is established by the court in compulsory settlement proceedings from among the creditors with the highest (unsecured) claims and may be established in bankruptcy proceedings at the request of creditors. A separate creditors' committee may be established for secured creditors (to the extent they are affected by the proceedings). The creditors' committee is convened by its president (apart from the first meeting, which is convened by the insolvency administrator) and it meets to discuss the reports submitted by the insolvency administrator, decides on giving consent to certain proposals and performs other statutory activities.

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 Slovenia, which prima facie, displays certain strengths. Nevertheless, such a framework would benefit from further improvements to address certain important areas of weaknesses and thus improve IOH capacity and performance.

Benchmarks	Strengths of the Slovenian IOH professional framework	Weaknesses of the Slovenian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> • IOHs are required to obtain a licence issued by the Ministry of Justice. • An official list of authorised IOHs is easily accessible and is published on the web site of the Ministry of Justice. 	
Regulation, supervision and discipline:	<ul style="list-style-type: none"> • A range of sanctions is available for IOH misconduct, although sanctioning power is split between the Chamber of 	<ul style="list-style-type: none"> • There is no single dedicated regulatory body for IOHs. Regulatory responsibilities (including disciplinary powers) are

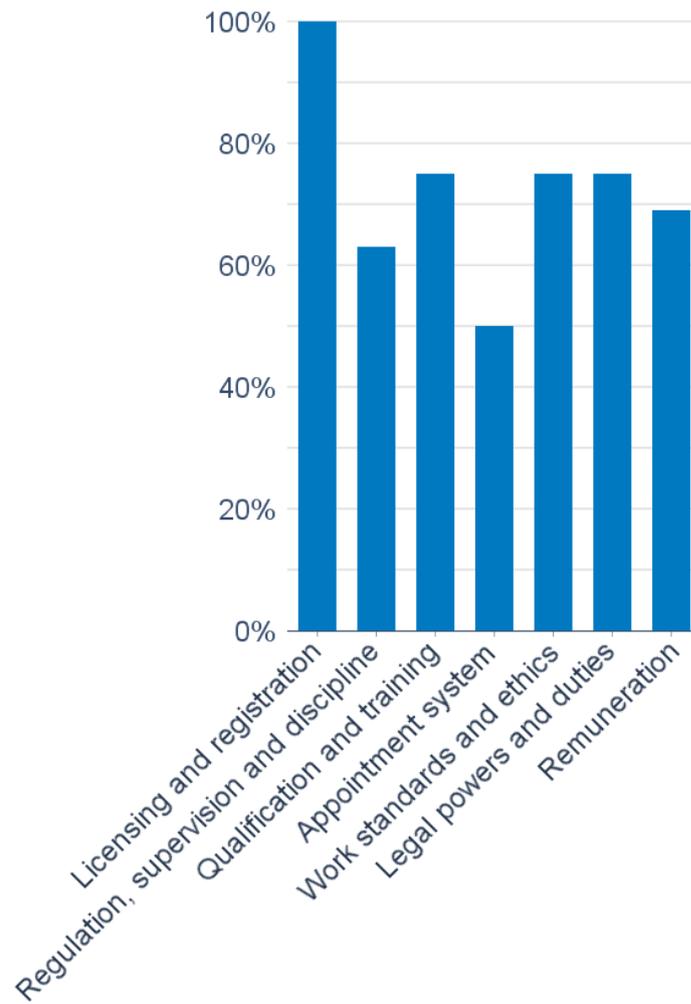
Benchmarks	Strengths of the Slovenian IOH professional framework	Weaknesses of the Slovenian IOH professional framework
	<p>Insolvency Administrators, the Ministry of Justice and the court.</p>	<p>split between the Ministry of Justice, the court and the Chamber of Insolvency Administrators (membership is compulsory for all IOHs).⁷</p> <ul style="list-style-type: none"> • There is no legal requirement for regular monitoring of the performance/activities of IOHs, although the Chamber of Insolvency Administrators will investigate on the basis of a complaint and informally if it comes across irregularities.⁸ • There is no centralised complaints procedure. Nevertheless, complaints can be filed with the court, the Ministry of Justice or the Chamber of Insolvency Administrators.
Qualification and training:	<ul style="list-style-type: none"> • IOHs are required to pass a specific examination organised by the Ministry of Justice (covering knowledge of insolvency and related laws as well as finance) for entry to the profession. • Criminal convictions and criminal proceedings for serious crimes constitute a bar to entry into the profession. Criminal checks are carried out. • The Chamber of Insolvency Administrators organises continuing training sessions, and IOHs may be disciplined by the Chamber of Insolvency Administrators if they fail to meet the necessary training requirements. 	<ul style="list-style-type: none"> • IOH candidates need to hold a higher-education degree (or auditor qualification), but any degree does not need to be in a relevant field of study.⁹ • There is no requirement for “on the job” practical training with an IOH, although IOH candidates need to have at least three years’ general work experience.
Appointment system:		<ul style="list-style-type: none"> • The random appointment system for IOHs in all insolvency proceedings (other than in compulsory settlement for small,

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		<p>medium and large companies) does not enable creditors (or debtors) to participate in the selection of the IOH.</p> <ul style="list-style-type: none"> • The random appointment system does not enable a particular IOH to be selected on track record (other than the requirement of 2 years “on the job” experience for large companies) and overall fit with the insolvency case. • In compulsory settlement proceedings for medium and large companies initiated by the debtor, the court is able to appoint the IOH at its own discretion (creditors may only file a motion for appointment of a particular IOH where they have initiated the proceedings).
Work standards and ethics:	<ul style="list-style-type: none"> • There is a binding code of conduct adopted by the Chamber of Insolvency Administrators which sets out general ethical standards of behaviour; however, this does not cover professional standards or rules (for example, sales of assets, separation of bank accounts and so on). 	<ul style="list-style-type: none"> • The Chamber of Insolvency Administrators does not actively monitor compliance with the code, but it and other regulatory bodies may investigate non-compliance based on complaints.
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs are required to provide the court with reports on a regular basis every three months (which are made available to creditors and online) and in addition on the request from the court/creditors’ committee. • IOHs can ask the debtor to provide information and deliver up any assets (and the IOH may require assistance from the court or police forces). IOHs may (under certain conditions) 	<ul style="list-style-type: none"> • While IOHs have certain powers to manage the debtor’s property, in most cases they need to obtain the court’s consent to exercise those powers. • Third parties (including state bodies) are not under a duty to cooperate with the IOH, nonetheless in bankruptcy they might be requested to provide certain information to the IOH.

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	<p>request the management of the debtor also to allow access to assets (including premises and assets) but this does not extend to third parties. Certain sanctions (for example, fines, criminal liability) are envisaged for non-cooperation by relevant parties with any information assistance request from the IOH.</p>	
Remuneration:	<ul style="list-style-type: none"> • There is a legislative framework for IOH remuneration, which is set by the court. • IOH remuneration is a cost of the insolvency proceedings; it is generally paid before the distribution of any proceeds to creditors.¹⁰ 	

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

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Key recommendations

As illustrated in the chart above, Slovenia appears to have developed a legal framework for IOH profession which covers some of the key elements of the profession. 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 legal powers and duties.

- 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 a regulatory body could monitor the activities of IOHs on a regular basis.
- The establishment of a separate complaints procedure operated by a dedicated regulatory body should be considered to provide easy access to all stakeholders.
- On-the-job practical training with a practising IOH should be introduced for prospective IOHs to increase practical knowledge and awareness and relevant tertiary education requirements re-introduced to ensure that the right candidates join the profession.
- Certain reforms should be made to the IOH appointment procedure to enable greater stakeholder involvement in the appointment and selection of the IOH in all insolvency cases. Such reforms should provide for a more independent, fair and transparent appointment system for the protection of stakeholders' interests and matching of the appropriate IOH to the insolvency case.
- Certain additional requirements for cooperation by third parties, especially sanctions for non-cooperation, would enhance the potential success of investigations by the IOH.
- Consideration should be given to expanding on the existing code of ethical conduct for IOHs to include more detailed professional rules/standards outlining best practice for certain important IOH activities, such as sale of assets.

¹ Official Gazette No. 13/14 (official consolidated text no. 8.), 10/15, 27/16, 31/16 (Constitutional Court decision) and 38/16 (Constitutional Court Decision);

² Official Gazette No. 91/08, 119/08, 53/09 and 92/14.

³ Official Gazette No. 82/08 and 102/10.

⁴ Official Gazette No. 76/08 and 7/11.

⁵ Official Gazette No. 94/10.

⁶ In Slovenia, creditors do not meet as a general assembly to vote, but they represent their interests either individually or collectively. Collectively creditors are represented by a creditors' committee. Individually they may represent their own interests (for example, by declaring claims, filing objections, voting for compulsory settlement or voting on the establishment of creditors' committee) or jointly with other creditors (for example, motions which may be filed only by a certain majority of creditors or with the consent of other creditors).

⁷ Established in 2010.

⁸ Since its establishment the chamber has about 30 monitoring cases per year and 12 disciplinary cases per year. Disciplinary cases are initiated mainly for serious offences which result in serious penalties such as monetary fines and temporary removal of the IOH's permission to act.

⁹ Such specific degree (in other words, degree in law or economics) used to be determined by law. The rationale for deletion of the specific degree requirement is that knowledge of law and economics is already subject to the prospective IOH's examination by the Ministry of Justice.

¹⁰ Certain amounts of IOH's remuneration are paid upfront (for example, advance payment) and other amounts are paid during the insolvency proceedings (for example, after initiation and at termination). The level of IOH remuneration depends on the IOH's scope of work (for example, sold assets, and/or the scope of the supervised business) and it is possible that certain claims are repaid before or together with IOH remuneration. The IOH's remuneration is estimated at the initiation of the insolvency proceedings and subsequently confirmed by the court's resolution.