

UKRAINE



Legislative framework

Legislative framework for insolvency proceedings

The Law of Ukraine on Restoration of Debtor's Solvency or Declaration of Bankruptcy (as amended, the LB) is the main legislation governing the insolvency of legal entities and individual entrepreneurs.¹ General provisions relating to insolvency are also contained in the Commercial Code of Ukraine (as amended),² while procedural rules are contained in the Commercial Procedural Code of Ukraine (as amended).³ Insolvency legislation is not applicable to certain legal entities, including state-owned enterprises with special status (*kazenni pidpryemstva*).

Legislative framework for insolvency office holders

The main provisions relating to insolvency office holders (IOHs) are found in the LB. However other laws are relevant, including the Orders of the Ministry of Justice of Ukraine on the Approval of the Regulation on the System of Training and Retraining of Persons Intending to Act as Managers (as amended);⁴ on the Procedure of Issuing the Certificate and the Right to Pursue the Activities of a Manager (as amended);⁵ on the Approval of the Procedure on the Formation and Maintenance of the Unified Register of Managers (as amended);⁶ and on the Approval of the Procedure for Monitoring the Activities of Managers (as amended).⁷

Types of insolvency procedures

There is one gateway into insolvency proceedings under the LB for businesses that are insolvent, in other words permanently unable to settle their due obligations. A petition for commencing insolvency proceedings under the LB will result in most cases in the opening of an initial "administration of assets" procedure for a limited period and the appointment of an asset manager.⁸ The aim of such a procedure is the protection of the debtor's estate, the determination of the type of subsequent insolvency procedure and the formation of the creditors' committee.

Insolvency proceedings may result in either: (i) liquidation, involving the sale of the debtor's assets and/or business; or (ii) financial rehabilitation, aimed at restoring the debtor's business

and solvency through the adoption of a rehabilitation plan by the debtor and its majority creditors.

An amicable settlement agreement between the creditors and the debtor may be adopted at any stage after commencement of insolvency proceedings, subject to court approval.

Institutional framework

The key players in insolvency proceedings in Ukraine are the insolvency court (and the judge), the IOH, and the creditors (acting as a general body and, to the extent applicable, as represented by the creditors' committee).

Insolvency proceedings are overseen by the competent court (being the economic court where the debtor has its registered place of business). The court directs and controls proceedings from opening to closure and decides, among other matters, on the initiation and termination of the insolvency procedure and on the appointment or dismissal of an IOH.

The IOH, known as the insolvency manager (or the asset manager, rehabilitation manager or liquidator, as applicable) takes control of and manages the property of the debtor and is, inter alia, entitled to initiate lawsuits on behalf of the debtor, request information from relevant parties including state authorities and liquidate the debtor's business as applicable. The insolvency manager is required to analyse the financial and economic status of the debtor and protect its property. Sale of assets in liquidation may be carried out by a liquidation committee headed by the liquidator and consisting of representatives of creditors and the debtor.

The general body of creditors has a number of responsibilities. These include the election of the members of the creditors' committee. The insolvency manager convenes a meeting of the general body of creditors on his own initiative or if the creditors' committee or one third of creditors so request.

A creditors' committee represents the interests of all creditors and consists of a maximum of seven members. The creditors' committee is entitled to convene a meeting of the general body of creditors, prepare and conclude any rehabilitation plan, authorise the sale of assets by the IOH in liquidation and file appeals with the court regarding the appointment of the insolvency manager and/or request his replacement.

Assessment overview/strengths and weaknesses

Based on the results of the assessment, a legal framework exists for the IOH profession in Ukraine, which, prima facie, displays a number of key strengths. Nevertheless the framework would benefit from further minor improvements to address certain principal areas of weaknesses and thus further improve IOH capacity and performance.

Benchmarks	Strengths of the Ukrainian IOH professional framework	Weaknesses of the Ukrainian IOH professional framework
Licensing and registration:	<ul style="list-style-type: none"> IOHs are required to obtain a certificate (<i>svidotstvo</i>) issued by the Ministry of 	

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	<p>Justice.</p> <ul style="list-style-type: none"> A list of authorised IOHs is easily accessible to all third parties and is available online. 	
<p>Regulation, supervision and discipline:</p>	<ul style="list-style-type: none"> The Ministry of Justice is the main authority on bankruptcy issues, being responsible for matters relating to the regulation, supervision and discipline of IOHs. The Ministry of Justice appears to monitor the performance and activities of IOHs. Planned inspections of IOHs are carried out (no more than once every two years) and unplanned inspections may take place at any time in response to complaints. An official complaints system regarding IOH conduct is operated by the disciplinary commission within the ministry, although complaints may be also filed before the court. Self-regulating organisations (SROs)⁹ of IOHs monitor compliance by their IOH members with the applicable law and regulations. SROs also participate in the qualifications and disciplinary commissions of the Ministry of Justice. 	<ul style="list-style-type: none"> The Ministry of Justice can impose a limited range of sanctions including reprimand or revocation of the IOH's certificate. Additional sanctions may be imposed by SROs on their members.
<p>Qualification and training:</p>	<ul style="list-style-type: none"> A tertiary qualification is required in a field relevant for IOH activities (law or economics). IOHs are required to pass a specific examination for entry to the profession organised by the ministry's qualifications commission. Insolvency-related work experience is required for 	

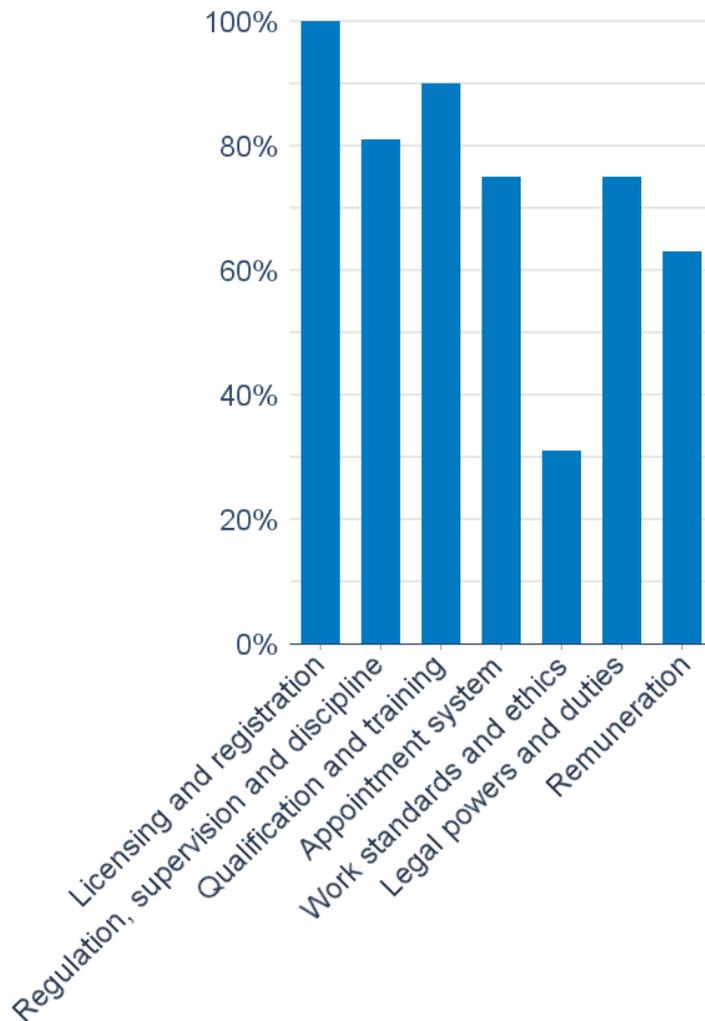
Benchmarks	Strengths of the Ukrainian IOH professional framework	Weaknesses of the Ukrainian IOH professional framework
	<p>prospective IOHs (in addition to other work experience). Prospective IOHs must undertake educational preparatory training and a six-month internship with a licensed IOH.</p> <ul style="list-style-type: none"> • Criminal checks are required for prospective IOHs before admittance to the profession; however, the type of criminal convictions that act as a bar to entry to the profession is limited to persons convicted of a criminal offence relating to financial dishonesty. • Continuing educational training is required and failure to undertake it may result in loss of permission to act.¹⁰ 	
Appointment system:	<ul style="list-style-type: none"> • Creditors have some influence over the appointment of the IOH in liquidation and financial rehabilitation: they may nominate the IOH and propose his replacement, but the court is not obliged to follow their recommendations and is entitled to appoint the IOH at its own discretion. Nevertheless, the court should state reasons for rejecting the IOH recommended by creditors and appointing of a different IOH. • Creditors have powers to request the court to replace the IOH during the proceedings if he does not comply with his duties or legal responsibilities. 	<ul style="list-style-type: none"> • IOHs are appointed by the court using an automated appointment system in the administration of assets procedure, which does not facilitate the matching of the IOH to the insolvency case. Where the IOH does not take up such appointment, the court has the ability to select another IOH at its own discretion.
Work standards and ethics:		<ul style="list-style-type: none"> • There is no professional code of conduct covering professional and/or ethical rules for the IOH profession, although a number of

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		<p>conduct-related provisions (for example, anti-bribery) are found in different pieces of legislation and a voluntary code for the profession appears to have been adopted into the rules of a number of SROs.</p>
Legal powers and duties:	<ul style="list-style-type: none"> • IOHs have significant powers to manage the debtor's property in insolvency; nevertheless they are subject to strong creditor oversight. • IOHs have clear powers and duties set forth in legislation which enable them to request all relevant information and the delivery up of any assets from the debtor. The court may impose administrative or criminal liability if the debtor fails to cooperate with the IOH. • IOHs are required to provide reports to the creditors' committee and the court at regular intervals depending on the type of procedure (reports every three months for financial rehabilitation and reports every month for liquidation).¹¹ 	<ul style="list-style-type: none"> • There are no direct obligations on state bodies or third parties to cooperate with the IOH.
Remuneration:	<ul style="list-style-type: none"> • The framework for remuneration prescribes a clear statutory structure for IOH fees (with minimum and maximum monthly amounts established by law). In both liquidation and financial rehabilitation, the IOH is entitled to additional fees based on a percentage of recovered assets and amounts paid to creditors. • The core part of IOH remuneration (other than additional fees) is settled in priority to unsecured claims and forms part of the costs 	<ul style="list-style-type: none"> • The statutory remuneration structure does not take the experience and skill of the IOH into account. • Additional fees of IOHs rank after unsecured creditors. • There is no specific mechanism for challenging an IOH's remuneration, nonetheless IOHs must provide reports on remuneration accrual and payment for approval by the creditors' committee, and the parties may appeal against the decision of the

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	of the proceedings, but ranks equally with first priority claims, including employee claims.	judge on the approval of IOH fees.

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

Ukraine



Key recommendations

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

- The strengthening of disciplinary powers of the Ministry of Justice, especially in terms of the range of available sanctions capable of being imposed on IOHs and a more frequent system of monitoring and supervision, may have a positive impact on

the professional conduct and performance of IOH professionals.

- A comprehensive and publicly available code of professional conduct for IOHs of a binding nature should be adopted to provide useful guidelines and principles for IOH professional activities and ethical behaviour.
- Statutory provisions regarding remuneration should be reviewed to ensure that IOH fees are sufficiently protected (including any additional fees) and there is sufficient flexibility to reward an IOH's skill and experience and performance as the context requires.

¹ No. 2343-XII dated 14 May 1992.

² No. 436-IV dated 16 January 2003.

³ No. 1798-XII dated 6 November 1991.

⁴ No. 1973/5 dated 27 December 2012.

⁵ No. 93/5 dated 14 January 2013.

⁶ No. 541/5 dated 26 March 2013.

⁷ No. 1284/5 dated 27 June 2013.

⁸ Up to 115 days while a moratorium applies. This period may be extended by another two months.

⁹ SROs are all private, non-governmental organizations, which regulate their members' activity and are entitled to represent and protect their members before state and local authorities.

¹⁰ 27 hours of training are required per two year period.

¹¹ In respect of liquidation, a final report should be provided to the creditors' committee and to the court for their approval after settlement of claims.