



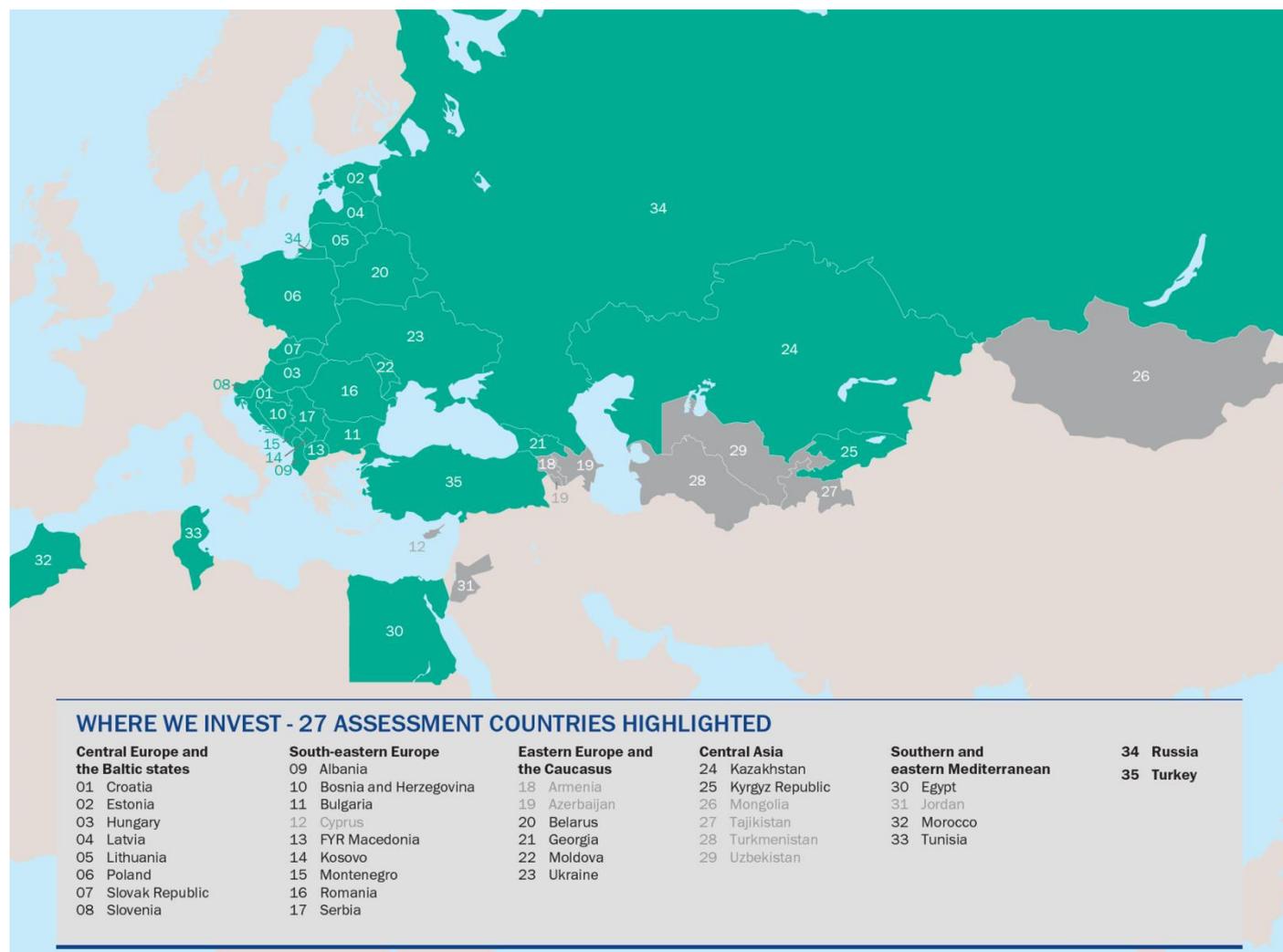
# Insolvency office holders: a new study by the EBRD provides insight into creditors' rights in insolvency<sup>1</sup>

Catherine Bridge

The EBRD has recently completed a detailed assessment of the insolvency office holder profession that evaluates the profession's state of development and performance in the Bank's region. The results of the assessment reveal important information not only about insolvency office holders, but also about the insolvency systems in which they operate and the dynamics of the relationship between office holders, creditors and the court. This article discusses a number of critical issues for creditors arising from the EBRD's assessment of the insolvency office holder profession.

## Background to the Assessment

Known variously as administrators, managers, liquidators or trustees, insolvency office holders (IOHs) are central figures in collective insolvency proceedings. These proceedings often require the total or partial divestment of the debtor's management and the appointment of an IOH to administer or liquidate the assets of the debtor.<sup>2</sup> The centrality of the IOH to the insolvency process was well articulated by one Moldovan respondent, who commented, "An insolvency process cannot be imagined without the involvement of an insolvency administrator – the link between the court, creditors and the debtor." Notwithstanding the importance of IOHs, little comparative research had been done on the profession until recently.<sup>3</sup> In 2012 the EBRD embarked on a study (Assessment) of the IOH profession in 27 countries<sup>4</sup> to discover more about the profession and to identify any shortcomings that need to be addressed within the existing statutory framework for IOHs.



The Assessment was first piloted in 2012 in seven countries (Bosnia and Herzegovina, Latvia, Poland, Romania, Russia, Serbia and Tunisia), before being rolled out to a further 20 countries in 2013 and 2014. The Assessment involved the collection of information by means of questionnaires from selected stakeholder groups, which included IOHs, regulatory bodies (including government ministries), legal professionals and creditors (predominantly banks). One of the largest respondent groups across all jurisdictions was creditors.

The EBRD Assessment set the following seven “benchmarks” for the IOH profession (the Benchmarks), by which information on the profession was collected and assessed:

- Licensing and registration*: IOHs should hold some form of official authorisation to act.
- Regulation, supervision and discipline*: Given the nature of their work and responsibilities, IOHs should be subject to a regulatory framework with supervisory, monitoring and disciplinary features.
- Qualification and training*: IOH candidates should meet relevant qualification and practical training standards. Qualified IOHs should keep their professional skills updated with regular continuing training.
- Appointment system*: There should be a clear system for the appointment of IOHs, which reflects debtor and creditor preferences and encourages the appointment of an appropriate IOH candidate.
- Work standards and ethics*: The work of IOHs should be guided by a set of specific work standards and ethics for the profession.
- Legal powers and duties*: IOHs should have sufficient legal powers to carry out their duties, including powers aimed at recovery of assets belonging to the debtor’s estate.

IOHs should be subject to a duty to keep all stakeholders regularly informed of the progress of the insolvency case.

- (g) *Remuneration*: A statutory framework for IOH remuneration should exist to regulate the payment of IOH fees and protect stakeholders. The framework should provide ample incentives for IOHs to perform well and protection for IOH fees in liquidation.

Given the broad nature of the Assessment, this article aims to address key issues from a creditor's perspective across the jurisdictions surveyed in respect of two benchmarks: the appointment system and remuneration of IOHs. The article explores what these two benchmarks reveal about creditor rights and their influence over the insolvency process itself. Lastly, it considers the legal powers and duties of IOHs, with specific reference to the role of creditors and the court in overseeing the activities of IOHs.<sup>5</sup>

### Insolvency office holders in transition countries

The Assessment reveals that office holders are predominantly natural persons, in other words, individuals (in 26 out of 27 countries). In a few countries, IOHs can also be a partnership or association of natural persons – for example, in Romania IOHs can be limited liability professional associations. In nine of the Assessment countries legal persons are entitled to act as IOHs. Hungary is the only country surveyed where IOHs can only be legal persons (either a private limited company or a private company limited by shares).

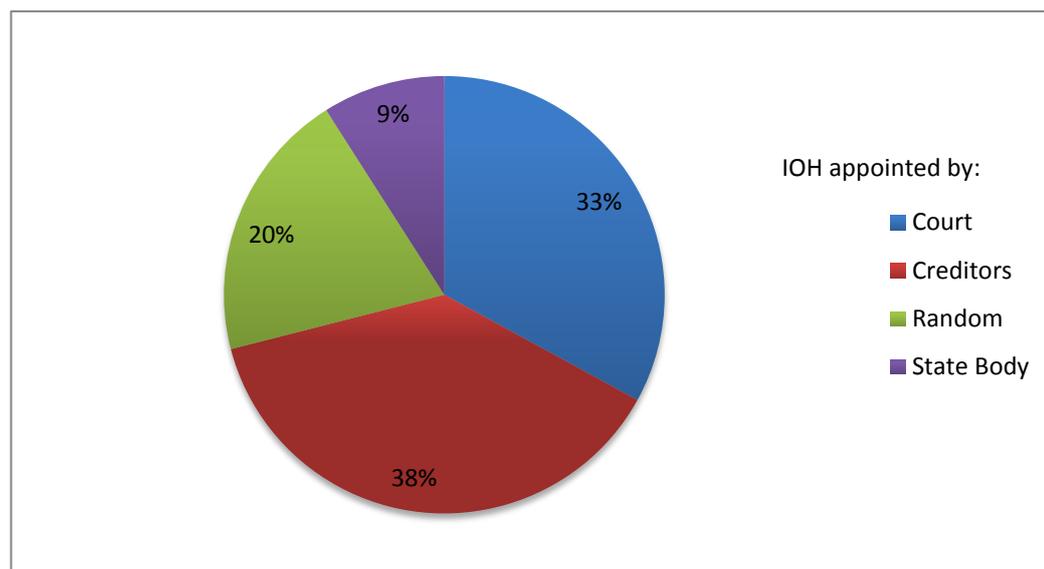
In most Assessment countries, there appear to be strong links between IOHs and other professionals, notably lawyers, although in some countries there are also links with accountants. IOHs often undertake other professional activities outside of insolvency proceedings. Serbia, however, imposes professional “exclusivity” requirements – since 2012 IOHs have been prohibited by law from carrying out other forms of employment. None of the representatives of major accounting firms appear to take appointments as IOHs in any of the surveyed countries, in contrast to the United Kingdom. This may be due to a number of factors, including low remuneration levels and/or high professional liability risks. In many countries, including Serbia and Slovenia, the most common type of IOH is the sole practitioner, rather than the IOH acting as part of a firm or partnership. The profile of the IOH gives an important indication of the nature of the profession and potentially also the market and demand for insolvency services.

### Appointment of insolvency office holders

The IOH appointed to an insolvency case may have a decisive impact on the way in which the case is managed and on any recoveries by creditors. Notwithstanding the financial risks for creditors if the debtor's estate or business is poorly administered (and the fact that most creditors of an insolvent debtor will never recover in full), creditors are frequently denied any real or effective involvement in the appointment of an IOH. This may prevent creditors from undertaking any effective “contingency planning” for an insolvency filing. It may also diminish the bargaining power of creditors in relation to any threats by the debtor's management to file for insolvency.

As evidenced in Chart 1 below, creditors can nominate or directly select the IOH in over one-third of the countries surveyed. Such right may, nonetheless, be limited to the nomination or selection of the permanent IOH to be appointed following the appointment by the court of an initial or temporary IOH at the outset of the proceedings. In other Assessment countries, creditors have no or limited influence over the IOH's appointment and such appointment remains at the court's discretion or is determined by either an appointment system based on random selection or by the involvement of a state agency.

Chart 1: Insolvency office holder appointment system in transition countries



Note: This pie chart indicates the number of countries surveyed in which the key determining factor in the selection and nomination of insolvency office holders is either the court, creditors, a random/electronic appointment system or a state body. Where there is more than one determining factor in a particular country, that country's participation is reflected in each relevant category.

Source: 2012-14 EBRD Insolvency Office Holder Assessment.

Only a small number of Assessment countries' insolvency systems allow creditors (or the debtor for that matter) to recommend or select an IOH candidate when the insolvency petition is first presented. These include Bulgaria, FYR Macedonia, Moldova,<sup>6</sup> Romania<sup>7</sup> and Russia. In Romania, where both creditors and the debtor are entitled to propose an initial IOH, new insolvency legislation has clarified that a creditor's request shall prevail over a competing request by the debtor.<sup>8</sup> In Latvia the court will only appoint the debtor's chosen IOH in legal protection (reorganisation) proceedings if such candidate has the majority support of creditors. However, in insolvency (liquidation) proceedings the IOH is selected by the Latvian Insolvency Administration<sup>9</sup> and creditors are not given any opportunity to influence the appointment. In Belarus creditors and other stakeholders, including the debtor, can make representations to the court at the outset of the proceedings, but the court is not bound to follow these.

Those insolvency systems that permit creditors to participate in the selection of the permanent IOH typically only allow such participation at a post-filing stage, either at the first creditors' meeting or assembly following the opening of insolvency proceedings. This is the case in Croatia (in respect of bankruptcy proceedings only) and Estonia. In these countries the court, acting at its own discretion, will appoint an initial or temporary IOH and creditors will subsequently be requested to elect a permanent IOH. It is unclear how many court-appointed IOHs are, in practice, replaced by creditors. The risk is that the insolvency proceedings may be quite advanced by the time creditors have the opportunity to replace the IOH and important decisions relating to the course of the proceedings may already have been taken.

Under pre-2012 German insolvency legislation, the court appointed a temporary administrator and creditors were able to appoint a new administrator by majority vote at the first creditors' meeting. The administrator was rarely replaced by creditors in practice because of the resulting delay and additional cost. However, in 2012, German insolvency legislation was amended to enable a preliminary creditors' committee to be established by law for debtors of a certain size. This committee may select the insolvency administrator at the beginning of the insolvency proceedings and the court may only choose not to appoint such candidate if the person proposed is not suited to taking office.<sup>10</sup> The relative merits of creditor involvement in the selection of the interim IOH were not covered by the Assessment, but the German reform is perceived by many within the business community as being fairer to creditors, as well as more efficient and predictable in terms of outcome.

This raises the question of whether Assessment countries might wish to adopt a similar reform to their IOH appointment system to enable creditors to participate from the outset in the selection of the interim IOH.

In a number of countries (Belarus, Bosnia and Herzegovina, Egypt, Morocco and Tunisia) the court is the sole body empowered to select and appoint the IOH. In these jurisdictions creditors have limited rights to request a replacement IOH. Grounds for replacement are typically limited to IOH misconduct or breach of duty. In Belarus creditors must first establish careless or improper performance of the IOH's duties or commission of an offence, among other matters, in order for the court to consider replacing the IOH. In Morocco and Tunisia, creditors may complain to the court and request the IOH's dismissal, but any decision to replace the IOH is entirely at the court's discretion. Unlike creditors, however, the court has no financial stake in the insolvency proceedings and their outcome.

In four countries (Croatia, Kazakhstan, Kyrgyz Republic and Latvia) a state body plays a leading role in determining the appointment of the IOH. In Croatia the selection of the pre-bankruptcy trustee in pre-bankruptcy settlement proceedings is assumed by FINA, a government financial agency. In Kazakhstan the Tax Committee appoints IOHs from a list; in the Kyrgyz Republic such appointment is made by the Department of Bankruptcy Affairs, although creditors may propose an IOH candidate to the department. In Latvia the Insolvency Administration makes recommendations to the court for the appointment of the IOH in insolvency proceedings.

Other insolvency law frameworks (FYR Macedonia, Hungary, Serbia, Slovak Republic, Slovenia and Ukraine) have introduced an automatic randomised IOH appointment system. Although this system may be superficially fair, it is something of a lottery and may lead to "random" results. In addition to not matching the IOH to the insolvency case, the randomised IOH appointment system can remove the incentive for IOHs to perform to a high level since future appointments are not dependent on performance. In systems where IOHs are appointed on the basis of reputation and merit, it is likely that they will work hard to maintain their reputation and perform to the best of their abilities. Exemptions introduced by Slovenia to the automatic system for medium and large-sized enterprises suggest that it may not be appropriate for companies of higher economic importance.

Interestingly, lack of creditor participation in the appointment of the IOH (either as a result of the court's leading role in appointing IOHs or the automatic randomised appointment system) does not necessarily result in a perception of weak creditor oversight of IOH activities by Assessment respondents. As demonstrated in Chart 2 below, respondents from Belarus, which has a court-controlled system of IOH appointment, unanimously report strong creditor oversight of IOH activities. However, in Egypt and Morocco, where the court plays a determining role in the appointment of the IOH, there appears to be a correlation between the court-based appointment system and a perception of weaker creditor control and oversight of the activities of IOHs. Respondents in Hungary, Slovak Republic, Slovenia and Ukraine, where an automatic randomised IOH appointment system operates, perceived creditors to exercise strong oversight.

Greater involvement of creditors in appointing IOHs should not mean that the IOH behaves in a manner that is partial to creditors. As recognised by the EBRD Core Principles for an Insolvency Law Regime, "The liquidation or restructuring of an insolvent corporation impacts the debtor, the creditors, the employees, the state and the community." An IOH should act as an impartial third party.<sup>11</sup> However, opening up the system of appointment to those stakeholders (creditors) which stand to lose most financially from the insolvency may encourage greater competition and better performance from those within the profession.

## Remuneration of IOHs

In liquidation IOH remuneration is generally paid from the funds available in the debtor's estate, in priority to unsecured creditors and also sometimes preferential and secured creditors. It is therefore particularly important for creditors that they receive "value for money" for an IOH's services since they may be paying for these services from proceeds which would otherwise be available for distribution to creditors. At the same time a

competitive level of remuneration or professional compensation is essential for the development of the IOH profession. It provides an incentive to satisfy often burdensome, as well as costly, admission requirements for the profession, including specialised study and training. Remuneration is also a potential tool by which the higher performers within a profession may be rewarded for their efforts, or the specialist sector skill or experience held by certain professionals is reflected.

The statutory framework for IOH remuneration frequently differs according to the type of insolvency procedure and whether this is aimed at liquidation or reorganisation. Very few of the Assessment countries allow IOH remuneration to be freely determined between the IOH and creditors in liquidation. This appears only to be the case in Bulgaria, Georgia and Lithuania, where, exceptionally, there is no detailed legal framework for remuneration. In Bulgaria creditors are able to set the level of remuneration of the permanent IOH in both liquidation and reorganisation, nonetheless creditors are required to pay a monthly fee to the IOH for the work performed and may pay an additional final remuneration amount (as a percentage of the property of the bankruptcy estate or any property which has been liquidated). In Georgia and Lithuania, private IOH fees are determined by private contract between creditors and the IOH.

The remuneration system of some countries contains a flexible element, which enables the IOH to receive an optional performance-related “additional fee”. Additional remuneration is not, however, necessarily decided by creditors. In Russia the creditors’ meeting may decide to increase the fixed fee to be paid to the IOH, but its decision is subject to approval by the court. In Montenegro the performance-related fee is awarded by the court. In other jurisdictions, such as FYR Macedonia and Serbia, IOH remuneration may be increased in certain circumstances, such as when the case is particularly complex or there is a higher satisfaction of creditors’ claims. In Albania and Hungary higher remuneration is linked with continuation of the debtor’s business, which in the case of Hungary requires the conclusion of a settlement agreement between the debtor and its creditors.

In most Assessment countries, remuneration is set by the court and creditors have limited rights to participate in setting IOH fees. This is often the result of a strict tariff system, which guides the court in establishing the level of IOH remuneration, typically as a fixed fee and/or an amount determined by a sliding scale or range of values. In many countries creditors also have limited rights to review or challenge IOH remuneration. In Slovenia, for example, creditors wishing to challenge the court’s resolution on IOH remuneration must file an appeal in accordance with the general rules of insolvency proceedings. This may be a lengthy process.

The ability for creditors to influence the level of IOH remuneration is desirable. Nevertheless, given the nature of the IOH’s work and the fact that the IOH is generally paid from the debtor’s estate, it is important for there to be a statutory framework for IOH remuneration. A tariff system may be transparent and “appear to be fair”, but it can also be rather inflexible. It may either not sufficiently reward the IOH for high performance, or risk over-rewarding in cases where the IOH has not worked to maximise recoveries for creditors from the debtor’s estate. Fortunately the tariff system for IOH remuneration in some countries is moderated by a flexible element, which enables the IOH to receive an optional performance-based fee. Payment of the performance-based fee is often decided by the court, rather than creditors. Determination of performance-based fees is one key aspect of IOH remuneration where creditors could arguably play a greater role.

## Court control and oversight of insolvency proceedings

The limited role of creditors in the appointment of the IOH and the determination of IOH remuneration in a number of countries surveyed brings into question the role played by creditors in overseeing the work of the IOH in insolvency proceedings. It also raises questions about the interaction between creditors and the court. In most of the countries surveyed, insolvency proceedings take place “in court”. Insolvency office holders therefore operate for the most part within a system, where prior notification to the court and sometimes court approval is needed at various stages of the insolvency proceedings. As discussed below, creditor oversight of IOH activities is typically shared with the court responsible for conducting the insolvency case.

In a minority of countries, including Croatia, Kyrgyz Republic, Slovenia and Turkey, certain insolvency proceedings have an out-of-court element. In Croatia the preliminary administrative stage of the pre-bankruptcy settlement procedure<sup>12</sup> is conducted before a non-court body, FINA, while in the Kyrgyz Republic, the debtor may elect for special administration and rehabilitation procedures under the Bankruptcy Law<sup>13</sup> to take place extra-judicially, subject to the agreement of creditors. In both Croatia and the Kyrgyz Republic, an IOH is nonetheless appointed to the insolvency case. Exceptionally in these countries there may therefore be a lack of court control and oversight of IOH activities (in certain proceedings). It is interesting to note that in some countries with pre- or early insolvency procedures, the person or entity appointed to assist the debtor may not necessarily need to be a licensed or registered IOH. In Romania, similar to France, IOHs may, but are not required to be appointed in either *mandat ad hoc* or composition procedures.<sup>14</sup> In contrast, under Croatian pre-bankruptcy settlement proceedings, the pre-bankruptcy trustee must be chosen from a list of certified IOHs.

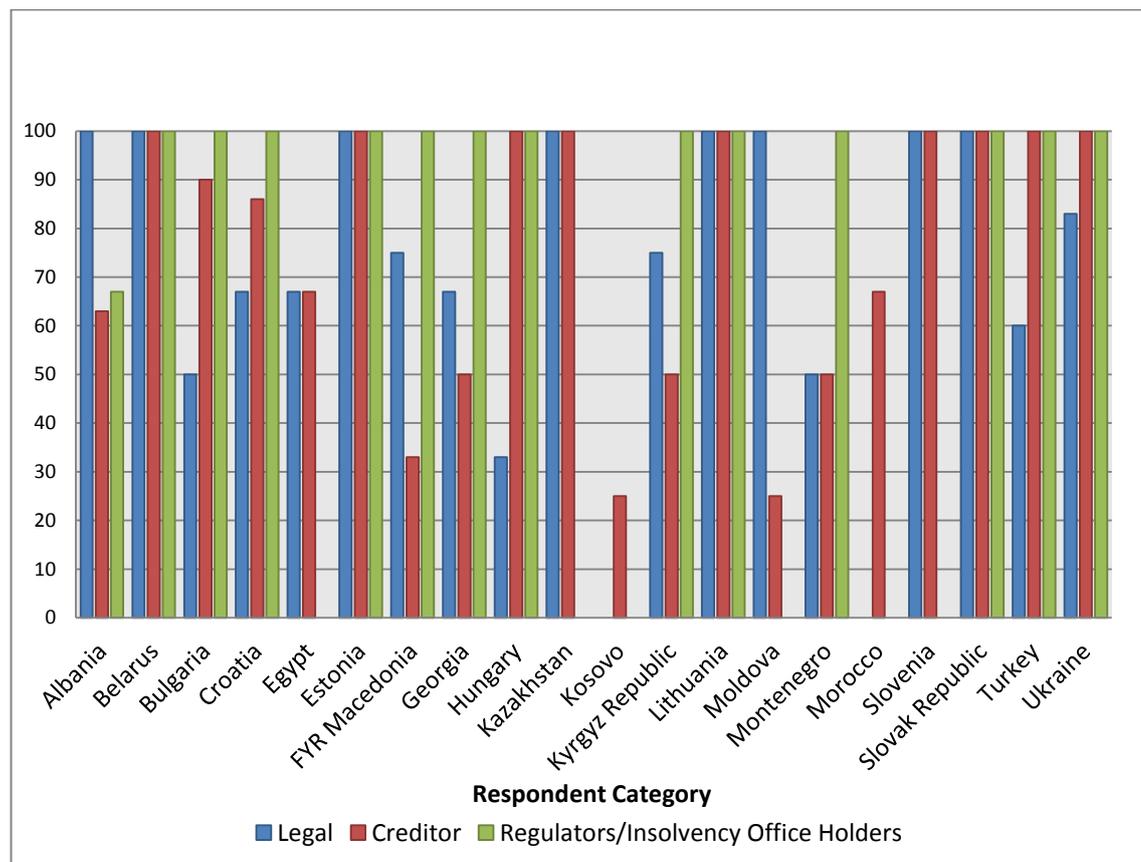
Overall, the extent of court involvement in judicial insolvency proceedings is likely to vary on a case-by-case basis. It may depend on the individual judge(s) and also on the competence of the IOH. Respondents consider the court to play a strong role in monitoring IOH activities in Bulgaria, Egypt, Lithuania, Slovenia and Turkey, but a relatively weak role in Georgia, Kazakhstan, Lithuania and Moldova. In Slovenia a large number of decisions relating to the debtor’s estate require prior court approval, which may explain the perceived strength of the court. A few Slovenian creditors suggested, however, that the court’s oversight was limited to matters of form, rather than substance. Importantly, in those countries<sup>15</sup> with reportedly weak court control, creditors appear to fill the gap left by the court and are considered by local respondents to play a strong role in overseeing the work of IOHs.

## Creditor control and oversight of insolvency office holders

Responses to the Assessment questionnaires suggest that creditors play a strong role in overseeing the activities of IOHs in most jurisdictions. A total of 77 per cent of respondents across all respondent categories and jurisdictions confirmed that IOHs are subject to strong creditor oversight in the exercise of their powers and duties (in some cases with reservations).<sup>16</sup> Nevertheless, there are some differences of opinion among the different respondents, particularly in FYR Macedonia, where the regulator respondent believed that a strong degree of creditor oversight existed and only a minority (33 per cent) of creditors were of the same opinion (see Chart 2).

In Kosovo the majority of creditor respondents and all legal professional respondents did not consider creditors to play an important role in overseeing the exercise of powers and duties by IOHs. This may, in part, be due to a lack of practice. There have been few insolvency cases in Kosovo to date. In Morocco the relatively high perception of weak creditor control and oversight of IOH activities may be explained by the marginal role of creditors in the insolvency process. Although the court in Morocco may appoint a number of creditors to act as controllers or observers of the insolvency case, creditors do not participate in the appointment of the IOH or vote either as a general assembly or as a committee of creditors at any of the key points during the insolvency process. Creditor oversight is also weak in Egypt and Tunisia where, similar to Morocco, creditors may only be appointed as “controllers” (in Egypt this appears to happen rarely in practice).

Chart 2: Overall perception of strong creditor oversight of insolvency office holder powers and activities in transition countries



Note: This chart presents the percentage of respondents agreeing (Yes or Yes with reservations) to the question: “Are IOHs subject to strong creditor (including creditors’ committee) oversight in the exercise of their powers and duties?” Answers were collected from respondent groups (legal, creditors, regulators/insolvency office holders) in the roll-out of the Assessment to the 20 countries cited above. Positive responses are presented on an aggregate basis per respondent category and are expressed as a percentage with 100 per cent indicating a unanimously positive response. Where there is no response from a respondent category, this is due either to the fact that all legal professionals responded in the negative (Kosovo, Morocco) or the regulators/insolvency office holders responded in the negative (Egypt, Kazakhstan, Kosovo, Moldova, Morocco and Slovenia).

Source: 2012-14 EBRD Insolvency Office Holder Assessment.

In many Assessment countries, creditors exercise strong powers in relation to the sale of the debtor’s unencumbered property by the IOH in liquidation, although the nature of these powers varies from jurisdiction to jurisdiction. Creditor control may take the form of either prior creditor approval for the sale of all (or certain) assets or joint creditor and court approval. In some jurisdictions, such as Hungary, no direct approval is needed from the creditors for sales by the IOH.

In Albania the IOH’s powers to sell any assets of the debtor are, as a rule, subject to prior creditors’ committee approval, while in Belarus, the IOH is required to submit the liquidation plan to the wider assembly of creditors for approval. In Poland the consent of creditors is not directly solicited, other than in respect of private sales. Creditor oversight is also more limited in Serbia, where prior creditor approval is only required for sales by direct agreement and sales of the debtor as a legal entity. In some countries there are general restrictions on the method of sale. In the Slovak Republic, if the IOH wishes to sell debtor property, which is not a sale of all or a substantial part of the business, such a sale is required to take place by public auction.

Creditor control of any sale of the debtor’s assets is, in some cases, shared with the court. In Bulgaria the meeting of creditors determines the procedure and the method of liquidating the debtor’s property, including any property evaluation, but any sale of the

bankruptcy estate requires the prior permission of the court. In other countries such as Egypt, Morocco, Tunisia and Turkey only court (and not creditor) approval is needed for the sale of assets by the IOH. In each of these countries, there is no creditors' committee, although as noted above the court may appoint creditors to act as "controllers". Although the Turkish system does not give creditors the power to approve the sale of assets by the IOH, creditors participate in the nomination and shortlisting of candidates to be appointed as insolvency office holders in bankruptcy, and vote on any reorganisation or restructuring plan (unlike Egypt, Morocco and Tunisia). Turkey is therefore an example of a country where creditors appear to play a more substantive role in some, although not all, key aspects of the insolvency case.

Unlike sales of assets in liquidation, IOHs tend to be subject to fewer creditor (and court) controls in the exercise of management powers. There may, nonetheless, be statutory restrictions on an IOH's ability to exercise "higher value" decision-making. In Serbia actions of "special importance", including taking a loan and acquiring items of high value, require prior notification to the court and the consent of the creditors' committee. This is in contrast to the United Kingdom, which gives insolvency office holders (administrators) wide-ranging statutory powers to enter into a number of transactions, including the "Power to raise or borrow money and grant security therefor over the property of the company."<sup>17</sup> IOH management powers may, in some cases, be shared with the court. In Montenegro, for example, IOHs cannot decide to enter into transactions such as taking a loan and procuring high-value equipment, without obtaining the judge's prior consent.

In reorganisation-type proceedings, where the debtor remains "in possession", the IOH's management powers are often limited to the supervision of existing management. Over half of the Assessment countries have a form of debtor-in-possession reorganisation procedure in which the IOH does not take over the management of the debtor's business, but monitors the actions of existing directors or managers. In such cases, creditors correspondingly have fewer powers of formal oversight of IOH activities.

### Insolvency office holder reporting obligations

It is interesting to note the reporting duties of IOHs towards creditors. In the majority of countries, IOHs are required to report regularly to both creditors and the court. Reports facilitate the oversight by creditors and other stakeholders of the management of the insolvency case and provide them with the information to intervene and, if necessary, raise any issues or complaints in connection with the IOH's administration of the case. Nevertheless in certain countries, including Egypt, Kosovo, Moldova, Tunisia and Turkey, the court appears to be the sole addressee of the IOH's reports and information is not easily accessible by stakeholders. Creditors may, however, be entitled to consult the reports submitted by the IOH to the court. This is the case in Kosovo and Moldova.

Frequency of reporting is also important in allowing stakeholders to follow, influence and, if necessary, challenge actions by the IOH. Across the countries surveyed, reporting is often on a quarterly basis. Certain countries, including Belarus, Bulgaria (liquidation only), FYR Macedonia, Kazakhstan (rehabilitation only), Kosovo, Kyrgyz Republic, Romania (judicial administration) and Ukraine (liquidation only) set monthly reporting requirements. This may, in practice, create a relatively high administrative burden on the IOH. However, it is not possible to assess from the results of the Assessment the overall usefulness of monthly and other periodic IOH reports for stakeholders.<sup>18</sup>

Weak reporting obligations towards creditors risks marginalising creditors in the insolvency process and may prevent them from playing an effective role in overseeing the activities of IOHs. While the reporting obligations by IOHs appear, at first glance, to be satisfactory in many of the countries surveyed, some countries' reporting systems in insolvency proceedings would benefit from improvement to increase transparency for creditors and other stakeholders. It is interesting that in all of the countries with creditor-led IOH appointment systems, creditors have the right to receive regular reports from the IOH regarding the status of the insolvency case. Overall in such countries, creditors appear to have greater rights in insolvency.

## Conclusion

In many Assessment countries creditors have limited rights in certain important areas of insolvency proceedings. Areas highlighted by this article include the right to determine the appointment of an IOH and to participate in decision-making regarding IOH remuneration. These areas are of fundamental importance to the issue of IOH performance and how to ensure insolvency stakeholders receive the best value for money from IOHs. A competitive appointment system is likely to encourage IOHs to carry out their activities to the best of their abilities. At the same time, a more flexible remuneration framework with input from creditors may provide an incentive for better performance by IOHs.

In those countries where creditors have a determining role in the appointment of the IOH, it has been seen that creditors typically have greater rights to influence certain IOH activities, including the sale of debtor's assets, and to receive regular reports in insolvency. The active involvement of creditors in the insolvency process should be encouraged. Creditors are important stakeholders in insolvency and may, together with the court and insolvency office holders, play an essential role in administration of the insolvency estate. In many jurisdictions surveyed creditors appear to be active in monitoring IOH activities and approving sales of assets from the debtor's estate.

It is clear from the Assessment that further capacity-building for the IOH profession, greater supervision of IOH performance and adherence to ethical norms for the IOH profession are needed. Nevertheless, responses to the Assessment questionnaire indicate that, at least on an aggregated basis, creditors believe that IOHs as a whole perform their professional tasks and duties well with some reservations.<sup>19</sup>

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<sup>2</sup> See the definition of “liquidator” in Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, Article 2(b).

<sup>3</sup> One recent research project conducted by Leiden University and commissioned by INSOL Europe has examined European principles and best practices for insolvency office holders in 11 European countries, with a view to developing a common set of principles and best practices for the profession in Europe.

<sup>4</sup> Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Latvia, Lithuania, Moldova, Montenegro, Morocco, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, Tunisia, Turkey and Ukraine.

<sup>5</sup> It should be noted that respondents in all countries were asked an identical set of questions tailored for their respondent category and the information gathered over the course of the Assessment was deliberately selective given the Assessment's cross-jurisdictional application. Certain limitations to the Assessment are noted in this article, where applicable.

<sup>6</sup> In Moldova the debtor may also propose the IOH if it petitions for insolvency however, creditors are entitled to propose the replacement of the debtor's candidate.

<sup>7</sup> Creditors may now request that the judge appoints their proposed IOH by joining the debtor's insolvency petition.

<sup>8</sup> Romanian Law no. 85/2014 regarding preventative insolvency proceedings and insolvency proceedings, effective from 28 June 2014.

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<sup>9</sup> This body, which certifies and regulates IOHs, is under the control of the Latvian Ministry of Justice.

<sup>10</sup> See Section 56a of the German Insolvency Statute of 5 October 1994 (Federal Law Gazette I, page 2866), as last amended by Article 19 of the Act of 20 December 2011 (Federal Law Gazette I, page 2854).

<sup>11</sup> See Principle 9: [www.ebrd.com/downloads/legal/insolvency/principle.pdf](http://www.ebrd.com/downloads/legal/insolvency/principle.pdf) (last accessed 3 September 2014).

<sup>12</sup> Act on Financial Operations and Pre-Bankruptcy Settlement Proceedings. Official Gazette Nos. 108/2012, 144/2012, 81/2013, 112/2013.

<sup>13</sup> Law of the Kyrgyz Republic on Bankruptcy no. 74 dated 15 October 1997 (as amended).

<sup>14</sup> In France, a *mandataire ad hoc* or a conciliator does not need to be a registered insolvency office holder.

<sup>15</sup> Georgia, Kazakhstan, Lithuania and Moldova.

<sup>16</sup> Respondents from Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine were each asked in their respective questionnaires: "Are IOHs subject to strong creditor (including creditors' committee) oversight in the exercise of their powers and duties?"

<sup>17</sup> See Schedule 1 of the Insolvency Act 1986, paragraph 3.

<sup>18</sup> The usefulness of IOH reporting was not directly covered in the Assessment questionnaires.

<sup>19</sup> Respondents from Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine. This question was not covered in the pilot Assessment.