



European Bank
for Reconstruction and Development



ASSESSMENT OF INSOLVENCY OFFICE HOLDERS

Review of the profession
in the EBRD region



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Foreword

Insolvency systems have received increasing attention in recent years in response to the problems caused by the financial crisis. As a bank and equity investor, the European Bank for Reconstruction and Development (the EBRD) recognises the importance of a functioning insolvency and restructuring framework for businesses in financial difficulties and for transition countries' economies.¹

A sound legislative basis or set of laws governing insolvency is fundamental. Nevertheless an insolvency system also requires professionals with specialist legal, financial and commercial expertise, who are able to perform the various tasks associated with managing a financially distressed or insolvent business. These professionals include judges, lawyers, accountants and insolvency office holders (IOHs), as well as a developing profession of turnaround experts.

Known in some jurisdictions as "administrators", "liquidators" or "trustees", IOHs are central figures in most insolvency systems, which typically require the partial or total divestment of the debtor's management powers and the appointment of an insolvency office holder to administer or liquidate the assets of the debtor.² In reorganisation proceedings where the debtor's management remains in place, the office holder often supervises management's administration of the debtor's affairs. This proximity to the debtor means that IOHs are frequently responsible for keeping the court, creditors and other stakeholders informed of the progress of the insolvency case.

The powers and duties of the IOH vary according to the objective of the insolvency procedure. The IOH in liquidation proceedings is focused on sale of the business and/or assets and distribution of proceeds, while the IOH in reorganisation proceedings will often take over management of the debtor's business and prepare or assist in the preparation of a reorganisation plan. How well the IOH administers these tasks can be critical in terms of the financial outcome for creditors and, in some cases, continuation of the debtor's business.

Notwithstanding the importance of IOHs, little comparative research has been done on the profession until recently.³ In 2012 the EBRD embarked on a study (the assessment) of the IOH profession in its region with the aim of evaluating both the profession's relative development and the legal and regulatory framework applicable to IOHs. This document summarises the main results of the assessment. A full copy of the assessment report, including individual country profiles summarising the key strengths and weaknesses of the IOH profession in each of the countries assessed and the assessment methodology and scoring system, is available online at: www.assessment.ebrd.com/insolvency-office-holders/2014/report.html.

We hope that the assessment report will provide a useful source of information on insolvency office holders and will serve as a reference point for policy makers and stakeholders with an interest in further development of the profession.

1 The term "bankruptcy" is frequently used within the EBRD region as an alternative to the term "insolvency" and sometimes as a synonym for "liquidation". For consistency, we refer to "insolvency" throughout this report.

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

3 One recent research project (the Leiden University Report) has examined European principles and best practices for insolvency office holders, with the aim of developing a common set of principles and best practices for the profession in Europe.

Acknowledgements

The EBRD would like to thank all those who participated in the assessment and responded to the questionnaire, including insolvency office holder regulators, ministries, insolvency practitioners, bank representatives and legal professionals. The time and commitment offered by all participants greatly contributed to the overall value of this report.

The EBRD would like to extend its special thanks to those law firms listed at Annex 1 to this report, which provided invaluable input and commentary on section 4 (Cross jurisdictional trends and frameworks) and the individual country profiles published in the online version of the report. Special thanks are also

due to the University of Nottingham which assisted the EBRD with the pilot assessment.

The assessment forms part of the work of the Legal Transition Programme administered by the Office of the General Counsel and was led by Catherine Bridge, Principal Counsel and Bettina Bognár, Legal Research Associate, under the guidance of Frederique Dahan, Lead Counsel.

This report is dedicated to Professor Ron Harmer, a long-standing consultant and friend of the EBRD, who made an invaluable contribution to this assessment and who sadly passed away in November 2013.

Executive summary

The EBRD assessment has revealed a number of important points on the status and development of the insolvency office holder profession in the countries surveyed.

- *Overall assessment results:* There were strong associations between the type of regulatory structure for the profession and a number of areas examined by the assessment including IOH licensing and registration, training and qualifications, work standards and ethics and the system of IOH appointment.

Countries surveyed may be grouped for analytical purposes according to their regulatory system and in particular whether they follow a self-regulatory model for IOH regulation (Group 1); have established a dedicated state agency or department with regulatory responsibility for the IOH profession (Group 2); or entrust main regulatory responsibilities regarding IOHs to a government ministry (Group 3). Countries which have no real regulatory body for the IOH profession and where no government ministry plays an active role in the regulation of IOHs form a separate group (Group 4).

With reference to section 2 (Overview of the EBRD insolvency office holder assessment results), countries in Groups 1 and 2 perform best overall in the areas covered by the assessment since they have a dedicated regulatory body for the IOH profession. Countries in Group 3 where IOHs are under the general supervision of a government ministry typically exhibit a number of weaknesses in the regulatory framework for the IOH profession. These weaknesses are accentuated among Group 4 countries where there is no dedicated regulatory body or significant government involvement.

- *Licensing and registration:* In most of the countries surveyed there is a readily identifiable insolvency office holder profession. This is evidenced first, by a functioning system of official authorisation (whether licensing, registration or similar) and second, by the existence of a specialist cadre of insolvency professionals. Such professionals are required to demonstrate relevant tertiary qualifications, successful completion of a professional entry exam and prior work experience.⁴
- *Qualification and training:* Prior work experience with a practising insolvency office holder and continuing training for qualified IOHs are the hallmarks of a developed profession. However these are key areas of weakness in the legislative and regulatory framework for IOHs in most of the countries surveyed. In the countries where continuing training is required by law, minimum target hours and/or detailed training programmes are frequently not prescribed. Nevertheless, most countries require IOH candidates to have tertiary education and to have successfully passed a specific entrance examination for the profession.
- *Professional associations:* A professional association or trade body can provide an important stimulus for development of the insolvency office holder profession. In the majority of countries surveyed where there is a professional association, there is also a code of conduct, typically focused on professional ethics. This is binding on the members of the association. Professional associations can therefore act as an important driver of

⁴ In Egypt, Georgia, Morocco and Tunisia the IOH profession appears to be less well-defined.

professional standards. They can also serve as a contact point between regulators and IOHs and a forum in which experience and information can be shared among practising IOHs. The existence of a professional association can be a useful indicator of the relative development of the profession in a particular country. In the majority of countries where a professional association exists, the association is voluntary in nature and appears to have been established without state intervention. Development of such associations may thus depend on the initiative of a number of dedicated individuals within the profession. Nevertheless, almost half of the countries surveyed do not have an official professional association or trade body for IOHs. In all but one of these countries there are no ethical or professional rules of conduct for the profession.⁵ Insufficient ethical and professional guidance for the IOH profession is therefore a principal point of weakness in many countries surveyed.

- *Regulation, supervision and monitoring:* Regulation of the insolvency office holder profession is very important given the public role of the IOH and the IOH's duties to insolvency stakeholders. However the regulatory system for the IOH profession in many countries is weak, with little time, resources and effort devoted to the activity of regulation outside of individual insolvency proceedings. In 67 per cent of countries, there is no dedicated regulatory body for the IOH profession. Regulatory powers are either entrusted primarily to a government ministry or to the court. Supervision and monitoring of the IOH profession in these countries appears to take place on a reactive basis, in response to complaints by stakeholders or within the confines of insolvency proceedings. The work of IOHs is therefore not regularly assessed or monitored in most of the countries.
- *Legal powers and duties:* The insolvency office holder needs certain statutory powers and duties

⁵ Albania is an exception. It has enacted legislation governing ethical and professional rules of conduct for the IOH profession, despite not having an official professional association for IOHs.

to perform the various tasks associated with insolvency proceedings and representation of the debtor. These define the scope of the IOH's activities and are an indication of the relative autonomy and nature of the IOH profession in a given jurisdiction. The IOH's powers and duties in insolvency are not, however, free-standing. They interact to a significant (and varying) extent with the powers of creditors and the court. The powers of the IOH, the court and creditors need to be carefully balanced. If the powers of creditors and the court are too strong, the IOH may be prevented from performing his duties efficiently or may be unable to make effective decisions. On the other hand, if creditors and the court exercise weak powers of oversight, the IOH may have little incentive to take the interests of key stakeholders into account. It appears that in a minority of countries the court exercises excessively strong powers of oversight in relation to the IOH's management of the insolvency case.⁶ In these countries the court, rather than the IOH, determines the conduct of the proceedings. In contrast with the court, creditors as a whole do not exercise the same level of powers or control over the IOH. In certain aspects of the insolvency case, such as in IOH appointment and remuneration, creditors do not seem to play a sufficiently important role in many of the countries surveyed for their interests to be fully protected.⁷

- *Appointment system:* Certain features of the professional and regulatory framework for insolvency office holders in the countries surveyed restrict the development of a "competitive market" for IOH services. These concern, in particular, the system of IOH appointment and remuneration. In the majority of jurisdictions, the IOH is appointed either by the court, a state entity or by a randomised electronic system. Only one-third of countries surveyed give creditors a leading role in the

⁶ Examples include Egypt, Hungary, Morocco, Poland, Slovenia and Tunisia.

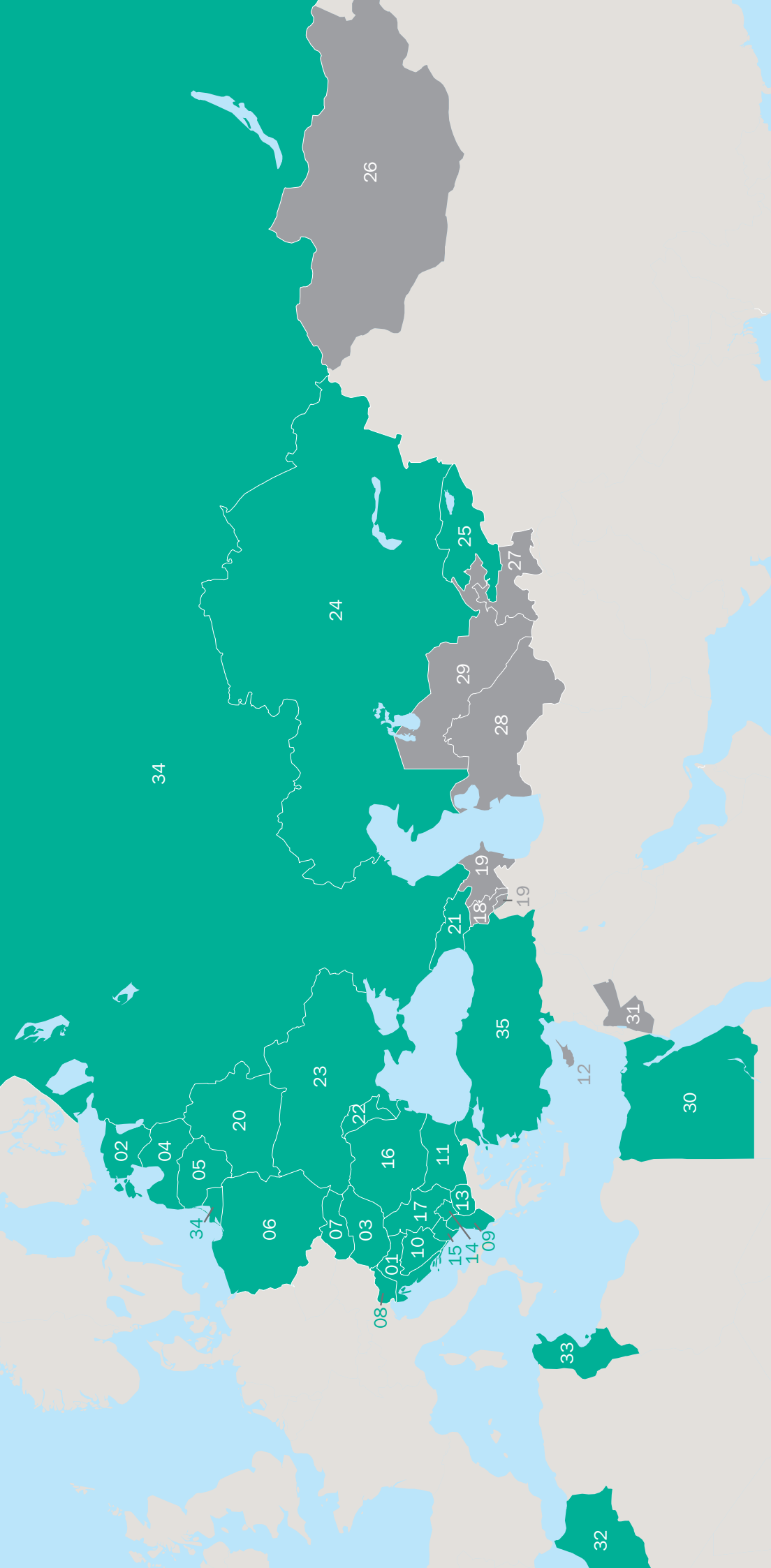
⁷ In Bosnia and Herzegovina, Egypt, Hungary, Kosovo, Morocco, Poland and Tunisia, among other countries, creditors do not play a key role in either appointment or remuneration of the IOH. Such a role is reserved for the court.

appointment of the IOH. The randomised electronic system of appointment operates on the premise that all IOHs are “equal” and appoints the IOH without regard to past performance. In contrast the court and the state entity may lack the relevant commercial knowledge and experience to select the most appropriate IOH candidate.

- *Remuneration:* Competition is lacking in the area of insolvency office holder remuneration. Over half of the countries surveyed have a fixed tariff or scale for IOH fees. In most cases the tariff is based on external, objective factors, such as the total amount of realisations in liquidation, or the total

liabilities or assets of the debtor in reorganisation. Tariffs are not, therefore, affected by whether the IOH performs well or badly, although in liquidation the relevant percentage payable to the IOH from the proceeds of sale may incentivise the IOH to obtain the best price possible. Approximately half of those countries that operate a tariff system also provide for an additional performance-related fee for IOHs. This is payable for example, if an insolvency case is especially complex or if a higher level of satisfaction of creditors’ claims is achieved. Although performance-related fees introduce a more flexible element to the tariff system, in most cases such fees are decided by the court, not by creditors.





WHERE THE EBRD INVESTS - 27 ASSESSMENT COUNTRIES HIGHLIGHTED

Central Europe and the Baltic states

- 01 Croatia
- 02 Estonia
- 03 Hungary
- 04 Latvia
- 05 Lithuania
- 06 Poland
- 07 Slovak Republic
- 08 Slovenia

South-eastern Europe

- 09 Albania
- 10 Bosnia and Herzegovina
- 11 Bulgaria
- 12 Cyprus
- 13 FYR Macedonia
- 14 Kosovo
- 15 Montenegro
- 16 Romania
- 17 Serbia

Eastern Europe and the Caucasus

- 18 Armenia
- 19 Azerbaijan
- 20 Belarus
- 21 Georgia
- 22 Moldova
- 23 Ukraine

Central Asia

- 24 Kazakhstan
- 25 Kyrgyz Republic
- 26 Mongolia
- 27 Tajikistan
- 28 Turkmenistan
- 29 Uzbekistan

Southern and eastern Mediterranean

- 30 Egypt
- 31 Jordan
- 32 Morocco
- 33 Tunisia

34 Russia

35 Turkey

SECTION 1

Background to the assessment and benchmarks

This report presents the results of an in-depth study on insolvency office holders conducted by the EBRD across 27 jurisdictions. The EBRD decided to focus on 27 of the 35 countries where it invests for two main reasons. First, there needed to be an identifiable profession of insolvency office holders and second, there had to be a developed practice of commercial insolvency proceedings involving the appointment of an office holder.⁸ The absence of either of these factors undermined the value of the assessment.

The assessment was carried out from 2012-14 in three phases described below and focused on the role of insolvency office holders in commercial insolvency proceedings.

1.1. The research

Phase I

Phase I consisted of consultations by the EBRD with stakeholders in a number of countries, including field studies in Poland and Latvia, to identify the principal factors influencing development of the IOH profession. This resulted in publication of a discussion paper by the EBRD in 2012, which identified the following seven core elements (benchmarks) for the development and performance of the IOH profession:⁹

1. *Licensing and registration*: IOHs should hold some form of official authorisation to act.
2. *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.
3. *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.
4. *Appointment system*: There should be a clear system for appointment of IOHs, which reflects debtor and creditor preferences and encourages the appointment of an appropriate IOH candidate.
5. *Work standards and ethics*: The work of IOHs should be guided by a set of specific work standards and ethics for the profession.
6. *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.
7. *Remuneration*: A statutory framework for IOH remuneration should exist to regulate

⁸ For example, Jordan was excluded from the assessment on the basis that companies that cannot pay their debts and/or conceal their deteriorated financial condition are most commonly dissolved under the liquidation procedures of the companies' law.

⁹ www.ebrd.com/downloads/legal/insolvency/discuss.pdf (last accessed on 30 September 2014).

the payment of IOH fees and to protect stakeholders. The framework should provide incentives for IOHs to perform well and protection for the payment of IOH fees in liquidation.

Phase II

From 2012-13, the assessment was piloted in seven countries: Bosnia and Herzegovina, Latvia, Poland, Romania, Russia, Serbia and Tunisia.¹⁰ The pilot assessment collected data in respect of the above benchmarks by adopting a two-fold approach: first, a review of the primary legal sources in each country to identify the legal structure within which IOHs operate and second, a questionnaire sent to three stakeholder groups (government and regulators, insolvency office holders and banks). Data was collected with the assistance of the University of Nottingham, which published a report on the pilot assessment exercise.¹¹

Using the data collected in the pilot assessment, the EBRD then developed “in-house” a scoring system for each of the above listed benchmarks.¹² Benchmarks were sub-divided into a number of elements known as “key indicators”. The scoring system was then used to re-interpret the data and assess the relative state of development of the IOH profession in the pilot countries.¹³ Individual country profiles for the pilot countries were created to provide an overall impression of the legislative and institutional framework applicable to IOHs and to highlight points of strength and weakness in relation to each of the benchmarks.¹⁴

¹⁰ Criteria for the selection of the participant countries included the existence of a relatively well-developed insolvency law regime and body of insolvency practitioners, geographical spread and relative size of population and economy.

¹¹ papers.ssrn.com/sol3/papers.cfm?abstract_id=2351726 last accessed on 30 September 2014.

¹² See www.assessment.ebrd.com/insolvency-office-holders/2014/report.html last accessed on 30 September 2014.

¹³ In most of the countries surveyed, the IOH profession is still developing. The benchmarks aim to create a road map for development of the IOH profession and to provide directions for potential future reform.

¹⁴ The EBRD is grateful for the assistance received from local law firms, whose names are listed in Annex 1.

A full explanation of the EBRD assessment benchmarks and key indicators can be found online: www.assessment.ebrd.com/insolvency-office-holders/2014/report.html

Phase III

From 2013-14, the pilot assessment was rolled out to a further 20 countries: Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine. The approach adopted was similar to the pilot assessment; however, separate questionnaires were created for: (i) creditors; (ii) IOHs and regulators; and (iii) a new category of legal professionals.¹⁵ Judges were invited to respond to the IOH and regulator questionnaires in certain jurisdictions, such as Turkey, where the activities of insolvency office holders are primarily overseen by the judiciary. Each of the 20 countries was then assessed against the EBRD benchmarks (and key indicators).

1.2. General assessment observations

There was a high level of participation in the majority of the countries surveyed, with 264 completed assessment questionnaires. Overall the highest number of stakeholder responses was from creditors (126 responses), followed by legal professionals (82 responses).¹⁶ The main challenge was to secure responses from regulators and IOHs. This was, in part, due to the availability of the questionnaire in only English, French and Russian.

Although a number of assessment countries share similar insolvency legislation, they do not necessarily have a common approach to the IOH profession. For example, Tunisian and Moroccan insolvency

¹⁵ The rationale for having a single (and separate) questionnaire for IOHs and regulators was that both types of respondents were expected to have a more detailed practical knowledge of IOHs given their “insider” knowledge of the profession.

¹⁶ A full breakdown of assessment respondents is contained in Annex 2 to this report.

Table 1: Insolvency office holder regulatory systems: grouping of assessment countries

Group 1: Self-regulation	Group 2: State agency/ department for IOH profession	Group 3: Government ministry	Group 4: No regulatory body
Estonia Romania Russia	Albania Belarus Kyrgyz Republic Latvia Lithuania Serbia	Bosnia and Herzegovina Bulgaria Croatia FYR Macedonia Hungary Kazakhstan Kosovo Moldova Montenegro Poland Slovak Republic Slovenia Tunisia Ukraine	Egypt Georgia Morocco Turkey

Note: This table illustrates the main types of IOH regulatory systems among assessment countries. The court plays an important supplementary role with respect to monitoring IOHs in most of the countries surveyed.

Source: 2012-14 EBRD insolvency office holder assessment.

legislation is closely related,¹⁷ but Tunisia has a centralised registration system, consisting of two lists of IOHs and specific legislation governing the IOH profession and Morocco does not.¹⁸ The insolvency systems in Russia and the Kyrgyz Republic also have some parallels, but Russia has adopted a self-regulatory model for the IOH profession, whereas in the Kyrgyz Republic IOHs are regulated by the state. It is, therefore, difficult to group the assessment countries on the basis of both insolvency law and the IOH profession.

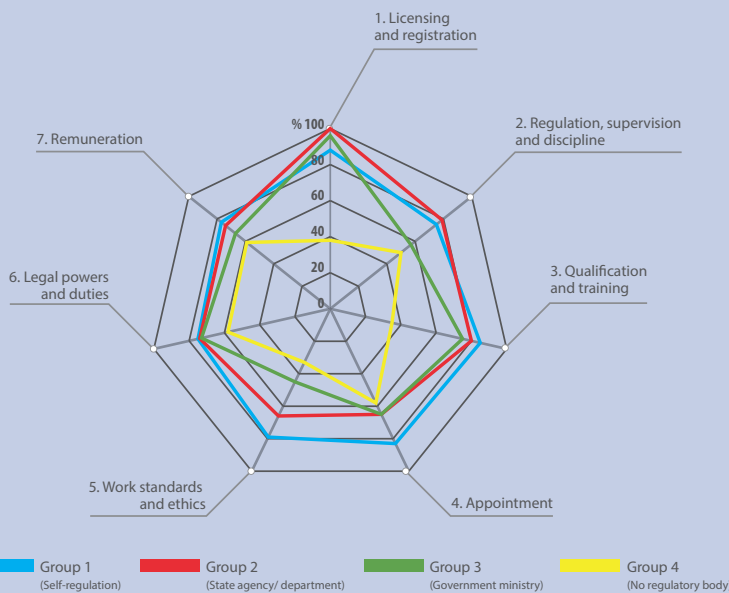
Nevertheless, some groups can be observed among the countries surveyed in respect of regulation of the IOH profession. Groups include countries which follow a self-regulatory model (Group 1); countries which have established a dedicated state agency or department with regulatory responsibility for the IOH profession (Group 2); countries which have entrusted their main regulatory responsibilities to a government ministry (Group 3); and countries which have no real regulatory body for the IOH profession and where no government ministry appears to play an active role in the regulation of IOHs (Group 4).

With reference to section 2 (Overview of the EBRD insolvency office holder assessment results), countries in Group 1 and 2 perform better overall across the assessment benchmarks. There is deterioration in performance among countries in Group 3 relative to Groups 1 and 2 and still further in Group 4 countries compared with Group 3 countries.

Although the countries within a particular Group have similar regulatory frameworks, some countries share similarities with the regulatory frameworks of different Group countries. For example, the IOH profession in Estonia is mainly self-regulating, but unlike other Group 1 countries certain regulatory powers remain with the Ministry of Justice and the Estonian Chamber does not appear to have any statutory monitoring obligations with respect to the IOH profession. In Latvia a state agency (the Latvian Insolvency Administration) performs some regulatory functions, but has no statutory obligation to monitor the IOH profession, unlike other Group 2 countries. In FYR Macedonia, Moldova, Slovenia and Ukraine, a government ministry retains primary regulatory control of the IOH profession, but there are elements of self-regulation, for example in Ukraine with respect to training.

¹⁷ Both Tunisia and Morocco have insolvency systems that are closely inspired by the (pre-2005) French insolvency model.

¹⁸ Law no. 71 of 11 November 1997 on insolvency office holders.

Chart 1: Assessment results by Groups

Note: This chart illustrates the performance of the four Groups identified in Table 1 on an aggregate basis with respect to each of the assessment benchmarks. Each benchmark has a maximum score of 100 per cent. The maximum of 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.

Based on an analysis of the data contained in section 3 (Cross jurisdictional trends and frameworks), the IOH assessment regulatory system groups have interesting associations with many, although not all, of the benchmarks:¹⁹

- **Licensing and registration:** As may be expected, this is a characteristic of all Group 1, 2 and 3 countries, which have a self-regulatory body, a state agency or department for the IOH profession or a government ministry with regulatory powers relating to the profession. In respect of Group 4 countries, there is either no registration or licensing of IOHs (in the case of Georgia and Turkey) or de-centralised registration at court level (in the case of Egypt and Morocco).
- **Regulation, supervision and discipline:** For both Group 1 and 2 countries (other than Estonia and Latvia), monitoring of the IOH profession outside of insolvency proceedings is a statutory

¹⁹ There are fewer associations between the Groups and the benchmarks of legal powers and duties and remuneration.

requirement. For Group 3 countries, there is generally no statutory monitoring requirement (with the exception of FYR Macedonia, Kazakhstan and Ukraine). There is no statutory monitoring requirement in all Group 4 countries. Group 1 and 2 countries all have professional association for IOHs (other than the Kyrgyz Republic). This is in contrast to Group 4 countries, which have no professional association for IOHs. The picture among Group 3 countries is mixed: some countries have one or more professional associations of IOHs, but others do not. With respect to complaints against IOHs, it is interesting that the court is the only forum for complaints in certain countries in Groups 3 and 4 (but not for any countries in Groups 1 and 2).

- **Qualification and training:** All Group 1 and 2 countries require IOHs to have a tertiary degree and to pass a specific examination and have prior work experience (not necessarily with a qualified IOH) for entry into the IOH profession. These three elements are mostly required for Group 3 countries, apart from Tunisia, which does not require a specific examination, Moldova, which is in the process of introducing an examination requirement for IOHs, and Bosnia and Herzegovina, Croatia and the Slovak Republic where no prior work experience is required. There is no developed framework for qualification and training of IOHs in Group 4 countries.
- **Appointment system:** All Group 1 countries give creditors a determining role in appointment of the IOH. The picture among Group 2 countries is mixed: although a few countries (Albania and Kosovo) allow creditors to take the lead in the appointment of the IOH, the remainder entrust IOH appointment to the court or a government agency and/or a randomised electronic selection system. Group 3 presents a similarly mixed picture to Group 2, while in Group 4 countries appointment of the IOH is equally divided between the court and creditors.
- **Work standards and ethics:** All Group 1 countries have binding code of conduct rules for the IOH

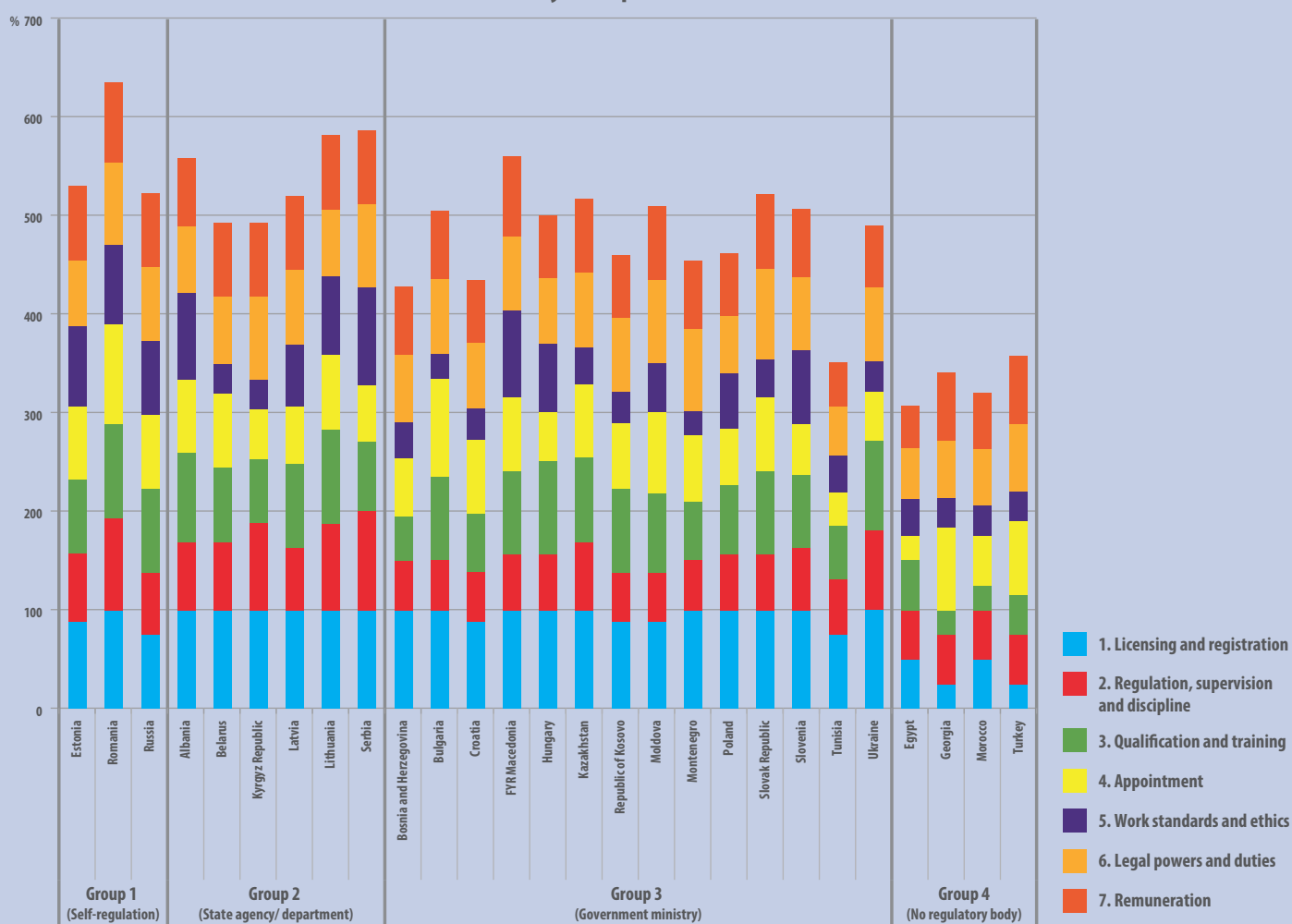
profession (in Russia these encompass certain professional standards). The majority of Group 2 countries have code of conduct rules (other than Belarus and the Kyrgyz Republic); however the majority of Group 3 countries do not have any code of conduct rules (exceptions are FYR Macedonia, Hungary, Latvia and Lithuania). No Group 4 countries have code of conduct rules for IOH professionals.

- **Legal powers and duties:** No significant connections could be identified between the different Groups and the reporting requirements of IOHs and the powers of IOHs to request

cooperation. However, it is interesting to note that none of the Group 2 countries appoint a specialist judge or judge commissioner to the insolvency case and therefore the activities of the IOH in Group 2 countries may be less closely supervised by the court.

- **Remuneration:** The remuneration systems for the IOH profession differ widely among all Group countries. A tariff or sliding scale of IOH remuneration applies in all Group 1 and 2 countries (apart from Russia, the Kyrgyz Republic, Lithuania and Romania), but is a common feature of most assessment countries.

Chart 2: Detailed assessment benchmark results by Groups



Note: This chart illustrates the performance of the four Groups identified in Table 1 on an aggregate basis with respect to each of the assessment benchmarks. Countries are assessed against 700 per cent which represents the total maximum score of the seven benchmarks. Each benchmark has a maximum score of 100 per cent. The maximum of 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.



Financial documents and reports are visible in the foreground, including a table with numerical data and a bar chart.

Np	a
1	1127
2	2328
3	4336
4	5414
5	6587
6	7623
7	87
8	1520
9	16346
10	8175
11	1834
12	1956
13	2013
14	2136
15	2223
16	2349
17	2487
18	2636
19	2796
20	2967
21	3149
22	3342
23	3546
24	3761
25	3987
26	4224
27	4472
28	4731
29	5001
30	5282
31	5574
32	5877
33	6191
34	6516
35	6852
36	7199
37	7557
38	7926
39	8306
40	8697
41	9099
42	9512
43	9936
44	10371
45	10837
46	11314
47	11803
48	12303
49	12814
50	13336
51	13869
52	14413
53	14968
54	15534
55	16111
56	16699
57	17298
58	17908
59	18529
60	19161
61	19804
62	20458
63	21123
64	21799
65	22486
66	23194
67	23913
68	24643
69	25384
70	26136
71	26899
72	27673
73	28458
74	29254
75	30061
76	30879
77	31708
78	32548
79	33399
80	34261
81	35134
82	36018
83	36913
84	37819
85	38736
86	39664
87	40603
88	41553
89	42514
90	43486
91	44469
92	45463
93	46468
94	47484
95	48511
96	49549
97	50598
98	51658
99	52729
100	53811

SECTION 2

Overview of EBRD insolvency office holder assessment results

2.1. Assessment results overview

This section provides: (i) an overall aggregate score by benchmark for all of the countries surveyed; and (ii) a cross-jurisdictional analysis of the assessment scores per country for each of the benchmarks. Key areas of strength and weakness in a particular country and an explanation of the EBRD assessment scores for that country may be found respectively in the individual country profiles and scoring notes for the assessment, published at: www.assessment.ebrd.com/insolvency-office-holders/2014/report.html.

Assessment scoring system

As described in section 1 above, each assessment benchmark was divided into a number of key indicators, which were scored separately in accordance with a scoring system developed by the EBRD.²⁰ Thus the results of a particular benchmark presented in this section represent the aggregate score of all key indicators under the relevant benchmark and there may be variances of scoring within each benchmark.

The scoring system takes into account the objective or, as applicable, subjective nature of key indicators, namely whether the particular key indicator aims to assess factual (mainly legal or procedural) elements of the legal and professional framework for IOHs or the beliefs and perceptions of questionnaire respondents. Nevertheless, the majority of assessment key indicators

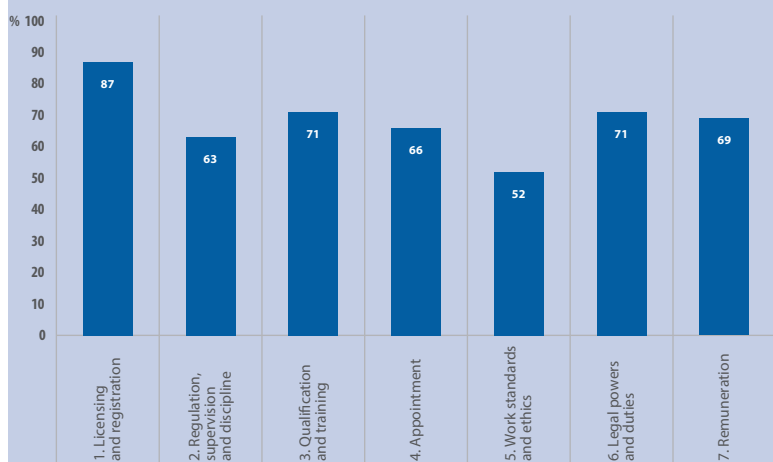
are of an objective nature and seek to ascertain certain factual criteria. For example, key indicators under the licensing and registration benchmark examine whether IOHs are required to have formal authorisation to act and whether there is an easily accessible official public list of authorised IOHs. This may be answered by an examination of the relevant legal system and a verification of the accessibility of any public list of practising IOHs. Perceptions of assessment respondents may, nonetheless, be taken into account to understand whether the licensing and registration system operates as envisaged in practice and prevents any unlicensed or unregistered IOHs from taking appointments.

Subjective elements considered for scoring perception-based or related key indicators include whether the remuneration level for IOHs appears to be adequate in context. Given the high level of creditor participation in the assessment (and the large number of perception-based or related questions asked of creditors), this group of respondents provided a valuable and interesting insight into the IOH framework for remuneration and other elements. Creditors' views and perceptions are discussed in section 5 (Creditor perceptions) of this report, which provides a snapshot of the IOH profession through creditors' eyes. However, the main difficulty when evaluating creditors' perceptions was the variations in the experience and background of different respondents and the fact that responses were often not conclusive.

According to the calculation method for the assessment results, it is technically possible for a country to achieve a maximum score (100 per cent) for a given benchmark. Such a maximum score is

²⁰ Full details of the EBRD scoring system are published on: www.assessment.ebrd.com/insolvency-office-holders/2014/report.html

Chart 3: Assessment results by benchmark: Development of insolvency office holder profession in transition countries



Note: This bar chart indicates the percentage of the assessment results achieved by the countries in each of the benchmarks. The score 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework in all of the countries surveyed.

Source: 2012-14 EBRD insolvency office holder assessment.

same benchmark given to different countries does not mean that the same level of – or approach to – regulation applies in each of these countries. An identical score may nonetheless reflect a similar level of development in the relevant area.

Development of insolvency office holder profession by benchmark

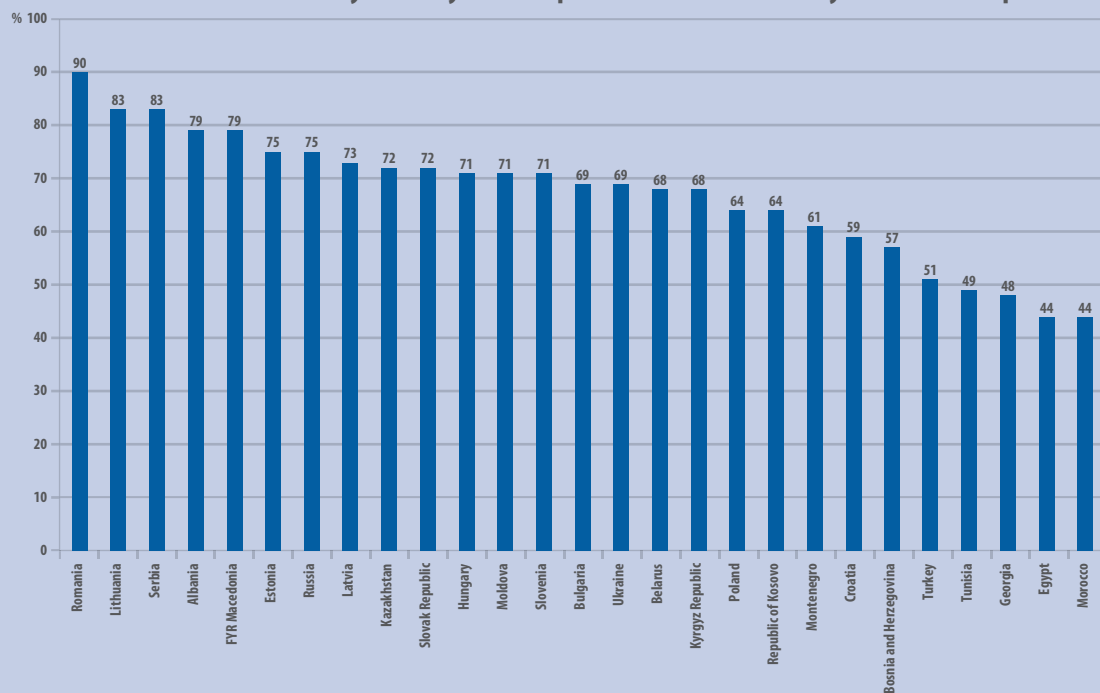
Chart 3 summarises the overall country results from the assessment relating to the IOH profession per benchmark. Accordingly, the results shown in the chart represent an aggregate of all the results in all of the countries surveyed for a particular benchmark. As revealed by the bar chart below, the strongest performing benchmarks overall were licensing and registration, followed by qualification and training and legal powers and duties. The weakest benchmark surveyed across all jurisdictions was work standards and ethics.

intended to signal the existence of a “comprehensive” regulatory and/or professional framework. It is not intended to imply that the framework functions perfectly or is perfectly regulated in practice. It is also important to note that the same score for the

Development of insolvency office holder profession by country

As illustrated by the chart below, Romania, Lithuania and Serbia appear to have the most well developed overall framework and system for the IOH profession,

Chart 4: Assessment results by country: Development of the insolvency office holder profession in transition countries



Note: This bar chart indicates the percentage of overall results achieved by the assessment countries. The result 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.

since they have established regulatory frameworks that cover the key elements for the profession. The weakest overall framework for IOHs appears to exist in Egypt, Morocco, Georgia and Tunisia where only a few key elements of the profession are adequately covered. In these countries there are a number of areas where reforms are particularly needed. Nevertheless, Tunisia performs better among the low-performing countries as it has a slightly more-developed statutory framework for IOHs.

2.2. Assessment results benchmark analysis

Licensing and registration

Of the countries surveyed, 13 countries (47 per cent) follow a licensing model, while 11 (43 per cent) adopt a registration system, in which the official lists of IOHs are administered by the relevant ministry, the court or (in Russia) by the self-regulating organisations of qualified receivers (SROs). Only two countries (Georgia and Turkey) have no licensing or registration

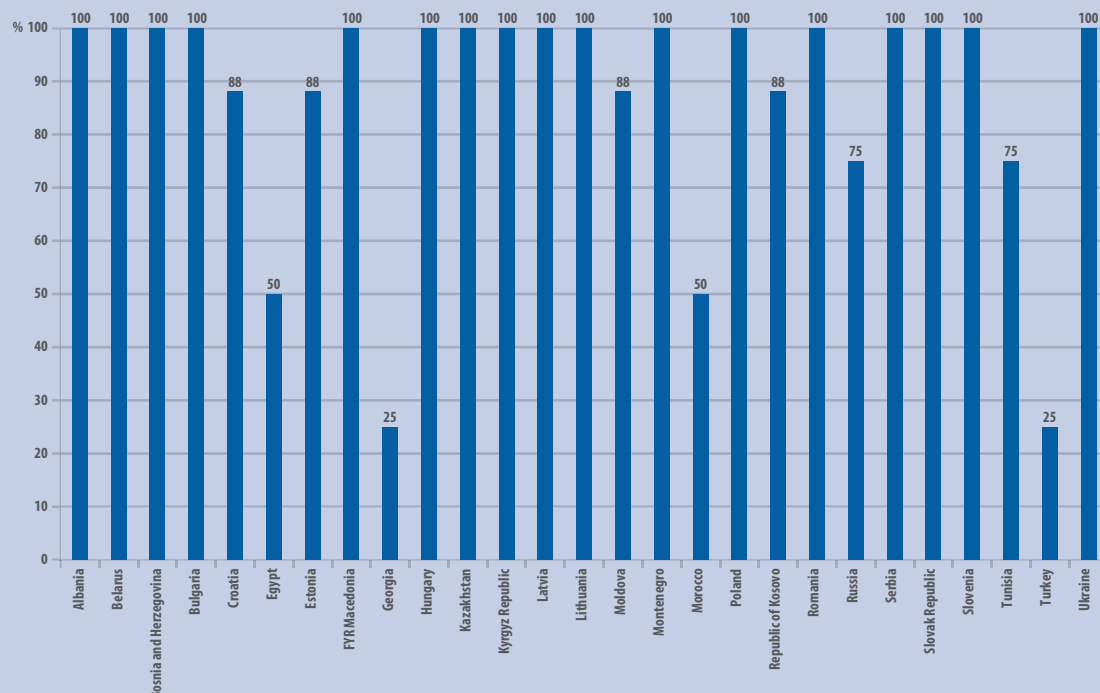
system. In Hungary the formal authorisation to act is granted through a centralised tender procedure operated at a governmental level.

As illustrated by the chart below, licensing and registration is the strongest benchmark for all of countries surveyed. Seventeen countries achieved the maximum score. Among the remaining countries, the main deficiencies include: lack of any registration or licensing system (Georgia and Turkey); absence of a centralised registration or licensing system (Egypt, Morocco and Russia); exemptions from IOH qualification requirements related to licensing and registration (Estonia), reservations as to the public availability of the register or list of IOHs (Egypt, Kosovo and Morocco) or exemptions which allow IOHs in practice to be appointed from outside the list of licensed/registered IOHs (Croatia and Tunisia).

Regulation, supervision and discipline

In terms of regulation, supervision and discipline, as illustrated by Chart 6, Serbia appears to have developed the most reliable and well-functioning

Chart 5: Assessment results: Development of licensing and registration systems for insolvency office holders



Note: This bar chart indicates the results achieved in the assessment benchmark "Licensing and registration" for each of the countries assessed. Every country score aggregates the results for each of the key indicators examined under this benchmark. These include whether insolvency office holders are required to obtain a formal permission or authorisation to act such as a licence or registration. The result 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.

system for IOHs, with the establishment and operation of a dedicated regulatory body, the BSA. Serbia is followed closely by Romania, which also has a dedicated regulatory body, UNPIR, a self-regulatory organisation of insolvency practitioners. In addition, the Kyrgyz Republic, Ukraine and Lithuania have established dedicated regulatory bodies that, among other matters, operate a complaints system for insolvency stakeholders.

Albania, Belarus, Estonia, FYR Macedonia, Hungary, Kazakhstan, Latvia, Poland, Russia, Slovak Republic, Slovenia and Tunisia have developed a regulatory framework for IOHs (51 to 70 per cent), nonetheless with some deficiencies. These deficiencies include lack of a dedicated regulatory body (FYR Macedonia, Hungary, Poland, Russia, Slovak Republic and Slovenia), irregular monitoring of IOH conduct (for example, in Latvia, Hungary and Tunisia), lack of a separate complaints system (for example, in Albania and Belarus, although a dedicated regulatory body exists in these countries) or a limited range of sanctions capable of being imposed for IOH misconduct (for example, in Kazakhstan and Latvia).

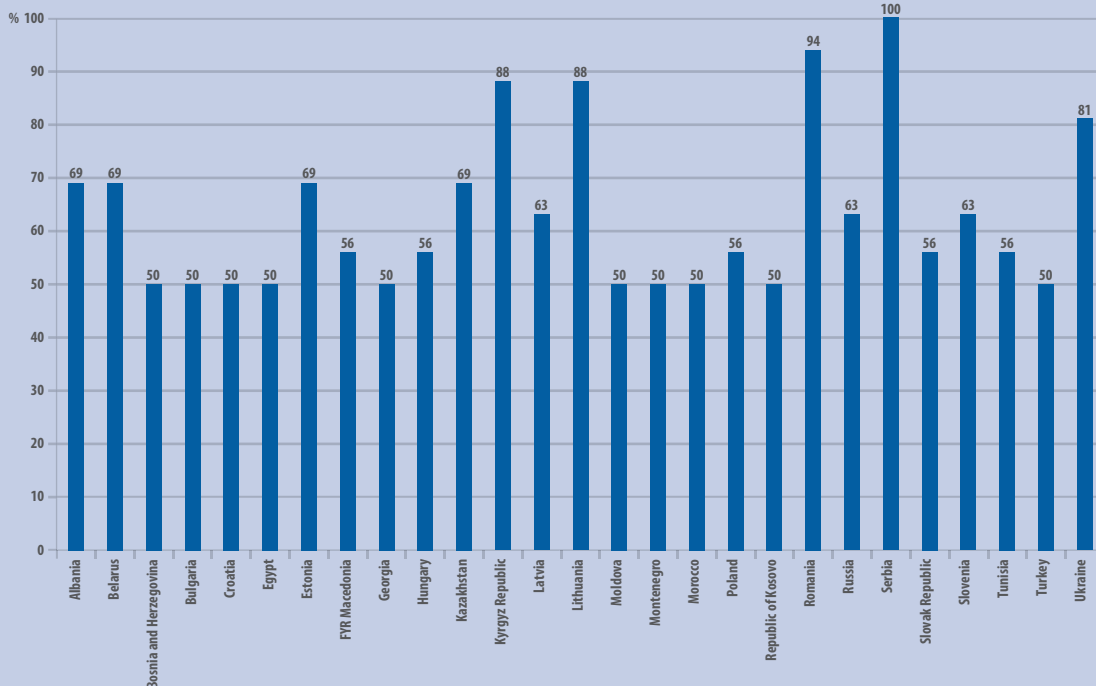
Ten countries (Bosnia and Herzegovina, Bulgaria, Croatia, Egypt, Georgia, Kosovo, Moldova, Montenegro, Morocco and Turkey) seem to have only a partially developed regulatory framework for IOHs (50 per cent). In all of these countries, there is no dedicated regulatory body. Monitoring of IOH conduct and administering complaints fall within the competence of the relevant ministry and the court in individual insolvency proceedings.

These countries appear to lack the necessary legal tools and framework for carrying out regular monitoring of IOHs activities, examining complaints by third parties and imposing disciplinary measures on IOHs. In respect of Bosnia and Herzegovina the position is somewhat mitigated by the active role played by the judge-commissioner appointed to oversee the insolvency case (also appointed in Poland and Romania).

Qualification and training

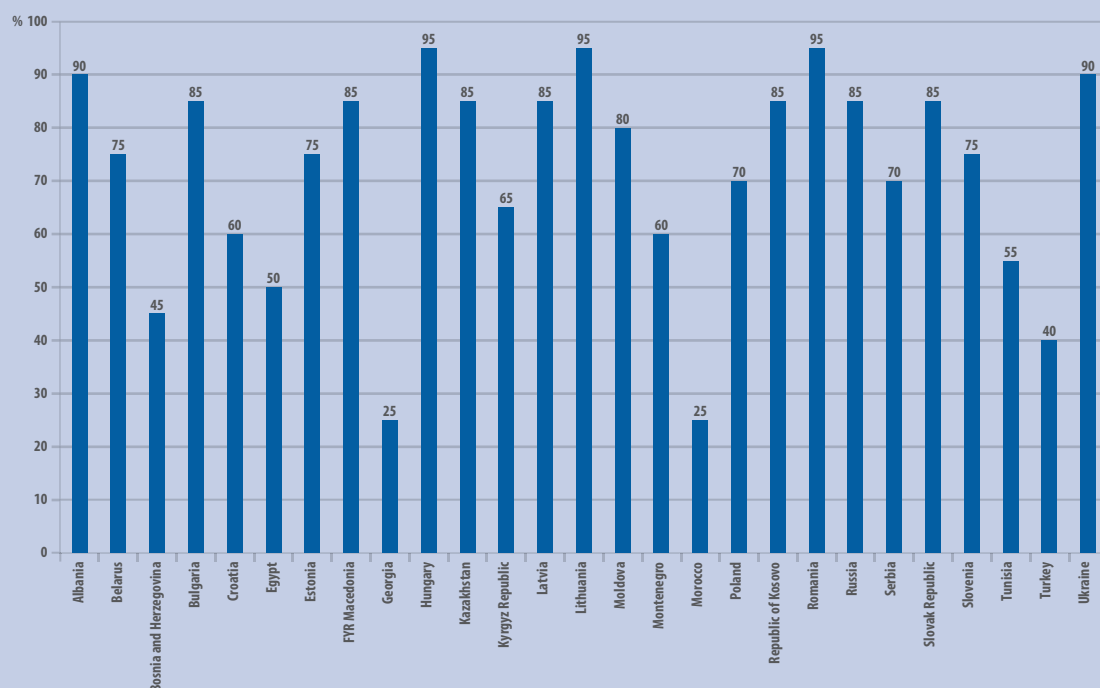
As revealed in Chart 7, the results for this benchmark reflect the large variety of approaches to IOH qualifications and training among the

Chart 6: Assessment results: Framework for regulation, supervision and discipline of insolvency office holders



Note: This bar chart indicates the results achieved in the assessment benchmark "Regulation, supervision and discipline" for each of the countries assessed. The score aggregates the results for each of the key indicators examined under this benchmark. These include whether the regulatory body actively monitors the performance of insolvency office holders and operates a complaints system. The result 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.

Chart 7: Assessment results: Development of qualification and training requirements for insolvency office holders

Note: This bar chart indicates the results achieved in the assessment benchmark “Qualification and training” for each of the countries assessed. The score aggregates the results for each of the key indicators examined under this benchmark. These include whether prospective insolvency office holders are required to obtain a tertiary qualification or pass a specific exam. The result 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

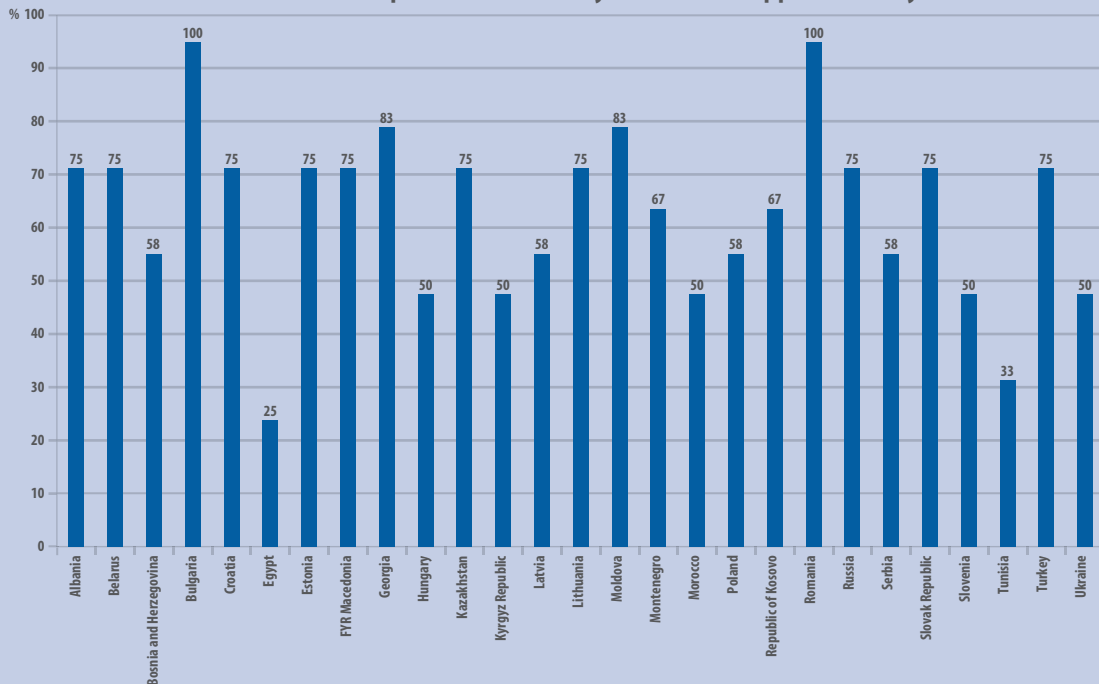
Source: 2012-14 EBRD insolvency office holder assessment.

participating countries, especially in terms of tertiary qualifications and “on the job” practical insolvency experience. The majority of countries assessed (16 countries) scored above 70 per cent (23 scored at or above 50 per cent), which generally indicates an established framework in place facilitating the development of skilled professionals. Nevertheless, key weaknesses identified across most jurisdictions include lack of practical “on the job” training with an authorised IOH for prospective IOHs and the lack of continuing training for those qualified members of the profession.

Hungary, Lithuania and Romania achieved the highest scores (95 per cent) with minor gaps in the regulatory framework for this benchmark. In Hungary continuing training requirements are not fully defined, while in Lithuania and Romania “on the job” practical training is not mandatory for prospective IOHs. Albania, Belarus, Bulgaria, Estonia, FYR Macedonia, Kazakhstan, Kosovo, Latvia, Moldova, Russia, Slovak Republic, Slovenia and Ukraine (13 countries that scored between 71 and 94 per cent)

also have a developed system of requirements for IOH candidates. However weaknesses arise from the lack of relevant or well-defined tertiary qualification requirements (Belarus, Estonia, Moldova, Russia, Slovenia); no practical “on the job” training with an authorised IOH (Albania, Belarus, Bulgaria, Estonia, FYR Macedonia, Kazakhstan, Latvia, Slovak Republic); and not well-defined continuing training requirements (for example, Kosovo and Ukraine). Criminal records (subject to different conditions) act as a bar to the admittance of persons to the IOH profession in most countries; nevertheless there are some reservations as to the effectiveness of these checks in some countries (for example, in FYR Macedonia).

Bosnia and Herzegovina, Croatia, Egypt, Kyrgyz Republic, Montenegro, Poland, Serbia, Tunisia and Turkey were ranked in the middle (between 40 and 70 per cent). In these countries certain qualification requirements for prospective IOHs exist, but do not seem to form a set of rules that would ensure the admittance of fully skilled candidates into the profession in every case. Such reservations include

Chart 8: Assessment results: Development of insolvency office holder appointment systems

Note: This bar chart indicates the results achieved in the assessment benchmark “Appointment system” for each of the countries assessed. The average score aggregates the results for each of the key indicators examined under this benchmark. These include whether the prospective insolvency office holders can be selected on the basis of professional experience and whether the creditors have an influence on the appointment of a particular insolvency office holder. The result 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.

the same weaknesses described above, but these are present to a greater extent. In Poland relevant tertiary qualifications are not a requirement, while in Bosnia and Herzegovina and the Kyrgyz Republic there are no specific training or work experience requirements or compulsory criminal checks on IOH candidates. In Croatia, Montenegro and Poland in addition to the lack of “on the job” practical training with a qualified IOH, authorised IOHs are not required to participate in continuing training. In Egypt and Tunisia, among other deficiencies, IOHs are not required to pass a specific entry exam to access the profession whereas in Serbia the tertiary qualification does not need to be in a relevant discipline. In Turkey a few guidelines are set forth by law which stipulate that IOHs should have “sufficient knowledge and experience” but these are neither detailed nor comprehensive. Furthermore criminal convictions are only indirectly a bar to entry to the profession since IOHs are classified as public servants and the latter are not allowed to have a criminal record.

Contrary to the aforementioned large majority of countries with established frameworks, a few

countries (Georgia and Morocco) do not cover separate qualification and training requirements for IOHs in their insolvency legislation.

Appointment system

The countries surveyed overall performed worse in respect of this benchmark compared with other benchmarks. As evidenced in Chart 8, thirteen countries achieved lower scores than 70 per cent and among these countries, seven countries scored at or less than 50 per cent.

The appointment system in Bulgaria and Romania seems to meet all of the requirements assessed and to promote the selection of the “best candidate”, taking into account creditors’ views. Bulgaria and Romania are followed by Georgia and Moldova (above 80 per cent) where the creditors have a determining influence over the appointment of an IOH.

Albania, Belarus, Croatia, Estonia, FYR Macedonia Kazakhstan, Lithuania, Russia, the Slovak Republic and Turkey (above 70 per cent) generally provide

reasonably detailed statutory frameworks that govern the appointment of IOHs. The fairness or transparency of the system and the selection of the right candidate are, however, often questionable, such as in Albania, Croatia, Estonia and Slovak Republic where the court is entitled to appoint the initial IOH at its own discretion. Nevertheless, this system is not completely unfair given that the court-appointed IOH may be replaced at a later stage on the request of creditors. Another frequently used “model” for appointing IOHs is found in Belarus, Kazakhstan, Lithuania and Russia where the IOH may be nominated by creditors, but the final decision remains at the court’s discretion. The Turkish system, follows both models depending on the particular type of insolvency procedure. In other words, creditors may nominate IOH candidates in bankruptcy proceedings, while the court decides at its sole discretion on the IOH appointment in postponement of bankruptcy proceedings.

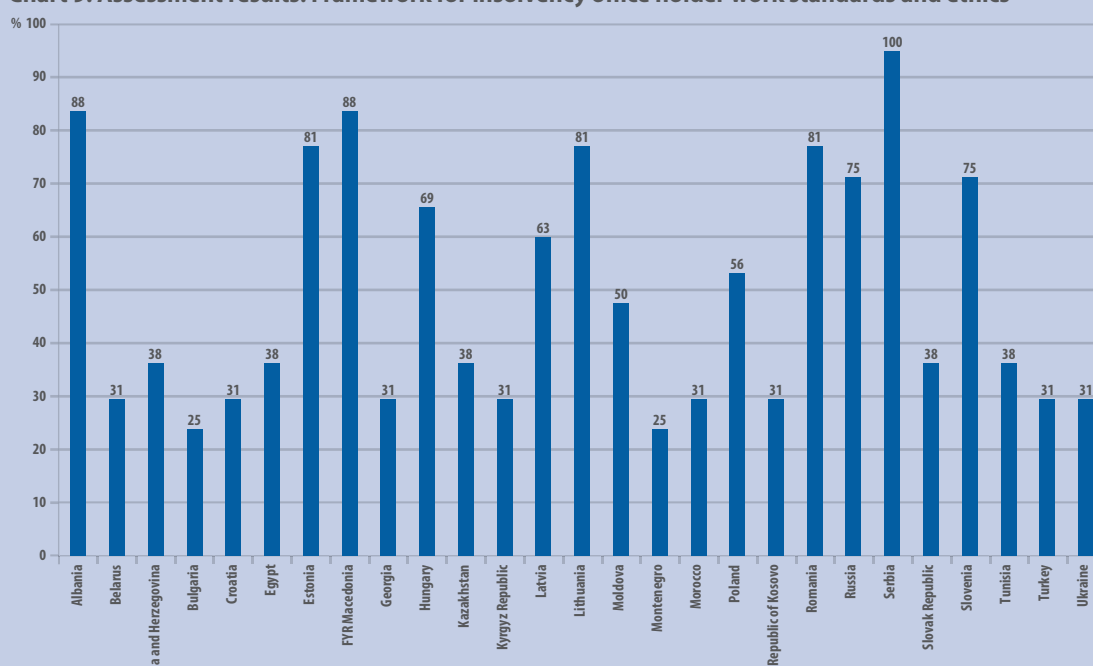
The countries (13) that scored below 70 per cent display similar weaknesses. These include lack of a detailed statutory framework for the appointment of IOHs (Bosnia and Herzegovina, Egypt, Kosovo,

Morocco and Tunisia), lack of “matching” of the IOH to the insolvency case (Hungary, Serbia, Slovenia and Ukraine, in which countries this deficiency derives from the random selection process which does not take into account specific factors, including the previous experience of the IOH or stakeholders’ nominations), the court’s discretion in appointing the IOH with limited creditors’ review or input (Bosnia and Herzegovina, Egypt, Latvia, Montenegro, Morocco, Poland, Tunisia). In the Kyrgyz Republic the Kyrgyz Department appoints the IOH on the nomination of either the creditors or the debtor. Among these countries, the lowest level of fairness and transparency may be found in Egypt, Morocco and Tunisia where there are no express statutory provisions on the procedure and criteria for the appointment of the IOH and creditors do not have any influence on the person appointed as an IOH.

Work standards and ethics

This benchmark may be regarded as one of the weakest points for IOH professional framework in the participating countries, alongside qualification and training.

Chart 9: Assessment results: Framework for insolvency office holder work standards and ethics



Note: This bar chart indicates the results achieved in the assessment benchmark “Work standards and ethics” for each of the countries assessed. The average score aggregates the results for each of the key indicators examined under this benchmark. These include whether there are comprehensive and publicly available professional standards and ethics for the profession, the binding nature of these rules and whether compliance with these is monitored. The result 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.

As demonstrated by Chart 9, only a minority of eight countries (Albania, Estonia, FYR Macedonia, Lithuania, Romania, Russia, Serbia and Slovenia) achieved scores above 70 per cent. Nevertheless, a comprehensive, binding code of conduct that encompasses both ethical and professional rules, compliance with which is monitored regularly may be found only in Serbia. In the other well-performing countries the deficiencies largely derive from the non-comprehensive nature of the code (Estonia, Lithuania, Romania, Russia, Slovenia) and irregular monitoring of compliance with the code (for example, Albania, Estonia, FYR Macedonia, Lithuania, Romania and Slovenia).

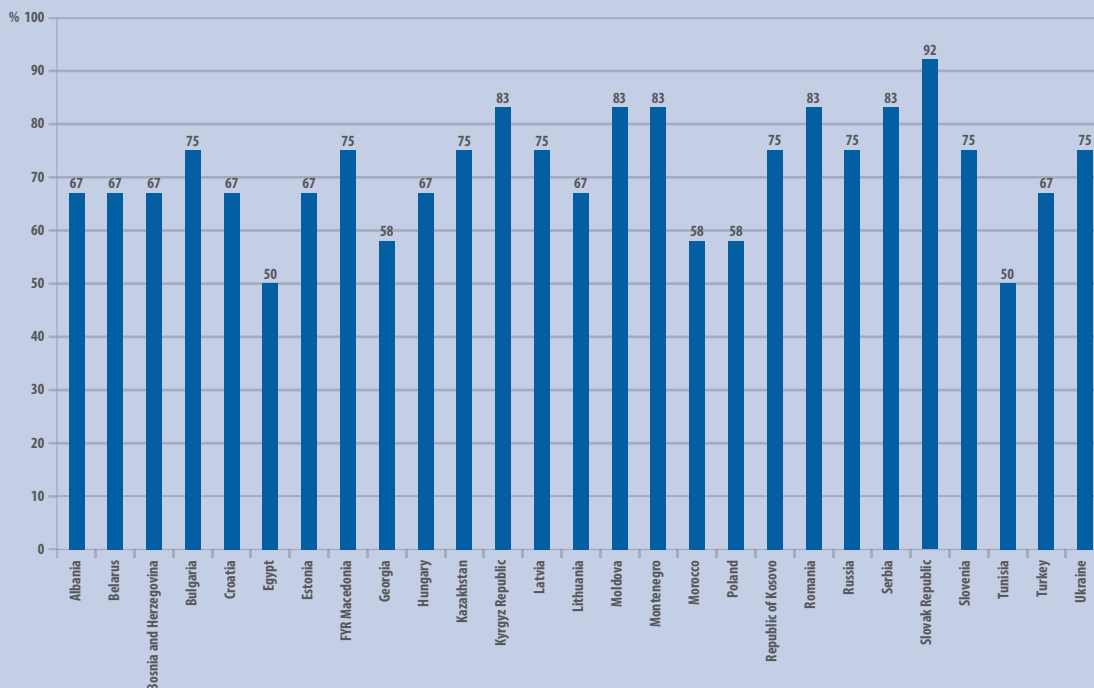
In Hungary, Latvia, Moldova and Poland (which all scored between 40 and 70 per cent) there are different types of deficiencies in the framework for professional conduct. In Hungary although a code of ethics exist, it is not legally binding on IOHs, while in Moldova professional conduct rules, while expected, are not yet in place due to the country's new legal framework for IOHs. In Latvia and Poland the code does not appear to be comprehensive (it covers only ethical rules) and compliance is not monitored regularly.

The remaining 15 countries that achieved a score of less than 40 per cent do not appear to have any comprehensive professional and ethical standards for the IOH profession. Nevertheless, conduct-related provisions may be contained in other pieces of legislation, such as in Belarus, Georgia, Kazakhstan, Kosovo, the Kyrgyz Republic, Montenegro or Ukraine, while in Tunisia (similar to Poland and Romania) IOH candidates are required to swear an oath upon joining the profession.

Legal powers and duties

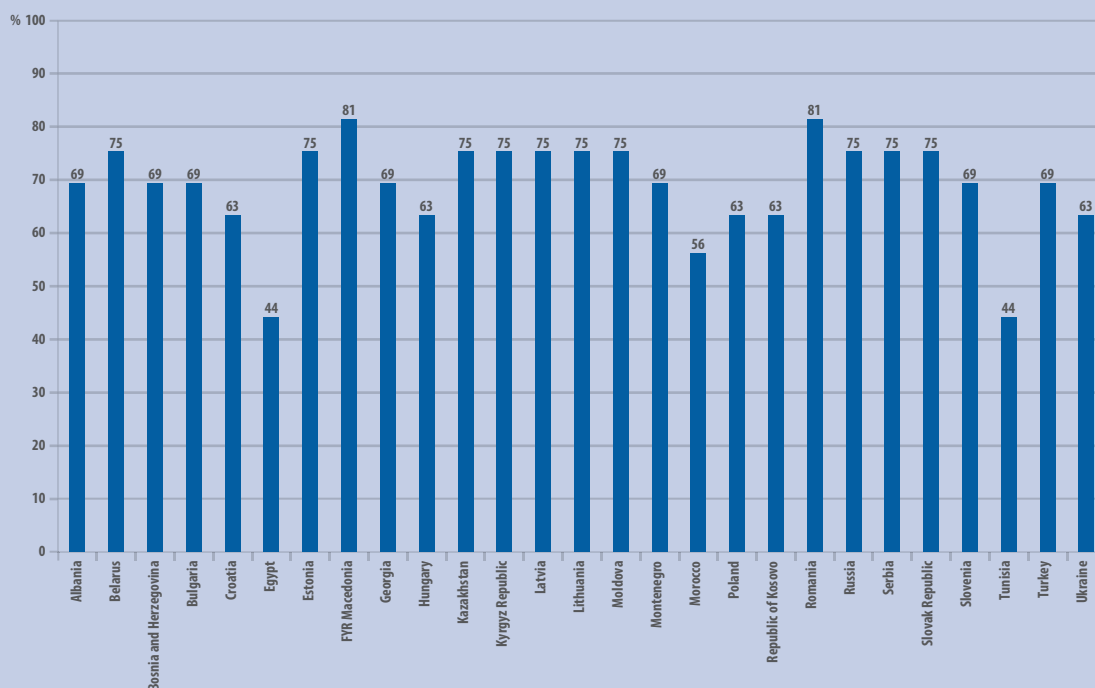
After licensing and registration, this benchmark was the second strongest (alongside qualification and training) in the countries surveyed, since IOHs have, in practice, a wide range of statutory powers (framed in many of the countries as "duties") in the following areas examined by the assessment: (i) management of the debtor's estate, to the extent applicable, and sale of any assets belonging to the estate in liquidation; (ii) reporting to insolvency stakeholders on a regular basis; and (iii) investigation and enquiry to facilitate the recovery of the debtor's assets.

Chart 10: Assessment results: Statutory framework for insolvency office holder legal powers and duties



Note: This bar chart indicates the results achieved in the assessment benchmark "Legal powers and duties" for each of the countries assessed. The average score aggregates the scores for each of the key indicators examined under this benchmark. These include whether insolvency office holders have sufficient legal powers and/or duties of investigation and enquiry to facilitate the recovery of debtor's assets. The result 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.

Chart 11: Assessment results: Remuneration of insolvency office holders

Note: This bar chart indicates the results achieved in the assessment benchmark “Remuneration” for each of the countries assessed. The average score aggregates the results for each of the key indicators examined under this benchmark. These include whether relevant parties have an adequate oversight and/or review of insolvency office holder remuneration. The result 100 per cent is intended to signal the existence of a comprehensive regulatory and/or professional framework.

Source: 2012-14 EBRD insolvency office holder assessment.

As demonstrated in Chart 10, half of countries surveyed (14 out of 27) scored above 70 per cent. The Kyrgyz Republic, Latvia, Montenegro, Romania, Serbia and the Slovak Republic in particular appear to give IOHs wide legal powers overall in insolvency proceedings (above 80 per cent). These strong powers typically include requiring both the debtor and third parties to provide information and deliver up any assets belonging to the debtor, backed up by sanctions for non-cooperation. Nevertheless, all other countries appear to have an established system of IOH powers and duties. Although there were some reservations as to the extensiveness or effectiveness of the powers of IOHs, IOHs seem to be able to carry out the key activities required of them in insolvency.

Reservations in these highly performing countries include the level of prior consents required by IOHs for certain key activities, including Bulgaria, Moldova, Montenegro, Romania, Russia, Serbia, Slovenia and Ukraine, where frequently both creditor committee and/or court approval

are needed to make distributions to creditors and/or to effect a sale of debtor property and IOHs are required to comply with the court or creditors’ decision. The extent of IOH powers to require unconnected third parties to cooperate or otherwise provide information varies across the jurisdictions. In Kosovo third parties are not obliged to assist the IOH in the course of insolvency proceedings, however this may be mitigated by an application to the court for assistance.

The remaining 13 countries all ranked above 40 per cent, which indicates a generally high level of statutory powers. Among these countries, weaknesses include the same deficiencies as mentioned above, only present to a larger extent. Further weaknesses include, however, the lack of or insufficient reporting obligations of IOHs to stakeholders (Albania, Belarus, Estonia, Morocco and Poland). In Bosnia and Herzegovina, Croatia and Hungary the major deficiency seems to be the inability of IOHs to request assistance from third parties.

The worst performing countries in respect of this benchmark are Egypt and Tunisia. In Egypt the powers and duties of the IOHs are poorly covered in the legislation and their actions are subject to strong court oversight, whereas in Tunisia the powers of IOHs are limited to requesting assistance and IOHs are subject to insufficient reporting obligations.

Remuneration

A statutorily recognised remuneration system appears to operate in the majority of countries assessed. As reflected in Chart 11 all of the countries scored above 40 per cent and 12 countries scored above 70 per cent. FYR Macedonia and Romania achieved the highest score, with the only weakness being that no real consensus could be found among respondents as to whether IOH remuneration is adequate in practice. Minor reservations relating to the remuneration system in the remaining best-performing 10 countries concern the apparently too strict nature of the statutory system that allows no or little room to take into account the particularities of the actual case (for example, Belarus, FYR Macedonia, Moldova, Russia and Slovak Republic) and the inadequate oversight of IOH fees (for example, Estonia, Kyrgyz Republic and Serbia) that is mitigated by the right of creditors to appeal against the court's decision approving the fees. In Lithuania, IOH remuneration is determined by a private contract between creditors and the IOH while in Kazakhstan creditors are responsible for

approving IOH remuneration. The Latvian statutory framework only partially covers IOH remuneration as it does not include remuneration in Latvian Legal Protection Proceedings.

In the remaining 15 countries the framework for IOH remuneration appears to be less detailed either due to the lack of statutory tariff or scale system such as in Kosovo or Poland or due to the limited nature of creditors' input and overview, especially in Albania, Croatia, Hungary. In Bulgaria setting the IOH remuneration falls within the competence of the creditors; however, there is no minimum applicable tariff to protect the IOH. In Georgia an agreement governing IOH remuneration needs to be concluded between the IOH and creditors, but there is no further guidance. The lowest performer among all participating countries is Egypt, which does not have any legislative guidance on remuneration. Although Tunisia appears to be a low performer, it has certain guidelines for setting the fees for liquidators, but not for other types of IOHs.

Given that remuneration is a complex issue that is dependent on various factors (as discussed above), it was difficult to ascertain the appropriateness of the level of IOH remuneration, which was one of the key indicators of this benchmark. The responses received from respondents in many countries were inconclusive.

SECTION 3

The insolvency office holder in context

As a starting point for any analysis of the IOH profession, it is useful to ascertain what exactly we mean by “insolvency office holder”. The European Union Insolvency Regulation uses the term “liquidator” and defines this as: “Any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs.”²¹ This definition was used by the EBRD as a starting point for the assessment.

This section seeks to place the IOH in context by examining on a cross-jurisdictional basis: (i) the role of insolvency frameworks; (ii) the composition and size of the IOH profession; and (iii) the interaction between insolvency office holders, creditors and the court.

3.1. Insolvency frameworks

A country’s legal framework for insolvency proceedings has an important influence on the IOH profession. It sets the parameters for IOH professional activities and determines the extent to which other players, including the court and creditors, can intervene in any decision-making by the IOH. It can also shape the course of IOH professional development, since professional abilities depend to a great measure on the skills developed in practice.²²

²¹ Council regulation (EC) No 1346/ 2000 of 29 May 2000 on insolvency proceedings, Article 2(b).

²² The Leiden University Report acknowledges that next to training “continuous practical experience is necessary for an IOH to stay in touch with the realities of the insolvency practice.” (See commentary to principle 2)

It may be expected that in countries where judicial reorganisation is comparatively rare, the skills of IOHs may be more advanced in tasks related to liquidation, such as sale of the debtor’s assets and business, rather than in reorganisation. This is reportedly the case in Montenegro where IOHs perform their duties well, because: “The majority of insolvency procedures are simple and oriented to the final liquidation of the company.” In countries where the debtor remains in possession during reorganisation-type proceedings, the IOH may not play as important a role in management of the debtor’s business. For example, in Estonia the IOH is appointed as a “reorganisation adviser” in any reorganisation procedure under the Reorganisation Act and does not replace existing management.

Access to practical experience is, however, dependent on numerous factors, including the relative size of the profession to the number of insolvency cases and the availability of insolvency appointments. Countries where insolvency proceedings are relatively rare, such as Albania, or where insolvency procedures are new, as in Kosovo, may find it more difficult to develop a body of highly skilled professionals. One Albanian respondent explains that insolvency procedures are not common since: “Most of the creditors seek settlement of their credit out of insolvency proceeding based on the security pre-agreed arrangements with their debtors.”

Assessment respondents were asked for their views on whether commercial insolvency proceedings play an important role in their country.²³ They were further

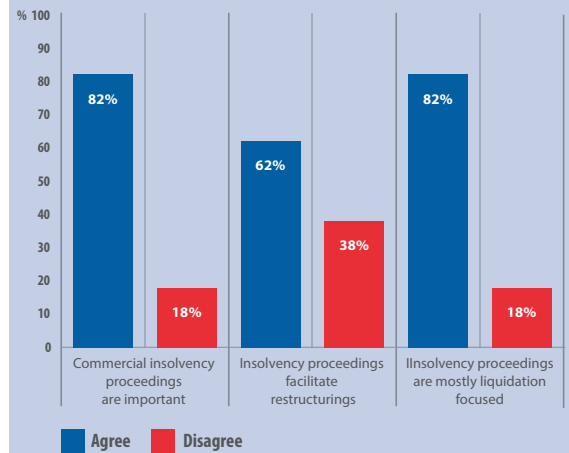
²³ Selected assessment countries only: Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine.

Table 2: Respondent perceptions of insolvency proceedings

Countries	Importance of commercial insolvency proceedings	Insolvency proceedings facilitate restructuring as a going concern	Insolvency proceedings are mostly liquidation focused
Albania	x (8/15)	✓(9/15)	✓ (12/15)
Belarus	✓(9/9)	x (5/9)	✓ (7/9)
Bulgaria	✓ (13/14)	x (9/14)	✓ (14/14)
Croatia	✓ (13/13)	✓ (10/13)	✓ (13/14)
Egypt	x (3/6)	✓ (4/6)	✓ (5/6)
Estonia	✓ (7/9)	x (6/9)	✓ (9/9)
FYR Macedonia	✓ (8/9)	✓ (5/9)	✓ (9/9)
Georgia	x (6/11)	✓ (8/11)	✓ (6/11)
Hungary	✓ (10/10)	✓ (6/10)	✓ (9/10)
Kazakhstan	✓ (6/8)	✓ (5/8)	x (4/8)
Kosovo	x (4/6)	✓ (5/6)	x (3/6)
Kyrgyz Republic	✓ (5/9)	x (4/8)	x (5/9)
Lithuania	✓ (12/13)	✓ (8/13)	✓ (13/13)
Moldova	✓ (9/9)	✓ (6/9)	✓ (8/9)
Montenegro	✓ (10/10)	x (6/10)	✓ (9/10)
Morocco	✓ (5/5)	✓ (3/5)	✓ (4/5)
Slovak Republic	✓ (4/6)	✓ (5/6)	✓ (5/6)
Slovenia	✓ (11/11)	✓ (10/11)	✓ (9/11)
Turkey	✓ (9/9)	✓ (11/12)	✓ (7/9)
Ukraine	✓ (10/10)	✓ (6/10)	✓ (8/10)

Note: This table indicates whether or not respondents consider commercial insolvency proceedings to be important, to facilitate the debtor's restructuring as a going concern and the extent to which they are mostly liquidation focused. If the majority of the responses answered in the positive ("yes" or "yes with reservations") a "✓" symbol is given; if the majority of responses answered in the negative ("no" or "no with reservations") an "x" symbol is used. The numbers included in brackets refer to the number of positive responses out of the total number of responses received across all respondent categories in a particular country.

Source: 2012-14 EBRD insolvency office holder assessment.

Chart 12: Public perception of insolvency proceedings in selected transition countries

Note: This bar chart indicates the aggregate percentage of respondents across 20 countries surveyed in the roll-out assessment who agreed and disagreed with the above statements.

Source: 2012-14 EBRD insolvency office holder assessment.

asked the extent to which these proceedings facilitate the restructuring of a debtor's business as a going concern and whether these are mostly liquidation-focused.²⁴ A summary of their aggregate responses is contained in Table 2.

Commentary to Table 2:

The vast majority (82 per cent) of all respondents consider commercial insolvency proceedings to play an important role in their countries. This view was unanimously expressed by stakeholders in nine countries: Belarus, Croatia, Hungary, Moldova, Montenegro, Morocco, Slovenia, Turkey and Ukraine. The insolvency systems appear to be liquidation focused overall given that the high percentage of respondents (82 per cent overall) believe that insolvency proceedings are mostly liquidation-focused. Those stakeholders surveyed in Bulgaria, Estonia, FYR Macedonia and Lithuania were unanimously of the perception that insolvency proceedings in their countries are liquidation-based. In comparison, there were no countries where stakeholders unanimously believe that insolvency proceedings facilitate

²⁴ *Ibid.*

restructuring as a going concern, although there was overall still some consensus (among 62 per cent of the total respondents) that this was the case. Opinion on this topic was more divided in the Kyrgyz Republic.

A list of the various names of insolvency office holders and the procedures in which they are appointed in the assessment countries is contained in Annex 4.

3.2. The insolvency office holder profession

As described above, an IOH is any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administration of his affairs.²⁵ The premise that the IOH profession can be undertaken by both natural persons (in other words individuals) and legal persons is confirmed by the results of the assessment displayed in Table 3 below. Nevertheless, such persons are frequently subject to nationality and (to a more limited extent) language requirements.

Commentary to Table 3:

The assessment reveals that office holders can predominantly be natural persons (in 26 out of 27 countries). In a few countries IOHs can also be a partnership or association of natural persons. In one-third (nine out of 27 countries) legal persons can act as IOHs. For example, in Romania, IOHs can be limited liability professional associations, as well as professional single-member limited liability enterprise and sole practitioners. In Serbia IOHs can be partners or sole practitioners, although the second type of IOH is the most common. In Estonia IOHs must be natural persons, but are required to carry out their professional activities through a legal office.

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). Hungarian IOH companies participate in a tendering process to obtain authorisation to act as IOHs. The natural person acting as asset controller or liquidator

²⁵ Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, Article 2(b).

Table 3: Profile of insolvency office holder professionals

Countries	Natural person	Legal entity	Nationality requirement	Language requirement
Albania	✓			
Belarus	✓	✓		
Bosnia and Herzegovina	✓			
Bulgaria	✓			
Croatia	✓			
Egypt	✓			
Estonia	✓			✓
FYR Macedonia	✓	✓	✓	
Georgia	✓	✓ ¹		
Hungary		✓	✓	
Kazakhstan	✓		✓	
Kosovo	✓		✓	
Kyrgyz Republic	✓	✓	✓ ²	
Latvia	✓			✓
Lithuania	✓	✓	✓ ³	✓
Moldova	✓		✓	✓
Montenegro	✓		✓	
Morocco	✓			
Poland	✓	✓ ⁴		
Romania	✓	✓		
Russia	✓			
Serbia	✓			
Slovak Republic	✓	✓ ⁵	✓ ⁶	
Slovenia	✓		✓ ⁷	✓
Tunisia	✓		✓ ⁸	
Turkey	✓		✓ ⁹	
Ukraine	✓		✓	✓

Note: This table describes the insolvency office holder profession and specifically whether an insolvency office holder may be a natural person, a legal person or both (marked with symbol "✓"). In addition, the table also incorporates any further statutory nationality or language requirements applicable to insolvency office holders.

Source: 2012-14 EBRD insolvency office holder assessment.

- 1 State trustee.
- 2 The IOH needs to be either a national of the Kyrgyz Republic or a legal entity established in the country.
- 3 IOHs are required to be nationals of Lithuania, another EU member state or the EEA; or a legal person established in Lithuania, a branch of a legal person in another EU member state registered in Lithuania.
- 4 A commercial company whose shareholders do not enjoy the privilege of limited liability may act as an IOH as may a commercial company if its representatives on its management board hold an appropriate licence.
- 5 General partnership or limited partnership (or foreign legal entity).
- 6 IOHs are required to be citizens of the Slovak Republic, EU member states or EEA states and resident in the Slovak Republic or another EU member state.
- 7 Slovenian citizenship or citizenship of EU member state or EEA state.
- 8 Plus resident in Tunisia.
- 9 Plus resident in Turkey.

in insolvency proceedings must be the employee, shareholder or contractor of such IOH company. In Georgia both natural and legal persons are typically appointed in insolvency proceedings: the private IOH, who is a natural person and the state IOH, the National Bureau of Enforcement.

In a minority of countries, IOHs are subject to professional exclusivity rules and are prevented from carrying out all other types of professional activities.²⁶ Since 2012 IOHs in Serbia have been required by law to work exclusively as IOHs and not to carry out other forms of employment. Nevertheless, in many countries, such as Bulgaria and Romania, there are strong links with other professions and IOHs usually carry out other forms of professional activity, for example as lawyers. In Romania there are, however, some restrictions on which other professions an IOH can exercise. The rules of the Romanian association of IOHs, UNPIR, state that the insolvency practitioner profession is incompatible with employment in other professions, other than “compatible professions”, which include academic activities, the profession of lawyer, chartered accountant, certified accountant, appraiser, financial auditor, arbitrator, mediator, conciliator, financial expert and forensic expert.²⁷ A few countries group IOHs together with other professions for regulatory purposes. Estonia has a joint professional association of IOHs and bailiffs. In Bulgaria the same “Inspectorate” under the Ministry of Justice oversees the work of IOHs, bailiffs and notaries.

Over half (15 out of 27) of the assessment countries specify additional nationality, residency and/or language requirements for IOHs. In FYR Macedonia, Macedonian citizenship and residency are among the requirements that need to be satisfied for IOH candidates to be eligible to take the entrance examination. In European Union (EU) countries, such as Hungary, the nationality requirements for IOHs ensure equal opportunity for EU companies. In Hungary an IOH company must be established either in Hungary or in the European Economic Area (EEA) with a branch in Hungary. In Poland there are no direct nationality or language requirements, nevertheless IOH candidates

are required to prove that they have managed an estate in bankruptcy or an undertaking in the EEA for at least three years and obtained their degree in the EU or other EEA country. It is important to note that nationality criteria may also be introduced indirectly by means of constitutional and/or administrative law provisions, which qualify as IOHs as “public officers” such as in Egypt where all public officers need to be country nationals.

3.3. Size of the insolvency office holder profession

The assessment sought to ascertain the relative size of the IOH profession from stakeholders on the basis of an official, centralised register of IOHs, which exists in all countries, apart from Egypt, Georgia, Morocco and Turkey. Nevertheless, existence of a large number of licensed or registered IOHs does not reveal how many IOHs actively take appointments. A few countries, including Serbia, keep records of those IOHs which are active and inactive.

It should be noted that in a number of the former Soviet bloc countries the IOH profession has only been around for a couple of two decades. In the Kyrgyz Republic, insolvency office holders have only existed as a group of professionals since 1994 and a licensing system was first introduced in 1998. In addition to the relative age of the profession, the number of insolvency proceedings may determine where there are too many or too few IOHs. In a few countries, such as Albania and Kosovo, the insolvency framework is relatively new and under-utilised. The relative size of the profession may determine the number of individual appointments which an IOH receives and therefore the level of practical work experience.

As part of the assessment stakeholders were also asked whether the number of qualified authorised IOHs was too few or too many relative to the number of corporate insolvencies. In 10 countries responses to this question were inconclusive and/or respondents did not know. A more reliable analysis of this question would require data on the actual

²⁶ There may also be rules within other professions, for example, set by the Bar Association, which preclude lawyers from acting as IOHs.

²⁷ Article 26 Emergency Ordinance No. 86/2006 (as amended).

Table 4: Number of insolvency office holders and stakeholder perceptions

Countries	Number of IOHs ¹	Majority stakeholder responses (Number of IOHs) ²
Albania	<501 (21 ³)	Do not know (6/15)
Belarus	<501 (162 ⁴)	Do not know (4/8)
Bosnia and Herzegovina	<501 (193 ⁵)	Responses are not conclusive
Bulgaria	<501 (163 ⁶)	A sufficient number (9/13)
Croatia	<501 (381 ⁷)	Too few (5/12)
Egypt	<501 (not conclusive)	Responses are not conclusive
Estonia	<501 (90 ⁸)	A sufficient number (7/9)
FYR Macedonia	<501 (63 ⁹)	Do not know (4/9)
Georgia	<501 (not conclusive)	Too few (5/11)
Hungary	<501 (130 IOH companies based on tender on 15 March 2014 ¹⁰)	A sufficient number (4/8)
Kazakhstan	501-1500 (475 ¹¹)	Responses are not conclusive
Kosovo	<501 (approx 20)	Too few (4/6)
Kyrgyz Republic	<501 (125 ¹²)	Do not know (5/7)
Latvia	501-1500 (545 ¹³)	A sufficient number (10/22)
Lithuania	501-1500 (514 natural persons and 203 companies ¹⁴)	A sufficient number (7/11)
Moldova	<501 (approx 140 to 170)	Too few (3/7)
Montenegro	<501 (166 ¹⁵)	Do not know (4/9)
Morocco	<501	Too few (5/5)
Poland	501-1500 (approx 610)	A sufficient number (5/8)
Romania	2501-4000 (approx 2,814 ¹⁶)	A sufficient number (7/11)
Russia	4001< (approx 8,000 to 9,000)	Too few (10/19)
Serbia	<501 (active / licensed IOHs: 327 /485 ¹⁷)	A sufficient number (6/18)
Slovak Republic	1,501 to 2,500 (1733 ¹⁸)	A sufficient number (3/6)
Slovenia	<501 (138 ¹⁹)	Responses are not conclusive
Tunisia	<501 (108 ²⁰)	Too few (2/3)
Turkey	<501 (N/A ²¹)	Responses are not conclusive
Ukraine	1,501 to 2,500 (1,808 ²²)	A sufficient number (5/10)

Note: This table indicates the number of insolvency office holders in the countries surveyed divided by ranges, in other words <501; 501-1500; 1,501 to 2,500; 2,501 to 4,000 and 4,001<. The number in brackets refers to the actual number of insolvency office holders as obtained from the official lists and/or local counsel. The aggregate majority stakeholder response includes the majority perception of the respondents as to whether the number of insolvency office holders in the particular country is sufficient, too few, too many or they do not know.

Source: 2012-14 EBRD insolvency office holder assessment.

- The numbers indicated in brackets were obtained from registers at the time of preparation of this report; however, data in some countries may not be up to date.
- Majority stakeholder responses shown as a fraction of the number of all stakeholder responses.
- 23 insolvency administrators licensed by the Agency, from which only 21 have active licenses.
- www.economy.gov.by/ru/restructuring-insolvency/new_url__896402376 (last accessed on 30 September 2014).
- As of October 2013 in the Federation. In the RS, the number of IOHs is approximately 74.
- ispn.mjs.bg/MJ/ispn.nsf/indexPublic.xsp?page=trustee
- As of 3 September 2014.
- www.kpkoda.ee/content/avaliku-poolle-lingid/kontaktinfo (last accessed on 16 September 2014), including seven suspended IOHs.
- As of 13 November 2011.
- hkih.gov.hu/nyitolap/-/asset_publisher/4frusdbuyVxX/content/osszeallt-az-uj-felszamoloi-nevjegyzekek-sajtokozlemenyi-redirect=http%3A%2F%2Fkih.gov.hu%2Fnyitolap%3Fp_p_id%3D101_INSTANCE_4frusdbuyVxX%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-2%26p_p_col_count%3D1 (last accessed on 30 September 2014).
- www.salyk.kz (last accessed on 18 September 2014).
- www.bankrotstvo.kg/?act=&page=8; 457 IOH, 125 have valid licences.
- www.lursoft.lv/exec?act=MNR_LSTAT&stat_id=538&lang=EN
- www.bankrotodepl.it/Administratoria.php?Tipas=6 as of 4 September 2014.
- www.pravda.gov.me/rubrike/Stecajni-upravnici/121504/Spisak-stecajnih-upravnika-april2013.html
- According to UNPIR web site of 19 September 2014, including trainee IOHs, IOHs acting in individual offices, IOH partnerships and employees of IOH partnerships.
- www.alsu.gov.rs/bap/pdf/Bankrupcy-managers_1_1.pdf (last accessed on 30 September 2014).
- www.justice.gov.sk/Stranky/Registre/Zoznamy-vedene-MS-SR/Zoznam-spravcov.aspx (last accessed on 30 September 2014).
- www.ajpes.si/eObjave/rezultati.asp?podrobno=0&id_skupina=52&MAXREC=10 as of 1 September 2014.
- As of 30 January 2014
- Due to the lack of licensing/registration requirements, the number of active IOHs is hard to be estimated.
- www.minjust.gov.ua/38169

number and duration of insolvency proceedings in each of the countries surveyed, compared with the number of practising IOHs. Data of this kind is often scarce and/or not easily comparable.

Commentary to Table 4:

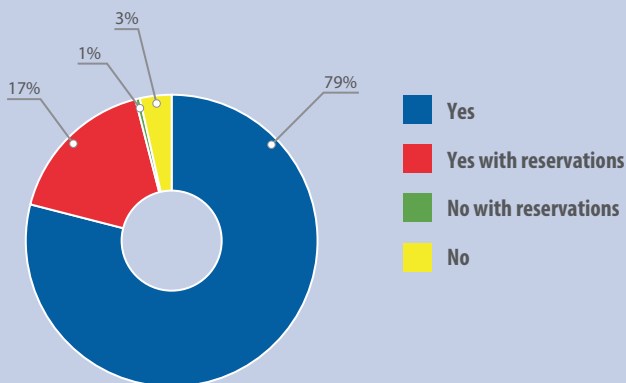
Table 4 collates the number of insolvency practitioners, both as a range captured in the responses to the assessment questionnaire and, where known, the exact number based on an official register or list. The highest number of IOHs is found in Russia, the largest country in terms of population and geographical area among the countries surveyed. Russia is followed in number of IOHs by Romania and the Slovak Republic.

It is interesting to compare numbers with a few Western European jurisdictions: in France there are 146 *administrateurs judiciaires* and 399 *mandataires judiciaires* (two separate types of insolvency office holders), but in the UK the numbers are significantly greater.²⁸ As of 1 January 2014 there were approximately 1,738 UK insolvency practitioners, of whom 1,355 actively take appointments as licensed insolvency practitioners.²⁹ Table 4 does not reveal how many registered or licensed IOHs regularly take appointments, which may be lower than the given

28 As of 20 August 2014: www.cnajmj.fr/annuaire-profession?profession=AJ®ion=12&dep=92

29 Germany does not have a registration system for IOHs and therefore exact numbers cannot be verified for comparative purposes.

Chart 13: Public perception: Are insolvency office holders important?



Note: This pie chart summarises the percentage of responses from 20 countries surveyed in the roll-out assessment to the question “Do you think that IOHs play an important role in the conduct and management of insolvency cases?”

Source: 2012-14 EBRD insolvency office holder assessment.

figures, depending on how easy it is to hold a licence or remain registered without practising.

Assessing whether there are sufficient IOHs is difficult to do on an objective basis. As noted above in respect of Russia, size of population and geographical mass may be a useful indicator. Nevertheless, the most useful indicator with respect to size of the profession is the number and duration of insolvency proceedings. This information is not always easily available and/or comparable in many of the countries surveyed. The assessment therefore sought to ask stakeholders for their perceptions regarding the size of the IOH profession in their jurisdiction. In Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Serbia, the Slovak Republic and Ukraine, a majority of respondents held there to be a sufficient number of IOHs. This contrasted with Croatia, Georgia, Kosovo, Moldova, Morocco, Russia and Tunisia, where the majority was of the opinion that there were too few IOHs.

3.4. The role of insolvency office holders

The centrality of the role of insolvency office holders in insolvency proceedings was captured by the words of one Moldovan respondent: “An insolvency process cannot be imagined without the involvement of an insolvency administrator – the link between the court, creditors and the debtor.” Most respondents consider IOHs to play a significant role in the conduct and management of insolvency cases in the countries surveyed: 96 per cent gave a positive response to the question: “Do you think that IOHs play an important role in the conduct and management of insolvency cases?”³⁰

Nevertheless, a minority of respondents in Albania, Bulgaria, FYR Macedonia, Kosovo, Morocco and Slovenia were of the opinion that IOHs did not have such an important role in their jurisdictions.

30 Selected assessment countries only: Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine.

Despite the undoubted significance of the IOH, IOHs cannot be studied in isolation and need to be viewed in context within each country's specific institutional framework. This requires that the interaction of IOHs with other key players in insolvency proceedings, in particular the court and creditors, is taken into account. As discussed further below, in most countries, the court and creditors exercise some form of limitation on the activities of IOHs, especially in relation to the sale of any assets from the debtor's estate and subsequent distributions to creditors.

3.5. The role and jurisdiction of the court

The court has a determining influence on the autonomy and scope of work of IOHs. Extensive judicial involvement in "decision making" may weaken the effectiveness (and relative autonomy) of the IOH, nevertheless, in a jurisdiction in which IOHs are relatively untrained and may vary greatly in quality, the involvement of the court may be considered a safeguard. The extent to which the court represents, in practice, such a safeguard is to a large part dependent on judicial skill, time and experience. The involvement of the court in specific insolvency proceedings may vary on a case-by-case basis, depending on the individual judge(s) and potentially also on the competence of the IOH. As one legal professional in Estonia observes: "The depth and scope of investigation of the court strongly depends on how the respective court and the judges thereof interpret the general supervisory authority vested in them, and to what extent they deem the execution thereof fit."

Given the central function of the court in many countries, an analysis was made of the jurisdiction of the court hearing insolvency cases. This analysis is contained in Table 5.

Commentary to Table 5:

Substantial differences can be seen among the assessment countries. Over one-third (10 out of 27) of countries do not appear to require insolvency cases to be handled by a specific division within the ordinary court and do not have specialised commercial and/or economic courts. For example, in

Table 5: Courts with jurisdiction in insolvency matters

Type of court	Countries
First Instance Court (General)	Bulgaria, Estonia, Kazakhstan ¹ , Kyrgyz Republic, Lithuania, Poland, Slovak Republic, Latvia, Bosnia and Herzegovina (with respect to the Federation of Bosnia and Herzegovina)
Commercial/Economic Division of First Instance Court	Albania, Kosovo, Tunisia
Insolvency Division of First Instance Court	FYR Macedonia, Romania ²
Commercial/Economic Specialised First Instance Court	Belarus, Croatia, Egypt, Montenegro, Morocco, Russia, Serbia, Slovenia, Turkey, ³ Ukraine, Bosnia and Herzegovina (with respect to the Republika Srpska)
Higher/ Second Instance Court	Moldova, Georgia, Hungary

Note: This table lists the type and level of court that is competent to hear the insolvency cases in the countries surveyed for the assessment.

Source: 2012-14 EBRD insolvency office holder assessment.

- 1 In Kazakhstan, a commercial court for businesses operating in the special economic zone established in and around Almaty is competent and is called the Special Financial Court of Almaty.
- 2 Insolvency matters are dealt with by a particular division of a general civil court. For example, Civil Section VII of the Bucharest Tribunal hears insolvency matters.
- 3 Insolvency proceedings are transferred from the commercial court to the enforcement court on the court's declaration of the debtor's bankruptcy.

Bosnia and Herzegovina, insolvency cases are within the competence of the general Municipal Courts, the lowest level of court. This is the same in Poland, where jurisdiction in bankruptcy matters is with the Regional Court, the lowest in the tier of courts (above it is the District Court). Such a picture is in contrast to Moldova and Hungary, where the appellate court acts as the first instance forum for all insolvency matters.

Court oversight

The assessment has revealed that the insolvency systems of almost all of the countries surveyed are, to a significant degree, overseen by the court. Limited exceptions to this statement can nonetheless be found in five countries. The most significant exception is the Kyrgyz Republic, where special administration and rehabilitation can also take place extra-judicially within the framework and conditions established by the Law of the Kyrgyz Republic on Bankruptcy.³¹ In other assessment countries, the court is given a more limited role in certain insolvency procedures. In Croatia the new Act on Financial Operations and Pre-Bankruptcy Settlement Proceedings provides that the preliminary administrative stage of

³¹ Law no. 74 dated 15 October 1997 (as amended).

the procedure is overseen by a non-court body, the Financial Agency.³² The court is nevertheless required to confirm the legality of the administrative stage and the reorganisation plan approved by creditors for the plan to be effective. In Serbia a reorganisation plan under the Law on Bankruptcy can be “pre-packaged” and presented by the debtor together with its bankruptcy petition, reducing the scope of court involvement and duration of the court proceedings.³³ In the Kyrgyz Republic and Croatia, an IOH is appointed in extra-judicial proceedings and pre-bankruptcy settlement proceedings, but is optional in Serbian pre-packaged reorganisation proceedings.

In Slovenia a new pre-insolvency preventive restructuring procedure now exists for large and medium-sized companies under the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act, which takes place largely out of court by way of private agreement between the parties.³⁴ The Slovenian preventive restructuring procedure does not involve the appointment of an IOH and therefore falls outside the scope of this study. In Turkey the opening of bankruptcy proceedings for legal entities under the Enforcement and Bankruptcy Code no. 2004 may be postponed for a period of up to one year (capable of an extension of up to an aggregate period of four years), in

32 Official Gazette Nos. 108/2012, 144/2012, 81/2013, 112/2013.

33 Law on Bankruptcy of the Republic of Serbia of 2009 (as amended).

34 Official Gazette No. 13/14 – official consolidated text no. 8.

order for the debtor to develop a financial restructuring “project” under the supervision of a court appointed insolvency office holder (trustee).³⁵ Postponement of bankruptcy involves reduced court intervention and is viewed by some Turkish respondents as another type of insolvency procedure.

Scope of court oversight

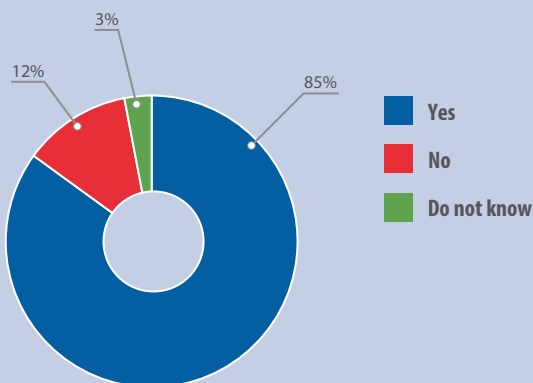
In many assessment countries the influence of the court is present in a number of key aspects of the insolvency proceedings. These include determination of the opening of insolvency proceedings and the nature of such proceedings, the appointment of the IOH and, in some cases, sale of the debtor’s assets and business. In the majority of the countries surveyed, the court assumes the leading role in appointing the initial IOH, frequently without any official stakeholder input. Decisions regarding sale of the debtor’s assets or business often require prior court (and sometimes also creditor) approval. In the majority of countries surveyed, IOHs are required to report to the court or judge on the progress of the insolvency case. In countries such as Egypt, Kosovo, Moldova, Turkey and Tunisia, the reporting duties of IOHs are framed as duties owed to the court rather than to creditors (although in Kosovo and Moldova creditors are able to consult such reports).³⁶ Frequency of reporting is very high in some countries. IOHs submit reports to the court (and regulatory body and creditors where applicable) on a monthly basis in Belarus, Kosovo, Kyrgyz Republic and Romania (for judicial reorganisation only) and Bulgaria and Ukraine (for liquidation only). This is discussed further in section 4 (Cross jurisdictional trends and frameworks) below.

While the court may oversee insolvency proceedings in most countries, it may not necessarily be closely involved in the activities and decision-making of the insolvency office holder. The assessment therefore sought to ascertain the level of court involvement in the exercise of powers by the IOH. During the pilot assessment respondents were asked: “Are insolvency

35 Published in the Turkish Official Gazette no. 2128 and dated 9 June 1932 (as amended).

36 Kazakhstan is somewhat unusual in that reporting is only to creditors (in both liquidation and reorganisation). In the Slovak Republic the reporting is also framed as a reporting obligation to creditors in all types of proceedings, subject to the court’s ability to request a report from the IOH.

Chart 14: Public perception: Are insolvency office holders subject to the supervision of the court?



Note: This pie chart presents the percentage of responses from the seven pilot assessment countries to the question “Are insolvency office holders subject to the supervision of the court in the exercise of their powers?”

Source: 2012-14 EBRD insolvency office holder assessment.

office holders subject to the supervision of the court in the exercise of their powers?" Eighty-five per cent of total respondents across all seven jurisdictions confirmed that IOHs were subject to court supervision.³⁷

With the roll-out assessment respondents were asked whether IOHs were subject to strong court oversight or control in the exercise of their powers and duties.³⁸

Sixty-five per cent of total respondents were of the view that the court exercises "strong" oversight or control over IOHs (with some reservations). There was significant consensus in a number of countries that a strong level of court oversight exists, particularly in Slovenia, Turkey, Lithuania, Bulgaria and Egypt. Nevertheless, respondents in Georgia, Kazakhstan, Lithuania and Moldova reported minimal court oversight or involvement in practice. Interestingly, the majority of respondents in these countries said that IOHs were subject to strong creditor oversight.

Extent of court oversight

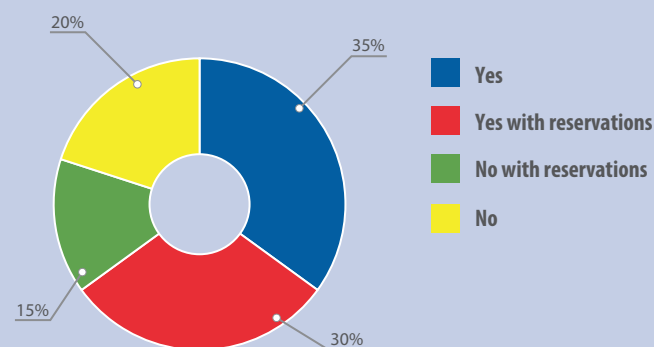
The degree of court oversight may depend on a number of factors. In some of the assessment countries (Bosnia and Herzegovina, Poland, Morocco, Romania and Tunisia), the court is required to appoint a special insolvency judge or "judge commissioner" to monitor the day-to-day administration of the insolvency case. Such an appointment may significantly increase the level of court oversight and control. Court supervision can also be strict even without the appointment of a special insolvency judge. In Slovenia the court plays a strong role in insolvency proceedings. This appears to be a result of the high number of decisions relating to the debtor's estate that require, by law, prior court approval. The strength of the court's role may nonetheless be relatively symbolic. A few creditors in Slovenia expressed the view that court oversight was limited to matters of form and procedure, rather than substance.

Other stakeholders, particularly creditors, may define how active a role the court plays. Responses from

³⁷ Bosnia and Herzegovina, Latvia, Poland, Romania, Russia, Serbia and Tunisia.

³⁸ See question 64 in the legal questionnaire, question 46 in the creditors' questionnaire and question 74 in the regulators' questionnaire, which was formulated slightly differently: "Are IOHs closely supervised by the court in the exercise of their powers and duties?"

Chart 15: Public perception: Are insolvency office holders subject to strong court oversight or control?



Note: This pie chart indicates the percentage of responses in 20 countries surveyed in the roll-out assessment to the question: "To your knowledge are insolvency office holders subject to strong court oversight or control in the exercise of their powers and duties?"

Source: 2012-14 EBRD insolvency office holder assessment.

legal practitioners in Hungary, Estonia and Lithuania suggested that the court does not intervene in insolvency proceedings at its own discretion but only following a stakeholder request (or presumably when required by law). Responses from creditors, for example in Estonia, suggested that the extent of court oversight depended on the workload of the particular court, as judges are often too busy to monitor the activities of IOHs in detail. Under the new Romanian insolvency law, the judge commissioner (known as the "syndic judge") is required to analyse the progress of the insolvency proceedings every 120 days and may dictate certain actions to be taken by the IOH.³⁹

3.6. The role of creditors

Creditors are major stakeholders in an insolvency given their financial stake in the debtor and are often highly interested in the outcome of the insolvency proceedings. Creditors may play a useful role in the proceedings and the appointment and monitoring of the IOH. However, in some assessment countries the role of creditors in all or part of the insolvency process is peripheral. As the results in section 4 (Cross jurisdictional trends and frameworks) reveal, creditors are often denied any real or effective involvement in

³⁹ Romanian Law no. 85/2014 regarding preventative insolvency proceedings and insolvency proceedings.

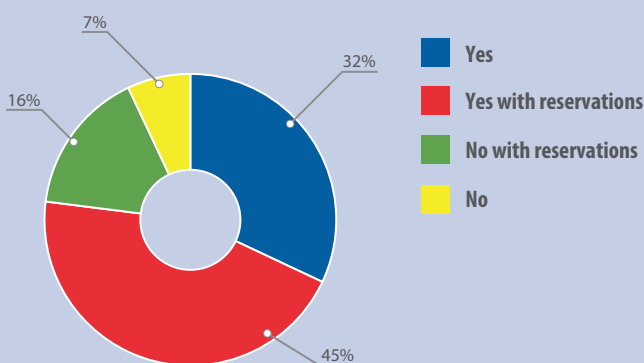
the selection and/or appointment of the IOH. Most insolvency systems surveyed do not give creditors a significant role in determining the level of IOH remuneration, in some cases due to the existence of a statutory tariff or fixed fee.

In Egypt, Morocco and Tunisia, where creditors have a weaker role, there is no concept of a creditors' committee or creditors voting at a general meeting or as an assembly. The judge may instead appoint creditors to act as "controllers" in proceedings. In Egypt, however, controllers are rarely appointed in practice. In other jurisdictions, such as Georgia, the creditors' committee may exist in theory but may not always be appointed. The risk of such an approach is that it distances creditors from insolvency cases and provokes apathy and disinterest.

Assessment respondents were asked: "In your opinion, are IOHs subject to strong creditor (including creditors' committee) oversight in the exercise of their powers and duties?"⁴⁰ Responses to the question are aggregated across all respondent categories in the below pie chart.

40 Selected assessment countries only: Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine. For the seven pilot assessment countries, the question was formulated in a more granular way according to the type of creditor approval required for the exercise of any or all of the insolvency office holder's powers, which is more difficult to chart.

Chart 16: Public perception: Are insolvency office holders subject to strong creditor oversight?



Note: This pie chart indicates the aggregated percentage of responses from 20 countries surveyed in the roll-out assessment to the question: "In your opinion, are insolvency office holders subject to strong creditor (including creditors' committee) oversight in the exercise of their powers and duties?"

Source: 2012-14 EBRD insolvency office holder assessment.

In the assessment countries, there was overall agreement among 77 per cent of respondents that the creditors play a strong role (with reservations). There was, however, some disagreement by respondents with this statement in Albania, Egypt, FYR Macedonia, Georgia, Hungary, Kosovo, Kyrgyz Republic, Moldova and Morocco. In Kosovo and Morocco, the majority of respondents stated that IOHs were not subject to strong creditor oversight in the exercise of their powers and duties.

Nevertheless, creditors appear to play an important role in most countries in practice and the prior consent of creditors is required for IOHs to sell the debtor's business and/or assets. Furthermore, the legal frameworks of most of the countries surveyed give creditors a role in monitoring the IOH's activities through the reports which the IOH is required to submit on progress of the insolvency case. Decision-making by creditors is typically divided between those decisions which are required to be taken a majority of creditors as a whole at a general meeting or assembly and those which are delegated to the creditors' committee (generally elected by creditors acting as a majority). Strategically important matters for the conduct of the insolvency case, such as replacement of the IOH and approval of the liquidation or reorganisation plan (and any sale of the debtor's business and/or assets) are frequently decided by the majority of creditors as a whole. In some countries, such as Belarus and Ukraine, secured assets (and therefore secured creditors) are not included within the bankruptcy estate. Secured creditors can therefore only participate in the creditors' committee in respect of any unsecured claims.

SECTION 4

Cross jurisdictional trends and frameworks

Certain trends and frameworks relating to the IOH profession can be identified across the 27 countries surveyed by the assessment. These are summarised below in respect of each of the seven assessment benchmarks of: (i) licensing and registration; (ii) regulation, supervision and discipline; (iii) qualification and training; (iv) appointment system; (v) work standards and ethics; (vi) legal powers and duties and (vii) remuneration.

4.1. Licensing and registration

This section examines whether IOHs are required to have some form of official authorisation to act in the countries surveyed by the assessment.

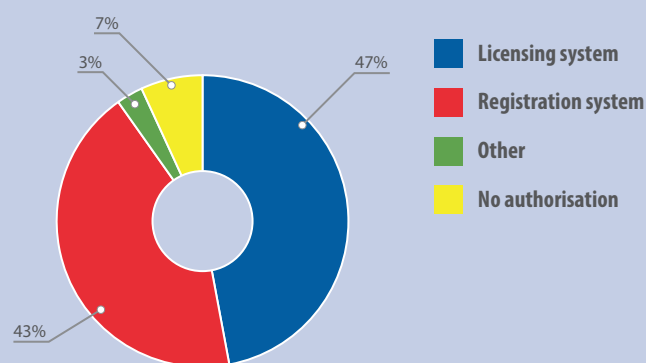
In the majority of countries, IOHs must have special permission to carry out their professional activities. Two main approaches are observed with respect to the granting of such special permission: (1) licensing, involving the issuance of a licence, certificate or similar official document to authorised IOHs; and (2) registration, by which the names of authorised IOHs are entered into an official list or register, often administered by a government ministry. Both licensing and registration models are equally valid forms of official authorisation to act. In either case it is important that the body which grants the IOH authorisation to act also has the power to suspend, cancel or withdraw that authorisation where needed, subject to a form of disciplinary and/or court process.

A licensing or registration system may provide that the IOH's authorisation to act has a limited period of validity, in other words whether it should be renewed or suspended in certain circumstances.

A system that is tied to satisfaction of continuing training requirements may enhance the professional development of IOHs. A registration system, similar to a licensing system, may contemplate the registration of an IOH for a defined period and re-registration thereafter, such as is the case in Australia. However, any system of licence or registration renewal may result in higher cost payable by IOHs. The EBRD assessment has not covered the cost associated with renewal of an IOH's licence.

An important component of any licensing or registration system for IOHs is the existence of a public list or register available for consultation by third parties. The purpose of a public list is to provide the outside world with confirmation of the persons who are authorised to act as IOHs. This, importantly, increases the level of transparency for insolvency stakeholders. To ensure real transparency, the public list should be easily accessible by third parties, for example, online and at little or no cost.

Chart 17: Authorisation systems for insolvency office holders



Note: This pie chart indicates the percentage of those countries where a licensing system, a registration system or other authorisation system exist for insolvency office holders.

Source: 2012-14 EBRD insolvency office holder assessment.

Table 6: Forms of authorisation for insolvency office holders

Countries	Licensing	Registration	No/other	Licence/registration renewal	Official register/list
Albania	✓			Two years	✓
Belarus	✓ (Three types of certificate A, B & C)			Three years, subject to compliance with continuing training	✓
Bosnia and Herzegovina		✓		No	✓
Bulgaria		✓		No	✓
Croatia	✓			Four years	✓
Egypt		✓ (Court only)		No	✓ (Court only)
Estonia	✓			No, subject to compliance with continuing training every five years	✓
FYR Macedonia	✓			Three years	✓
Georgia			✓ (No)	No	
Hungary			✓ (Tender)	Seven years	✓
Kazakhstan		✓		No	✓
Kosovo	✓			Four years	✓
Kyrgyz Republic	✓			No, subject to qualification "attestation" every three years	✓
Latvia	✓ (Certificate)			Two years	✓
Lithuania	✓			No	✓
Moldova		✓ (New) ¹		No	✓
Montenegro		✓		No	✓
Morocco		✓ (Court only)		No	✓ (Court only)
Poland		✓		No	✓
Romania	✓			No, but failure to attend UNPIR training courses may lead to suspension of licence	✓
Russia		✓ (SRO level)		? (Registration at SRO level)	✓
Serbia	✓			Three years	✓
Slovak Republic		✓		No	✓
Slovenia	✓			No	✓
Tunisia		✓ (Two lists)		No	✓
Turkey			✓ (No)	N/A	
Ukraine	✓ (Certificate)			No, subject to compliance with continuing training every two years	✓

Note: This table identifies with symbol "✓" those countries that follow the licensing model, countries that have a registration or other authorisation system in place and countries in which insolvency office holders are not required to obtain any form of official authorisation to act. The table also identifies whether the licence or registration needs to be renewed periodically by the office holder and whether the names of authorised insolvency office holders need to be entered into an official list or register.

Source: 2012-14 EBRD insolvency office holder assessment.

¹ Under the new 2014 Law on Authorised Administrators, all authorised IOHs are required to be recorded in a Register of Authorised Administrators maintained by the Ministry of Justice and published on its web site.

As can be seen from the below pie chart, out of the 27 countries surveyed, there was a relatively equal division between the licensing and registration models, with a tendency towards a system of licensing for IOHs.

Commentary to Table 6:

Most countries have a licensing or registration system for IOHs with the exception of two countries: Georgia and Turkey. Hungary has a different model, since IOHs are required to be companies and to go through a tendering process every seven years. In the majority of countries there is only one type of licence or registration, subject to a few exceptions. In Belarus, IOHs will be granted a certificate (licence) with a category (A, B, or C) depending on their level of relevant commercial experience and this will determine the type of debtor to which they are appointed. Tunisia follows the French approach to dividing responsibilities in insolvency between two different types of office holders and maintains two separate lists of registered IOHs.⁴¹ In practice, however, Tunisia, unlike France, allows the same persons to be registered on both lists.

Many registration systems are administered by a government ministry, often the ministry of justice, with wide-ranging responsibilities not limited to the IOH profession. However, government ministries may also issue licences. In Croatia, Kosovo and FYC Macedonia licences are issued by the ministry of justice, whereas in the Kyrgyz Republic and Lithuania IOH licences are granted by the ministry of economy. Some licensing systems are operated by a dedicated regulatory body, established by or independent from government, such as in Albania, Belarus, Estonia, Romania and Serbia.

For the purposes of the chart, Egypt and Morocco are characterised as registration systems, but registration takes place at court level and there is no official

centralised register, which reduces transparency with respect to third parties. Similarly in Russia, while there is a registration system, this is at SRO level (there are approximately 53 SROs in existence). Such de-centralisation may reduce transparency for stakeholders and result in a lack of clarity as to who is authorised to assume the role of IOH in insolvency proceedings.

In Georgia, which is one of the two countries that does not follow the licensing or registration system, the state trustee (National Enforcement Bureau) plays an important part in all insolvency proceedings (and is responsible for sale of the debtor's assets and business thereby significantly reducing the scope of the private IOH's role). In the other such country, Turkey, IOHs are reportedly often banking/finance lawyers working in the legal departments of banks and financial institutions.⁴²

As mentioned above, a key element of a licensing and registration system is the availability of an official list or register of IOHs. In 23 out of the 27 countries, there is some form of centralised register of IOHs which is available for public consultation. No central register of IOHs exists in either Georgia or Turkey, where the profession is neither licensed nor registered while there are some reservations about the transparency and accessibility of lists maintained in Egypt, Morocco, Tunisia and Russia.

In terms of renewal of official authorisation to act, a distinctive feature of licensing systems in just under a third of the assessment countries (Albania, Belarus, Croatia, FYR Macedonia, Hungary, Kosovo, Latvia and Serbia), is that licences are issued with a limited duration (on average three years) and are therefore subject to renewal. A number of countries provide that the licence may only be renewed if continuing training obligations are met by the practising IOH. Other countries (Estonia, Kyrgyz Republic and Ukraine) provide that the licensing body has the option of cancelling an existing licence, which would otherwise have an unlimited term, if the IOH does not satisfy continuing training requirements. No countries

41 The French insolvency office holder profession (known generically as *mandataires de justice*) is divided into two separate bodies: *mandataires judiciaires*, who represent the interests of creditors in all insolvency proceedings and are appointed as liquidators where insolvency results in liquidation; and *administrateurs judiciaires*, who assist the debtor in the management of its business during insolvency proceedings of a 'reorganisation' nature.

42 In addition to lawyers, accountants, retired bank managers and/or individuals having expertise in the company's area of activity are also appointed as IOHs.

surveyed appear to operate a renewable system of registration; however, as noted above, this would technically be possible.

4.2. Regulation, supervision and discipline

This section considers the regulatory, supervision and discipline framework and related complaints system for insolvency office holders of the countries surveyed by the assessment.

Regulators help to establish certain professional limits and standards of conduct for insolvency office holders. Across the countries surveyed, IOH regulators are typically government ministries, state agencies or self-regulatory associations. The extent to which the regulator is focused on the IOH profession determines the degree of specialism and time spent on supervision and discipline of IOHs and therefore also the “quality” of regulation.

In the countries surveyed, regulation of the IOH profession is, for the most part, conducted at governmental level. This may involve a government ministry (frequently the Ministry of Justice, such as in Croatia or the Ministry of Finance as in Kazakhstan) or a state agency or department under the management of a government ministry, such as the Bankruptcy Supervision Agency under the Ministry of Justice in Albania or the Bankruptcy Supervision Agency under the Ministry of Economy in Serbia. In a few countries, the IOH profession is mainly self-regulated by a private association of IOHs.

A dedicated regulatory body, such as a state agency or self-regulatory association, is more likely to be an active regulator than a non-specialised ministry, without the necessary resources or experience to oversee the IOH profession. While establishing a dedicated regulatory body requires upfront investment or funding, it may provide

the most clear and efficient model for regulation, since it constitutes a central point of authority for IOHs and facilitates a coordinated approach to the supervision and discipline of IOHs. A dedicated regulatory body provides, in other words, a form of “infrastructure” for the profession.

Non-dedicated regulatory bodies with regulatory powers of oversight such as government ministries, are unlikely to have the necessary human resources to focus on day-to-day regulation of IOHs. They may, therefore, conduct more “reactive” monitoring and supervision of IOH activities and rely to a significant extent on the courts to police any incidents of IOH professional misconduct or breach of duty in specific proceedings. However, in some jurisdictions, courts reportedly face issues with workload or may be reluctant to investigate an IOH’s conduct of their own initiative.

Given the court-driven nature of insolvency procedures in most assessment countries, the court may also be perceived as a regulator of IOH activities. However, regular supervision and monitoring of IOHs outside of specific insolvency proceedings helps to ensure that IOHs comply with relevant legal and professional requirements and deliver a good service to stakeholders. Active monitoring, when supported by proper disciplinary powers, can set expectations regarding IOH professional performance and act as a deterrent for IOH misconduct. By comparison, reactive monitoring to incidents or complaints by a court or government ministry may be too infrequent and uneven to raise overall standards within the IOH profession as a whole. It also provides a more consistent approach to regulation of the profession, which is less “reactive” in approach. A dedicated regulatory body for the IOH profession is more likely to undertake supervision of IOHs on a regular basis, sometimes in accordance with minimum periodic statutory requirements. This is in contrast to a non-specialised government ministry, which typically may intervene only where a particularly serious issue arises within the IOH profession.

Disciplinary powers are an essential complement to supervision of the IOH. Disciplinary sanctions imposed on IOHs for misconduct or breach of professional duties act as a deterrent for similar future kinds of behaviour within the profession and, where necessary, exclude persons from the profession. A range of applicable sanctions is important to ensure a proportionate response to cases of misconduct.

The existence of a complaints system is closely connected to effective supervision and discipline. Complaints by stakeholders may highlight cases of mismanagement by the IOH, which are not picked up by regulatory monitoring or by the court overseeing the insolvency case. A formal complaints system denotes a framework in which complaints are addressed in accordance with a specified procedure and within a given time period. It is designed to supplement (but not substitute) the monitoring of IOH activities by the regulator.

Where a professional association for IOHs exists, complaints regarding IOH members' conduct may be filed with such association. Professional rules to which IOHs are subject are often contained in a code for members of the association or sometimes incorporated into statute and binding on the whole profession. Among those countries where membership of a professional association is mandatory, complaints can, in the majority of the cases, be filed with the association and all of these countries have a binding code of conduct for the profession (in Russia with reservations). Nevertheless, a voluntary association can also typically examine complaints against its own members. In Hungary the voluntary association for IOHs has a code of ethics, which is binding on its members and examines any complaints regarding IOH conduct.

Regulatory framework

The regulatory framework for IOHs varies considerably within the 27 countries assessed. The below pie chart identifies as a percentage the number of countries surveyed which follow a

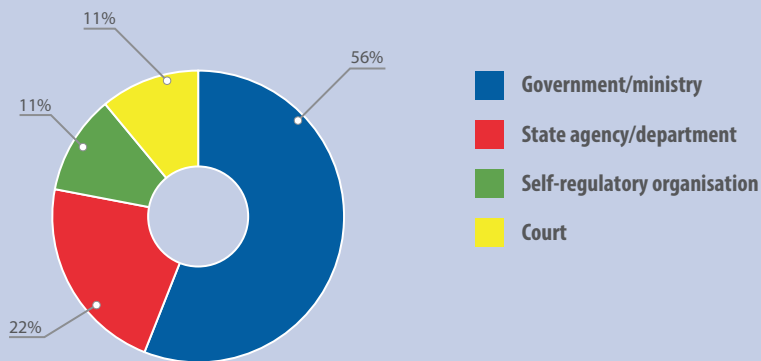
Table 7: Insolvency office holders regulatory bodies

Countries	Government Ministry	State agency/department	Self-regulating professional association	Court
Albania		✓ ¹		●
Belarus		✓ ²		●
Bosnia and Herzegovina	✓ ³			●
Bulgaria	✓ ⁴			●
Croatia	✓ ⁵			●
Egypt				✓
Estonia	● ⁶		✓ ⁷	●
FYR Macedonia	✓ ⁸		● ⁹	●
Georgia	✓ ¹⁰			●
Hungary	✓ ¹¹		● ¹²	●
Kazakhstan	✓ ¹³			●
Kosovo	✓ ¹⁴			●
Kyrgyz Republic		✓ ¹⁵		●
Latvia		✓ ¹⁶	● ¹⁷	●
Lithuania		✓ ¹⁸		●
Moldova	✓		●	●
Montenegro	✓ ¹⁹			●
Morocco				✓
Poland	✓ ²⁰			●
Romania			✓ ²¹	●
Russia			✓ ²²	●
Serbia		✓ ²³		●
Slovak Republic	✓ ²⁴			●
Slovenia	✓ ²⁵		● ²⁶	●
Tunisia	✓ ²⁷			●
Turkey	● ²⁸			✓ ²⁹
Ukraine	✓ ³⁰		●	●

Note: This table indicates the countries in which the government ministry, a state agency/department, a self-regulating professional association or the court play a key role in the regulation of insolvency office holders. The key regulator is identified by an "✓" symbol, while other bodies which carry out supplementary regulatory functions are identified by the symbol "●".

Source: 2012-14 EBRD insolvency office holder assessment.

- | | | | |
|----|---|----|--|
| 1 | Albanian Bankruptcy Supervision Agency. | 17 | Latvian Association of Certified Administrators. |
| 2 | Department for Financial Rehabilitation and Bankruptcy under the Ministry of Economy. | 18 | Department of Enterprise Bankruptcy Management under the Ministry of Economy. |
| 3 | Ministry of Justice. | 19 | Ministry of Justice. |
| 4 | Inspectorate under the Ministry of Justice. | 20 | Ministry of Justice. |
| 5 | Ministry of Justice. | 21 | National Union of Insolvency Practitioners. |
| 6 | Ministry of Justice. | 22 | Self-regulating organisations of qualified receivers (SROs). SROs are regulated by the Federal Registration Service. |
| 7 | Estonian Chamber of Bailiffs and Trustees. | 23 | Bankruptcy Supervision Agency. |
| 8 | Ministry of Economy. | 24 | Ministry of Justice. |
| 9 | Chamber of Insolvency Trustees. | 25 | Ministry of Justice. |
| 10 | Ministry of Justice and the National Bureau of Enforcement. | 26 | Chamber of Insolvency Administrators. |
| 11 | Ministry of National Economy (the Administrative and Judicial Office). | 27 | Ministry of Justice. |
| 12 | Association of the Insolvency Office Holders. | 28 | Ministry of Justice. |
| 13 | Tax Committee under the Ministry of Finance. | 29 | Court and the Bankruptcy Office attached to the court. Under Article 227 of the Turkish Execution and Bankruptcy Code the Execution Court has supervisory power over the activities of IOHs in bankruptcy proceedings. |
| 14 | Ministry of Justice. | 30 | Ministry of Justice. The State Bankruptcy Agency was liquidated in 2005. |
| 15 | Department for Bankruptcy Affairs under the Ministry of Economy. | | |
| 16 | The Latvian Insolvency Administration. | | |

Chart 18: Main regulatory bodies for insolvency office holders

Note: This pie chart indicates the percentage of countries assessed where the main regulatory body for insolvency office holders is a government ministry, a state agency or department, a self-regulatory organisation or the court.

Source: 2012-14 EBRD insolvency office holder assessment.

particular regulatory model. As implied by the chart, regulation is often shared between a number of different bodies; nevertheless, there is usually a main or principal regulator.

Commentary to Table 7:

Table 7 identifies the key regulator in each of the countries surveyed and other bodies that play a supplementary role in regulation, supervision and/or discipline of IOHs.

In the majority (15) of the countries listed above it is the government at ministerial level that is primarily responsible for the regulation of IOHs. This does not mean that the government ministry plays an active role in regulation; in practice this is often left to the courts. One respondent from Montenegro notes that: "Except the competences that the Court has in each individual case with respect to the work of IOHs, there is no authority that monitors the work of IOHs." Many government ministries do not have active "departments" or "units" devoted to insolvency matters, including the IOH profession. In Tunisia there is an internal commission within the Ministry of Justice that is responsible for considering insolvency issues (including registration and sanctioning of IOHs), but this only meets on a couple of occasions each year. In three countries (Egypt, Morocco and Turkey), the court is considered to be the main *de facto* regulatory body for the profession,

owing to the lack of any significant involvement at government level in the regulation of IOHs.

The second most frequent main regulatory body among the assessment countries is the "state agency or department". This is present in less than one quarter (six out of 27) of assessment countries. The category of "state agency and department" includes regulatory state agencies, as well as specialised departments within relevant government ministries with the capacity to play a significant role in regulation of IOHs. In three countries (Albania, Latvia and Serbia) there are state agencies for IOHs and in another three countries (Belarus, Kyrgyz Republic and Lithuania) the main regulatory role is assumed by a department established under a government ministry (the relevant Ministry of Economy).

Classification as a state agency or department does not mean that such body performs all regulatory-related functions or focuses only on IOHs. In Latvia, for instance, the Latvian Insolvency Administration cannot sanction IOHs and is not involved in qualification and training matters.⁴³ In Belarus the Department for Financial Rehabilitation and Bankruptcy (although not focused only on the IOH profession) has branches in all major cities and is active in monitoring the work of IOHs. However a state agency or department needs to have some capacity for regulating the IOH profession. The Inspectorate under the Ministry of Justice in Bulgaria is not considered a "state department" for the purpose of the Table, since it has very limited capacity for regulation of IOHs and is responsible for a number of other professions (bailiffs and notaries). In seven countries (Estonia, FYR Macedonia, Hungary, Latvia, Moldova, Slovenia and Ukraine) powers and duties relating to regulation, supervision and discipline of IOHs are divided among a number of bodies, although a key regulatory body can nevertheless be identified.

⁴³ Sanctioning power is reserved for the court and oversight of IOH qualification and training is decided by a separate body, the Latvian Association of Certified Administrators.

Self-regulation is the main regulatory model in a few assessment countries (three in total). These include Russia (the self-regulating organisations of qualified receivers), Romania (UNPIR) and Estonia (the Chamber of Bailiffs and Trustees). In Russia there are multiple self-regulating professional associations of IOHs and no single authority for the profession.⁴⁴ In Romania the Ministry of Justice does not retain any regulatory powers in relation to the IOH profession; these powers are exercised by UNPIR. In Estonia the Chamber of Bailiffs and Trustees is the main body responsible for regulation of IOHs, but the Ministry of Justice is also required to investigate IOHs suspected of misconduct and has direct sanctioning powers. However, the most serious sanction (loss of licence) remains within the exclusive jurisdiction of the Estonian Chamber.⁴⁵

Self-regulation is also present to a lesser extent in FYR Macedonia and Ukraine. In these countries the relevant ministry retains more regulatory authority over the IOH profession than the self-regulatory associations. In Ukraine the Ministry of Justice shares responsibilities with respect to qualification and discipline of IOHs with the four SROs, which are entitled to appoint four out of the seven members to sit on the relevant commission within the Ministry. Self-regulation has its supporters in other countries, for example Belarus, which does not currently allow for self-regulation. One legal professional in Belarus commented on the state regulatory body, the Department for Bankruptcy Affairs: "Overall it's fine but in our opinion it would be more effective [sic] to create a self-regulatory institution which shall control and regulate IOH's activity."

44 In Russia, there is no direct regulation of IOHs by government or a centralised regulatory authority. Instead a Russian government agency, the Federal Registration Service, regulates a large number of self-regulating organisations (SROs) of qualified receivers, which in turn are responsible for regulating their members (IOHs).

45 Nevertheless, in Estonia, the Minister of Justice and the Estonian Chamber cannot impose disciplinary sanctions on IOHs operating as registered lawyers. Supervision of IOHs who operate as registered lawyers is conducted by the Board of the Bar Association, with the involvement of the Ministry of Justice. The Estonian Chamber may, however, apply for the initiation of proceedings against IOHs to the Court of Honour of the Bar Association.

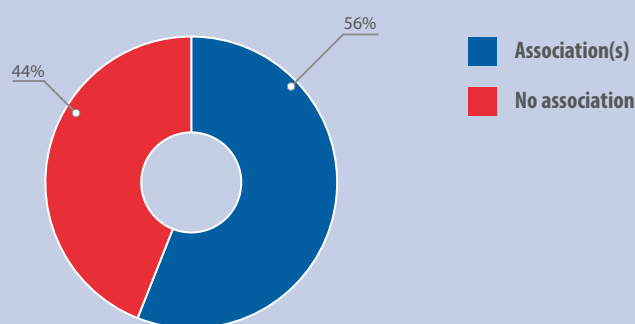
In all of the countries, the court, assisted in the majority of cases by creditors, plays an important supplementary regulatory role in the context of insolvency proceedings. In the case of Egypt, Morocco and Turkey, the court in fact plays the main regulatory role. The importance of the court in regulation of IOHs is reflected in the powers given to the court in a number of jurisdictions to impose sanctions on IOHs for misconduct and/or determine the outcome of sanctions administered by other regulatory bodies, such as UNPIR in Romania.

Professional associations

In addition to provisions found in primary and secondary legislation, IOHs are often bound by the rules of a professional association, membership of which may be compulsory or voluntary. Professional associations may set rules of membership for their IOH members and provide another element of IOH regulation or discipline. They may also be instrumental in continuing educational training for IOHs and act as a forum in which experience and information can be shared among practising IOHs.

As the below chart demonstrates, there are professional associations in the majority of the assessment countries. However, as many as 44 per cent of the countries do not have a professional association.⁴⁶

Chart 19: Professional associations for insolvency office holders



Note: This pie chart indicates the percentage of countries surveyed where a professional association(s) exists for insolvency office holders (whether on a mandatory or voluntary basis) and where there is no association.

Source: 2012-14 EBRD insolvency office holder assessment.

Table 8: Professional associations for insolvency office holders

Countries	Professional association	No professional association
Albania		✓
Belarus	✓ ¹	
Bosnia and Herzegovina	✓ (voluntary) ²	
Bulgaria		✓
Croatia		✓
Egypt		✓
Estonia	✓ ³	
FYR Macedonia	✓ ⁴	
Georgia		✓
Hungary	✓ (voluntary) ⁵	
Kazakhstan		✓
Kosovo		✓
Kyrgyz Republic		✓
Latvia	✓ (voluntary) ⁶	
Lithuania	✓ ⁷	
Moldova	✓ ⁸	
Montenegro		✓
Morocco		✓
Poland	✓ (voluntary)	
Romania	✓ ⁹	
Russia	✓ ¹⁰	
Serbia	✓ (voluntary) ¹¹	
Slovak Republic	✓ (voluntary) ¹²	
Slovenia	✓ ¹³	
Tunisia		✓
Turkey		✓
Ukraine	✓ ¹⁴	

Note: This table indicates with symbol “✓” whether there is a professional association for insolvency office holders in each of the countries surveyed by the assessment. The voluntary nature of the professional association, where applicable, is noted in brackets.

Source: 2012-14 EBRD insolvency office holder assessment.

1. Belarusian Association of Specialists in Crisis Management and Bankruptcy.
2. Three professional associations with voluntary membership. One operates in the FBiH, one in the RS and one at a federal level: Association of Bankruptcy Administrators of FBiH, Association of Bankruptcy Administrators of the RS and Association of Bankruptcy Administrators of Bosnia and Herzegovina.
3. Chamber of Bailiffs and Trustees in Bankruptcy (mandatory membership).
4. Chamber of Bankruptcy Trustees (mandatory membership).
5. Association of Liquidators and Asset Controllers.
6. Association of Administrators.
7. National Association of Bankruptcy Administrators and National Association of Business Administrators.
8. Two associations, including the Association of Professional Liquidators and Administrators.
9. National Union of Insolvency Practitioners (membership is mandatory).
10. Union of self-regulating organisations of qualified receivers (membership is voluntary) and separate self-regulating organisations of qualified receivers (IOH must belong to one of these SROs).
11. Towards the end of April 2012, four regional associations of IOHs were formed and/or became active: (1) the Association of IOHs from Southern and Eastern Serbia; (2) the Association of IOHs from Central and Western Serbia; (3) the Association of IOHs from Belgrade, Pozarevac and Pancevo (the cities near Belgrade); and (4) the Association of IOHs from Vojvodina (northern Serbia). Membership of the regional Associations is voluntary and is open to IOHs who practise in the relevant region.
12. Association of Insolvency Office Holders of the Slovak Republic.
13. Chamber of Insolvency Administrators (membership is mandatory).
14. In Ukraine, there are four self-regulating professional associations (as of 13 August 2014).

Commentary to Table 8:

In slightly over half (15) of the countries, there is some form of professional association for IOHs. Membership of this association is often voluntary. Membership is only compulsory in a minority of countries (Estonia, FYR Macedonia, Romania, Russia and Slovenia).

The fact that there is no professional association in 12 of the countries surveyed does not mean that there have been no discussions around the establishment of such an association. For example, in Bulgaria, there have been long standing discussions on the establishment of a professional association of IOHs; however, many IOHs would like such association to be officially recognised by statute (and to have a self-regulating function), as is the case with the Bar association for Bulgarian lawyers.

Statutory monitoring

Commentary to Table 9:

Significant differences emerge among the assessment countries regarding supervision and monitoring of IOHs. The main differentiating factor is whether there is a dedicated regulatory bodies, with all or major responsibility for regulating, supervising and disciplining members of the IOH profession. Dedicated regulatory bodies (whether self-regulatory organisations, agencies or departments within government ministries) are in a minority and are only present in seven out of the 27 countries.

As noted above, dedicated regulatory bodies may take a more active approach to the supervision and monitoring of IOHs. This appears to be the case in Belarus, Kyrgyz Republic, Lithuania and Serbia, where monitoring of IOHs is undertaken regularly as required by statute, but is not necessarily the case in Albania, Latvia and Romania, where it is not clear on how regular a basis monitoring is conducted and there is no prescribed statutory timescale.

Regular monitoring therefore appears to be only carried out in five countries (Belarus, Kyrgyz Republic, Lithuania and Serbia and Ukraine). These countries may be characterised as “active” in their approach to regulation.

Table 9: Statutory monitoring of insolvency office holders

Countries	Regular statutory monitoring requirements	Statutory monitoring requirements (no prescribed timeframe)	No statutory monitoring requirements
Albania		✓ ¹	
Belarus	✓ ²		
Bosnia and Herzegovina			✓
Bulgaria			✓
Croatia			✓
Egypt			✓
Estonia			✓
FYR Macedonia		✓ ³	
Georgia			✓
Hungary			✓
Kazakhstan		✓ ⁴	
Kosovo			✓
Kyrgyz Republic	✓ ⁵		
Latvia			✓
Lithuania	✓ ⁶		
Moldova			✓
Montenegro			✓
Morocco			✓
Poland			✓
Romania		✓ ⁷	
Russia		✓ ⁸	
Serbia	✓		
Slovak Republic			✓
Slovenia			✓
Tunisia			✓
Turkey			✓
Ukraine	✓ ⁹		

Note: This table indicates with symbol "✓" whether the regulator is required to monitor insolvency office holders on a statutory basis and if so, whether such monitoring needs to be carried out regularly by statute.

Source: 2012-14 EBRD insolvency office holder assessment.

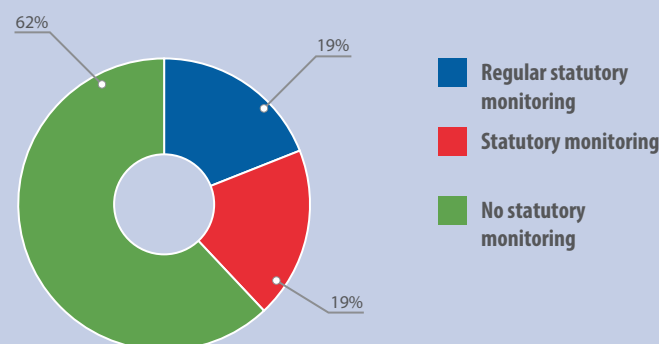
1. Albanian Bankruptcy Supervision Agency.
2. Department for Financial Rehabilitation and Bankruptcy
3. Ministry of Economy (through the Chamber).
4. Tax Committee monitors the performance of IOHs; nevertheless, such monitoring is based on a schedule and is not frequent.
5. The Department for Bankruptcy Affairs undertakes regular monitor of IOHs' performance, assisted by the court and creditors.
6. Department of Enterprise Bankruptcy Management carries out routine (scheduled) monitoring as well as supervises IOHs on a case-by-case basis.
7. The National Union of Insolvency Practitioners carries out monitoring of the activities of IOHs, nevertheless the regularity of such monitoring is not clear.
8. Self-regulating organisations monitor the activities of IOHs at a de-centralised level.
9. The Ministry of Economy appears to monitor IOH activities regularly, although no more than once every two years (based on a plan or on an ad hoc basis).

In the majority (17) of countries surveyed a more passive approach is taken to monitoring of IOH activities. There are no statutory monitoring requirements and monitoring appears to take place on an irregular basis. In these countries *ad hoc* monitoring or supervision is carried out primarily by the court (such as in Egypt), often assisted by creditors (for example, in Croatia) and/or by a professional organisation (for example, in Moldova).

Complaints against IOHs

In each of the countries surveyed, a legislative provision exists regulating the submission of complaints against IOHs. Dealing with third party complaints against IOHs is fundamental, since it may identify cases of IOH misconduct that merit investigation and wider issues within the profession that should be addressed.

Legislative provisions regarding complaints do not necessarily signal the existence of an "official complaints system". By "official complaints system" we understand a system in which complaints are registered, processed and resolved in accordance with a defined procedure (and usually within a given time period). According to this definition, an official complaints system only appears to exist in a very small number of assessment countries: Kyrgyz Republic, Latvia, Lithuania, Romania, Serbia and Ukraine. In each of these countries (other than

Chart 20: Statutory monitoring of insolvency office holders

Note: This pie chart indicates the percentage of countries where the regulatory body is required to carry out regular monitoring of insolvency office holders, where the regulator has a general monitoring obligation but such monitoring does not need to be carried out regularly, and countries where the regulator is not obliged monitor insolvency office holders.

Source: 2012-14 EBRD insolvency office holder assessment.

Table 10: Bodies dealing with complaints against insolvency office holders

Countries	State agency or Self-regulatory Body	Government/ ministry	Court	Other
Albania	✓ (Albanian Agency)		✓	✓ (Creditors' Committee)
Belarus			✓	✓ (Creditors' Committee)
Bosnia and Herzegovina		✓ (Ministry of Justice)	✓	● ¹
Bulgaria		✓ (Ministry of Justice)	✓	
Croatia			✓	
Egypt			✓	
Estonia	✓ (Estonian Chamber)	✓ (Ministry of Justice)	✓	
FYR Macedonia		✓ (Ministry of Economy)	✓	✓ (Macedonian Chamber)
Georgia			✓	
Hungary			✓	✓ (Hungarian Association)
Kazakhstan		✓ (Ministry of Finance)	✓	
Kosovo			✓	
Kyrgyz Republic	✓ (Kyrgyz Department)		✓	
Latvia	✓ (Latvian Insolvency Administration)		✓	
Lithuania	✓ (Lithuanian Department)		✓	
Moldova			✓	
Montenegro			✓	
Morocco			✓	
Poland		✓ (Ministry of Justice)	✓	
Romania	✓ (UNPIR)		✓	
Russia	✓ (SROs)		✓	✓ (Federal Registration Service; Union)
Serbia	✓ (BSA)		✓	
Slovak Republic		✓ (Ministry of Justice)	✓	
Slovenia		✓ (Ministry of Justice)	✓	✓ (Slovenian Chamber)
Tunisia		✓ (Ministry of Justice)	✓	
Turkey			✓	
Ukraine		✓ (Ministry of Economy)	✓	

Note: This table indicates with symbol "✓" those bodies where complaints may be filed against insolvency office holders. These bodies include a state agency or self-regulatory body for the profession, a government ministry and the court. Other bodies that may also examine complaints within a particular jurisdiction, including creditors or professional associations, are also indicated. Any reservations are marked with symbol "●".

Source: 2012-14 EBRD insolvency office holder assessment.

1. The extent of the disciplinary powers of the Associations in Bosnia and Herzegovina is unclear.

Ukraine) there is a dedicated regulatory body for IOHs.

In other countries with a dedicated regulatory body (Albania and Belarus) there is reportedly no official complaints system although in Albania, there are plans to establish such a system operated by the Albanian Bankruptcy Supervision Agency. In Belarus complaints relating to an IOH's performance may only be submitted to the court and to the creditors' committee, but not to the department, which acts as a dedicated regulatory body for insolvency matters (including the IOH profession).

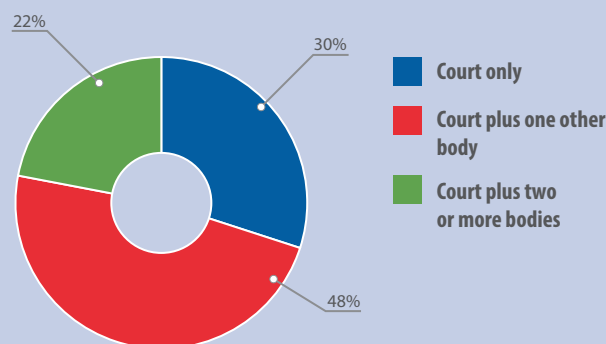
Commentary to Table 10:

In the vast majority of countries surveyed there is no official complaints system. In eight countries, (Croatia, Egypt, Georgia, Kosovo, Moldova, Montenegro, Morocco and Turkey) complaints regarding an IOH's performance may only be submitted to the court. This is unlikely to be the most effective or efficient way of handling complaints against an IOH and may lead to costs and delay. Furthermore, it is likely that many courts only have the resources to deal with the most serious of complaints. In Moldova, one legal professional observed: "Every complaint is to be examined in a court meeting. Due to the court's workload, examination of the complaints against the activity of the insolvency administrators may be time-consuming."

In six countries (Bulgaria, Kazakhstan, Poland, Slovak Republic, Tunisia and Ukraine) complaints can be submitted to both the relevant government ministry and to the court. In these countries, the court is generally under no time pressure to respond to a complaint, but the Ministry must do so within a statutorily defined period. In seven other countries, however, (Belarus, Hungary, Kyrgyz Republic, Latvia, Lithuania, Romania, and Serbia) complaints may be addressed to the court and one other body that is not a government ministry. These bodies typically include dedicated regulatory bodies or professional associations including chambers.

In Albania, Bosnia and Herzegovina, Estonia, FYR Macedonia, Russia and Slovenia, complaints about

Chart 21: Bodies handling complaints against insolvency office holders



Note: This pie chart indicates the percentage of countries surveyed where complaints against insolvency office holders may be filed only with the court or with the court plus one other body or the court plus two or more bodies (as further detailed in Table 10).

Source: 2012-14 EBRD insolvency office holder assessment.

IOHs may be submitted to the court and two other bodies. However, in Albania, one of the two other bodies is the creditors' committee, which is then required to notify the court. This form of complaints process may also prove challenging according to one Albanian respondent since: "There is no deadline for the competent court to rule on the complaints filed from the creditor committee and/or general meeting of creditors." In contrast creating too many bodies responsible for complaints may lead to inconsistencies in responding to stakeholders concerns about IOHs and in the approach to the IOH profession. The development of a formal complaints system operated by the main regulatory authority is, therefore, to be encouraged.

Disciplinary sanctions for IOHs

An important component of a regulatory system for IOHs depends on the ability of the regulatory authority to impose disciplinary sanctions, where necessary, in response to cases of professional misconduct. It is important to ensure that authorities have a certain flexibility of response and can deploy a range of different sanctions in accordance with the level of seriousness of the misconduct.

The legislation in 24 out of the 27 countries surveyed envisages the imposition of sanctions by the regulatory authorities in the form of reprimands

Table 11: Types of sanctions against insolvency office holders

Countries	Reprimand/ warning	Fine	Dismissal from a case	Suspension of permission to act	Cancellation of permission to act
Albania		✓ (Court)	✓ (Court)		✓ (Albanian Agency)
Belarus	✓ (Court)	✓ (Court)	✓ (Court)		✓ (Belarussian Department)
Bosnia and Herzegovina	✓ (Court)	✓ (Court)	✓	Unclear ¹	Unclear ²
Bulgaria		✓ (Court)	✓ (Court)		✓ (Ministry)
Croatia			✓ (Court)		✓ (Ministry)
Egypt			✓ (Court)		
Estonia	✓ (Estonian Chamber, Court ³ and Ministry)	✓ (Estonian Chamber, Court and Ministry)	(Ministry ⁴ and Court)	✓ (Estonian Chamber and Ministry ⁵)	✓ (Estonian Chamber)
FYR Macedonia	✓ (Macedonian Chamber)	✓ (Macedonian Chamber)	✓ (Court)	✓ (Macedonian Chamber)	✓ (Ministry)
Georgia			✓		
Hungary	✓ (Hungarian Association)	✓ (Court and Ministry)	✓ (Court)		✓ (Ministry) ⁶
Kazakhstan		✓ (Tax Committee) ⁷	✓ (Tax Committee)		
Kosovo		✓ (Court)	✓ (Court)		✓ (Ministry)
Kyrgyz Republic		✓ (Kyrgyz Department)	✓ (Kyrgyz Department or creditors)	✓ (Kyrgyz Department)	✓ (Kyrgyz Department)
Latvia			✓ (Court)	✓ (Court)	✓ (Latvian Association)
Lithuania	✓ (Lithuanian Department)	✓ (Court)	✓ (Court)		✓ (Lithuanian Department)
Moldova ⁸	✓ (Court)	✓ (Court)	✓ (Court)		
Montenegro			✓ (Court)		✓ (Ministry)
Morocco			✓ (Court)	N/A	N/A
Poland	✓ (Judge Commissioner)	✓ (Judge Commissioner)	✓ (Judge Commissioner)	✓ (Ministry)	✓ (Ministry)
Romania	✓ (UNPIR)	✓ (UNPIR and Court ⁹)	✓ (Court)	✓ (UNPIR)	✓ (UNPIR)
Russia	✓ (SRO)	✓ (SRO and Federal Registration Service)	✓ (Court)		✓ (SRO) – expulsion from membership
Serbia	✓ (BSA)	✓ (BSA)	✓ (Court) ¹⁰	✓ (BSA)	✓ (BSA)
Slovak Republic		✓ (Ministry)	✓ (Court)	✓ (Ministry)	✓ (Ministry)
Slovenia	✓ (Slovenian Chamber)	✓ (Slovenian Chamber and Ministry)	✓ (Court and Creditors' Committee)	✓ (Slovenian Chamber and Ministry)	✓ (Slovenian Chamber and Ministry)
Tunisia	✓ (Ministry)	✓ (Court)	✓ (Court)		✓ (Ministry)
Turkey		✓ (Court)	✓ (Court)	N/A	N/A
Ukraine ¹¹	✓ (Ministry)				✓ (Ministry)

Note: This table indicates with symbol “✓” the types of sanctions that may be imposed by the sanctioning bodies on insolvency office holders for misconduct. The assessment focused on the following sanctions: reprimands/warnings, fines, dismissal from the insolvency case, suspension or cancellation to act.

Source: 2012-14 EBRD insolvency office holder assessment.

1 Subject to further verification of Ministry of Justice.

2 Ibid.

3 This only relates to the requirement for the court to issue a warning prior to the imposition of a fine (up to a maximum of EUR 6,400) but the court does not have to issue a prior warning in cases of severe violation.

4 The Ministry may request the court to release the IOH from the relevant bankruptcy proceedings to which he has been appointed.

5 The Ministry may also issue a prohibition on acting as an IOH for a maximum term of five years and such prohibition will be enforced by the Estonia Chamber.

6 The Association may also exclude an IOH and notify the Office of Administration under the Ministry

of Economy of any misconduct.

7 Any penalty would be an administrative penalty imposed under the Code of the Republic of Kazakhstan on Administrative Violations.

8 A registration system for IOHs is in the process of being implemented.

9 The syndac judge may sanction the judicial administrator with a fine ranging from RON 1,000 (approximately EUR 230) to RON 5,000 (approximately EUR 1,200) if the latter, either negligently or with bad faith, does not perform or performs late his legal obligations.

10 By the Court ex officio and also on the request of three-quarters of the creditors' committee.

11 Additional sanctions may be imposed by the four Ukrainian SROs on their members.

or warnings, fines, suspension and cancellation of permission to act. In addition, most of these countries' legislation provides for the ability of the court to dismiss the IOH for misconduct from a particular case. For example in Serbia, the court may dismiss the IOH on a number of grounds, including where the IOH did not fulfil his duties or adhere to statutory deadlines or where the IOH failed to take appropriate measures to sell the assets of the bankruptcy estate within a specified period.

The majority of countries surveyed appear to apply a range of sanctions for IOH misconduct. However in some of these countries, especially Croatia, Kazakhstan, Montenegro and Ukraine, the range of sanctions that are capable of being imposed by any of the relevant bodies against IOHs is quite limited. For example, in Croatia, there are only two options available: dismissal of the IOH from the insolvency case or cancellation of the IOH's licence.

A minority of countries (Egypt, Georgia and Morocco) do not have any specific sanctions for IOH misconduct, other than dismissal of the IOH by the court from a particular case. In Egypt the court can also apply criminal sanctions applicable to public servants, which include IOHs. In Georgia the Ministry of Justice and the court are limited to imposing any sanctions on IOHs for misconduct under the general civil, administrative and criminal orders rules. In Morocco IOHs must comply with all legal and contractual obligations applying to managers and are therefore, subject to sanctions for management.

Although not directly covered by this assessment, in some countries IOHs appear to be able to challenge sanctions imposed by the regulatory authorities through judicial channels. For example in Serbia, decisions of the IOH regulator, the Bankruptcy Supervision Authority, may be disputed during the course of administrative proceedings.

Commentary to Table 11:

As can be seen from Table 11, the types of sanctions that can be imposed are administered by more than one body, most frequently the court and the relevant Ministry.

From among those 24 countries where a range of sanctions exists for IOH misconduct, in Moldova and Turkey only the court can impose sanctions on IOHs. It is interesting to observe that in Turkey, the Ministry of Justice is responsible for appointing the judiciary, while in Moldova the Ministry of Justice determines the organisational framework (including fees) of the courts. There is, therefore, in these countries a close link between the Ministry of Justice and the courts. In Kazakhstan the sole body that can impose disciplinary sanctions is the Tax Committee while in the Kyrgyz Republic it is the Kyrgyz Department and in Ukraine the government ministry.

In 13 countries sanctions may be imposed by the court and another body, including government ministries, dedicated regulatory bodies or associations. In four countries (Estonia, FYR Macedonia, Hungary and Slovenia) the court and more than one body may impose sanctions on IOHs.

However, in certain countries, sanctioning power may also be split within an organisation. For example, in Estonia, the Court of Honour of the Estonian Chamber (being the body that hears matters concerning violations of the obligations of IOHs) can only make a proposal on revocation of an IOH's licence to the management board of the profession union, the body within the chamber entitled to decide on the revocation of IOH licences. Additional courses of action other than those sanctions listed above may be available in cases of IOH misconduct. For example, in Slovenia and Romania, the court may issue directions to the IOH to remedy respectively any misconduct or prejudice caused.

4.3. Qualification, training and standing

Qualification, training and standing requirements refer to those criteria that may enhance the professional quality and suitability of IOHs. These include, *inter alia*, the tertiary qualifications, specific exams, work experience (either insolvency related or non-insolvency related), other theoretical training and continuing training, all of which have been examined by the assessment. As indicated earlier in

this report, qualification and training requirements are useful signals of the existence of an identifiable IOH profession.

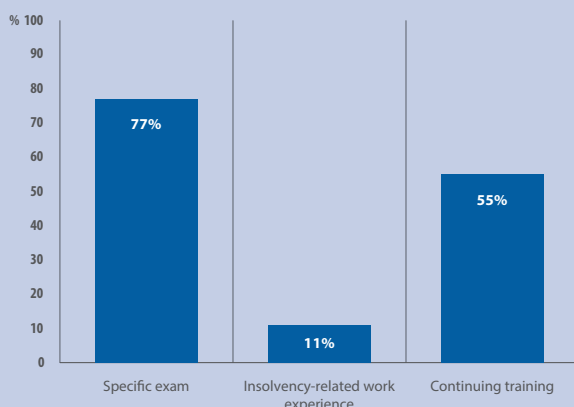
There is a very strong connection between qualification and training requirements and the existence of a licensing or registration system for IOHs. In two countries (Georgia and Turkey) where no licensing or registration of IOHs exists, there are also no qualification or training requirements. A few countries have a poorly regulated system for licensing or registration, which is reflected in low qualification and training requirements. In Morocco and Egypt there is a decentralised registration system at court level, which appears to be ineffective and not transparent. Morocco does not have any form of qualification or training requirements and in Egypt only tertiary qualifications are needed to become an IOH. Tunisia has a slightly more advanced, but still not properly detailed regulatory system for the IOH profession. Tunisian IOHs are required to be registered and, in addition to a tertiary qualification requirement, must have prior work experience to enter the profession. However, in Tunisia there is no entry examination requirement.

The requirement for continuing training for authorised IOHs has interesting connections with both the

regulatory model for the IOH profession, particularly whether there is a dedicated regulatory body, and the existence of professional associations. In the 17 countries where continuing training is required post-admission to the profession, in six countries there is a state agency or department tasked with the regulation, supervision and discipline of IOHs (Albania, Belarus, Kyrgyz Republic, Latvia, Lithuania and Serbia). In a further seven countries a self-regulating professional association exists (Estonia, FYR Macedonia, Hungary, Romania, Russia, Slovenia and Ukraine). It is interesting to note that even where there is a professional association for IOHs, continuing training may not be required. This is the case in Bosnia and Herzegovina and Poland.

Relevant tertiary qualifications provide a fundamental basis for development of a competent profession. Given that the work of an IOH requires a diverse skill set, law, finance, economics and/or business may all potentially be equally valid degree subjects. An IOH with a legal background may need to employ advisers with finance or business competency and IOHs, who have a background in finance and business, will likely need legal experts or advisers, especially given the court driven nature of the insolvency systems in many of the countries surveyed.

Chart 22: Qualification requirements of insolvency office holders (exam, insolvency-related work experience and continuing training)



Note: This bar chart illustrates the percentage of countries surveyed that require insolvency office holder candidates to sit a specific examination and have prior work experience with an acting insolvency office holder for entry to the profession. The third bar indicates the percentage of countries where insolvency office holders are required to participate in continuing training sessions.

Source: 2012-14 EBRD insolvency office holder assessment.

Tertiary qualifications are also important since they can provide a useful basis of knowledge for the IOH sitting entry exams to the profession. Candidates with no tertiary qualification or with a degree from an unrelated discipline may be indirectly barred from entry to the profession by any subsequent technical, specific entry qualification examination. In Belarus, where there is no specified tertiary education requirement, candidates without a law or economics degree are required to complete three months training with the department. On the other hand, narrow tertiary education requirements permitting entry to the profession for only candidates of a certain discipline, such as law, may be problematic and restrict the pool of available candidates.

While tertiary qualifications undoubtedly provide an important educational foundation for IOH candidates, further qualification-related requirements are also

Table 12: Educational and qualification requirements for insolvency office holders

Countries	Tertiary qualification	Specific exam	Insolvency-related work experience	Other work experience	Theoretical training	Continuing training
Albania	✓ ¹	✓		✓ ²	✓	✓
Belarus	● ³	✓		✓ ⁴	● ⁵	✓
Bosnia and Herzegovina	Professional education	✓				
Bulgaria	✓ ⁶	✓		✓ ⁷		✓ ⁸
Croatia	● ⁹	✓				
Egypt	✓ ¹⁰					
Estonia	● ¹¹	✓		● ¹²	✓ ¹³	✓ ¹⁴
FYR Macedonia	✓ ¹⁵	✓		✓ ¹⁶	✓ ¹⁷	✓ ¹⁸
Georgia						
Hungary ¹⁹	✓ ²⁰	✓ ²¹	✓			✓ ²²
Kazakhstan	✓ ²³	✓		✓ ²⁴		✓ ²⁵
Kosovo	✓ ²⁶	✓	●	● ²⁷		
Kyrgyz Republic	● ²⁸	✓		✓ ²⁹	✓ ³⁰	

1. Law or economics.
2. Ten years in business.
3. Not necessarily from a relevant discipline.
4. Three years in business.
5. Only for those candidates that do not have law or economics degree. The training is for three months.
6. Law or economics.
7. Three years in law or economics.
8. Minimum number of training hours is not specified by law.
9. Not necessarily from a relevant discipline.
10. Law or business.
11. Not necessarily from a relevant discipline.
12. Two years' experience in finance, law, management or accounting is required only from those candidates that have a Bachelor's degree.
13. Organised by the Estonian Chamber.
14. Two hundred hours' training within a five-year period, except if the IOH obtained a masters' degree or doctorate in law during this period. Sworn advocates or auditors that pass continuing education trainings at their bar/board of auditors are not required to do the same at the Estonian Chamber.
15. Law, economics, business administration or in other commercial discipline.
16. Three years or five years' work experience is required, if they received their degree in law economics/ business administration; or in other commercial discipline, respectively.
17. Thirty hours' training organised by the Macedonian Chamber.
18. Minimum 24 hours training is required before the renewal of licence.
19. Requirements are indirect via employees of IOH companies.
20. IOH companies need to engage at least two professionals with liquidation and asset controller specialisation; jurists with bar exam, economists and licensed auditors.
21. IOH companies need to have at least two professionals with liquidation and asset controller specialisation.
22. Participation in continuing training sessions in every two years and submission of the certificate received through any training to their employer IOH company are mandatory.
23. Law or economics.
24. Three years' prior work experience in law, finance or economics.
25. Continuing educational training is required from IOH in law, finance or law every three years.
26. Law or economics/finance.
27. IOHs are required to have experience of at least five years in law or economics; or three years of experience in implementing bankruptcy procedures.
28. Not necessarily from a relevant discipline.
29. Three years' experience after graduation.
30. Trainings are organised under a specialised programme.
31. IOH candidates are required to obtain either a vocational education in jurisprudence and qualified as lawyers; or higher education degree is jurisprudence and an academic degree.
32. Three years' work experience as a lawyer.
33. Fifty hours every two years.

Countries	Tertiary qualification	Specific exam	Insolvency-related work experience	Other work experience	Theoretical training	Continuing training
Latvia	✓ ³¹	✓		✓ ³²		✓ ³³
Lithuania	✓ ³⁴	✓	●	● ³⁵		✓ ³⁶
Moldova	✓ ³⁷	Pending		✓ ³⁸	✓ ³⁹	✓ ⁴⁰
Montenegro	● ⁴¹	✓		✓ ⁴²		
Morocco						
Poland	● ⁴³	✓	●			
Romania	✓ ⁴⁴	✓	●	✓ ⁴⁵		✓ ⁴⁶
Russia	● ⁴⁷	✓	✓	●		✓ ⁴⁸
Serbia	● ⁴⁹	✓	● ⁵⁰	● ⁵¹		● ⁵²
Slovak Republic	✓ ⁵³	✓			✓ ⁵⁴	✓ ⁵⁵
Slovenia	● ⁵⁶	✓		✓ ⁵⁷		✓
Tunisia	✓ ⁵⁸			✓ ⁵⁹		
Turkey						
Ukraine	✓ ⁶⁰	✓	✓ ⁶¹	✓ ⁶²	✓ ⁶³	✓

Note: This table summarises the educational and qualification requirements for insolvency office holders, focusing on whether they need to obtain a tertiary qualification, pass a specific exam, have previous insolvency-related or other work experience, and undertake prior theoretical or continuing training. The existence of a relevant requirement is confirmed by the symbol “✓”, while the symbol “●” refers to the existence of a requirement with some reservations, including whether the particular requirement is mandatory in nature.

Source: 2012-14 EBRD insolvency office holder assessment.

- 34 Law or economics.
- 35 Candidates need to have at least two years' experience as an assistant IOH in the last previous three years; or five years' experience as a chief executive officer in the last previous seven years; or they need to be an attorney at law admitted to the Lithuanian bar or a bailiff.
- 36 Not less than 24 hours per year.
- 37 Law, economics/finance or administration/technical discipline.
- 38 Five years' experience in the field of studies.
- 39 Under the new Law on Authorised Administrators, IOHs shall be required to undergo a 12-month theoretical and practical training programme.
- 40 The new regime requires participation at continuing training sessions (minimum 30 hours per year).
- 41 Not necessarily from a relevant discipline.
- 42 Three years' experience.
- 43 Master's degree, or the equivalent, from a Member State of the European Union, Swiss Confederation or a Member State of the European Free Trade Area (EFTA) party to the European Economic Area Agreement.
- 44 Law or economics.
- 45 Three years' experience.
- 46 At least 20 hours per year organised by the National Institute for Training Specialists in Insolvency.
- 47 Not necessarily from a relevant discipline.
- 48 Continuing training and previous work experience is required by law; nevertheless, it seems to take place on a decentralised level (24 hours per year).
- 49 Not necessarily from a relevant discipline.
- 50 Three years' experience either in positions requiring a university degree or in administering bankruptcies.
- 51 Three years' experience either in positions requiring a university degree or in administering bankruptcies.
- 52 No requirement but the Bankruptcy Supervision Agency organises trainings.
- 53 Law or economics.
- 54 Specialised course should be attended by IOH candidates before taking the entry examination.
- 55 There is no minimum number of further education hours per year. However, IOHs are required to obtain 60 credits over a period of two years.
- 56 Either a higher education degree or an auditor qualification.
- 57 Three years' experience
- 58 Law, economics or management.
- 59 Five years' or 10 years' experience to be included on the list of receivers or administrators, respectively.
- 60 Law or economics.
- 61 Six months' internship with a licensed IOH.
- 62 Not less than three years' experience in the degree area or not less than one year in a top management position after obtaining the degree.
- 63 Educational preparatory training is required.

needed to encourage the development of a highly skilled profession. A specific examination in insolvency-related subjects is an important next step for IOH candidates, following successful completion of tertiary education.

Practical experience is a complement to relevant tertiary education and insolvency examination requirements. With respect to the IOH profession, it may take two forms: (i) work experience with practising IOHs, which provides exposure on how insolvency cases are actually handled in practice; or (ii) general work experience, frequently in a legal, business or management environment. Prior work experience with a practising office holder for IOH candidates is a key area of weakness relating to the IOH profession in many assessment countries. It is one area that such countries should consider reforming, especially as the profession develops. In the words of one Moldovan respondent: "The IOHs with practical experience are able to face most of the challenges of the process. The problem appears with young IOHs that are not initiated in practical problems of the insolvency process."

Although most countries do not establish work experience requirements with a practising IOH, they often have some form of other, non-insolvency related work experience conditions to be fulfilled by prospective IOHs.

A final aspect of ensuring that the IOH profession meets the utmost standards of probity and honesty is the screening of IOH candidates for prior criminal convictions and excluding those persons with criminal convictions from entry to the profession. Strict criminal checks and controls are, however, fundamental for a healthy profession and are needed to maintain the integrity and standing of the profession. Like many other professions, it is argued that a strict approach should be taken to prevent persons with criminal convictions from becoming IOHs or continuing to practise as IOHs.

Once IOH candidates have successfully entered the profession, they should maintain and develop their skills and knowledge over the years. Continuing educational training is a requirement for many types of professionals in various countries (such as for legal

professionals and medical practitioners). Due to the interdisciplinary nature of insolvency cases (in other words, insolvency is connected to law, economics, accounting and other disciplines) the continuous development and improvement of IOH skills is of fundamental importance.

Commentary to Table 12:

All countries apart from Bosnia and Herzegovina, Georgia, Morocco and Turkey require IOH candidates to have a tertiary qualification, demonstrating a tendency towards high entry requirements. The lack of a tertiary education requirement in Georgia, Morocco and Turkey may be expected, given that there is no real regulatory framework for (private) IOHs. In Bosnia and Herzegovina the legislation is not entirely clear since it refers to the need for an IOH candidate to have completed professional education, which may equate in most cases to a tertiary qualification.

Tertiary education

In 14 of the 23 countries where a tertiary educational requirement is needed, this tends to be in law, economics or business and in a few countries, also any other commercial-related discipline. Nevertheless, nine countries do not specify the field of study. The risk in such a generalist approach is that it may allow persons without the right educational background to enter the IOH profession. Notwithstanding statutory qualification requirements, there is often a trend in some countries in IOHs coming from a particular background. In Bulgaria, candidates with a law or economics background may apply for entry to the profession, but in practice Bulgarian IOHs typically have a law degree and in many cases also practise as lawyers.

Entry examination

All assessment countries, except for Egypt, Georgia, Moldova, Morocco, Tunisia and Turkey (77 per cent) require an IOH candidate to sit a specific examination in insolvency to become an authorised member of the profession. In Moldova the requirement for IOH candidates to pass a specific examination is to be introduced as part of the new law on Authorised Administrators. Overall among most countries surveyed there is, therefore, a widespread recognition

of the specialised nature of the IOH's work and the need for an entry examination in relevant subjects. In the case of Hungary, the requirement for an examination is expressed indirectly through the conditions imposed on IOH companies in relation to their employees.

Previous work experience

The majority of countries (20) require IOH candidates to have some form of previous work experience, whether with an insolvency office holder and/or general work experience. Nevertheless, "on the job" work experience or training with an acting IOH is weak or non-existent across most of the countries surveyed (only 11 per cent of the countries require "on the job" work experience on a mandatory basis). However, 13 of the assessment countries require previous general work experience from IOH candidates. On average three to four years of work experience is needed. In a few countries the work experience requirements are set very high: in Albania 10 years' work experience in business is required and in Tunisia, five or 10 years' work experience is needed depending on the type of IOH.

Out of all 27 countries, prior work experience with an acting IOH is only a strict requirement in Hungary, Russia and Ukraine. In Hungary professionals with liquidation and asset controller qualification must complete at least one year's work experience at an IOH company. In Russia the length of such practical experience varies: candidates must either have experience of at least one year in a managerial position and at least six months' practical experience with a registered IOH, or, alternatively, practical training with a licensed IOH for at least two years.

In an additional five countries (Kosovo, Lithuania, Poland, Romania and Serbia) work experience or training with an IOH is optional and/or not always required. In Romania licensed IOHs must complete a two-year apprenticeship with a practising IOH before acting, but persons who have worked for more than 10 years as lawyers, magistrates or notary publics are exempt from this requirement. In Kosovo, Lithuania and Serbia, practical experience with an acting IOH is optional and an alternative to other forms of work

experience. In Kosovo IOHs are required to have work experience of at least five years in law or economics or three years' experience in implementing bankruptcy procedures. In Lithuania, the number of options is wider: candidates need to have either at least two years' work experience as an assistant IOH in the previous three years, five years' experience as a chief executive officer in the previous seven years, or they need to be an attorney at law admitted to the Lithuanian bar or a bailiff. In Poland IOHs must prove that they managed an estate in bankruptcy or, alternatively, an undertaking or a separate part of an undertaking in the European Economic Area for at least three years. In Serbia three years' experience either in positions requiring a university degree or in administering bankruptcies is required for prospective IOHs.

Across all the jurisdictions, only Hungary and Ukraine have a framework that requires IOH candidates to have a relevant tertiary education qualification, pass a specific examination and carry out prior work experience with a practising IOH. On the contrary, none of these elements may be found in the systems for insolvency office holders in Georgia, Morocco, or Turkey. In Kosovo, Lithuania, Poland, Morocco, Romania, Russia and Serbia there are reservations in one or more of these three areas. For example, in some of these countries prior work experience with a practising IOH is one of the alternative selection criteria and not a strict requirement. It is interesting to note that in a number of countries where prior work experience with an acting IOH is not required, prior specialised theoretical training is compulsory: Albania, Estonia, FYR Macedonia, Kyrgyz Republic, Moldova and Slovak Republic. In Ukraine, both prior work experience with an IOH and specialised theoretical training is needed.

Criminal convictions

The vast majority of the countries surveyed have legal provisions restricting candidates with criminal convictions from entering the profession. Some countries bar all persons with any type of criminal conviction from the profession. Others draw a distinction based on the seriousness of the criminal offence. Nevertheless, in Bosnia and Herzegovina,

Georgia and Morocco, no criminal checks appear to be conducted on prospective IOHs. However, some countries have adopted an indirect approach, such as Turkey, where there is no direct prohibition on IOH candidates with criminal records being appointed as IOHs, but members of the bankruptcy administration are regarded as public officials, and as such, their criminal records are reportedly checked by the court. It is not entirely clear from the results of the assessment how rigorous the screening of IOH candidates for criminal convictions is in practice.

Continuing training

Continuing training for qualified IOHs is required in more than half (15) of the 27 countries. This is, however, subject to a few reservations. In a number of countries, continuing education is required but no minimum number of hours is specified. This is the case, for example, in Albania, Hungary, Kazakhstan and Ukraine. It is also the case in other developed IOH systems, such as France. In Ukraine training for qualified IOHs is organised by the Ukrainian Ministry of Justice Training and Qualification Improvement Centre and attendance at qualification improvement sessions is notified to the Ukrainian Ministry of Justice. Despite the lack of a minimum hour requirement, if an IOH fails to attend a course, this may result in disciplinary action by the Ministry of Justice's Disciplinary Commission. In the Kyrgyz Republic new regulations are likely to be adopted which will require IOHs to participate at continuing training sessions. Only one country (Slovak Republic) requires IOHs to undertake continuing training but does not require IOHs to have any form of previous work experience.

Some countries set out the minimum number of training hours in a defined period, such as Estonia (200 hours every five years), Latvia (at least 50 hours every two years), Lithuania (24 hours per year) and Moldova (30 hours per year). In the Slovak Republic IOHs must obtain a minimum of 60 credits every two years. The Leiden University Report suggests that in any event an IOH should on an annual basis take sufficient training in insolvency related matters organised or endorsed by the national or regional professional association in order to maintain

professional knowledge and skills at the required level.⁴⁷ The report cites the UK, which imposes a minimum of 36 hours of continuing training per year on licensed IOHs and Germany, where an annual minimum of 30 hours training per year is required.

Twelve countries surveyed do not prescribe any form of continuing training for IOHs. Continuing training is an important long-term goal for all insolvency office holder systems. It may yet become a compulsory component of the regulatory framework for IOHs in many of these countries.

4.4. Appointment of the insolvency office holder

The IOH appointed to an insolvency case may have a decisive impact on the way in which the case is managed. Consequently, there should be a clear and transparent system established by law for the appointment of the IOH, which properly balances stakeholder interests and enables the matching of an IOH to an insolvency case. Among the most important stakeholders are creditors, given their financial exposure to the debtor and reliance on the outcome of the insolvency process to minimise or reduce that exposure or risk. It stands to reason that creditors should have the ability to influence the appointment of a particular IOH in most cases.

The system for IOH appointment may vary according to the type of insolvency proceedings and whether these are liquidation or reorganisation focused. Based on the trends observed in the countries surveyed, IOHs are typically appointed by either: (i) the court only; (ii) the court with creditor input; (iii) the court at the direction of the creditors; (iv) randomly or (v) at the direction of a governmental body.

Remarkably few countries allow parties to recommend or elect an IOH candidate at the time of presentation of the insolvency petition, and in most cases an initial IOH will be appointed. Countries that

⁴⁷ European Principles and Best Practices for Insolvency Office Holders, Report III: The Statement of Principles and Best Practices for Insolvency Office Holders in Europe, Best practice 2.1.

allow creditors to participate in some form in the determination of the IOH generally require creditors to wait until the first creditors' meeting or assembly.

Some insolvency law frameworks have sought to introduce a court-based automatic/random system for IOH appointment to address some of the difficulties associated with the appointment of IOHs by the court at its own discretion. The apparent aim of the automatic/random system is to reduce corruption and the potential for preferential treatment of certain IOHs through a theoretically "neutral" process.

Although there may be undoubtedly benefits from a corruption perspective with automatic or "next in the list" selection of the IOH, the real difficulty with such an approach is that it does not allow a particular IOH to be selected for a particular insolvency case on the basis of relevant experience and skills. It can therefore be a rather blunt instrument. In Slovenia specific exemptions to the automatic appointment system have been introduced to enable the court to appoint a specific IOH directly in insolvency proceedings involving medium and large-sized enterprises.

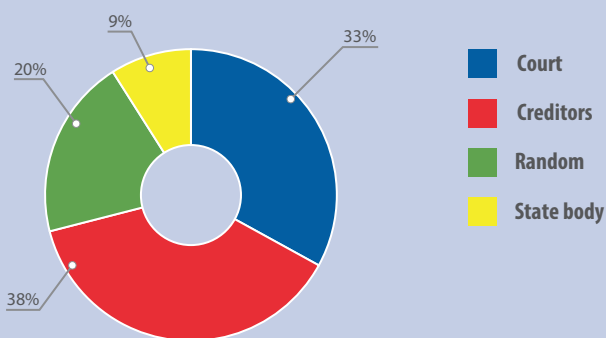
Randomised selection of the IOH also does not encourage competition within the profession,

since the appointment is made without regard to past performance. The same may also be true for insolvency systems which give a strong role to the court in determining the appointment of the IOH, without any stakeholder and especially creditor input. The court simply does not have the same prior knowledge of the debtor as have many creditors and takes no financial risk when it appoints the IOH. It is important for the development of the IOH profession in the long term to encourage competition and to allow areas of specialism to develop within the profession, such as dealing with debtors in different areas of business or industry.

As part of the assessment, creditors were asked: "Do you think that the IOH should be matched in accordance with his skills and/or experience with the particular case which he is appointed to administer?"⁴⁸ Among creditors there was unanimous support for this proposition in Albania, Croatia, FYR Macedonia, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Ukraine and Republic of Kosovo, with either 50 per cent or majority support for this proposition in remaining countries.

Regulators and legal practitioners were asked a slightly different question: "Do you think that creditors have sufficient influence over the appointment of the IOH?"⁴⁹ It is interesting to note that in Egypt and Morocco legal practitioners were unanimously of the opinion that creditors do not have sufficient influence, which reflects the reality of the existing appointment system in both countries where creditors are completely excluded from the decision-making process regarding the IOH appointment. In Belarus and the Slovak Republic there was unanimous consensus among legal practitioners that creditors do have sufficient influence (in Belarus, subject to reservations). In

Chart 23: How are insolvency office holders appointed?



Note: This pie chart indicates the percentage of countries surveyed in which the key player in the selection and nomination of insolvency office holders is the court, creditors, a random/electronic appointment system or a state body. Where there is more than one determining body in a particular country, for instance where a different appointment system applies according to the type of procedure, that country's results were split and reflected in each relevant category.

Source: 2012-14 EBRD insolvency office holder assessment.

48 Selected assessment countries only: Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine.

49 Selected assessment countries only: Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine. Question 53 in the legal practitioners' questionnaire and Question 58 in the regulators' questionnaire.

Table 13: Appointment of insolvency office holders

Countries	Random / electronic	Court	Creditors	Other
Albania		● ¹	✓ ²	
Belarus		✓	● ³	
Bosnia and Herzegovina		✓	● ⁴	
Bulgaria		● ⁵	✓ ⁶	
Croatia		● (bankruptcy proceedings) ⁷	✓ (bankruptcy proceedings only) ⁸	✓ (pre-bankruptcy settlement proceedings) ⁹
Egypt		✓ ¹⁰	● ¹¹	
Estonia		● ¹²	✓ ¹³	
FYR Macedonia	✓ ¹⁴		✓ ¹⁵	
Georgia			✓ ¹⁶	
Hungary	✓ ¹⁷		● ¹⁸	
Kazakhstan			● ¹⁹	✓ ²⁰
Kosovo		✓ ²¹	● ²²	
Kyrgyz Republic			✓ ²³	✓ ²⁴
Latvia	● ²⁵	● ²⁶	✓ (Legal Protection Proceedings only) ²⁷	✓ ²⁸

1 The court appoints the initial IOH at its own discretion.

2 Creditors may propose replacement of the IOH at the first meeting of creditors. The court can only refuse to appoint a replacement if the person is "unqualified".

3 Creditors and other stakeholders including the debtor can make recommendations to the court; nevertheless, the IOH appointment is at the court's discretion and there is limited scope to propose replacement of the IOH.

4 The court decides on appointment of the interim (if applicable) and permanent IOH. Creditors have limited rights to request the court to replace the IOH.

5 In most cases the court will appoint the IOH nominated by the petitioning creditor.

6 Creditors elect the permanent IOH at the first creditors' assembly.

7 The court appoints the initial IOH at its own discretion.

8 Creditors are entitled to elect a replacement IOH at the assembly of creditors and the court shall appoint the IOH unless he does not meet the legal requirements.

9 The FINA settlement committee, consisting of three members appointed by the Ministry of Finance, is responsible for appointing a pre-bankruptcy trustee.

10 The court appoints the IOH at its own discretion.

11 Creditors may propose the replacement of the IOH.

12 The court approves the interim trustee at its own discretion.

13 The creditors approve the court appointed IOH or propose his replacement at the first general meeting of creditors.

14 Random selection applies where no creditor proposes an IOH candidate and/or the insolvency petition is not brought by a creditor.

15 The IOH is appointed by the creditors if the insolvency proceeding was initiated by creditors or, by the court through a random selection process (in which case, the creditors may propose the

replacement of the IOH).

16 A bankruptcy manager should be appointed by a majority by value of creditors at the creditors' meeting within three days of the court ruling. If there are no nominations, the court will appoint a state body, the NBE, to act as bankruptcy manager (in addition to its capacity as trustee).

17 The IOH is appointed by the court through a random electronic system.

18 Creditors may, in very limited certain circumstances, propose the replacement of the IOH, for example, material breach by the IOH.

19 Creditors may propose an IOH candidate to the Tax Committee but the Tax Committee is not obliged to follow such recommendation.

20 IOHs are appointed in order from the list by the Tax Committee.

21 The court appoints the initial IOH at its discretion.

22 Creditors holding 60 or more per cent of the total outstanding debt of the debtor, whether secured or unsecured, may, at any time, submit a written request to the court to replace the original administrator with an administrator of their own selection, provided that the administrator otherwise fulfils the requirements of set forth by law.

23 Creditors (and the debtor) have the right to nominate IOH candidates. In extra-judicial special administration and rehabilitation proceedings IOHs are appointed by the meeting of creditors.

24 IOHs are appointed by the Kyrgyz Department, although the debtor and creditors may nominate candidates.

25 Recommendations by the Latvian Insolvency Administration are made on an electronic, randomised basis.

26 The court is entitled to appoint the IOH, on recommendations of the Latvian Insolvency Administration in Insolvency Proceedings and in Legal Protection Proceedings only if the debtor does not make an election.

27 A majority of creditors must approve the debtor selected IOH candidate in Legal Protection Proceedings.

Countries	Random / electronic	Court	Creditors	Other
Lithuania		✓ ²⁹	● ³⁰	
Moldova		● ³¹	✓ ³²	
Montenegro		✓ ³³	● ³⁴	
Morocco		✓ ³⁵	● ³⁶	
Poland		✓	● ³⁷	
Romania		● ³⁸	✓ ³⁹	
Russia		● ⁴⁰	✓ ⁴¹	
Serbia	✓		● ⁴²	
Slovak Republic	✓		● ⁴³	
Slovenia	✓ ⁴⁴	● ⁴⁵		
Tunisia		✓	● ⁴⁶	
Turkey		● (postponement of bankruptcy only) ⁴⁷	✓ ⁴⁸	
Ukraine	✓	● ⁴⁹	● ⁵⁰	

Note: This table details those bodies that play a key role in the appointment of insolvency office holders. The main appointing body is indicated by the symbol “✓”. Other bodies that play a supplementary role in the appointment of insolvency office holders are indicated by the symbol “●”.

Source: 2012-14 EBRD insolvency office holder assessment.

The court appoints the IOH on the nomination of the creditors or the debtor (depending on the type of procedure).

28 The Latvian Insolvency Administration makes recommendations to the court for the appointment of the IOH in insolvency proceedings and (subject to there being no prior nomination by the debtor) also in legal protection proceedings.

29 The court appoints the IOH at its discretion, which may take into account the proposals of the parties including creditors, the debtor’s management and shareholders.

30 Creditors can propose an IOH candidate to the court and can request his replacement (based on the support of over 50 per cent of creditors by value).

31 The court appoints the IOH, taking into account the candidature proposed by the party who has filed the insolvency petition.

32 Creditors may nominate the IOH candidate (if the procedure was initiated by the creditors) or propose his replacement if selected by the debtor and later in the proceedings. In restructuring, creditors may appoint the IOH, to be approved by the court.

33 The court appoints the IOH at its own discretion from its official list.

34 Creditors with over 60 per cent of claims may propose the replacement of an IOH (but the final decision is up to judge) and can otherwise appeal in limited circumstances. In practice creditors’ influence is limited.

35 Court appoints the IOH at its discretion.

36 Creditors may propose the replacement of the IOH.

37 At the first assembly of creditors, creditors can suggest an IOH candidate to be appointed by the court, but the Court is not bound to follow such suggestion.

38 The IOH is appointed on a provisional basis by the court and is confirmed or replaced by the assembly of creditors acting by majority.

39 In judicial liquidation and reorganisation proceedings, a majority of creditors can select the IOH at the first creditors’ assembly.

40 The court must confirm any decision regarding appointment of the IOH by creditors.

41 A creditor may include a nomination of an IOH, or an SRO from whose membership the IOH should be appointed and the creditors’ meeting has powers to nominate the IOH.

42 Three-quarters of the creditors’ committee may request the court to replace the IOH, even in the absence of grounds for dismissal and the court must comply with such request. It does not appear to occur often in practice.

43 Creditors are entitled to replace the randomly selected IOH by majority vote at the first assembly of creditors.

44 The randomised appointment system is subject to certain exceptions in compulsory settlement for medium and large-sized companies.

45 In compulsory settlement proceedings of medium and large-sized companies the court is entitled to appoint the IOH at its own discretion.

46 Creditors have limited rights to request the replacement of the IOH.

47 The court appoints the members of the bankruptcy administration from a pool of nominees proposed by creditors; and at its sole discretion the trustee in the postponement of bankruptcy.

48 Creditors may nominate the IOH candidates.

49 The court is entitled to appoint the IOH at its own discretion, if the automatic selected IOH does not take up the appointment.

50 Creditors may propose the replacement of the IOH, or (where the automatic selection is not applicable) nominate the IOH on a non-binding basis.

contrast, regulators in Albania, Belarus, Croatia and Estonia were of the unanimous opinion that creditors did not have sufficient influence (including with reservations).

There is a strong correlation between the appointment system and creditors' rights in the insolvency procedure in general, and more specifically, how and to what extent creditors are regarded as "key players" in insolvency proceedings. In those countries where creditors have a determining or at least influential role in the selection of IOHs, creditors' approval is typically needed for the IOH to carry out certain activities, including the sale of debtor's assets. An exception is Georgia where all sales in insolvency are carried out through the National Bureau of Enforcement (NBE) (a state body). The other significant indicator of the relative rights of creditors in insolvency proceedings is whether they are addressees or otherwise recipients of the reports. Similarly to the powers regarding the sale of assets, all countries with creditor centred appointment systems also require creditors to receive the IOH's reports on a regular (monthly or quarterly) basis. The appointment system also has an interesting relationship with the remuneration system for IOHs. In all of those countries where a randomised appointment system is in place, there is a tariff/scale applicable for IOH remuneration.

As can be seen from the Chart 23, the court plays the key role in the appointment of the IOH in a third of the assessment countries, followed by creditors and then the randomised appointment system for IOHs.

Commentary to Table 13:

In Belarus, Bosnia and Herzegovina, Egypt, Morocco, Poland and Tunisia, the court is the main body responsible for appointing the IOH and creditors have limited rights to request the court to replace the IOH. In some countries, creditors must first establish some level of IOH misconduct or breach of duty. For example, in Belarus this includes careless or improper performance of IOH's duties, commission of an offence in the

course of performing the role of IOH activities and certain criminal measures or a court sentence being imposed on the IOH. In Morocco and Tunisia the court may dismiss the IOH if a complaint is made by creditors, but such dismissal is entirely at the court's discretion.

In Kosovo, Lithuania and Montenegro, where the court decides on the appointment of the IOH, creditors do not confirm or ratify the court's appointment, but have the right if acting by majority of 60 per cent by value subsequently to request the court to replace the IOH with a candidate of their choice (in Lithuania the required majority is 50 per cent). The court is then required to follow such request, provided that the replacement IOH meets all the necessary legal requirements. In Serbia 75 per cent of the members of the creditors committee (by number) can request the replacement of the IOH, who is appointed pursuant to the randomised selection process or, in limited cases, directly by the court.

In Albania, Bulgaria, Croatia (bankruptcy proceedings only), Estonia and Romania, the court has a more limited role in respect of appointment of the IOH. The court appoints an initial IOH, but a permanent IOH is then selected by creditors acting by majority at their first meeting.⁵⁰ In Albania and Estonia, the insolvency legislation provides that the court may only refuse such replacement if the IOH does not meet the statutory legal requirements. However, as experience in Germany has demonstrated, appointment of an initial IOH by the court may often reduce the likelihood of the appointment of a replacement IOH by creditors at a later stage in the proceedings.⁵¹ In some cases replacement of an IOH candidate can lead to additional time and cost for insolvency stakeholders. In Kazakhstan it is not creditors or

50 Many other countries, such as Bosnia and Herzegovina, also envisage the appointment of an IOH on an interim basis as a protective measure to preserve the bankruptcy estate.

51 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.

the court but the so-called Tax Committee under the Ministry of Finance who is responsible for appointing the permanent IOH (the temporary IOH is appointed by the court).

In a minority of three countries (FYR Macedonia, Moldova and Russia), the IOH is appointed by the court following the recommendations of creditors (or, in the case of Moldova, the debtor as applicable) at the time of the insolvency petition.⁵² In Latvia the court will appoint the debtor's chosen IOH in legal protection proceedings provided that such candidate has the majority support of creditors but in insolvency proceedings it is the Latvian Insolvency Administration (on the basis of a randomised electronic system) that makes the recommendation on IOH appointment to the court. Creditors in Latvia therefore have no "direct" right of representation in the selection of the IOH in legal protection proceedings and no right to make a representation in insolvency proceedings. 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 any of such representations.

Apart from the court and creditors, a small number of insolvency systems in the 27 countries surveyed enable the debtor to participate in the selection of the IOH. In Belarus and the Kyrgyz Republic, the debtor as well as creditors can make recommendations for the initial appointment of the IOH. The debtor may have a greater role in the appointment of an IOH in a procedure of a reorganisation nature, particularly where this is commenced in anticipation of financial difficulties, rather than on actual insolvency. This is the case in conciliation proceedings in Romania, where the debtor decides on the court appointed IOH and also in Latvia, where the debtor can recommend a particular IOH candidate to the court in legal protection proceedings, subject to first having received majority creditor approval.

⁵² In Moldova, creditors in Moldova can request the replacement of the debtor-appointed IOH and where there is no proposal by either creditors or the debtor the court will make the selection of the IOH at random.

In under a quarter (six) of the assessment countries (FYR Macedonia, Hungary, Serbia, Slovak Republic, Slovenia and Ukraine) an automatic appointment system exists for the selection of the IOH.⁵³ In the case of FYR Macedonia, such system was introduced in January 2014. Prior to this time IOHs were selected at the discretion of the court, a process which encountered strong criticism. Randomised selection appears to be becoming more popular. From 2015 the existing IOH appointment system in Lithuania will be replaced by a system of random selection. In a few countries the appointment process is not officially randomised, but the end result is similar. In Egypt each Preliminary Court has its own list of IOHs and appoints the IOH who is next on the list. In Kazakhstan, IOHs are appointed as the next in the order from the list in bankruptcy by the Tax Committee.

4.5. Code of conduct for insolvency office holders

In addition to the duties required of IOHs by primary insolvency legislation, it is widely accepted that IOHs should be subject to certain professional standards and ethical rules in the conduct of their activities. The EBRD Insolvency Office Holder Principles states that: "Standards are the most useful way of both establishing and measuring the level of performance expected of office holders."⁵⁴ The Leiden University Report goes further, arguing that: "Professional standards are at the core of the IOH's capability to perform his/her duties with a satisfactory result for all parties involved." (Emphasis added.)⁵⁵

For the purpose of the assessment, a distinction was drawn between "professional standards", by which it

⁵³ This is operated in all cases by the court, however given the court's lack of active involvement a distinction between those cases where the court is able to exercise its own discretion in appointing the IOH.

⁵⁴ See Principle 6, www.ebrd.com/downloads/legal/insolvency/ioh_principles.pdf (last accessed on 30 September 2014).

⁵⁵ See the Leiden University Report, paragraph 23 comments to principle 2.

is understood those standards that guide the IOH in the administration of tasks in insolvency proceedings, such as the sale by the IOH of assets belonging to the insolvency estate and “ethical rules”, being the general moral principles that an IOH is expected to follow in his professional life. These include such principles as impartiality, objectivity and probity. The division between “professional standards” and “ethical rules” is not always wholly clear. For example, in Hungary the code of ethics for members of the professional IOH Association makes reference to statutory obligations of IOHs and some of its ethical guidance relates to professional standards, including sale of the debtor’s property.⁵⁶ Article 12 of the code consequently provides that: “The liquidator, in the course of selling the debtor company’s assets, shall refrain from any unlawful conduct, disclosure of any information that adversely and unlawfully affect the achievement of the highest sale price or the fair market competition.”⁵⁷

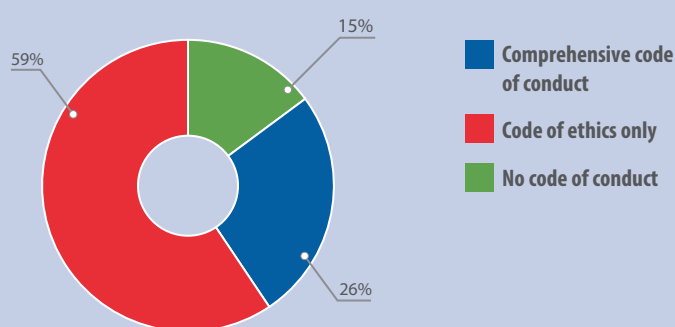
In some countries provisions relating to the professional standards and ethical behaviour expected of IOHs may be found in primary legislation and other more detailed provisions included in secondary legislation. Alternatively, these may be articulated as a code for the IOH profession.⁵⁸ Whatever approach is taken, it is important that professional standards and ethics are recorded in written form and are binding on all members of the IOH profession. In this way they can serve as a guide for IOHs in the conduct of their professional activities and a benchmark for satisfactory performance. Compliance with code of conduct rules should be included within the scope of regular monitoring of the IOH profession and a clear link should be established between breach of a code of conduct provision and sanctions for misconduct.

The existence and content of any code of conduct rules may provide a useful indication of the relative

state of development of the IOH profession in a particular jurisdiction. There is a strong correlation between code of conduct rules and the existence of professional associations of IOHs. Out of the 11 countries where a separate set of professional rules is applicable, 10 countries have professional associations. Albania is the only country where a professional code exists without an association and its existence is due to implementing secondary legislation. Therefore there appears to be a clear link between professional associations and the adoption of conduct related provisions for the IOH profession. Professional association may therefore enhance not only the professional quality of IOHs through continuing training, but also the professional and ethical conduct of IOH professionals. This logic is not, however, of universal application since there are a number of countries (Belarus, Bosnia and Herzegovina, Moldova, the Slovak Republic and Ukraine) where a professional association exists but there are no work standards or ethics for the profession.

Countries surveyed vary with respect to the level and extent of regulation relating to code of conduct rules for IOHs. Distinctions may nonetheless be drawn among the countries based on whether: (i) there is a comprehensive code of conduct encompassing both professional standards and ethical rules (in some cases, these are documented separately); and

Chart 24: Code of conduct for insolvency office holders



Note: This pie chart indicates the percentage of countries surveyed in which a comprehensive code of conduct encompassing both professional and ethical rules for insolvency office holders exists, those countries where only a code of ethics exists and countries which have no official professional and/or ethical rules for the insolvency office holder profession.

Source: 2012-14 EBRD insolvency office holder assessment.

56 Hungarian Code of Ethics, Part III (Guidelines), Article 5 www.foe.hu/index.php?page=etikai-kodex (last accessed on 30 September 2014).

57 Hungarian Code of Ethics www.foe.hu/index.php?page=etikai-kodex (last accessed on 30 September 2014).

58 The Leiden University Report attempts to establish certain European wide principles of best practice for the profession.

Table 14: Code of conduct rules for insolvency office holders

Countries	Comprehensive professional standards and ethics	Code of ethics only	Binding
Albania	✓ ¹		✓
Belarus ²			
Bosnia and Herzegovina			
Bulgaria			
Croatia			
Egypt			
Estonia		✓	✓
FYR Macedonia	✓ ³		✓
Georgia ⁴			
Hungary		✓	● ⁵
Kazakhstan ⁶			
Kosovo ⁷			
Kyrgyz Republic ⁸			
Latvia		✓	● ⁹
Lithuania		✓	✓
Moldova ¹⁰			
Montenegro ¹¹			
Morocco			
Poland		✓	● ¹²
Romania		✓	✓
Russia ¹³	✓		● ¹⁴
Serbia	✓ ¹⁵		✓
Slovak Republic			
Slovenia		✓	✓
Tunisia ¹⁶			
Turkey			
Ukraine ¹⁷			

Note: This table reveals those countries, marked with a symbol "✓", where a comprehensive professional standards and ethics or a code of ethics applies to insolvency office holders. The binding nature of any such professional/ethical rules is also indicated by the symbol "✓". In cases where there are reservations as to the binding nature of such rules (such as where the rules are not binding on all insolvency office holders) these reservations are indicated with the symbol "●".

Source: 2012-14 EBRD insolvency office holder assessment.

- 1 Separate acts for professional standards and ethical rules.
- 2 Conduct related provisions are found in other pieces of legislation.
- 3 Separate acts for professional standards and ethical rules.
- 4 Conduct related provisions are found in other pieces of legislation.
- 5 Binding on the members of the Association.
- 6 Conduct related provisions are found in other pieces of legislation.
- 7 Conduct related provisions are found in other pieces of legislation.
- 8 Conduct related provisions are found in other pieces of legislation.
- 9 Binding only on the members of the Association of Administrators (membership is voluntary).
- 10 Conduct related provisions are found in other pieces of legislation.
- 11 Conduct related provisions are found in other pieces of legislation.
- 12 Applicable to the members of the voluntary association.
- 13 Some form of standards are for IOH professional activities are adopted at union-level.
- 14 Only on those members of the Union or in relation to SRO professional standards/ rules, those members of the SRO.
- 15 Separate acts for professional standards and ethical rules.
- 16 IOHs are required to swear an oath.
- 17 Conduct related provisions are found in other pieces of legislation.

(ii) whether these standards and/or rules are binding on all IOHs.

As Chart 24 testifies, the majority (59 per cent) of the 27 countries surveyed have no code of work standards or ethics for IOHs. A minority of 26 per cent of countries only have a code of ethical rules. Only a small minority of countries (15 per cent) have developed what can be considered as a comprehensive ethical and professional code of conduct for IOHs. In aggregate, therefore, 41 per cent of countries have some form of code of conduct rules for IOHs.

Commentary to Table 14:

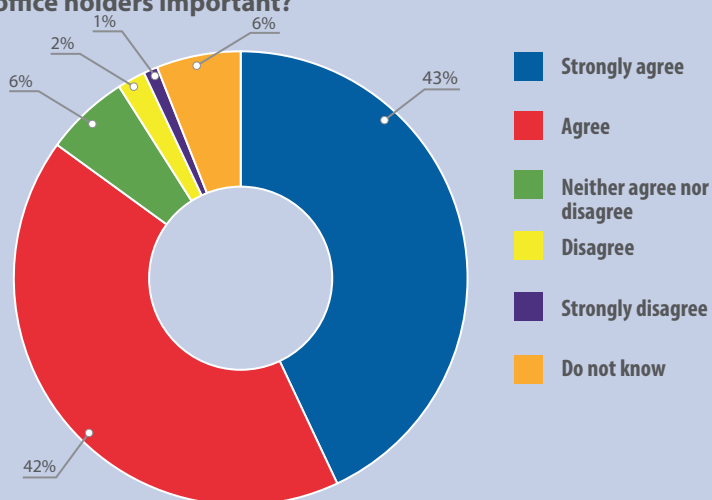
Only four countries (Albania, FYR Macedonia, Serbia and Russia) have comprehensive professional standards and ethical rules for the IOH profession. All of these countries have some form of professional association of IOHs; however, in Albania, FYR Macedonia and Serbia, the binding nature of the code of conduct rules is achieved by means of national (secondary) legislation. In Russia professional standards combining professional and ethical rules have been adopted by the Union of SROs, but are only binding on those IOHs who belong to SROs, which in turn belong to the union. It is a legal requirement in Russia for SROs of IOHs to establish professional standards for their members. SROs which are not members of the union are likely to have their own professional standards.

In seven jurisdictions (Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovenia), a code of ethics has been adopted but this does not contain (detailed) professional standards. In Estonia, Lithuania, Romania and Slovenia the code of ethics is binding on all practising IOHs. In Romania and Slovenia this is achieved through the rules of membership of the central IOH association, which is compulsory for all IOHs. In Estonia the code of ethics has not been implemented into legislation, but the Bailiff's Act provides that the code adopted by the Estonian Chamber shall be compulsory for trustees and any amendments should be coordinated with the Ministry of Justice before its adoption. In Lithuania the position is similar to Estonia. The Bankruptcy Act stipulates that the IOH is required to: "Comply

with the legal acts and requirements set in the Code of Conduct for Bankruptcy and Restructuring Administrators," whereas the Restructuring Act provides that a: "Natural person may not be regarded to be of sufficiently good repute if he does not comply with the requirements for administrators laid down in the Code of Conduct for Bankruptcy and Restructuring Administrators." This is in contrast to Hungary, Poland and Latvia, where it is only binding on those IOHs who are members of the voluntary professional association of IOH. It has not been possible to verify the extensiveness of membership of these associations by IOHs; however, the number of IOHs who are members of, for example, the Latvian professional association, is reportedly very high.

In the majority (16) of the countries surveyed, no regulation or code in matters of professional standards and/or ethical rules exists for the IOH profession. Nevertheless, professional conduct provisions may exist for some of these countries (and other assessment countries) to a varying extent, in other pieces of legislation. This is reportedly the case in Belarus, Croatia, Kazakhstan, Kyrgyz Republic and Turkey. In the Kyrgyz Republic the Rules of Conducting Bankruptcy Proceedings provides guidance for professional conduct. Some countries

Chart 25: Public perception: Is a code of conduct for insolvency office holders important?



Note: This pie chart indicates the percentage of respondents that strongly agree, agree, neither agree nor disagree, disagree or strongly disagree with the statement that there should be a clear and publicly available code of conduct in their countries.

Source: 2012-14 EBRD insolvency office holder assessment.

Table 15: Conduct rules for the insolvency office holder profession

Countries	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Do not know
Albania	3	7	2	2		1
*Belarus	4	3				1
*Bosnia and Herzegovina	6					
*Bulgaria	6	6				1
*Croatia	10		1			1
*Egypt	3	3				
Estonia	1	6	2			
FYR Macedonia	3	5	1			
*Georgia	3	8				
Hungary	5	2				
*Kazakhstan	2	2				1
*Kosovo	3	1				2
*Kyrgyz Republic	2	4	1			
Latvia	8	7	4	1		1
Lithuania	4	5	2			
*Moldova	5	2				
*Montenegro	4	4				
*Morocco	4				1	
Poland	1	7				
Romania	6	3		2		
Russia	6	7	1		1	4
Serbia	4	11		1	1	1
*Slovak Republic	3	2	1			
Slovenia	3	7				
*Tunisia	1				1	1
*Turkey	2	4				
*Ukraine	8	2				
Total (257):	110	108	15	6	4	14

Note: This table contains the responses on a country by country basis to the statement that: "There should be a clear and publicly available code of conduct for insolvency office holders in my country."

Source: 2012-14 EBRD insolvency office holder assessment.

which do not have professional conduct rules for IOHs, such as Tunisia, require the IOH to swear an oath before admission to the profession. Oaths are also required in other countries with professional conduct rules, such as Poland and Romania.⁵⁹

Respondents were asked whether there should be a clear and publicly available code of conduct for IOHs in their country.⁶⁰ The chart below aggregates their responses and extent of agreement or disagreement with the statement. It reveals a widespread agreement among 85 per cent of total respondents that there should be a code of conduct for IOHs, with only a small number (three per cent) of respondents disagreeing with this statement.

The responses on a country by country basis to the statement that: “There should be a clear and publicly available code of conduct for IOHs in my country,” are contained in Table 15 below. Those countries without any code of conduct rules (other than provisions contained in the main insolvency laws and/or other primary legislation) are identified by an asterix.

Commentary to Table 15:

There is a high level of agreement among respondents from all 16 countries which do not have a set of conduct rules for the IOH profession that there should be a clear and publicly available code of conduct for IOHs. Among these countries, there is a notably strong level of agreement with this statement in Bosnia and Herzegovina, Croatia, Moldova, Morocco and Ukraine.

4.6. Legal powers and/or duties

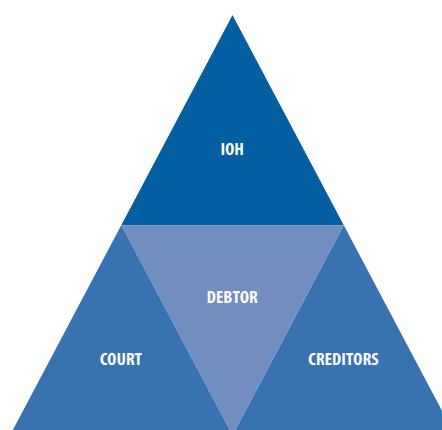
The assessment sought to examine whether IOHs have sufficient legal powers and duties to carry out their professional activities in each of the 27 jurisdictions surveyed and therefore perform to

⁵⁹ Approved by the Decree of the Government No. 865 of 30 December 1998.

⁶⁰ Question 56.a in the pilot assessment questionnaire; Question 59.a in the roll-out assessment Legal Professional Questionnaire, Question 67.a in the roll-out assessment Regulator questionnaire and Question 43.a in the roll-out assessment Creditor Questionnaire.

their maximum potential in an insolvency case. The balance of powers and duties between the IOH and other stakeholders, including creditors and the court may determine the efficiency of an insolvency law regime. This reasoning is articulated in the University of Nottingham report on the pilot assessment: “An effective regime will therefore seek to achieve an efficient allocation of decision-making power as between the insolvency office holder and the insolvency stakeholders, including in this context the court. It will recognise that, on the assumption that insolvency office holders are adequately trained and their actions subject to adequate scrutiny *ex post*, they should be granted a certain degree of autonomy and independence.”⁶¹

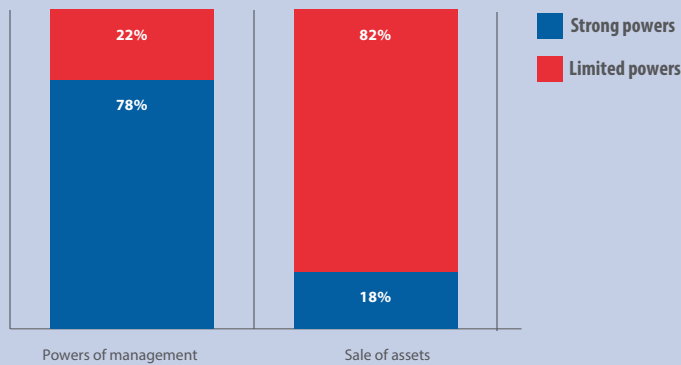
The division of powers among key players in insolvency proceedings, namely the court, the IOH and creditors may be illustrated by a triangle of powers. In jurisdictions where the court leads and directs the proceeding (such as in Egypt, Morocco and Tunisia) creditors typically have weak powers, while in countries where the creditors have a determining influence over management of the most significant aspects of the insolvency case by the IOH and take the lead in selecting the IOH, the courts tend to play a more supervisory role (such as in Albania, Estonia and FYR Macedonia).



In some cases, the powers and duties of an IOH are set out in separate pieces of legislation. Out of the countries surveyed, Croatia, Estonia, Lithuania and Tunisia each have separate laws for insolvency procedures of a reorganisation nature. In the

⁶¹ See the University of Nottingham report at page 12. papers.ssrn.com/sol3/papers.cfm?abstract_id=2351726

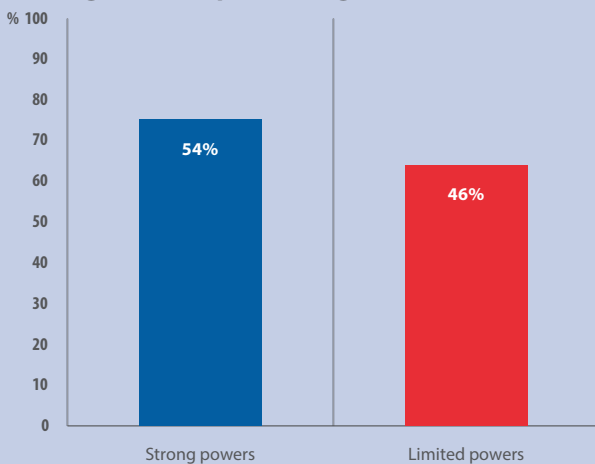
Chart 26: Powers of insolvency office holders in liquidation proceedings



Note: This bar chart indicates the breakdown of those countries where insolvency office holders have strong or limited powers to manage the debtor's business in liquidation proceedings and to sell the assets belonging to the debtor's estate.

Source: 2012-14 EBRD insolvency office holder assessment.

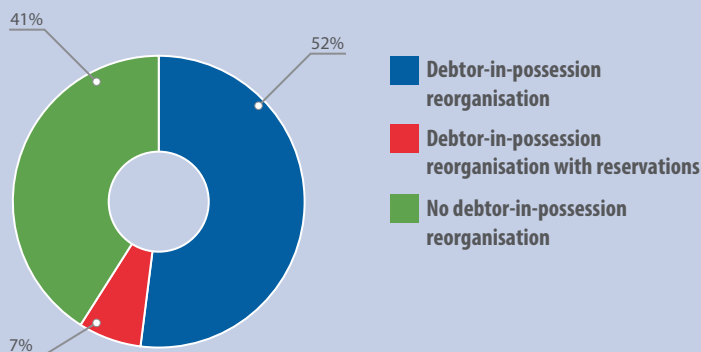
Chart 27: Management powers of insolvency office holders in reorganisation proceedings



Note: This pie chart indicates the breakdown of countries where insolvency office holders have strong or limited powers to manage the debtor's business in reorganisation. Strong powers are characterised by the displacement of existing debtor management in favour of the insolvency office holder.

Source: 2012-14 EBRD insolvency office holder assessment.

Chart 28: Existence of debtor-in-possession reorganisation proceedings



Note: This pie chart indicates the breakdown of countries where a debtor-in-possession reorganisation procedure exists (with reservations). Such reservations may include those countries where the powers of management are or may be shared between the insolvency office holder and the debtor's management.

Source: 2012-14 EBRD insolvency office holder assessment.

remaining assessment countries, liquidation and reorganisation procedures are consolidated into one piece of legislation (and, in respect of Egypt and Morocco, a single chapter of the commercial code), which governs the powers and duties of IOHs.

Typically an IOH's powers and duties are defined by the type of insolvency procedure and whether it is aimed primarily at liquidation or reorganisation. Over half (52 per cent) of assessment countries have a form of debtor-in-possession reorganisation procedure, in which the IOH typically only plays a supervisory role, overseeing the decisions taken by existing management. In some jurisdictions, such as Georgia, the IOH's powers and duties in reorganisation may be defined on a case-by-case basis by the court and/or creditors. However, in liquidation, as a general rule, the powers of management are typically displaced in favour of the IOH and the emphasis is on sale of the debtor's estate by the IOH. Management powers of an IOH are therefore often stronger in liquidation than in reorganisation proceedings. This explains the reference in Charts 26 and 27 respectively to IOHs having strong powers of management in liquidation in 78 per cent of countries, and only strong powers of management in reorganisation-type proceedings in 54 per cent of countries surveyed. However, the power of sale of the IOH in liquidation proceedings is typically more limited than the power of management, as illustrated in Chart 27. This is because various prior court and/or creditor approvals are often required before the liquidator is able to sell the debtor's assets.

Interestingly, there were significant differences in the level of autonomy given to IOHs among the countries surveyed, in other words the extent to which the IOHs could exercise statutory powers and/or duties freely, without prior consultation or authorisation. In some countries (for example, Poland and Russia), it is often necessary for the IOH to secure court permission prior to taking a specific action, while other countries (for example, Latvia) enable the IOH to be more autonomous in the performance of his role. Even in some countries where IOH management powers in insolvency are considered

Table 16: Powers of Insolvency Office Holders in liquidation proceedings

Countries	Powers of management (excluding sale of assets)	Powers of sale of assets ¹
Albania	✓	x (subject to creditors' committee approval)
Belarus	✓	x (in accordance with liquidation plan to be adopted by creditors)
Bosnia and Herzegovina	✓	x (subject to creditor approval)
Bulgaria	✓	x (in accordance with creditor and court decisions)
Croatia	✓	x (compliance with creditors' decisions, and subject to limited extent, court decisions)
Egypt	x (in the majority of cases, subject to court approval)	x (subject to court approval, creditors may object to the sale conditions list)
Estonia	✓	x (subject to creditor or court approval in certain cases)
FYR Macedonia	✓	x (subject to creditor approval, in case of no creditors' decision, court approval is needed)
Georgia	✓ (powers of private IOHs are subject to statutory provisions and agreement between the parties)	x (NBE is responsible for the sale of assets)
Hungary	✓	✓ (in liquidation, creditors may request information)
Kazakhstan	✓	x (subject to adoption of the plan on sale of assets by creditors) ²
Kosovo	✓	x (court approval)
Kyrgyz Republic	✓	✓ (any real estate asset sold by the IOH must be valued by an independent expert)
Latvia	✓	✓ (creditors may object to plan of sale. If the IOH does not heed the objection, creditors may appeal before the Latvian Insolvency Administration)
Lithuania	✓	✓ (potentially subject to court approval, on the request of creditors)
Moldova	x (approval from creditors and the court at all the main stages of the proceedings)	x (subject to creditor or, if no creditor approval is reached, court approval)
Montenegro	✓	x (subject to court and creditor approval)
Morocco	x (strong court oversight)	x (subject to court oversight)
Poland	x (strong court oversight)	x (subject to judge commissioner supervision for an auction and creditor or judge commissioner approval for private sale of assets) ³
Romania	✓	x (subject to approval by creditors' assembly and under the supervision of the insolvency judge) ⁴
Russia	✓	x (subject to creditor approval, if no creditors' approval is obtain, subject to court approval)
Serbia	✓	x (subject to creditors' committee approval for direct sales and sale of the debtor as a legal entity) ⁵
Slovak Republic	✓	x (subject to creditor approval, or in certain cases, court approval)
Slovenia	x (in bankruptcy proceedings approval from the creditors and the court at all the main stages of the proceedings)	x (subject to court approval or if the purchase price is less than 50 per cent of the estimated value, subject to further creditor consent)
Tunisia	x (close court oversight)	x (subject to court approval)
Turkey	✓	x (subject to creditor approval)
Ukraine	✓ (with creditors' oversight)	✓ (the IOH may elect to share his powers with creditors by forming a "liquidation committee" to oversee sale of the debtor's property)

Note: This table illustrates whether insolvency office holders exercise full powers of debtor's management in liquidation (marked with symbol "✓") and whether they have unfettered powers of sale of assets belonging to the debtor's estate in liquidation (marked with the symbol "✓"). Where either management powers or powers of sale are limited for example, by the need for prior consent(s), this is marked by the symbol "x". It does not consider the powers of sale of the insolvency office holder in respect of secured assets.

Source: 2012-14 EBRD insolvency office holder assessment.

- 1 Powers of sale in this table focus on the sale of unsecured assets only. Separate consents may be needed for sale of any secured assets by the IOH.
- 2 Approval not needed for an urgent sale of perishable goods.
- 3 No approval is needed in respect of perishable goods.
- 4 In emergency cases in order to preserve the debtor's estate and when there is no liquidity, the IOH may sell the debtor's assets (preferably assets without any preference rights) on an urgent basis by public action, starting with a price established by an independent valuation, without the need for prior creditor approval.
- 5 A decision by the insolvency judge may be required for the most favourable method of sale or in respect of property claimed by one or more secured and pledge creditors. The insolvency judge also rules on any complaints regarding the sale.

to be strong there may be restrictions on an IOH's ability to exercise "higher value" decision-making. In Montenegro, for example, IOHs cannot decide to enter into transactions such as taking a loan and procurement of high value equipment, without first obtaining the judge's prior consent.

Creditors to a varying extent across the various jurisdictions also limit the powers of IOHs to act independently. 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. Both examples cited in Montenegro and Serbia are in contrast to the UK, 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 therefore over the property of the company."⁶²

Since the concept of "legal powers and duties" is very broad, the assessment focused on the following principal powers and duties found in most insolvency systems: (i) powers and duties of management and sale of the debtor's property; (ii) powers and duties of investigation and recovery of assets belonging to the debtor's estate; and (iii) reporting obligations. The information gathered over the course of the assessment provides a useful indication across the various jurisdictions of the extent to which the IOH is autonomous in the performance of his activities and an effective decision-maker. It also reveals the relative importance of the role of the IOH within a given insolvency system.

The role of the IOH should not be unduly restricted by requiring court (or as the case may be, creditor) approval in circumstances where IOH professional capacity is sufficiently developed for IOHs to be able to act independently, after proper consultation with stakeholders. At the same time, IOHs should be able to have easy access to the court where needed to obtain any directions on conduct of the case. Undue restrictions on the ability of an IOH to perform his duties may result in delays that could be

detrimental to insolvency stakeholders. Taking sale of the debtor's assets as an example, delays in the ability to conduct a sales process may prevent the IOH from being able to achieve the highest price possible for the sale.

Powers of IOHs in liquidation

Overall most limitations in the assessment countries are seen in respect of the IOH's powers of sale in liquidation. Subject to a few exceptions outlined below, prior court and/or creditor approval is typically required in 82 per cent of the assessment countries, therefore IOHs are considered to have limited powers of sale in liquidation.

Commentary to Table 16:

Powers of sale in this table focus on the sale of unsecured assets only. Separate consents may be needed for sale of any secured assets by the IOH. Other than Egypt, Moldova, Morocco, Poland, Slovenia and Tunisia, most countries' insolvency systems give IOHs full powers of management and control of the debtor in liquidation. Restrictions in Egypt, Morocco, Poland, Slovenia and Tunisia are due to the high level of court oversight, while in Moldova oversight is shared between the court and creditors. In respect of sale of assets in liquidation, IOHs only have strong and relatively unfettered powers of sale in five of the 27 countries surveyed: Hungary, the Kyrgyz Republic, Latvia, Lithuania and Ukraine. In Hungary, although classification of creditors' claims and proposed satisfaction of such claims by the IOH is subject to prior court approval, sale of the debtor's assets is not. However, the creditors' committee may request information regarding the sale from the IOH and may also request that the court appoints an independent evaluator to revise the value of the assets estimated by the IOH. The latter may provide the basis for challenge of the liquidator's valuation report. As a general rule, sale of the assets typically takes a form of a sale at public auction.

In the Kyrgyz Republic the IOH is under a general obligation to coordinate issues on the sale of the debtor's assets with the meeting of

⁶² See Schedule 1 of the Insolvency Act 1986, paragraph 3.

Table 17: Powers of management of insolvency office holders in reorganisation proceedings

Countries	Powers of management (excluding sale of assets)	Debtor-in-possession (reorganisation)
Albania	✓	x
Belarus	✓	x
Bosnia and Herzegovina	✓	x
Bulgaria	✓	x
Croatia	✓ (reorganisation under Insolvency Act) x (co-management with the debtor under Pre-Bankruptcy Settlement Act)	x (reorganisation under Insolvency Act) ✓ (reorganisation under Pre-Bankruptcy Settlement Act subject to supervision of IOH)
Egypt	x	x
Estonia	x (reorganisation under Reorganisation Act) ✓ (rehabilitation under Bankruptcy Act)	✓ (reorganisation under Reorganisation Act) x (rehabilitation under Bankruptcy Act)
FYR Macedonia	✓	x
Georgia	✓ (scope of private IOH powers subject to creditors' agreement)	● (powers of debtor's management and IOH are determined by creditors)
Hungary	x (in bankruptcy management powers are split)	✓ (debtor's management can continue to exercise management powers subject to IOH oversight and control)
Kazakhstan	✓ (in rehabilitation, subject to creditors' agreement)	● (creditors can decide whether the debtor's management powers continue or are assigned to the IOH)
Kosovo	✓	x
Kyrgyz Republic	✓ (in rehabilitation) ✓ (in financial restructuring)	x
Latvia	x	✓
Lithuania	x	✓
Moldova	x (approval from creditors and the court at all the main stages of the proceedings)	✓ (subject to supervision of IOH)
Montenegro	✓	x
Morocco	x (strong court oversight)	✓ (in amicable settlement or judicial rehabilitation, depending on the court's decision)
Poland	x (bankruptcy with an option of concluding an arrangement where debtor remains in possession) ✓ (bankruptcy with an option of concluding an arrangement where IOH replaces debtor's management)	✓ (bankruptcy with an option of concluding an arrangement where debtor remains in possession) x (bankruptcy with an option of concluding an arrangement where IOH replaces the management)
Romania	✓ (reorganisation) x (ad hoc mandate and composition)	x (reorganisation except for very limited cases) ✓ (ad hoc mandate and composition)
Russia	✓ (in external administration) x (in financial restoration and supervision)	x (in external administration) ✓ (in financial restoration and supervision)
Serbia	✓	x
Slovak Republic	x (restructuring)	✓ (restructuring)
Slovenia	x (compulsory settlement)	✓ (compulsory settlement)
Tunisia	x (in judicial settlement, the IOH's powers are decided by the Court)	✓ (in amicable settlement and judicial settlement) x (in bankruptcy proceedings involving a composition)
Turkey	x (in compromise and restructuring certain IOH management powers are limited and are of a supervisory nature)	✓ (in postponement of bankruptcy, compromise and restructuring)
Ukraine	✓ (with creditor oversight)	x

Note: This table illustrates whether insolvency office holders exercise the powers of the debtor's management in reorganisation (marked with symbol "✓") and whether reorganisation is a debtor-in-possession procedure in the countries assessed (marked with symbol "✓" if the country has at least one type of debtor-in-possession reorganisation procedure and marked with "x" if the country does not have a debtor-in-possession reorganisation procedure or if it has a reorganisation procedure, but this is not a debtor-in-possession procedure). The symbol "●" refers to some reservations regarding the debtor-in-possession nature of the reorganisation procedure, such as where this is determined by the parties on a case by case basis.

Source: 2012-14 EBRD insolvency office holder assessment.

creditors in respect of extra-judicial bankruptcy proceedings and with the court in respect of judicial bankruptcy proceedings. However, the IOH is not otherwise subject to any strict limitations regarding sale of the debtor's assets, other than that any real estate asset sold by the IOH must be valued by an independent expert unless otherwise agreed by the creditors. In Latvia creditors have the right to object to the plan of sale, and if the IOH does not heed any creditor objection, the plan of sale may be appealed before the Latvian Insolvency Administration. In Lithuania, court approval is not generally required, although creditors may request that the IOH obtains prior court approval for the sale of assets. In Ukraine the IOH may elect to share decision-making power with creditors by establishing a "liquidation committee" to oversee the sales process.

In seven countries (Albania, Belarus, Bosnia and Herzegovina, Kazakhstan, Romania, Serbia and Turkey) only creditor approval (and not court approval) is needed for the sale of assets by the IOH in liquidation. However in Serbia creditor approval is only needed for sales concluded by direct agreement and sale of the debtor as a legal entity. In Belarus and Kazakhstan, creditors must agree on a "plan" of sale. In 10 countries (Bulgaria, Croatia, Egypt, Kosovo, Montenegro, Morocco, Poland, Slovak Republic, Slovenia, and Tunisia) prior court approval is needed for the sale of assets by the IOH in liquidation, in some cases together with prior creditor approval. Nevertheless, in Kosovo, the IOH may sell any secured assets without the secured lenders' prior approval (within a certain period), provided that the liquidation proceedings were not preceded by reorganisation proceedings. In four countries (Estonia, FYR Macedonia, Moldova and Russia) prior court and/or creditor approval is required for the sale of assets by the IOH in liquidation. In Serbia, although prior court consent to sale of assets by the IOH is not directly required, the decision to proceed with compulsory liquidation of the debtor's estate is for the bankruptcy judge and the IOH must first notify the bankruptcy judge, the creditors' committee, the debtor and

any party with a security interest of the proposed sale in advance to enable any objections to be filed. Exceptionally in Georgia, sale of any of the debtor's assets is carried out by the state trustee only, the NBE.

Powers of IOHs in reorganisation

Insolvency procedures aimed at reorganisation often involve the continuation in some form of the debtor's business activities and sometimes allow the debtor and its management to remain in place. In contrast, liquidation procedures require, as a general rule, the divestment of the debtor's management's powers and the granting of management related powers in respect of the debtor to the IOH with a view, ultimately, to liquidation and sale of the debtor's business and assets.

Nevertheless, the powers of the IOH may also vary in reorganisation, depending on whether the debtor remains in charge of its business or not. A debtor-in-possession procedure where the debtor remains in control of the business (with possible assistance from an IOH) does not typically grant the IOH strong management powers. However, where the reorganisation procedure does not allow the debtor's management to retain control, the IOH as a rule replaces the existing management and plays a key role in management decisions.

While the legislation of some countries contemplates the sale of property in reorganisation proceedings, sales in reorganisation are likely to be governed by the terms of any reorganisation plan and therefore subject to the agreement of creditors and confirmation by the court. For the purpose of the below analysis, only the IOH's powers of management have been assessed in respect of reorganisation proceedings.

Commentary to Table 17:

Fourteen countries have a debtor-in-possession reorganisation procedure. In two countries, Georgia and Kazakhstan, the balance of powers between the IOH and the debtor's management (and therefore the extent to which there is a debtor-in-possession proceeding) in reorganisation is

determined on a case-by-case basis. Almost half of the countries surveyed (14 out of 27) appear to favour keeping existing management in charge in reorganisation. Nevertheless, they all require an IOH to be appointed to supervise the implementation of any agreed reorganisation measures. Nine countries, including Croatia and Estonia, have more than one type of collective reorganisation procedure. The extent to which the IOH may or may not exercise management powers can, therefore, depend on the reorganisation procedure used.

Insolvency office holder powers of investigation

Powers of investigation are needed to assist the IOH in the important task of recovering any dissipated assets belonging to the debtor's estate. Often the IOH is under a duty to recover any assets belonging to the debtor's estate which were transferred by the debtor within the relevant "hardening period" prior to the onset of insolvency.

In some jurisdictions, the IOH's powers of investigation are framed as duties by other stakeholders to assist the IOH, rather than as powers held by the IOH. In a few countries, such as in Montenegro, these duties are owed not only to the IOH but to a wider group of stakeholders including creditors and the court. In most of the countries surveyed duties of cooperation apply in liquidation proceedings only (and not in reorganisation).

A party's duty to cooperate with the IOH may take a number of forms including: (i) a general cooperation requirement; (ii) an obligation to provide information; and/or (iii) an obligation to hand over any assets belonging to the debtor's estate. Insolvency legislation in some of the countries surveyed, such as Croatia, contains only a general duty to cooperate with the IOH. This may, however, be interpreted to include the obligation to return any of the debtor's assets and/or provide information. In other countries statutory obligations reflect a combination of the elements referred to at sub-paragraphs (i) to (iii) above. Frequently the nature of any cooperation will depend on the identity of obligee, for example, whether the debtor and its management, connected parties, state authorities or other third parties.

Nevertheless, certain jurisdictions may not have specific provisions regarding the IOH's powers of discovery in insolvency. For example, in Egypt the IOH may only rely on the criminal offence of concealment of assets to obtain further information and/or access to assets. Concealment of assets is an offence in most of the countries surveyed. It may be regulated by insolvency legislation, such as in Kosovo, or by insolvency-related offences contained in the criminal code, such as in Egypt, Hungary or Georgia.

Duties of cooperation with the IOH should ideally be framed as widely as possible to include the debtor and its management, connected parties, such as shareholders, state bodies with information concerning the debtor and third parties generally. This increases the ability of the IOH to investigate and recover any assets belonging to the debtor's estate. However, express statutory powers requiring the cooperation of third parties and state authorities are limited in many of the countries surveyed. In some jurisdictions, IOHs are not entitled to request cooperation from third parties directly (apart from the debtor and often creditors). In addition, even if the IOH is entitled to request cooperation directly from the relevant parties, such cooperation cannot be enforced by the IOH. IOHs must therefore turn to the court for assistance, which requires cooperation from third parties by means of a court order. In a number of jurisdictions, including the Kyrgyz Republic, IOHs have separate powers and duties to notify the court and/or law enforcement bodies of unlawful actions by persons during the insolvency process.

In order to strengthen the willingness of parties to cooperate with the IOH, many countries' legislation contemplates the imposition of sanctions for failure to cooperate. Such sanctions are primarily imposed on the debtor, including the debtor's management and may take the form of criminal sanctions, for example, custody or imprisonment or administrative sanctions such as fines. In some cases these sanctions are specifically linked to the offence of concealment of assets. Nevertheless, in some countries, such as Georgia, a wider range of "enforcement measures" may be applicable. Statutory liability may also act as a deterrent, such as in Hungary, where the debtor and its management

Table 18: Powers of insolvency office holders to request cooperation

Countries	Debtor and connected parties	State authorities	Third parties (excluding creditors)	Sanctions for non-compliance
Albania	Debtor and connected parties: general duty to cooperate with the IOH and provide information.			Debtor and connected parties: fine and criminal liability for concealment of assets (fine or imprisonment).
Belarus	Debtor and connected parties: general duty to cooperate with the IOH.	Duty to provide information (provided not related to state secrets).		Debtor and connected parties: administrative fine and criminal liability (for concealment or damage of assets).
Bosnia and Herzegovina	Debtor only: general duty to cooperate with the IOH.			Debtor only: summons to court/ fines.
Bulgaria	Debtor only: general duty to cooperate with the IOH, including the duty to provide information and deliver up any assets to the IOH.	General duty to cooperate with the IOH.		Debtor only: assistance from police authorities/criminal liability for concealment of assets.
Croatia	Debtor and connected parties: general duty to cooperate with the IOH, court and creditors and provide information. Employees are only required to provide information to the IOH.			Debtor and connected parties: fine/custody of up to five months. Debtor only: criminal liability for providing false information and liability for resulting damages to creditors.
Egypt	Debtor and connected parties: general criminal offence of concealment of assets only.	General criminal offence of concealment of assets only.	General criminal offence of concealment of assets only.	Criminal sanctions for concealment of assets: fine/imprisonment.
Estonia	Debtor and connected parties: general duty to cooperate with the IOH including duty to provide information.	Specific state authorities only (for example, authorities holding property of the debtor and the Tax Authority): duty to provide information.	Third parties possessing debtor's property or with proprietary obligations towards the debtor: duty to provide information.	Debtor and connected parties: summons to court/ fines /arrest/house arrest.
FYR Macedonia	Debtor only: duty to provide information and deliver up any assets of the debtor to the IOH.	Duty to deliver up any assets of the debtor to the IOH.	Duty to deliver up any assets of the debtor to the IOH.	Debtor only: fine/ custody (up to 30 days). Court enforcement of delivery of assets against debtor and third parties.
Georgia	Debtor only: duty to provide information and deliver up any assets of the debtor to the IOH.		Duty to deliver up any assets of the debtor.	Debtor and third parties: criminal liability and enforcement measures. Court enforcement of delivery of assets against debtor and third parties.
Hungary	Debtor only: general duty to cooperate with the IOH, including to provide any information and deliver up any assets of the debtor to the IOH.	No duty to cooperate but IOH is required to obtain information from authorities and financial institutions holding records of the debtor for the recovery of the debtor's assets.		Debtor only: fine, imposing of costs, assumed liability for unsatisfied creditors' claims and criminal liability for concealment of assets.

Countries	Debtor and connected parties	State authorities	Third parties (excluding creditors)	Sanctions for non-compliance
Kazakhstan	Debtor only: general duty to cooperate with the IOH, including to provide information.	Duty to provide information to the IOH.	Duty to provide information to the IOH.	Debtor and third parties: administrative fine (in case of concealment of assets or non-disclosure of relevant information). Debtor only: criminal liability if resulting damage above a certain threshold.
Kosovo	Debtor only: general duty to cooperate with IOH, including to provide information.		General criminal offence of concealment of assets only.	Debtor and third parties for concealment of assets only. Debtor only: criminal liability Third parties: fine and imprisonment.
Kyrgyz Republic	Debtor and connected parties: duty to provide information and (debtor only) to deliver up any assets of the debtor to the IOH.	General duty to cooperate with the IOH, including to provide information.		For unlawful actions only: financial, administrative or criminal liability.
Latvia	Debtor only: general duty to cooperate with the IOH including to provide any information and to deliver up any assets of the debtor to the IOH.	Duty to provide information to the IOH.		Debtor only: administrative fine/criminal sanctions.
Lithuania	Debtor only: transfer of all assets and documents to the IOH following commencement of insolvency proceedings.		General duty to cooperate with the IOH.	Debtor only: fine.
Moldova	Debtor only: general duty to cooperate with the IOH, including to provide information.	General duty to cooperate with the IOH including to provide information.	General duty to cooperate with the IOH including to provide information.	Debtor and third parties: fine.
Montenegro	Debtor and certain connected parties (including the debtor's management, proxies and advisers): duty to provide information and deliver up any assets of the debtor to IOH.	Duty to provide information and delivery up any assets of the debtor to the IOH.	Duty to provide information and delivery up any assets of the debtor to the IOH.	Parties to the proceeding only: fine. Debtor and third parties failing to deliver assets of the debtor to the IOH: the court can order enforcement measures.
Morocco	Debtor and connected parties: duty to provide information to the IOH.	Duty to provide information to the IOH.	Duty to provide information to the IOH.	
Poland	Debtor only: duty to provide information and deliver up any assets of the debtor to the IOH.	Duty to provide information to the IOH.		Debtor only: civil and criminal liability. State authorities: administrative challenge.
Romania	Debtor only: duty to provide information and deliver up any assets of the debtor to the IOH.	State bodies keeping records of the debtor: duty to provide information to the IOH.	General duty to cooperate with the IOH, including to provide information.	Debtor only: fine.
Russia	Debtor only: duty to provide information and deliver up any assets of the debtor to the IOH.	Duty to provide information and deliver up assets of the debtor to the IOH.	Duty to provide information and deliver up assets of the debtor to the IOH.	All persons failing to cooperate with IOH: fine/criminal charges/disqualification for state and corporate officers.

Countries	Debtor and connected parties	State authorities	Third parties (excluding creditors)	Sanctions for non-compliance
Serbia	Debtor and certain connected parties (including proxies and advisers): duty to provide information to IOH and to deliver up any assets of the debtor to the IOH.	Public registries under general duty (not specifically to IOH) to provide data on assets and rights of debtor up to five years before insolvency	Duty to deliver up assets of the debtor to the IOH.	Debtor and certain connected parties are liable for damages caused to creditors.
Slovak Republic	Debtor only: general duty to cooperate with the IOH.	Duty to provide information, records and documents and deliver up assets of debtor to the IOH.	Duty to provide information, records and documents and deliver up assets of debtor to the IOH.	Debtor and certain connected parties: criminal liability, court summons or fine. Third parties: fine.
Slovenia	Debtor only: in bankruptcy proceedings, general duty to cooperate with the IOH including to deliver up any assets of the debtor. In compulsory settlement, duty to provide information.	In bankruptcy only, duty to provide certain information to the IOH.	In bankruptcy only, duty to provide certain information to the IOH.	Debtor only: fine and criminal liability.
Tunisia	Debtor only: general duty to cooperate with the IOH.			
Turkey	Debtor and connected parties: duty to provide information and deliver up any assets of the debtor to the IOH.	Duty to provide information to IOH.	Duty to provide information and deliver up any assets of the debtor to the IOH.	Fine for failure to deliver up assets of debtor within 90 days.
Ukraine	Debtor only: duty to provide information and deliver up any assets of the debtor to the IOH.			Debtor only: administrative and criminal liability

Note: This table summarises any express statutory powers of insolvency office holders to request cooperation from the debtor (which definition includes the debtor's management) and/or parties connected to the debtor for example, shareholders, state authorities and from any third parties excluding creditors. It also details any applicable statutory sanctions for failure to cooperate and provide assistance to the IOH.

Source: 2012-14 EBRD insolvency office holder assessment.

may be liable for any unsatisfied creditors' claims as a result of its failure to cooperate. A number of countries, such as, Morocco and Tunisia, do not support the IOH's powers of investigation with any express statutory sanctions for non-cooperation, although the court may provide assistance.

The lack of formal statutory powers does not preclude the IOH requesting assistance from third parties on a voluntary basis for the return of any assets belonging to the debtor or from litigating against such parties. The IOH as a representative of the debtor may request the return of any assets and may initiate legal proceedings in the name of the debtor against those third parties in possession of such assets. In some jurisdictions parties, such as the

state authorities, may cooperate with the IOH or the court on an informal basis, such as is reportedly the case in Bosnia and Herzegovina.

Commentary to Table 18:

In 26 of the countries surveyed the debtor and its management are under some obligation to assist the IOH, whether as part of a general duty to cooperate with the IOH and/or as part of a duty to provide information and to deliver up or provide access to assets. Egypt is the one country where there is no specific statutory provision requiring cooperation from the debtor's management. In Egypt the IOH and the court must instead rely on the criminal offence of concealment of assets, in order to solicit cooperation from the debtor and other persons. The

criminalisation of the concealment of assets seems to be a practice in other countries as well, including Belarus, Bulgaria and Hungary. Parties connected to the debtor, such as its shareholders or other persons that have an influence on the business or management decisions of the debtor, are required to cooperate with the IOH in only 10 of the countries surveyed. However, the cooperation of connected parties may nevertheless be solicited through any general requirement by third parties to provide the debtor with assistance.

Third parties are under a statutory obligation to cooperate with the IOH in the majority of countries (16 countries). Nevertheless, the extent of this obligation varies from jurisdiction to jurisdiction. It ranges from a general duty to cooperate with the IOH (Lithuania, Romania, Moldova) to a duty to provide information to the IOH only (Estonia, Kazakhstan, Morocco, Slovenia with reservations) or a duty to deliver up any assets of the debtor to the IOH only (FYR Macedonia, Georgia, Serbia) and to a duty both to provide information and deliver up assets of the debtor to the IOH (Montenegro, Russia, Slovak Republic and Turkey). In Moldova and Romania third parties are under a general duty to cooperate with the IOH and to provide information. Although not specifically examined by this table, creditors are typically under an obligation to cooperate with the IOH with respect to the submission of full information regarding their claims.

State authorities may be required to provide information in the majority of countries surveyed (19 countries including Belarus, Bulgaria, Egypt relating to the concealment of assets only, Estonia, Kazakhstan, Kyrgyz Republic, Latvia, Moldova, Montenegro, Morocco, Poland, Romania, Russia, Slovak Republic, Slovenia with reservations, and Turkey). In respect of Hungary, the IOH is under an obligation to obtain information necessary for the recovery of the debtor's assets from state authorities; however, they are under no statutory obligation to assist the IOH. In Bosnia and Herzegovina even though there is no statutory requirement for state authorities to cooperate with the IOH, they reportedly provide assistance to the IOH and the court in practice.

In three of the countries surveyed (Egypt, Morocco and Tunisia) there are no express statutory sanctions for failure to cooperate with the IOH. In Egypt this is due to the fact that there are no statutory obligations on any parties to cooperate with the IOH, other than in respect to the criminal offence of concealment of assets. Nevertheless, legislation and/or practice in a few of these countries contemplate that the IOH can seek assistance from the court in enforcing cooperation. In one of the countries surveyed, Serbia, the legislation only contemplates sanctions in the form of liability for damages caused to creditors and this relates to the debtor and certain connected parties only. Across the countries surveyed, sanctions for non-cooperation are frequently reserved for the debtor and any connected parties only. This is the case in 13 of the 24 countries surveyed which have express statutory sanctions for non-cooperation. Interestingly, out of the 16 countries (in Egypt, relating to the concealment of assets only) that require some express form of cooperation by third parties with the IOH, ten countries (Egypt, FYR Macedonia, Georgia, Kazakhstan, Kosovo, Moldova, Montenegro, Russia, the Slovak Republic and Turkey) establish specific sanctions to be imposed on third parties that fail to comply with the cooperation request. In the Kyrgyz Republic sanctions are of general application in respect of concealment of assets and unlawful actions, which may include third parties. Those countries where assistance may be requested from third parties only through a relevant court order are not included into the table.

Reporting obligations

Given the IOH's detailed knowledge and understanding of the conduct of the insolvency case, one of the foremost duties of IOHs is the duty to provide regular reports to insolvency stakeholders, in other words, the court and creditors, on the progress of the case. This duty is intrinsically linked to the principle of transparency and accountability of the IOH. Actions taken by IOHs often have a direct bearing on the financial recoveries made by creditors and it is, therefore, important for the IOH to be held accountable for his actions.

Table 19: Reporting obligations

Countries	Initial reports	Monthly/ quarterly reports	Annual reports	Additional reports	Report recipient(s)
Albania	✓ ¹	● ²	● ³	● ⁴	Court (creditors)
Belarus	✓	✓ ⁵		✓ ⁶	Court (creditors)
Bosnia and Herzegovina	✓		● ⁷	● ⁸	Court and creditors
Bulgaria	✓ ⁹	✓ ¹⁰		✓ ¹¹	Court and creditors
Croatia		● ¹²		● ¹³	Court and creditors
Egypt	✓ ¹⁴			● ¹⁵	Court (judge)
Estonia	✓ ¹⁶			✓ ¹⁷	Court and creditors
FYR Macedonia	● ¹⁸	✓ ¹⁹		✓ ²⁰	Court (judge) and creditors
Georgia	● ²¹			● ²²	Court and creditors
Hungary	● ²³	● ²⁴	● ²⁵	● ²⁶	Court and creditors
Kazakhstan	● ²⁷	● ²⁸		✓ ²⁹	Creditors
Kosovo	✓ ³⁰	✓ ³¹			Court (creditors)
Kyrgyz Republic	✓ ³²	✓ ³³		✓ ³⁴	Court, creditors and the Kyrgyz Department
Latvia	● ³⁵	● ³⁶		● ³⁷	Creditors

1 Based on the IOH's report, a meeting is held for delivery of the initial report.

2 Every three months only in liquidation and only to the court.

3 On an annual basis only in reorganisation and to both the creditors' committee and the court.

4 To the creditors on their request in liquidation only.

5 Monthly.

6 To the creditors on their request.

7 Annual reporting obligations of IOHs apply in reorganisation after the approval of the reorganisation plan.

8 In reorganisation only, the judge and creditors can request information from the IOH.

9 There is one gateway into insolvency proceedings the initial report is applicable to both types of procedures.

10 Monthly reports in liquidation. In reorganisation, the debtor is required report on its activities once every three months.

11 Any time on request from the court or creditors.

12 Every three months for bankruptcy proceedings under the Insolvency Act only.

13 On the request of the court or creditors in bankruptcy proceedings under the Insolvency Act only.

14 Within 30 days from his appointment.

15 Further reports include: the report issued to the composition assembly and the bankruptcy closure report, nevertheless no timeframe is prescribed by law. If a controller is appointed from amongst the creditors, the IOH is required to provide certain information to the controller.

16 The interim trustee is required to submit a report to the court. The trustee is required to provide a report at the first general meeting of creditors and within three months to the court and the creditors. It is applicable to all types of insolvency proceedings.

17 Reports to be provided to the court and creditors on request.

18 The IOH is required to prepare an initial balance sheet of the debtor and to draw up the inventory.

19 Monthly reports to creditors and the judge in both types of procedures.

20 The judge may request additional information from the IOH at any time.

21 The reporting obligations of the private IOH are set forth by the agreement concluded between the IOH and the creditors. NBE is required to report at the first meeting of creditors,

22 There are no express requirements for private IOHs; however, the NBE is required to report on request to the court or creditors in liquidation.

23 The opening balance sheets are prepared by the debtor.

24 In liquidation only, quarterly reports submitted to the creditors' committee (if any).

25 In liquidation only, interim balance sheets are prepared annually, submitted to the creditors and approved by the court.

26 In bankruptcy only, within eight days of request of the court or creditors. The court may request reports from the temporary IOH at any time in liquidation.

27 Inventory report to be submitted by the temporary IOH on commencement of liquidation only.

28 Monthly reports in rehabilitation only to the creditors (or any time on request within 10 working days).

29 In liquidation and in rehabilitation, on request from the creditors (within three and 10 working days respectively).

30 Within 30 days from the IOH's appointment, to be submitted to the court.

31 Monthly reports to the court, the copy of which is sent to creditors. It applies to both types of proceedings.

32 The temporary IOH shall, within 14 days of his appointment, submit to the court a report on the debtor's financial condition.

33 Monthly reports are submitted by the special administrator to the court and creditors. The external administrator has the same rights and duties as the special administrator.

34 IOH is required to report to the court or creditors at any time on its request.

35 In insolvency proceedings only.

36 Quarterly reports in insolvency proceedings only. There is no regular reporting obligation in legal protection proceedings.

37 Creditors may ask for further information from the IOH in insolvency proceedings.

Countries	Initial reports	Monthly/ quarterly reports	Annual reports	Additional reports	Report recipient(s)
Lithuania	● ³⁸		● ³⁹	● ⁴⁰	Court and creditors
Moldova	✓ ⁴¹	✓ ⁴²		✓ ⁴³	Court and creditors
Montenegro		✓ ⁴⁴		✓ ⁴⁵	Court and creditors
Morocco	✓ ⁴⁶			● ⁴⁷	Court (judge)
Poland	● ⁴⁸	✓		✓ ⁴⁹	Court (creditors)
Romania	✓ ⁵⁰	✓ ⁵¹			Court and creditors
Russia	✓	✓ ⁵²		✓ ⁵³	Creditors and the court
Serbia	✓	✓ ⁵⁴		✓ ⁵⁵	Court and creditors
Slovak Republic	✓ ⁵⁶	✓ ⁵⁷		✓ ⁵⁸	Court and creditors
Slovenia		✓ ⁵⁹		✓ ⁶⁰	Court (creditors)
Tunisia	● ⁶¹	● ⁶²		● ⁶³	Court (judge)
Turkey		● ⁶⁴		● ⁶⁵	Court (creditors)
Ukraine	✓ ⁶⁶	✓ ⁶⁷			Court and creditors

Note: This table illustrates (marked with symbol “✓”) the statutory reporting obligations of insolvency office holders including any requirements to file initial reports at the outset of the insolvency case, monthly, quarterly or annual reports and any additional reports at the stakeholders’ request. It also sets out the recipients of such reports (typically the creditors and/or the court). Any reservations relating to these categories are marked with symbol “●”.

Source: 2012-14 EBRD insolvency office holder assessment.

38 To the creditors at the first meeting of creditors under the Law on Bankruptcy only.

39 Annual financial reports are prepared by the IOH and approved by the court under the Law on Bankruptcy only.

40 On request of the creditors under the Law on Bankruptcy only. Nevertheless, under the Law on Restructuring of Enterprises, the IOH is required to inform the court and creditors if the restructuring plan cannot be implemented or there might be a delay in the implementation of such plan.

41 By the temporary IOH, within 45 working days from his appointment and/or the by the IOH within a deadline set forth by the court.

42 Reports every three months to the court in liquidation and reorganisation, accessible by creditors.

43 To the court and creditors at any time on request in both types of proceedings.

44 Every three months to the court and creditors. Creditors may request monthly and/or other additional reports from the IOH.

45 On request of the creditors (either the creditors’ committee or creditors representing 20 per cent of the claims by value).

46 Initial report detailing the financial, economic and social situation of the debtor, with a proposal regarding the type of insolvency procedure to be opened.

47 The syndic is under an obligation to keep the judge and creditors informed, nonetheless no further details are provided by law.

48 In liquidation proceedings only.

49 To creditors on request.

50 Within 20 days from the IOH appointment the report is to be filed detailing whether a liquidation procedure should be opened. Within 40 days from his appointment, the IOH shall file another report detailing the causes that led to insolvency.

51 Quarterly in liquidation, monthly in judicial reorganisation and quarterly or monthly in conciliation. All reports are accessible by creditors.

52 Regular reports to creditors in liquidation (quarterly) or at any time on request.

53 On request of the creditors in liquidation. The creditors’ committee and the assembly of creditors may

request reports at any time (may set the frequency of the reports) in financial restoration and external administration, while by law, only one report must be filed at the end of these procedures.

54 Quarterly reports. The creditors’ committee or the creditors, whose determined or contested claims represent at least 20 per cent of amount of the reported claims of the debtor, may request the IOH to submit monthly and/or other reports.

55 Ibid.

56 The temporary IOH is required to submit a report within 45 days from his appointment.

57 Reports every 90 days to the creditors’ committee in liquidation. In restructuring where a supervisory IOH is appointed, reports shall be filed with the court and creditors’ committee on a monthly basis.

58 At any time on the creditors’ committee or court request.

59 Quarterly reports to the court, accessible by creditors.

60 At any time on the request of the court or the creditors’ committee.

61 The position is unclear due, however the IOH in bankruptcy proceedings must submit an initial report.

62 Reporting is carried out every three months in judicial settlement (and not in bankruptcy proceedings).

63 In bankruptcy proceedings only the court may request reports at any time that may be accessed by other parties, subject to prior court permission.

64 Reports are filed once in every three months in the postponement of bankruptcy procedure by the trustee

65 In bankruptcy, only the following reports need be filed: the final report and the report at the second general meeting of creditors

66 The IOH must deliver to a commercial court and creditor committee a report concerning his activities, the debtor’s financial status, and proposals on whether the debtor’s solvency can be restored.

67 Monthly report in liquidation and quarterly reports in financial rehabilitation to the creditors’ committee and the court.

The existence of a statutory obligation to provide written reports to insolvency stakeholders therefore helps to protect transparency by ensuring that stakeholders have certain information on actions taken by the IOH during the course of the insolvency procedure. Written records provide a means of monitoring how the funds of the debtor's estate are being spent and may enable stakeholders to file complaints against those actions of the IOH that they find unlawful or improper. Such records may not only encourage the adoption of proper procedures by the IOH, who is required to keep a record of his activities, but may also assist with delivery of value for money by the IOH. Any IOH reporting obligations should also be accompanied by a principle of accessibility of information to enable all creditors to have easy (and equal) access to any reports provided by the IOH.

Reporting obligations of IOHs may differ depending on whether the insolvency proceedings are aimed at liquidation or reorganisation. In liquidation, the statutory reporting obligations of the IOH may be stronger than in reorganisation. This may be due to the fact that in many countries the debtor retains its management powers in reorganisation, albeit under the supervision of the IOH. The type of reporting obligation is determined by the time period in which the given report is required to be produced by the IOH. In most jurisdictions, the IOH will be required to submit an initial report at the outset of the insolvency case, examining the debtor's financial and economic situation and often also the causes of the insolvency. In the course of the insolvency proceedings, further reports are typically required to inform insolvency stakeholders of the management and administration of the insolvency case and the status of the proceeding. These update reports are due periodically, based on a statutorily defined timeframe, which may range from a month, to every three months or in some cases a year. In addition, some jurisdictions give stakeholders (the court and/or creditors) the right to request additional reports and updates on the status of the insolvency case from the IOH at any time, given that important events might occur in the period between the filings of two regular reports.

Although the assessment did not specifically examine the contents and substance of the IOH's reporting requirements, there appear to be significant differences among the different countries surveyed also in this respect. In some countries the emphasis is on the descriptive nature of the report (in other words, an examination of the causes that led to insolvency and the status of the case), while in other countries the IOH is required by law to make recommendations in his initial report on whether the debtor's solvency can be restored or if there are more types of insolvency procedure, which procedure should be followed (such as in Morocco and Ukraine).

Commentary to Table 19:

In all of the countries surveyed, IOHs are subject to reporting obligations, nonetheless with differing regularity. Initial reports (reports to be submitted at the outset of the insolvency case) are to be filed with the court and/or creditors in 17 jurisdictions, although not always in proceedings of a reorganisation nature. Interestingly in some countries, including FYR Macedonia and Hungary, the IOH is required to prepare an opening balance sheet that is not strictly speaking a report but may serve a similar purpose as the preliminary or initial report in terms of informing creditors of the assets and liabilities of the debtor.

Regular reporting requirements are observed in the majority of countries (21 countries with reservations) and typically contain either a monthly or a quarterly reporting obligation. Nevertheless, the regular nature of any reporting requirements varies in many countries depending on the nature of the procedure. In Bulgaria, for example, IOHs need to file reports monthly in liquidation and quarterly in reorganisation. Interestingly, in Albania although reports must be filed every three months in liquidation, in reorganisation IOHs only need to report on an annual basis.

Regular statutory reporting requirements are preferably accompanied by the ability of stakeholders to request additional updates and reports from the IOH as necessary in the course of the proceeding. Such reports may be requested in 24 countries (with

reservations) either by the court (such as Egypt or Morocco), creditors (such as Belarus, Kazakhstan or Russia) or by the court and creditors (Bulgaria).

Lastly, many countries also differ as to whether the reports are to be filed with the court, with creditors or with both court and creditors. In the majority of jurisdictions reports must be submitted to both the court and creditors or if they need to be filed with one are still accessible by the other. It is only Egypt, Kazakhstan, Morocco, Latvia and Tunisia where the reports are addressed to only one recipient category. In Kazakhstan and Latvia the recipients of IOH reports are the creditors, while in Egypt, Morocco and Tunisia the recipient is the court (judge). In these countries, the IOH's reporting obligations are framed not as an obligation towards creditors but towards the court or the judge-commissioner and it is not clear to what extent the reports have to be in written form.

4.7. Appropriate basis for remuneration

The level of remuneration has a significant impact on development of the IOH profession. If remuneration is insufficient, professionals may not be incentivised to join the profession. A competitive level of remuneration or professional compensation is therefore essential for the development of IOH capacity. It provides an incentive to satisfy often burdensome, not to mention costly, professional admission requirements, including specialised study and training, and may be one of the determining factors why persons choose the profession over another. Remuneration is also a potential tool by which higher performers within the profession may be rewarded for their efforts or their specialist sector skill or experience.

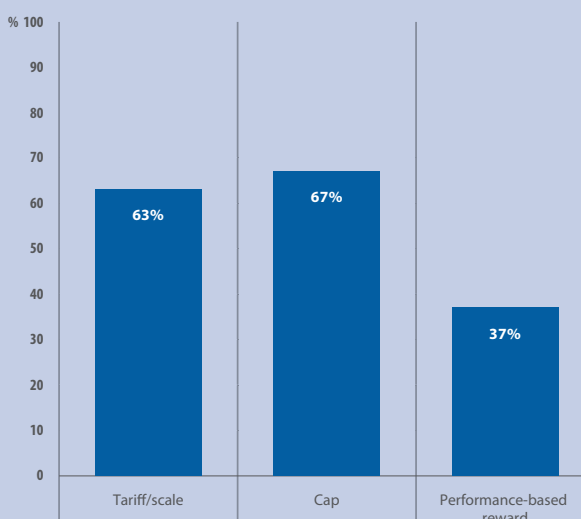
Remuneration is of central importance to insolvency stakeholders since IOHs are usually paid from the proceeds of the insolvent debtor's estate. It is particularly important for creditors that they receive "value for money" for an IOH's services since they are often indirectly paying for these services from proceeds that would otherwise be available for distribution to

creditors. There is arguably a greater need for IOHs than for other professionals to ensure that remuneration is guided by a reasonable statutory framework and is subject to an appropriate level of oversight.

The statutory framework for IOH remuneration generally differs according to the type of insolvency procedure and whether its aim is liquidation or reorganisation of the debtor. Nevertheless, the approach adopted in the countries surveyed varies significantly, from liberal guidance on the level and type of IOH remuneration on the one hand to a more regulated, tariff system of fixed and percentage-based amounts and/or caps on the other. Very few assessment countries allow IOH remuneration to be freely determined between the IOH and creditors. The few countries where this is possible include Bulgaria, Georgia and Lithuania.

The structure of IOH remuneration is a complex area. It may, nonetheless, be examined with reference to the following: (i) whether a statutory framework for remuneration exists; (ii) whether a tariff or scale system is applicable (this signals a higher level of regulation); (iii) whether there is any statutory minimum or maximum amount set for

Chart 29: Remuneration methods for insolvency office holders in assessment countries



Note: This bar chart indicates the percentage of assessment countries where a tariff/scale system applies; where IOH remuneration is capped (by a specific maximum amount); and where the IOH may be or is entitled to a performance-based reward. If the system in a given country allows for more than one method of remuneration, this is recorded under each of the relevant categories.

Source: 2012-14 EBRD insolvency office holder assessment.

IOH remuneration; (iv) whether IOHs are entitled to an additional performance-related award; (v) the parties which may set the level of IOH remuneration, for example the court and/or creditors; and (vi) the priority and protection given to IOH remuneration within the statutory framework.

Even though a statutory framework is advisable, a certain level of discretion or flexibility is also important. This is primarily because the tasks performed by the IOH and the extent of expertise and time spent by the IOH may vary considerably from case to case. Therefore, a tariff system may be too rigid if it does not allow the court and/or creditors to take into account the facts of the specific insolvency case when setting the level of IOH fees.

Defining a statutory minimum amount for IOH remuneration may provide a certain level of protection for the IOH and may help to ensure that IOHs are paid a basic amount for carrying out their duties. In contrast, a maximum amount (cap) may ensure the protection of creditors' interests by preventing excessive levels of remuneration to be paid to the IOH but may not be appropriate for the larger and more complex insolvency cases. The existence of a maximum cap within the statutory framework may, like the tariff, restrict flexibility. A performance-based reward may incentivise IOHs to perform to the best of their abilities. The tariff or sliding scale may be regarded in some circumstances as a type of "performance-based reward" given that it increases according to the reference value.

Adequate oversight by stakeholders of IOH remuneration and any associated costs or fees incurred by the IOH is of fundamental importance, particularly where there is a degree of flexibility in the approach to remuneration. In this regard creditors, as well as the court, should play a role since IOH fees are generally paid from the bankruptcy estate, thus decreasing potential value available to creditors. In most of the countries surveyed, the bankruptcy judge (court) alone is responsible for determining the level of IOH remuneration in accordance with available statutory guidance. Only a few countries, such as Russia, envisage a role for creditors in determining

the (higher) level of IOH remuneration above the statutory base amount. While creditors typically have a right to appeal against the court's decision approving IOH fees and costs, such appeal may be heard by the court at too late a stage to be effective. More regular consultation by the court with creditors and/or greater involvement of creditors in setting the level of IOH remuneration and payment of costs is desirable.

When an IOH accepts his appointment, he bears a certain amount of risk that the proceeds of the insolvent debtor's estate may be insufficient to cover all his fees and any expenses. Many insolvency law systems therefore provide that an IOH's professional fees and expenses will be paid in priority from the proceeds of the debtor's estate. Such statutory protection is very important to ensure that the IOH is paid for his work and performs his role in full and to the highest standard. In addition to priority provisions, some countries established further guarantees for ensuring that IOHs will be fully paid, including Kosovo or the Kyrgyz Republic where state funds guarantee that in cases where there are insufficient assets, the state will cover IOH remuneration.

The definition of the debtor's estate available for IOH remuneration is another key difference among the assessment countries. In many of the countries, the IOH is charged with the disposal or sale of secured assets and a portion of secured asset realisations is paid to the IOH by way of costs by secured creditors. In one country (Russia) the percentage of secured asset proceeds available for the IOH is quite high: up to 20 to 30 per cent depending on the type of security. However, in some countries, such as in Turkey or Ukraine, secured creditors' claims are excluded from the bankruptcy estate, which may significantly reduce the funds available to cover IOH fees, irrespective of any statutory protections for IOH remuneration. In a few countries, such as Bosnia and Herzegovina, secured creditors have a right of "separate settlement" and enforcement of their security outside of insolvency proceedings, including entitlement to all of the proceeds of that enforcement. It is not however clear to what extent

Table 20: Remuneration

Countries	Statutory framework	Tariff/ scale	Advance payment/ monthly fee	Minimum	Cap	Performance-based reward	Key players	Priority over unsecured/ preferential creditors
Albania	✓ ¹	✓ ²	✓ ³	✓ ⁴			Court ⁵	Unsecured, preferential
Belarus	✓ ⁶	✓ ⁷	✓ ⁸	✓ ⁹	● ¹⁰		Court, creditors	Unsecured, preferential
Bosnia and Herzegovina	● ¹¹	● ¹²	● ¹³	● ¹⁴	● ¹⁵		Court	Unsecured, preferential
Bulgaria	✓ ¹⁶		✓ ¹⁷			✓ ¹⁸	Creditors, ¹⁹ the IOH	Unsecured, preferential
Croatia	✓ ²⁰	● ²¹	● ²²		● ²³		Court (judge)	Unsecured, preferential
Egypt			● ²⁴				Judge, the IOH	Unsecured, pari passu with preferential
Estonia	✓ ²⁵	✓ ²⁶	✓ ²⁷	● ²⁸	● ²⁹	● ³⁰	Court, creditors, the IOH	Unsecured, preferential
FYR Macedonia	✓ ³¹	✓ ³²	✓ ³³	✓ ³⁴	✓ ³⁵	✓ ³⁶	Court, creditors, the IOH	Unsecured, preferential

- 1 Government Decision no. 197, dated 13 April 2007 on the criteria and conditions for the establishment of the insolvency administrator's compensation and reimbursement of expenses, applicable to both liquidation and reorganisation.
- 2 IOH base fees are calculated on the collected insolvency estate and the amount of liabilities. The IOH in reorganisation is also entitled to 0.25 per cent of the proceeds and 0.5 per cent of the gross income realised during the continuation of the business activity. In liquidation the IOH is also entitled to compensation based on the amount of liabilities calculated in accordance with a sliding scale. The court decides on the IOH fees within a particular range, taking into account the work performed by the IOH, the outcome achieved, the importance of the case and the care shown by the IOH. The temporary IOH is entitled to a fixed fee amounting to ALL 50,000.
- 3 The court may pay an advance fee to the IOH upon request.
- 4 ALL 50,000.
- 5 IOH remuneration can only be challenged by creditors and other stakeholders under the general procedural rules.
- 6 Resolution of Council of Ministers of the Republic of Belarus of 28 February 2007 N 260, as amended on the procedure on fixing the remuneration of insolvency office holders. There is a separate regulation applicable to IOHs performing their activities on the basis of contract with state authority (Resolution of Council of Ministers of the Republic of Belarus of 26 January 2013 N 60, as amended on the procedure on fixing the salary of insolvency office holders performing their activities under contract).
- 7 A monthly fee applies to all types of proceedings. An optional additional quarterly fee may be payable for a period of up to a year by decision of the court. Further remuneration is paid in both liquidation and reorganisation in accordance with a sliding scale based on the amount of creditors' claims which are satisfied by the proceeds of the liquidation.
- 8 A monthly fee is payable and, in some cases, also a quarterly fee.
- 9 A statutory minimum amount applies to the monthly fee.
- 10 The additional quarterly fee in both types of proceedings is capped by a certain percentage with reference to the monthly fee.
- 11 A rulebook governs IOH remuneration in the FBiH, applicable to IOHs in both liquidation and reorganisation (including the temporary IOH) while a similar rulebook is in the process of being adopted in the RS. The remuneration of the IOH in the RS is determined by the court and is dependent on the complexity of the case and the size of the debtor.
- 12 A tariff system applies in the FBiH and is regulated by the Rulebook on fees payable to experts, interim bankruptcy trustee, bankruptcy trustee and members of the creditors' committee of FBiH (Official Gazette of FBiH no. 71/08).
- 13 In the FBiH monthly fees are payable to the IOH.
- 14 In the FBiH the amount of the monthly fee may not be less than the average monthly net salary.
- 15 In the FBiH, monthly fees are capped at two average monthly net wages. In the RS these are in practice capped at three average monthly net wages (and not less than the average monthly salary) but this based on judicial practice only.
- 16 IOH remuneration consists of a monthly fee and an additional fee as set forth in the Bulgarian Commerce Act.
- 17 The remuneration of the initial IOH is decided by the court and paid as a monthly fee. The remuneration of the permanent IOH is decided by creditors and also consists of a monthly fee.
- 18 A decision for additional performed-related remuneration may be adopted either after finalisation of the IOH's work or at an earlier phase, as the creditors consider appropriate. The amount may be determined as a percentage of the property with which the bankruptcy estate has been replenished, or as percentage of the value of the assets converted into cash, or a combination of the two. Some guidance is applicable for setting the performance-based award, including that it should be dependent on the IOH's compliance with any applicable procedural terms any deadlines.
- 19 The fees of the temporary IOH are determined by the court.
- 20 For insolvency and pre-bankruptcy proceedings. Official Gazette No. 189-2961/2003 Regulation on the criteria and calculation of payments to the bankruptcy managers.
- 21 In insolvency, the fee is based on a sliding scale with reference to the value of the bankruptcy estate while in pre-bankruptcy the IOH fee is a fixed fee (that is either HRK 3,000 or HRK 6,000, depending on the amount of the debtor's liabilities).
- 22 An advance payment, including a monthly payment, may be granted in insolvency proceedings.
- 23 A cap of 300,000 HRK is applicable under the Croatian Insolvency Act (an other cap is applicable to small value insolvency proceedings). In respect of a temporary IOH, the cap is HRK 10,000. The monthly payment of the IOH cannot exceed the salary of the insolvency judge.
- 24 Fees and expenses of the IOH are determined by the court after the bankruptcy trustee submits a report to the court. The judge may decide to grant an advance payment under the Trade Law that will be deducted from the final amount. Any interested party can challenge the court decision on IOH fees.
- 25 For both proceedings under the Estonian Bankruptcy Act and Restructuring Act.
- 26 Under the Estonian Bankruptcy Act, if a restructuring plan is adopted, creditors and the court have greater discretion in determining the IOH's remuneration, including that the court shall take into account the volume and complexity of the IOH's duties and his professional skills. Under the Estonian Restructuring Act, the statutory provisions regarding the sliding scale (based on the amount of debt to be restructured) applies only if there is no agreement on IOH remuneration between the IOH and the debtor or if in the court's opinion the amount of remuneration to be awarded clearly harms creditors' interests.
- 27 Under the Estonian Bankruptcy Act, the court may set the preliminary remuneration for the trustee subject to the opinion of the bankruptcy committee. The interim trustee is entitled to time-based remuneration. Under the Estonian Restructuring Act, IOH fees may be paid in instalments at the court's discretion.
- 28 Under the Estonian Bankruptcy Act, the minimum amount of the remuneration of the IOH is one per cent of the amount (that may be increased or decreased by the court) which has been received and included in the bankruptcy estate as a result of the sale and recovery of the bankruptcy estate and other activities of the IOH. Under the Estonian Restructuring Act, the minimum amount of IOH remuneration is one per cent of the total amount of creditors' claims restructured in the course of the

Countries	Statutory framework	Tariff/ scale	Advance payment/ monthly fee	Minimum	Cap	Performance-based reward	Key players	Priority over unsecured/ preferential creditors
Georgia	N/A ³⁷	N/A ³⁸		N/A ³⁹			Creditors, ⁴⁰ the IOH	Unsecured, preferential
Hungary	✓ ⁴¹	✓ ⁴²	● ⁴³	✓ ⁴⁴	● ⁴⁵	✓ ⁴⁶	Court	Unsecured, certain preferential
Kazakhstan	✓ ⁴⁷		✓ ⁴⁸	● ⁴⁹	● ⁵⁰		Creditors (Court)	Unsecured, preferential
Kosovo	✓ ⁵¹		✓ ⁵²				Court ⁵³	Unsecured, preferential
Kyrgyz Republic	✓ ⁵⁴	●	✓ ⁵⁵	✓ ⁵⁶	✓ ⁵⁷		Court, creditors	Unsecured, preferential
Latvia	● ⁵⁸	● ⁵⁹	● ⁶⁰	✓ ⁶¹			Court, creditors (in legal protection proceedings the debtor and the IOH)	Unsecured, preferential
Lithuania	N/A ⁶²		● ⁶³				Creditors, the IOH, court may revise	Unsecured, preferential

proceeding.

- 29 Caps apply as a result of the a sliding scale applicable to proceedings under the Estonian Bankruptcy Act and Restructuring Act. These caps may be increased by the court where the remuneration of the IOH would not be fair considering the significant nature of his duties or in any other case where the court finds it reasonable.
- 30 There is no direct performance based award but the court is obliged to consider the performance of the IOH and may increase or decrease IOH remuneration accordingly.
- 31 Official Gazette of the Republic of Macedonia number 119/06 and 77/13 Rulebook on remuneration and compensation of incurred expenses of the insolvency office holders, the manner of determination of their value and the advance payment for preliminary bankruptcy procedure
- 32 A sliding scale applies both in liquidation and reorganisation with certain ranges (based on the collected funds or the funds required to settle the liabilities of the debtor, respectively). This may be increased or decreased in certain circumstances (including according to the complexity of the case or the length of the procedure). Within the range, the court takes into account the conduct of the IOH, the value of the settled claims and the complexity and length of the procedure. The scales exclude the temporary IOHs, the fees of which are based on the volume of the work, the time required to perform his duties and the amount of expenses advanced.
- 33 Following a proposal by the IOH, an advance payment may be paid to the IOH. If no advance payment is made to the creditors, a monthly fee is payable to the IOH which is equivalent to one month average salary for the first six months of the proceeding.
- 34 The minimum remuneration for an IOH in liquidation is MKD 60,000, whereas in a reorganisation procedure such minimum remuneration is MKD 120,000.
- 35 MKD 650,000,000 is set as the maximum amount of creditors' claims within the sliding scale and the amount of creditors' claims is used as a basis for calculating the IOH remuneration. IOH remuneration is capped at MKD 7,500,000 and 15,000,000 for liquidation and reorganisation, respectively. As a general rule the fees of the temporary IOH are capped at MKD 20,000.
- 36 IOH's remuneration may be increased up to 10 % based on complexity of the case. The IOH's remuneration is reduced if the duration of the proceeding is longer than one year.
- 37 A statutory framework is applicable only if the NBE is appointed as the IOH, otherwise IOH remuneration is agreed by the IOH and creditors.
- 38 The private IOH's remuneration is agreed by the IOH and the creditors.
- 39 Minimum remuneration of GEL 5,000 only applies if the NBE is appointed as IOH.
- 40 If the IOH is not the NBE, remuneration is governed by an agreement between the creditors and the IOH.
- 41 Remuneration provisions are contained in the Bankruptcy Law.
- 42 A different fixed calculation method applies for liquidation and bankruptcy. This may be increased or decreased by the court in certain circumstances, in accordance with the activities or workload of the IOH. In liquidation, the amount of IOH remuneration is five per cent of the assets sold and the receivables collected in the course of liquidation. If the liquidator maintains the debtor's operations during liquidation, it is entitled to receive two per cent of the proceeds of such operations. If

settlement is reached in liquidation, the amount of the IOH remuneration is 5 per cent of the assets covered by the settlement. In bankruptcy, the IOH fees depend on the value of the debtor's assets (book value) in accordance with a sliding scale: from two per cent to 0.25 per cent.

- 43 In liquidation advance payments are made on the basis of yearly interim balance sheet prepared by the IOH. In bankruptcy, there is no advance payment, while the IOH fees are set forth by the court order at the closure of the proceeding. The temporary IOH in liquidation is entitled to a fixed fee (HUF 200,000 or 400,000, depending on the legal form of the debtor) to be advanced by the creditor that initiated the procedure.
- 44 In liquidation different minimum thresholds apply. In respect of remuneration from assets sold and receivables collected in the course of liquidation, a minimum of HUF 300,000 applies (or, if the liquidation procedure is terminated because the debtor settled its debts, a minimum HUF 200,000). If a settlement is reached in liquidation, the minimum amount of the IOH remuneration is a minimum of HUF 300,000. In bankruptcy a minimum amount of HUF 250,000 applies.
- 45 In liquidation, if the IOH fee is subject to a cap of 4 per cent of the proceeds of the debtor's liquidation and the receivables. In bankruptcy no cap is applicable.
- 46 A mandatory bonus applies if a bankruptcy (settlement) agreement is reached in bankruptcy and a further 15 per cent is due to the IOH (a minimum of HUF 300,000 applies).
- 47 The Resolution on the minimum amounts of basic administrator remuneration and the Rules on payment of basic administrator remuneration set forth provisions relating to the remuneration of insolvency office holders. These include payment of a fixed monthly fee and an additional fee to be paid if the IOH: (i) caused any illegally alienated property to be returned to the debtor and respective transactions were construed invalid; and/or (ii) collected receivables owed to the bankruptcy estate. The cap of such additional fee is capped at two or three per cent of the value of the property returned or receivables collected in respect of liquidation and rehabilitation respectively.
- 48 A monthly fee applies.
- 49 Statutory minimum amount of monthly fee varies between 15 and 35 monthly calculation indexes depending on the type of IOH (but is not applicable to temporary IOHs). If the debtor has no assets, the minimum amount of the monthly fee is one month minimum salary. For 2014 one MCI equals to KZT 1852 (approximately USD 10).
- 50 With respect to the monthly fee only. This is MCI 50 per month.
- 51 The Regulation No. 22/2012 on Determining Special Qualifications, Rewards and Compensation and Bankruptcy Administrators' Licensing Procedures sets forth certain provisions relating to IOH remuneration, however the framework is not detailed. The final amount of reward and compensation is determined by the court at the closure of the procedure taking into account the volume of work, the value of the bankruptcy assets and the IOH's commercial outcomes.
- 52 The court decides on granting any advance payment, which may be a monthly payment, taking into account the volume of the work and the value of the bankruptcy estate.
- 53 The court decides the level of IOH remuneration at its discretion taking into account the time spent and the volume of the work, the value of assets and IOH's commercial results with respect to the insolvency case.
- 54 The same provisions apply to IOHs in special administration and in rehabilitation and consist of a

Countries	Statutory framework	Tariff/ scale	Advance payment/ monthly fee	Minimum	Cap	Performance-based reward	Key players	Priority over unsecured/ preferential creditors
Moldova	✓ ⁶⁴		✓ ⁶⁵	✓ ⁶⁶	● ⁶⁷		Creditors, the IOH, confirmed by the court	Unsecured, preferential
Montenegro	✓ ⁶⁸	✓ ⁶⁹	✓ ⁷⁰		✓ ⁷¹	✓ ⁷²	Court (in reorganisation creditors)	Unsecured, preferential
Morocco							Court	Unsecured, preferential
Poland	✓ ⁷³		✓ ⁷⁴		✓ ⁷⁵	✓ ⁷⁶	Court, the IOH	Unsecured, preferential
Romania	✓ ⁷⁷	● ⁷⁸			● ⁷⁹	✓ ⁸⁰	Court, creditors	Unsecured, preferential
Russia	✓	✓ ⁸¹	✓ ⁸²	● ⁸³	● ⁸⁴	✓ ⁸⁵	Court, creditors	Unsecured, preferential
Serbia	● ⁸⁶	● ⁸⁷	● ⁸⁸	● ⁸⁹	● ⁹⁰	✓ ⁹¹	Court, creditors	Unsecured, preferential

- monthly fee plus an additional payment. The additional payment is mandatory and is decided by creditors.
- 55 The monthly fee is a fixed monthly payment that is equal to 20 times the statutory minimum salary, which in the Kyrgyz Republic for 2014 is KGS 900. Monthly payments to IOHs therefore amount to KGS 18,000 (approximately USD 360).
- 56 The fixed monthly fee operates as a minimum payment.
- 57 The monthly fee is fixed and the additional payment is capped at five per cent of the funds allocated to creditors. The additional fee may be reduced by the court on the request of creditors.
- 58 With respect to Latvian Insolvency Proceedings only. In Latvian Legal Protection Proceedings there is no guidance on IOH remuneration. If the IOH is nominated by the debtor, his remuneration is subject to agreement between the IOH and debtor. If not agreed, the payment in practice is a monthly fee.
- 59 A flat rate fee applies in Latvian Insolvency Proceedings plus 10 per cent of the recovered assets (before the preparation of the plan for sale of the debtor's assets). In addition, the IOH is entitled to 10 per cent of the proceeds of non-pledged property or a certain percentage of the proceeds based on a sliding scale for pledged property.
- 60 A monthly fee is usually paid in Latvian Legal Protection Proceedings only and is equal to one minimum monthly salary.
- 61 In Latvian Insolvency Proceedings the minimum remuneration is two monthly salaries; in Latvian Legal Protection Proceedings the minimum remuneration is one monthly salary.
- 62 IOH fees are determined by a private contract between the IOH and creditors.
- 63 IOH fees (including any instalments) are determined by a private contract between the IOH and the creditors and may include a monthly or advance payment.
- 64 IOH fees consist of a fixed fee and an additional fee. The fixed fee is set forth by way of negotiation between the creditors and the IOH in both types of proceedings. The additional fee is based on the extent and complexity of the case in an amount not exceeding five per cent of the amounts distributed to creditors as result of the sale or use of the insolvency estate and/or the amount of creditors' claims satisfied. The remuneration percentage and the expenses of the IOH are established by the creditors.
- 65 A fixed fee is paid monthly.
- 66 There is a minimum amount for the monthly fee, which is calculated in accordance with average multiplication factors. In practice, the minimum IOH fee is MDL 9,900 (approx. EUR 540).
- 67 Caps on apply to the additional fee, which cannot exceed five per cent of the amount distributed to creditors.
- 68 A rulebook applies to IOH remuneration in all types of proceedings. Nevertheless the remuneration of the IOH is determined by the restructuring plan. If the IOH proposes the restructuring plan, his remuneration cannot exceed the amount he would receive if the bankruptcy was conducted by way of liquidation. Otherwise the remuneration of the IOH cannot be less than the amount he would receive if the bankruptcy were conducted by way of liquidation, in which case the basis for calculation would be 30 per cent of the amount envisaged by the reorganisation plan.
- 69 A sliding scale applies depending on the value of assets with rates ranging from 0.5 per cent to 100 per cent.
- 70 A monthly payment applies but law does not specify the amount of the monthly fee.
- 71 The monthly payment is typically capped at 2.5 times the average net salary in Montenegro, but can be increased by the judge.
- 72 The judge may increase or decrease the amount of IOH remuneration depending on the complexity or duration of the proceeding or the degree of the satisfaction of creditors' claims.
- 73 The same framework for remuneration applies in all types of insolvency proceedings.
- 74 The IOH is entitled to a lump sum payment but at the IOH's request the court may grant an advance payment that is awarded once every few months in practice. The monthly payment may be paid only if the value of the IOH's remuneration calculated in accordance with the general rules is evidently disproportionate to his work.
- 75 The monthly fee cannot be higher than the average monthly salary in the business sector. The lump sum fee is capped at three per cent of the value of the bankruptcy estate and the proceeds from selling the secured assets (but the judge may increase the IOH remuneration) or 140 times the average monthly wage in the business sector in the fourth quarter of the previous year (note that different rules apply if the debtor does not have sufficient funds).
- 76 IOH fees in liquidation can be increased by 10 per cent if the distribution plan is submitted within one year from the final date of registering creditors' claims or upon a higher level of satisfaction of creditors' claims. Where the IOH administers the debtor's business, an additional payment of 10 per cent of the annual profits may be granted.
- 77 In conciliation, IOH remuneration is agreed according to the conciliation plan and is paid from the debtor's estate. The remuneration is composed of a fixed amount, a monthly fee and/or a success fee depending on the nature of IOH's obligations and the complexity of the conciliation plan. In liquidation, a flat fee rate, success fee or a combination of these two fees apply. The fees of the interim IOH are determined by the syndical judge. Creditors participate in setting the IOH's remuneration when replacing or confirming the IOH appointed by the syndical judge at the opening of the procedure. The amount of remuneration awarded needs to take into account various factors including number of the debtor's employees, the nature of assets and the value of the estate.
- 78 A tariff applies if the IOH is paid from the "liquidation fund" which is available in circumstances where the debtor has insufficient liquidity.
- 79 A cap of 3,000 (approximately EUR 667) applies where IOH fees are paid from the liquidation fund. Where the remuneration of the IOH is set by the creditors and the debtor subsequently lacks liquidity, the IOH will be entitled to no more than his initial remuneration established by creditors.
- 80 A success fee may apply in both reorganisation and liquidation proceedings.
- 81 The tariff/ scale consists of a fixed fee plus an amount calculated as a percentage of the debtor's assets (based on their balance sheet value) and/or otherwise determined by the results of the proceedings. The statutory framework applies to all types of IOHs, however with calculation differences.
- 82 A fixed monthly fee applies which can be increased by creditors or by the court, depending on the type of procedure from 15,000 RuR to 45,000 RuR.
- 83 The monthly fee is set as a minimum of 15,000 RuR.

Countries	Statutory framework	Tariff/ scale	Advance payment/ monthly fee	Minimum	Cap	Performance-based reward	Key players	Priority over unsecured/ preferential creditors
Slovak Republic	● ⁹²	● ⁹³	● ⁹⁴		● ⁹⁵		Court, the debtor, the IOH	Unsecured (plus certain preferential claims)
Slovenia	✓ ⁹⁶	✓ ⁹⁷	● ⁹⁸	✓ ⁹⁹	✓ ¹⁰⁰		Court	Unsecured, preferential
Tunisia	● ¹⁰¹		● ¹⁰²				Court	Unclear. ¹⁰³
Turkey	● ¹⁰⁴	● ¹⁰⁵	● ¹⁰⁶		● ¹⁰⁷	✓ ¹⁰⁸	Court, the IOH	Unsecured, preferential
Ukraine	✓	✓ ¹⁰⁹	✓ ¹¹⁰	✓ ¹¹¹	● ¹¹²		Court	Unsecured, pari passu with preferential ¹¹³

Note: This table illustrates (marked with symbol “✓”) applicable aspects of insolvency office holder remuneration systems in assessment countries. Any reservations relating to these categories are marked with a symbol “●”.

Source: 2012-14 EBRD insolvency office holder assessment.

- 84 The fixed monthly fee can only be increased to a maximum of 45,000 RuR.
- 85 The “interest” additional fee may be paid at the end of each insolvency procedure, decided by the creditors. Such fee is calculated based on the value of the debtor’s estate and the/or the result of the proceeding.
- 86 With respect to liquidation only. In reorganisation, the IOH’s fees are determined by the reorganisation plan. Remuneration of insolvency office holders 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 of 14 January 2011) (as amended).
- 87 A tariff applies consisting of a fixed sum payment and a percentage of any proceeds in liquidation, varying from 0.5 per cent to 100 per cent.
- 88 A monthly payment may be paid in liquidation at the discretion of the judge.
- 89 If the IOH does not submit a reorganisation plan, the fee cannot be less than fee the IOH would get in liquidation, and the basis for calculation is 30 per cent of the amount of proposed satisfaction of creditors’ claims from the plan.
- 90 In reorganisation, the fee cannot be greater than the fee the IOH would get in liquidation, and the basis for calculation is the amount of proposed satisfaction of creditors’ claims in accordance with the plan (if filed by the IOH).
- 91 Remuneration may be increased based on the complexity or duration of the case or the degree of settlement of creditors’ claims, in accordance with a sliding scale in all types of insolvency proceedings. In addition, creditors may decide to grant an additional performance-based award.
- 92 In restructuring the statutory framework for remuneration does not apply as the IOH fees are determined by an agreement between the IOH and the debtor.
- 93 A tariff applies in liquidation only consisting of a fixed lump sum payment varying from EUR 2,323.57 to EUR 6,638.78 in case of legal entity debtor and a percentage of any proceeds. This may be decreased by the court.
- 94 The fixed lump sum payment in liquidation constitutes an advance payment. The fees of the preliminary IOH are determined by the court, whereas the specifics on the sum of the remuneration and reimbursement of proven expenses for the preliminary IOH are set forth in a separate legal regulation. The remuneration of the preliminary IOH is fixed at EUR 663.88 and reimbursement of proven expenses is capped at EUR 995.82 in respect of a debtor that is a legal entity.
- 95 In liquidation, a cap applies to the amount of proceeds in respect of which the IOH is entitled to claim a fee.
- 96 The Slovenian Insolvency Law provides a framework for IOH remuneration. General rules are contained in the Rules on the tariff for assessing remuneration of IOHs.
- 97 Remuneration is awarded for individual tasks, for example, preparing an opening report, sale of assets, and so on, both in liquidation and in reorganisation. It consists of a fixed fee plus a sliding scale percentage-based payment calculated according to the amount of the debtor’s assets, the number of creditors’ claims, the amounts of cash distributed to creditors and/or duration of the proceedings.
- 98 In reorganisation a monthly payment is made consisting of EUR 473 to EUR 1,420 and the remaining amount is paid at the completion of the proceeding. In liquidation remuneration is largely paid following the completion of individual tasks and the remaining unpaid amount for the completed tasks is paid at the end of the liquidation.
- 99 In reorganisation the minimum amount is EUR 12,000, whereas in liquidation the minimum amount is EUR 1,420.
- 100 In reorganisation the maximum amount of IOH remuneration is EUR 30,000 and in liquidation the maximum amount is EUR 80,000.
- 101 The Law No. 71 of 1997 on Insolvency Office Holders sets forth certain provisions regarding the remuneration of liquidators but is not detailed and does not properly cover the remuneration of other types of IOHs.
- 102 A liquidator submits his proposal for the estimated fees to the judge and may request an advance payment of maximum 20 per cent of the proposed amount but the judge is not obliged to grant such advance payment. The position with respect to advance payments of other IOHs is unclear.
- 103 IOH fees appear to have priority over unsecured and preferential creditors since they are treated as costs of the proceedings; however, this point is not expressly regulated by statute.
- 104 A Governmental Communication applies to IOH fees in bankruptcy proceedings. In postponement of bankruptcy IOH fees are decided at the court’s sole discretion.
- 105 Remuneration in bankruptcy proceedings is based on a sliding scale determined by the total amount of distributions to creditors. This varies from 10 per cent to 0.1 per cent and may be increased or decreased by the court.
- 106 On the request of the IOH, the court may order an advance payment to be made to the IOH however this is at the court’s sole discretion. The bankruptcy office (as temporary IOH) is paid certain expenses in expenses by the creditor that initiated the bankruptcy proceeding.
- 107 The amount established by the sliding scale in bankruptcy proceedings may be increased, subject to a cap (up to three times the amount payable in accordance with the tariff).
- 108 An additional payment may be granted by the court to the bankruptcy administration, however this cannot exceed 25 per cent of the fees payable in accordance with the sliding scale, taking into account the nature of the work and performance of the bankruptcy administration. The court is entitled to decrease the IOH’s remuneration.
- 109 IOH fees consist of a basic monthly fee (calculated within the limits of a minimum and maximum monthly salary) and additional fees in both liquidation and financial rehabilitation based on a percentage of the value of assets recovered and creditors’ claims satisfied (five per cent of the assets collected and three per cent of the creditors’ claims respectively).
- 110 IOH is entitled to receive a monthly payment. In addition, the creditors may also decide to establish a “fund” for paying advance payments to the IOH.
- 111 The asset manager’s minimum fee is two minimum salaries per month; the rehabilitation manager and liquidator’s minimum fees are two average monthly salaries of the debtor’s directors payable for the most recent twelve months of employment before initiation of the procedure.
- 112 The cap is applicable on monthly fees only. In respect of the asset manager the cap is five minimum salaries while the liquidator and rehabilitation manager’s fees are capped at 10 minimum salaries.
- 113 Only the basic fee has priority over unsecured claims. The additional IOH fee is payable after unsecured creditors.

such right is exercised. Some secured creditors may prefer a sales process managed by an IOH.

Commentary to Table 20:

The review of the IOH remuneration systems among the countries surveyed reveal that there is no single predominant model for IOH remuneration. Nevertheless, most countries have a relatively detailed statutory framework for IOH remuneration. Private agreement between the IOH and creditors (or the debtor) on the level of IOH remuneration is only possible in a minority of countries. This minority includes Bulgaria, where creditors are able to set the level of remuneration of the permanent IOH in both liquidation and reorganisation. In Bulgaria creditors are, however, required to pay a monthly fee to the IOH for the work performed and are expected to pay a final remuneration amount (as a percentage of the property of the bankruptcy estate or any property which has been liquidated). Georgia and Lithuania are other notable exceptions since private IOH fees are all determined by private contract between the creditors and the IOH and are subject to no real statutory restrictions. In all of these countries, creditors have strong influence on the selection and appointment of the IOH. Such difference is also observed in different types of insolvency proceedings. In liquidation the tariff/scale system is often applicable (such as in Hungary or Serbia), while in reorganisation creditors and the IOH (sometimes the debtor as in Latvia) are primarily responsible for agreeing IOH remuneration (such as in Estonia, Latvia, Montenegro or Romania).

Given the complex and broad nature of IOH remuneration, statutory provisions may cover various elements, including any tariff or scale, any statutory minimum or maximum amount and/or performance based reward. In more than half (63 per cent) of countries surveyed remuneration is linked to a tariff or scale, referring to a strict system whereby the level of IOH remuneration depends on primarily objective criteria, such as the amount of proceeds or the value of the debtor's estate. As mentioned above, a tariff system may be too rigid if it does not allow the court and/or creditors to take into account the particular facts of the insolvency case.

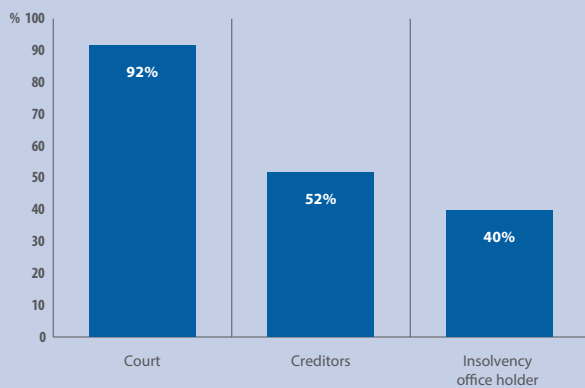
IOH fees are subject to a direct statutory minimum amount in 10 countries, which may include a fixed amount or a reference value to a statutory minimum salary. In another four countries (Bosnia and Herzegovina, Estonia, Russia and Serbia) an indirect minimum fee applies which may refer to a minimum percentage of proceeds from the sale of assets (in liquidation) or a percentage of the amount that would be applicable as per the tariff such as in Serbia where the tariff is not applicable in the given case.

Maximum amounts or caps on IOH fees are more frequently applied than minimum amounts in the assessment countries. Eighteen countries have a cap on IOH remuneration. These caps are either by reference to a statutorily defined amount (for example Kazakhstan) or the minimum or average salary (such as in Poland or Montenegro). Nevertheless, caps may also be imposed indirectly by setting a maximum value amount in respect of the sliding scale on which IOH fees are calculated (such as in FYR Macedonia).

Ten countries provide for additional "performance-based" remuneration that is granted on an optional basis (on the decision of the court or creditors). Performance-based remuneration is found, among other countries, in Bulgaria and Romania. In Bulgaria the creditors' committee does not appear to award performance-based remuneration often in practice. Additional remuneration may not necessarily be decided wholly by creditors. In Russia, although the creditors' meeting may decide to increase the fixed fee to be paid to the IOH, the creditors' decision is subject to approval by the court. In FYR Macedonia and Serbia IOH remuneration may be increased in certain circumstances, such as where the case is particularly complex or there is a higher satisfaction of creditors' claims. In Hungary, higher remuneration is linked with continuation of the debtor's business, which requires the conclusion of a settlement agreement with creditors.

In the vast majority of countries surveyed, remuneration is set by the court and creditors have limited rights to determine IOH fees. In the majority (92 per cent) of the assessment countries the court

Chart 30: Key players determining insolvency office holder remuneration in the assessment countries



Note: This bar chart indicates the percentage of assessment countries where the court, creditors and/or the IOH each play a role in determining the remuneration of insolvency office holders irrespective of the specific type of insolvency procedure.

plays a role in the determination and approval of IOH remuneration. The extent of such role may nonetheless vary. In some countries (for example, Bosnia and Herzegovina or Kosovo) the court appears to exert a determining influence; in other countries (for example, Lithuania) its role is of a more supervisory nature. In contrast, in a very limited number of jurisdictions (for example, Bulgaria and Georgia) creditors may determine the IOH's fees. In other jurisdictions, creditors only have the right to object to the level of

IOH remuneration either by filing objections and/or an appeal against the final amount of remuneration proposed to be awarded or awarded to the IOH.

Nevertheless, the court's discretion is typically restricted in those countries with a statutory tariff or scale where the court's decision on IOH fees must fall within such tariff or scale. In a number of countries the tariff or scale is, however, modified by the existence of performance-related remuneration (discussed above). It is observed that the key players in determining the level of IOH remuneration may change according to the type of insolvency proceedings. For example, in Latvia the court and creditors are each involved in deciding the IOHs fees in insolvency proceedings; however, in Latvian Legal Protection Proceedings such role is reserved for the IOH and the debtor. In the countries surveyed, there was overall recognition of the principle of protection of IOH remuneration. Tunisia was the only country where this principle was not clearly articulated in the legislation. In most countries IOH remuneration is characterised as a cost of the insolvency proceedings and is therefore paid first, albeit implicitly pro rata with other costs of the proceedings. In a few countries (Egypt, Hungary, Slovak Republic and Ukraine) there are restrictions on the overall amount IOH remuneration that can benefit from statutory priority.

SECTION 5

Creditor perceptions

5.1. Background

The EBRD sought to gather not only factual information relating to the IOH legal and professional framework from respondents, but also other data driven by respondents' opinions or beliefs. When asking perception-based questions, the general level of stakeholder awareness and experience was also tested to assess the reliability of the responses. There was a high level of participation by creditors across all jurisdictions and in the roll-out assessment, creditor respondents were asked further perception-based questions. This section focuses on the key perceptions by creditors of insolvency office holders in respect of certain assessment benchmarks. An overview of creditor respondents' experience and relative level of awareness of insolvency proceedings per jurisdiction is contained at Annex 5.

5.2. Creditors' views of insolvency office holder performance

In general, responses indicate that creditors believe that IOHs, as a whole, perform their professional tasks and duties well, with some reservations.⁶³ Reservations cited by respondents include misuse of powers by IOHs, unwillingness to start legal proceedings on behalf of the debtor for recovery of the debtor's assets, lack of professional skills due to insufficient qualification requirements and lack of transparency and efficiency. As demonstrated by Chart 31, creditors in Belarus, Bulgaria,

Egypt, Estonia, Hungary, Kosovo, Lithuania, Moldova, Slovak Republic and Slovenia (above 70 per cent) had the most positive perception of IOH performance, while creditors in Albania, the Kyrgyz Republic, Turkey and Ukraine (above 70 per cent) expressed a largely negative view. We note, however, that none of the creditor respondents in Kosovo had any direct experience with insolvency proceedings or IOHs. Comparing these perceptions with the overall development of these countries as assessed in section 2 (Overview of EBRD insolvency office holder assessment results) above, there seems to be a relatively significant mismatch in both positive and negative perceptions, especially in respect of Egypt, Albania and Ukraine.

Licensing and registration

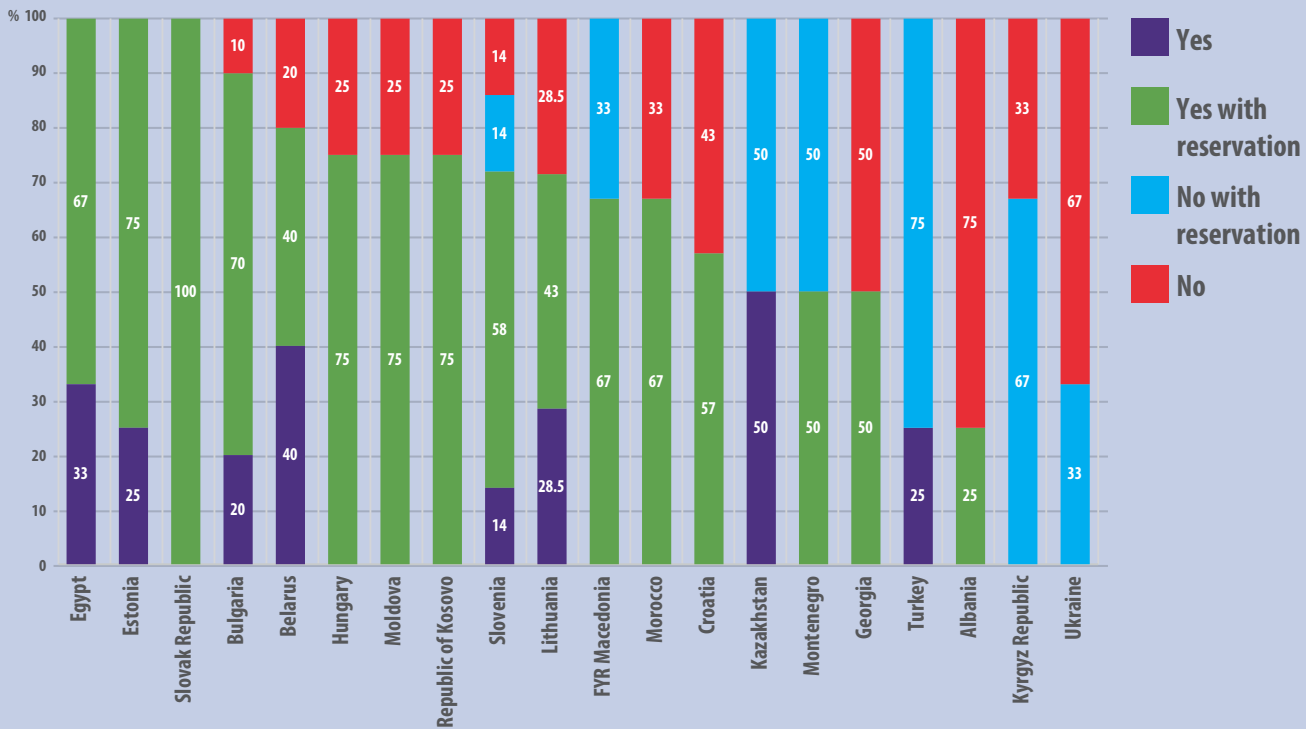
Creditors were questioned on whether they regarded the list of IOHs to be easily accessible at no or little cost. The responses generally corresponded with the existence of such lists in the particular jurisdictions. Nevertheless, in Albania, Bulgaria, Croatia, Hungary, Kazakhstan, the Kyrgyz Republic and Montenegro a small fraction of creditors do not find the list easily accessible, although these countries achieved the maximum score for this benchmark since the list is, in actual fact, readily available.

Regulation, supervision and discipline

Creditors in the majority of countries believe that a clear and efficient regulatory framework exists for IOHs in their respective country. A unanimously positive view was expressed by respondents from the Kyrgyz Republic, Lithuania, Turkey, Egypt and the Slovak Republic. Interestingly, all creditors answered in the negative (no and no with reservations) in Georgia, which seems to be in line with the overall assessment results and the fact that Georgia has only a partially developed regulatory framework for IOHs.

⁶³ Selected assessment countries only: 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 questionnaire for the seven pilot assessment countries.

Chart 31: Do you think that IOHs as a whole perform their professional tasks and duties well?



Note: This bar chart indicates the percentage of creditor respondents per country surveyed in the roll-out assessment which agree or disagree (in each case also with reservations) to the question in the creditors' questionnaire "Do you think that IOHs as a whole perform their professional tasks and duties well?"

Source: 2012-14 EBRD insolvency office holder assessment.

Creditors were also asked whether they regard the regulation, supervision and disciplinary system for IOHs to function effectively. As revealed by Chart 32, the overall picture for this questions is largely negative since the majority of respondents (at or more than 50 per cent) in Albania, Bulgaria, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Moldova, Morocco, Turkey and Ukraine believe that these systems do not function effectively. When comparing these responses with the responses from the previous question, it is interesting to observe that even though in the Kyrgyz Republic and Turkey creditors think that a clear and efficient regulatory framework exists, they do not think that it functions effectively.

Qualification and training

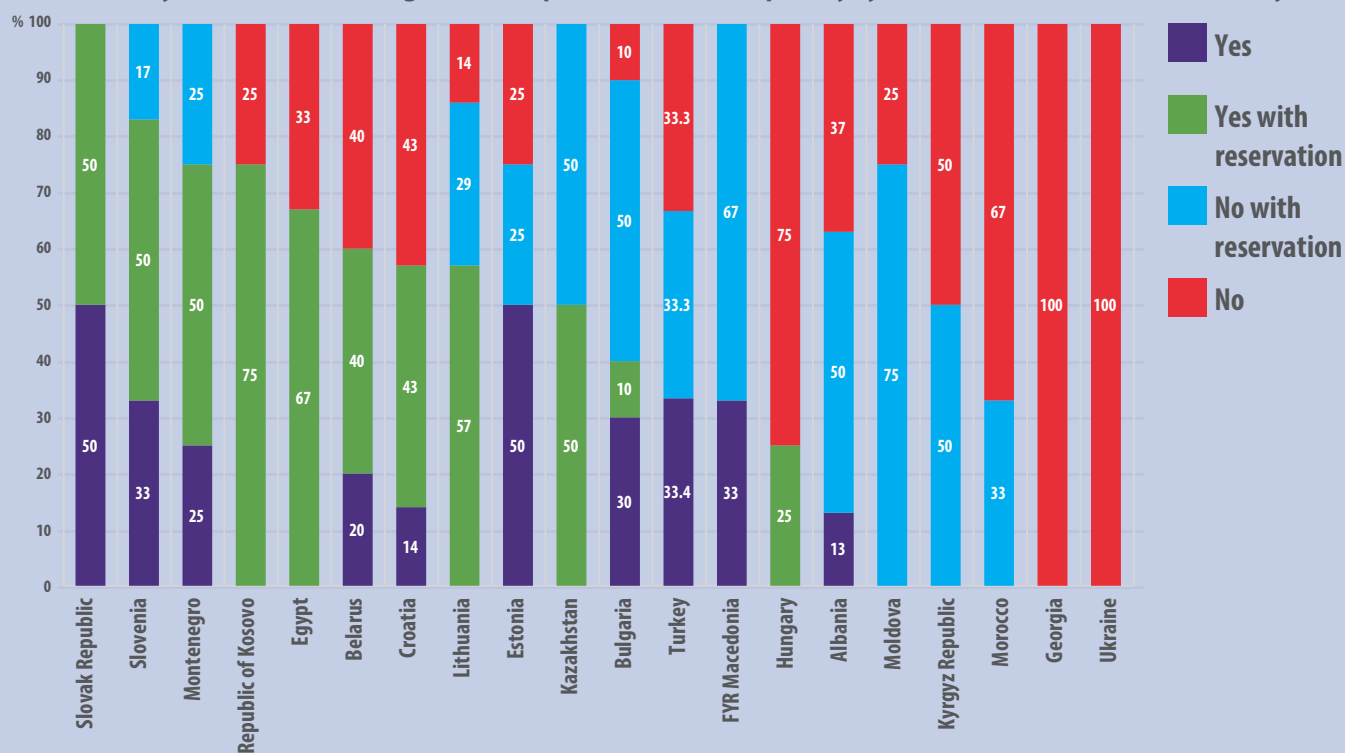
Chart 33 illustrates that the majority of creditor respondents are of the view that IOHs "generally have the necessary theoretical and practical skills" to carry out their professional duties well. All of the respondents in Belarus, Estonia, Egypt, Hungary, Kyrgyz Republic, Lithuania, Morocco, Slovak Republic, Turkey and Ukraine seem to be convinced that IOHs are skilled professionals (with some reservations), even though Morocco and Turkey are among the weakest

countries in terms of the legislative framework for the qualification and training of IOHs. Bank representatives in Albania, Georgia, Kazakhstan, Kosovo, Montenegro and Moldova (half or more than half of the respondents) had a largely negative view of the professional skills of IOHs. However, based on the assessment results this negative view seems to be justified only in Georgia.

With respect to qualification and training requirements for IOHs, there is an interesting difference among creditors' perceptions as to the skills of IOHs in respect of liquidation and restructuring. All creditors in Belarus, Egypt, Estonia, Hungary, Kyrgyz Republic, Lithuania, Moldova, Morocco, Slovak Republic, Slovenia, Turkey, and Ukraine believe that IOHs have the necessary skills to administer liquidation proceedings, while half or more than half of creditors in Georgia, Kazakhstan, Montenegro and the Republic of Kosovo are sceptical about the ability of IOHs in this area.

In contrast to liquidation, creditors tend to be less positive across all jurisdictions regarding the restructuring skills of IOHs. Fewer creditors believe that IOHs have the necessary skills to deal with the restructuring of the debtor's business than its liquidation. Creditor respondents in Estonia,

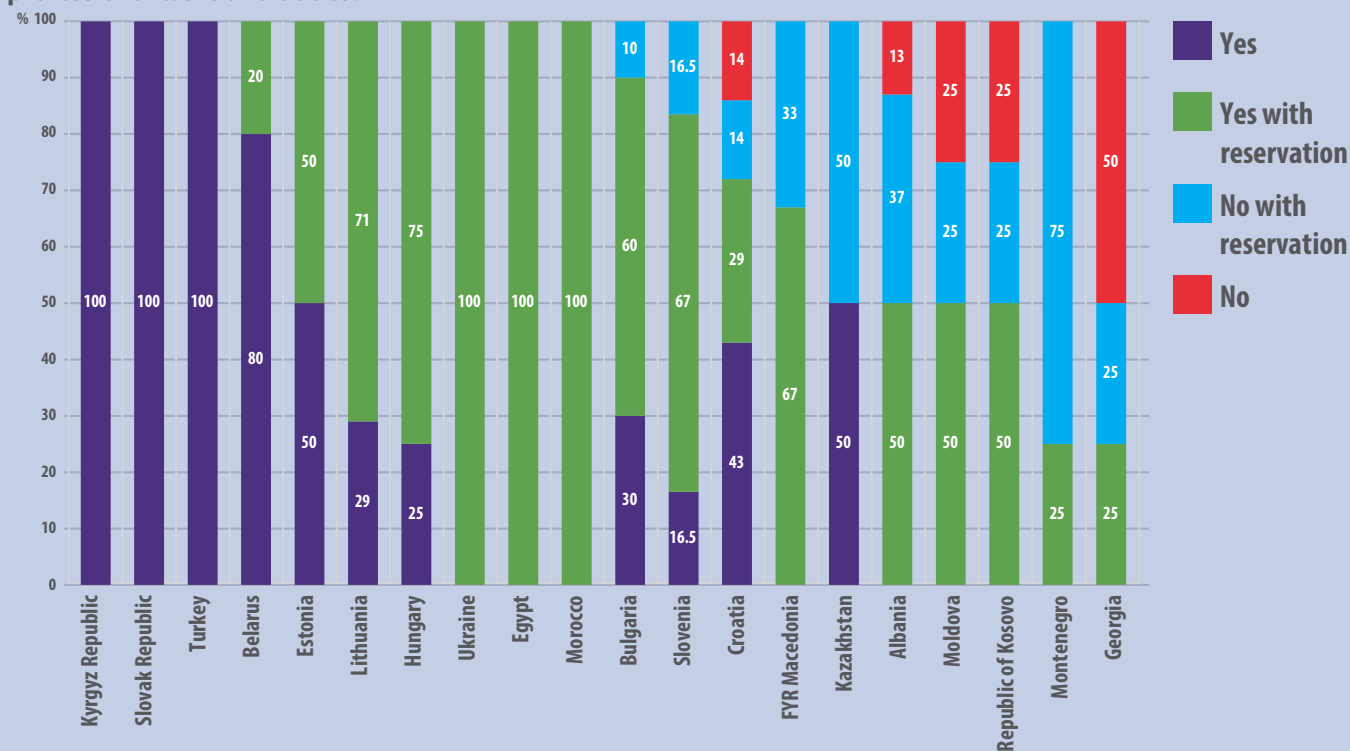
Chart 32: Do you think that the regulation, supervision and disciplinary system for IOHs functions effectively?



Note: This bar chart indicates the percentage of creditor respondents per country surveyed in the roll-out assessment which agree or disagree (in each case also with reservations) to the question in the creditors' questionnaire "Do you think that the regulation, supervision and disciplinary system for IOHs functions effectively?"

Source: 2012-14 EBRD insolvency office holder assessment.

Chart 33: Do you think that IOHs generally have the necessary theoretical and practical skills to carry out their professional tasks and duties?



Note: This bar chart indicates the percentage of creditor respondents per country surveyed in the roll-out assessment which agree or disagree (in each case also with reservations) to the question in the creditors' questionnaire "Do you think that IOHs generally have the necessary theoretical and practical skills to carry out their professional tasks and duties?"

Source: 2012-14 EBRD insolvency office holder assessment.

Hungary, the Kyrgyz Republic, Moldova, Morocco and Ukraine, who were mostly positive about the liquidation skills of IOHs, were largely negative (half or more than half of the respondents) about the restructuring skills of IOHs. Respondents in Montenegro and Kazakhstan were, however, negative about both liquidation and restructuring skill sets, although neither of these countries achieved significantly low scores in the qualification and training benchmark.

Appointment system

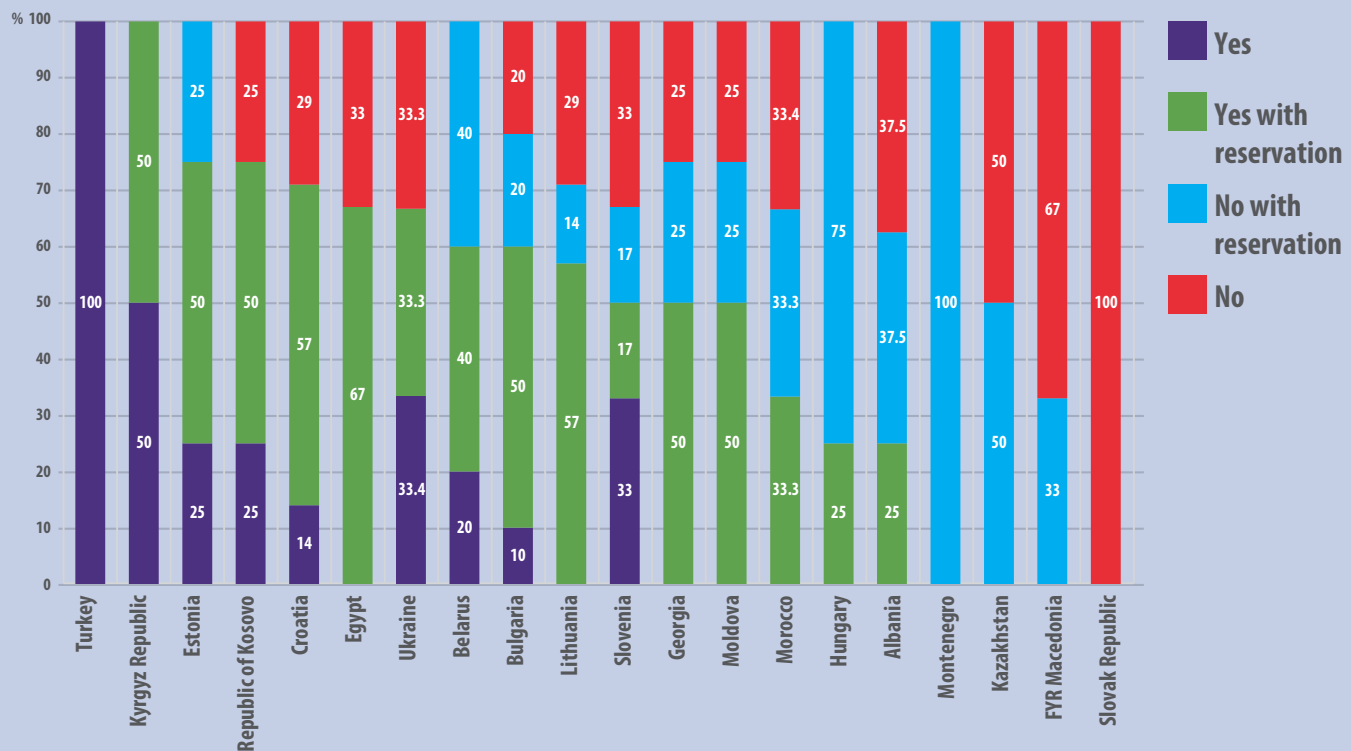
Given that creditors are of the view that IOHs generally have the necessary theoretical and practical skills to manage liquidation, it is not surprising that creditors, overall, think that the “right candidate” is typically appointed to an insolvency case. As revealed by Chart 34, creditors from 13 countries reported having had a positive experience (at least half of the responses) with the appointed IOH, nevertheless with reservations. Such reservations included that the appointed IOHs are incompetent, the appointment system is too random or the appointed IOH is not impartial. In Egypt where the

majority of creditors perceived that the right candidate is generally appointed as an IOH to a particular insolvency case, it is striking that the IOH appointment system does not appear to be well-developed and creditors do not play any role in appointment of the IOH. Creditors’ perceptions regarding IOH appointment only appear to match the relative development of the IOH appointment process in Ukraine, which achieved half of the total score awarded for this benchmark.

Work standards and ethics

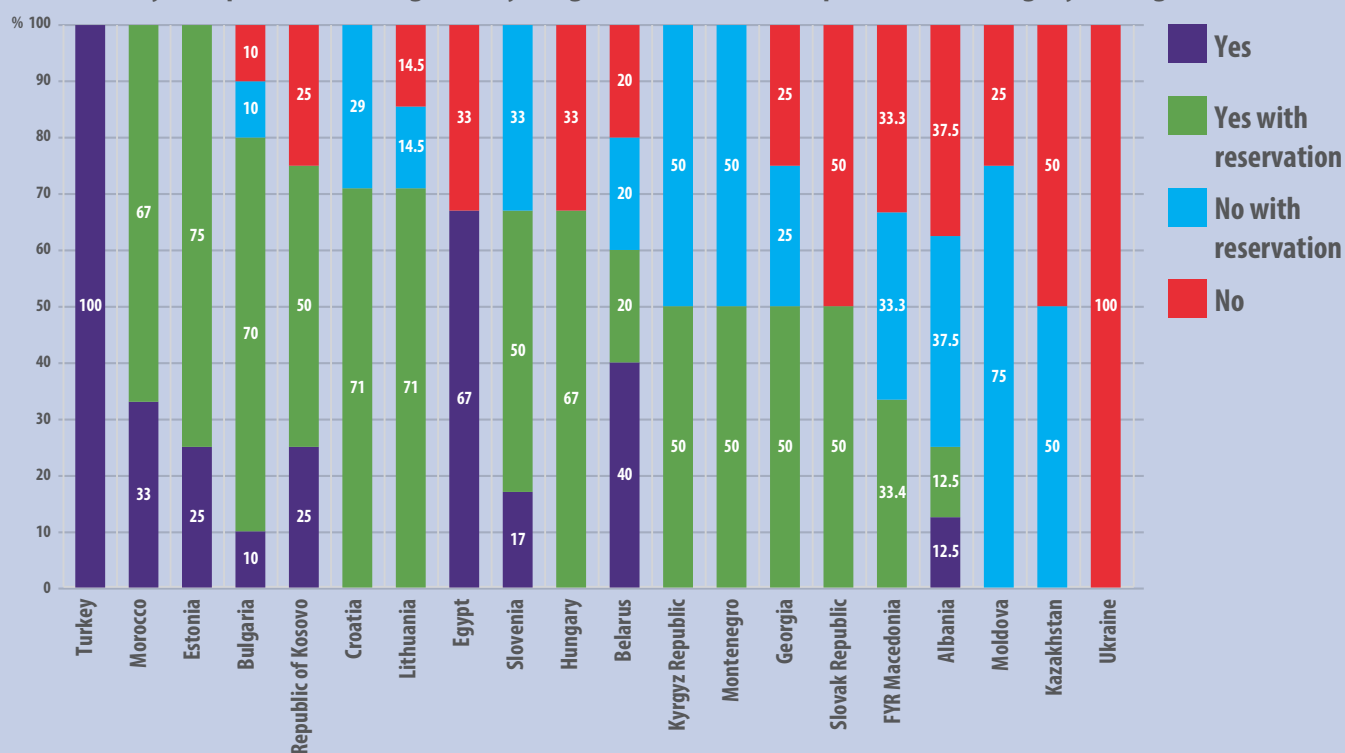
Chart 35 demonstrates that creditors as a whole regard IOHs to be professionals with a high level of moral and professional integrity, nevertheless with some reservations. Notable reservations include that IOHs prioritise their own interests. A majority of creditor respondents in Bulgaria, Croatia, Estonia, Lithuania, Morocco and Republic of Kosovo and Turkey (at or above 70 per cent) specifically acknowledged the integrity of IOHs, even though based on the assessment results and the analysis contained in section 2 (Overview of the EBRD insolvency office holder assessment results) the professional conduct framework

Chart 34: Do you think that the appropriate IOH, i.e. the “right candidate” is typically appointed to an insolvency case?



Note: This bar chart indicates the percentage of creditor respondents per country surveyed in the roll-out assessment which agree or disagree (in each case also with reservations) to the question in the creditors’ questionnaire “Do you think that the appropriate IOH, i.e. the “right candidate” is typically appointed to an insolvency case?”

Source: 2012-14 EBRD insolvency office holder assessment.

Chart 35: In your opinion, is there generally a high level of moral and professional integrity amongst IOHs?

Note: This bar chart indicates the percentage of creditor respondents per country surveyed in the roll-out assessment which agree or disagree (in each case also with reservations) to the question in the creditors' questionnaire "In your opinion, is there generally a high level of moral and professional integrity amongst IOHs?"

Source: 2012-14 EBRD insolvency office holder assessment.

does not appear to be detailed in these countries. In contrast, all Moldovan, Kazakh and Ukrainian creditors expressed the unanimous view that IOHs do not have a high level of moral and professional integrity. As set out in section 2, all of these countries only have a partially developed framework for professional conduct. Therefore in these countries creditors' perceptions seem to be in line with weaknesses found in the framework for professional conduct rules in Moldova, Kazakhstan and Ukraine.

Partiality or bias was one of the most frequently cited concerns with respect to IOHs in Kazakhstan, Ukraine and Moldova (above 75 per cent) while the lack of appropriate skills was considered by most creditor respondents in Georgia, Kosovo and Montenegro (at 75 per cent) to be one of the main problems. Similar to the main concerns with respect to IOHs, the principal areas about which complaints are made against IOHs concern management of the debtor's estate by (especially in the Kyrgyz Republic), the IOH's administration of the insolvency case (especially in the Slovak Republic) and the lack of impartiality (particularly in Morocco). The level

of IOH remuneration does not seem to be a frequent cause of complaints. Creditors in only eight countries referred to the issue of IOH remuneration and only to a limited extent (in Bulgaria, Croatia, Georgia, Hungary, Lithuania, Montenegro, Slovenia and Turkey).

A similar question regarding the general nature of complaints was asked of all respondents (not only creditors) in the pilot assessment. The most common complaints cited across all seven pilot assessment jurisdictions related to mismanagement of the debtor's estate, followed by bias towards certain creditors or debtor's management and inadequate communication by IOHs.

Legal powers and duties

Creditors were asked whether, in their opinion, IOHs have sufficient powers to carry out their administrative tasks. The large majority of creditors in all of the countries were of the view that IOHs have sufficient powers in insolvency proceedings. This generally corresponds with the overall high scores that the countries achieved for this benchmark. Respondents from 13 countries (Belarus,

Estonia, FYR Macedonia, Hungary, Kazakhstan, the Kyrgyz Republic, Moldova, Montenegro, Slovak Republic, Slovenia, Turkey, Ukraine and Egypt) unanimously gave a positive response (“yes” and “yes with reservations”) and believed that IOHs have the necessary skill-set to administer insolvency proceedings.

Remuneration

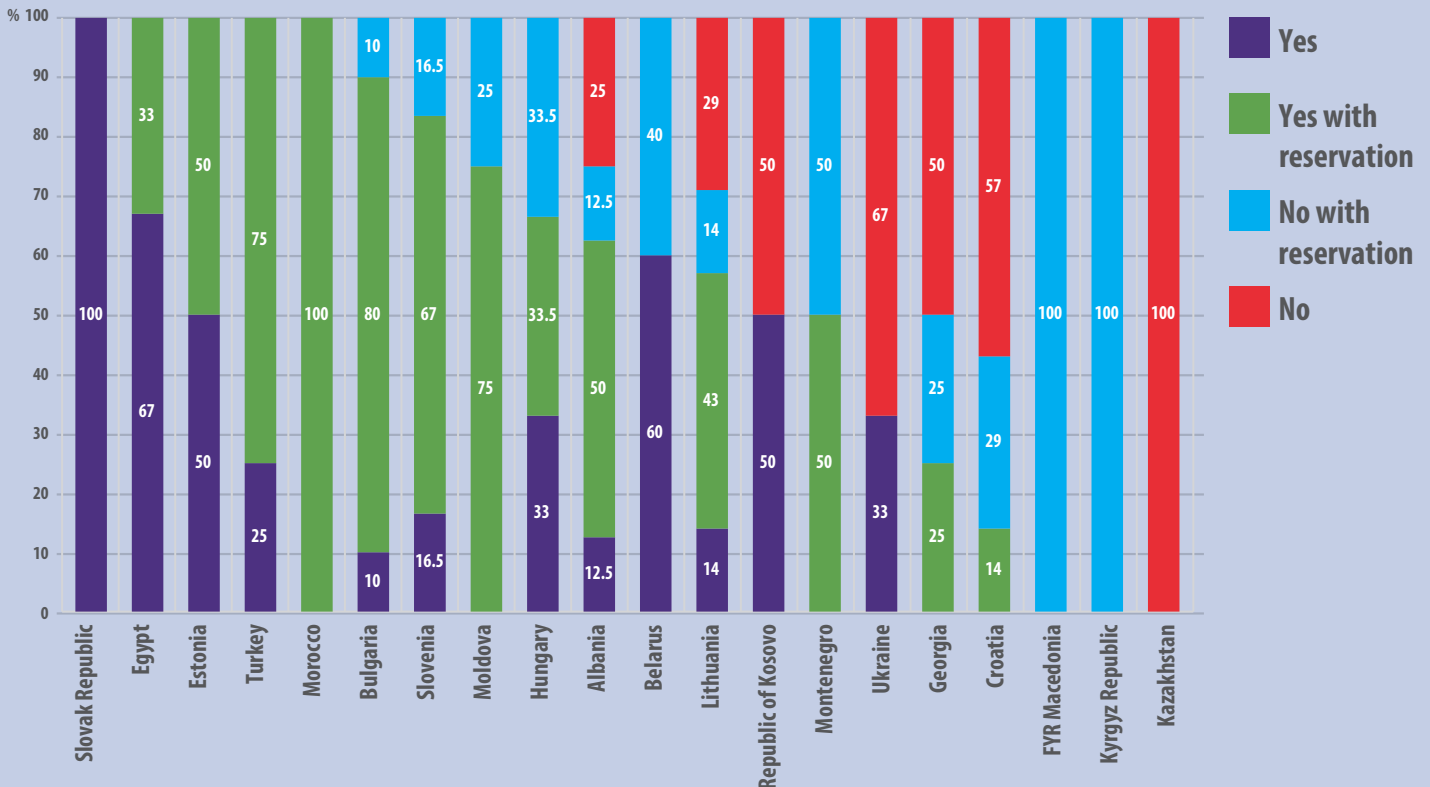
With respect to IOH remuneration, it is difficult to draw firm conclusions from creditor responses in individual jurisdictions on whether IOH remuneration is reasonable and transparent. For example, in Kazakhstan, the Kyrgyz Republic, and Montenegro opinion is evenly divided between those who consider IOHs’ fees to be mostly reasonable and transparent (positive responses including reservations) and others who believe IOHs’ fees to be mostly the opposite of reasonable and transparent (negative responses including reservations). However, in Belarus, Bulgaria, Croatia, Estonia, FYR Macedonia, Slovenia, Egypt, Morocco and Ukraine creditors believe that the remuneration of IOHs is mostly reasonable and transparent. Creditors’ criticisms often referred to the fact that IOHs’ fees are not too high for the work performed

and the calculation methods for such remuneration are not sufficiently transparent or clear.

Interestingly creditors appear to be in favour of performance-based rewards for IOHs. Respondents in Belarus, Kazakhstan, the Kyrgyz Republic, Lithuania and Ukraine unanimously responded that IOHs should be entitled to further remuneration as a reward for high performance. The highest level of disagreement with this argument was found in Estonia, Slovak Republic, FYR Macedonia, Hungary, Egypt and the Republic of Kosovo (at or above 50 per cent) where creditors do not appear to support such rewards. In practice, performance-based rewards exist in Hungary.

The majority of creditors across the 20 roll-out assessment jurisdictions believe that IOHs provide value for money, especially in Albania, Belarus, Bulgaria, Estonia, Hungary, Lithuania, Moldova, Slovak Republic, Slovenia, Egypt, Morocco and Turkey. This view was not shared by the majority of creditors in Croatia, FYR Macedonia, Georgia, Kazakhstan, the Kyrgyz Republic and Ukraine, who responded in the negative.

Chart 36: Do you think that IOHs provide value for money?



Note: This bar chart indicates the percentage of creditor respondents per country surveyed in the roll-out assessment which agree or disagree (in each case also with reservations) to the question in the creditors’ questionnaire “Do you think that IOHs provide value for money?”

Source: 2012-14 EBRD insolvency office holder assessment.

Annex 1

Law firm contributors

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4. Eristavi Law Group
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3. Turcan Cazac

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Annex 2

Assessment respondents by category

Countries	Legal professionals	Regulators	IOHs	Creditors
Albania	4	3	0	8
Belarus	2	1	0	5
Bosnia and Herzegovina	3	1	0	2
Bulgaria	2	0	1	10
Croatia	3	2	0	7
Egypt	3	0	0	3
Estonia	4	0	1	4
FYR Macedonia	4	2	0	3
Georgia	6	1	0	4
Hungary	3	1	0	4
Kazakhstan	3	0	0	2
Kosovo	2	0	0	4
Kyrgyz Republic	4	1	0	2
Latvia	2	8 ¹	5	7
Lithuania	3	1	0	7
Moldova	3	0	0	4
Montenegro	4	1	0	4
Morocco	2	0	0	3
Poland	2	3 ²	1	2
Romania	1	0	3	7
Russia	3	1	10	5
Serbia	1	3	1	12
Slovak Republic	3	1	0	2
Slovenia	4	0	0	6
Tunisia	0	0	0	3
Turkey	5	3 ³	0	3
Ukraine	6	0	1	3
Total⁴ 264	82	33	23	126

1 This includes two representatives of the judiciary.

2 This includes two representatives of the judiciary.

3 Includes two representatives of the Ministry of Justice and one judge.

4 This includes one extra respondent without group indication in the pilot assessment.



Annex 3

List of defined terms

Defined term	Reference
Albanian Agency	Albanian Bankruptcy Supervision Agency
assessment	The assessment conducted by the EBRD from 2012-14 on the IOH profession in selected countries where it operates with the aim of evaluating the profession's relative development and the legal and regulatory frameworks applicable to IOHs
assessment countries	The assessment covered the following 27 countries: 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
assessment report or report	The report summarising the results of the assessment
Belarussian Department	Department for Financial Rehabilitation and Bankruptcy in Belarus
benchmark	Seven core elements that have been developed by the EBRD following the pilot assessment for evaluating the legal and professional framework for IOHs and performance of the IOH profession
BSA	Bankruptcy Supervision Agency in Serbia
dedicated regulatory body	A body with primary responsibility for actively regulating the IOH profession. This may include a self-regulatory organisation and a state operated agency or department responsible for IOH regulation.
EBRD	European Bank for Reconstruction and Development
EBRD Insolvency Office Holder Principles	EBRD Principles in Respect of the Qualifications, Appointment, Conduct, Supervision, and Regulation of Office Holders in Insolvency Cases dated June 2007
EEA	European Economic Area
Estonian Chamber	Estonian Chamber of Bailiffs and Trustees
EU	European Union
FBIH	Federation of Bosnia and Herzegovina
Federal Registration Service	Federal Registration Service in Russia
FINA	Financial Agency in Croatia
Group	For the purpose of the report assessment countries are divided into different groups according to their principal regulatory system for the IOH profession. These include Group 1 (self-regulatory organisation), Group 2 (dedicated regulatory body), Group 3 (government ministry entrusted with regulatory powers) and Group 4 (no dedicated regulatory body or active government involvement).
Hungarian Association	Association of Insolvency Office Holders in Hungary
INSOL	International Association of Restructuring, Insolvency & Bankruptcy Professionals
Inspectorate	Inspectorate under the Ministry of Justice in Bulgaria
IOH	Insolvency office holder, referring to any person or body whose function is to administer or liquidate the assets of an insolvent debtor
key indicator	Each of the benchmarks was divided into a number of elements known as "key indicators", which set out the research parameters for individual benchmarks
Kosovo	Republic of Kosovo

Defined term	Reference
Kyrgyz Department	Department of Bankruptcy Affairs in the Kyrgyz Republic
Latvian Association	Latvian Association of Certified Administrators
Latvian Insolvency Administration	Insolvency Administration in Latvia
Leiden University Report	The draft report by the University of Leiden commissioned by INSOL Europe on "European Principles and Best Practices for Insolvency Office Holders, Report III: The Statement of Principles and Best Practices for Insolvency Office Holders in Europe" dated September 2014
Lithuanian Department	Department of Enterprise Bankruptcy Management in Lithuania
Macedonian Chamber	Chamber of Insolvency Trustees in the FYR Macedonia
NBE	National Bureau of Enforcement in Georgia
performance-based award	An additional, optional payment that may be made to the IOH above any statutorily prescribed range or amount, which is intended to reward the IOH for higher levels of performance in a particular insolvency case
pilot assessment	The assessment was piloted in the following seven countries from 2012-2013: Bosnia and Herzegovina, Latvia, Poland, Romania, Russia, Serbia and Tunisia with the assistance of the University of Nottingham
professional association	A group of IOHs with oversight or control of the legitimate practice of the IOH profession
questionnaire	Questionnaires covering each of the benchmarks were distributed by the EBRD to different respondent groups during the assessment and were used as a means of collecting both objective and subjective data on the IOH profession
roll-out assessment	The pilot assessment was rolled out in the following 20 countries from 2013-14: Albania, Belarus, Bulgaria, Croatia, Egypt, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kosovo, Kyrgyz Republic, Lithuania, Moldova, Montenegro, Morocco, Slovak Republic, Slovenia, Turkey and Ukraine
RS	Republika Srpska
scoring system	The scoring system developed by the EBRD for measuring the development of the IOH profession in the assessment countries
self-regulatory organisation	An organisation of IOHs which exercises regulatory authority over the IOH profession
Slovenian Chamber	Chamber of Insolvency Administrators in Slovenia
SROs	Self-regulating organisations of qualified receivers (IOHs) in Russia
Tax Committee	Tax Committee for Administration of Rehabilitation and Bankruptcy in Kazakhstan
UK	United Kingdom of Great Britain and Northern Ireland
Union	Union of SROs in Russia
University of Nottingham report	"Report on the Pilot assessment of the Performance of Insolvency Office Holders" issued by the University of Nottingham in 2013 summarising the results of the pilot assessment
UNPIR	National Union of Insolvency Practitioners in Romania

Annex 4

Insolvency proceedings and insolvency office holders

Countries	Insolvency proceedings / main legislation (as amended)	Insolvency office holders / titles
Albania	Law no. 8901, dated 23 May 2002 on Bankruptcy	administrator
Belarus	Law of the Republic of Belarus of 13 July 2012 No. 415-3 on Economic Insolvency	insolvency manager
Bosnia and Herzegovina	Law on Bankruptcy Proceedings applicable to the Federation of Bosnia and Herzegovina, published in the Official Gazette of Federation of Bosnia and Herzegovina No. 29/03, 33/04 and 47/06 Law on Bankruptcy Proceedings of the Republika Srpska, published in the Official Gazette of Republika Srpska No. 26/10	bankruptcy trustee
Bulgaria	Commerce Act, published in the State Gazette No. 48 dated 18 June 1991	bankruptcy trustee or receiver
Croatia	Insolvency Act, published in the Official Gazette No. 45/2013 Act on Financial Operations and Pre-Bankruptcy Settlement Proceedings, published in the Official Gazette No. 112/2013	bankruptcy trustee pre-bankruptcy trustee
Egypt	Trade Law No. 17 of 1999	trustee and liquidator
Estonia	Bankruptcy Act of 2003 Reorganisation Act of 2008	bankruptcy trustee reorganisation adviser
FYR Macedonia	Insolvency Act of 2006, published in Official Gazette of RM 34/2006	insolvency trustee
Georgia	Law of Georgia on Insolvency Proceedings adopted on 28 March 2007 by the Parliament of Georgia, No: 4522-IS	bankruptcy manager and rehabilitation manager NBE acts as state insolvency trustee
Hungary	Act XLIX of 1991 on Bankruptcy and Liquidation Proceedings	asset controller and liquidator
Kazakhstan	Law of the Republic of Kazakhstan on Rehabilitation and Bankruptcy No. 189 dated 28 April 2014, registered in the Registry of legal enactments of the Republic of Kazakhstan under No. 9478	rehabilitation manager and bankruptcy trustee

Countries	Insolvency proceedings / main legislation (as amended)	Insolvency office holders / titles
Kosovo	Law on the Liquidation and the Reorganisation of Legal Persons No. 2003 /4 of 13 March 2003	administrator
Kyrgyz Republic	Law of the Kyrgyz Republic on Bankruptcy No. 74 dated 15 October 1997	special administrator (or liquidator) and external administrator
Latvia	Law on Insolvency adopted on 26 July 2010	insolvency administrator
Lithuania	Law on Bankruptcy No. IX-216 of 2001 Law on Restructuring of Enterprises No. IX-218 of 2001	bankruptcy administrator restructuring administrator
Moldova	Insolvency Act No. 149 dated 29 June 2012	administrator and liquidator
Montenegro	Law on Bankruptcy No. 1/2011 dated 11 January 2011	bankruptcy trustee
Morocco	Book V (Businesses Difficulties) of the Commercial Code Law No. 15-95	insolvency trustee (syndic)
Poland	Law on Bankruptcy and Restructuring adopted on 28 February 2003	court receiver, court supervisor and administrator
Romania	Law No. 85/2014 regarding preventative insolvency proceedings and insolvency proceedings	judicial administrator and judicial liquidator
Russia	Federal Law No. 127-FZ on Insolvency of 26 October 2002	rehabilitation administrator, external administrator and liquidation administrator
Serbia	Law on Bankruptcy of the Republic of Serbia of 2009	bankruptcy administrator
Slovak Republic	Act on Bankruptcy and Restructuring, No. 7/2005	bankruptcy administrator and restructuring administrator
Slovenia	Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act published in the Official Gazette No. 13/14	insolvency administrator
Tunisia	Law no. 34 of 17 April 1995 on the Restructuring of Businesses in Financial Difficulty The Book IV on composition procedures and insolvency of the Commercial Code of 1959	administrator official receiver
Turkey	Enforcement and Bankruptcy Code No. 2004	postponement of bankruptcy trustee and the bankruptcy administration (consisting of three bankruptcy administrators)
Ukraine	Law of Ukraine on Restoration of Debtor's Solvency or Declaration of Bankruptcy No. 2343-XII dated 14 May 1992	asset manager, rehabilitation manager and liquidator

Annex 5

Creditor respondents' level of awareness

Although banks were the only creditors solicited for feedback in the assessment, they did not typically constitute a homogeneous group in terms of awareness and experience regarding insolvency and restructuring procedures (both within each

of the jurisdictions covered and in cases where there was more than one respondent from a bank, sometimes also within the same bank). The table below summarises the level of awareness and experience of creditors (banks) in the 20 jurisdictions

Country/number of creditor institutions/ number of respondents	Participation in insolvency proceedings (number of creditor institutions/number of respondents)	Participation in reorganisation cases (number of creditor institutions/number of respondents)	Observation of IOHs' work (number of creditor institutions/number of respondents)	Participation in a creditors' committee (number of creditor institutions/number of respondents)
Albania / 4 / 8	3 / 5	3 / 4	2 / 4	1 / 1
Belarus / 4 / 5	3 / 3	2 / 3	3 / 5	3 / 3
Bulgaria / 4 / 10	4 / 8	3 / 3	4 / 7	3 / 3
Croatia / 3 / 7	3 / 7	2 / 5	3 / 6	2 / 6
Egypt / 3 / 3	2 / 2	2 / 2	2 / 2	2 / 2
Estonia / 3 / 4	3 / 4	1 / 1	3 / 4	3 / 4
FYR Macedonia / 2 / 3	1 / 2	2 / 2	0 / 0	1 / 2
Georgia / 3 / 4	2 / 3	2 / 2	2 / 3	2 / 2
Hungary / 3 / 4	3 / 4	3 / 4	3 / 4	1 / 1
Kazakhstan / 2 / 2	2 / 2	2 / 2	2 / 2	2 / 2
Kyrgyz Republic / 1 / 2	1 / 1	0 / 0	1 / 1	1 / 1
Lithuania / 4 / 7	4 / 7	4 / 7	3 / 6	4 / 6
Moldova / 2 / 4	2 / 4	1 / 1	2 / 3	2 / 2
Montenegro / 2 / 4	2 / 2	2 / 2	1 / 2	1 / 1
Morocco / 3 / 3	3 / 3	3 / 3	2 / 2	3 / 3
Kosovo / 3 / 4	0 / 0	0 / 0	0 / 0	0 / 0
Slovak Republic / 2 / 2	1 / 1	1 / 1	1 / 2 ¹	1 / 1
Slovenia / 3 / 6	3 / 6	3 / 6	3 / 6	3 / 4
Turkey / 4 / 4	4 / 4	4 / 4	2 / 3	1 / 2
Ukraine / 2 / 3	2 / 3	0 / 0	2 / 3	2 / 2
Total: 57 / 89	48 / 71	40 / 52	37 / 65	37 / 48

Note: This table indicates the number of creditor respondents surveyed in the roll-out assessment and their experience, focusing on whether they have participated in insolvency and/or reorganisation proceedings, observed the work of an insolvency office holder and whether they have participated in the work of a creditors' committee.

Source: 2012-14 EBRD insolvency office holder assessment.

¹ The respondent from the second bank was a former IOH and had therefore observed the work of IOHs, but not as part of her role within the bank. Her response is therefore excluded from this table.

assessed in the roll out of the pilot assessment.⁶⁵ This focuses on the sum of experience within each of the banks and on the experience of particular individual respondents.

As indicated by the table above, all or most of the creditors said that they had participated as a creditor in insolvency proceedings. A notable exception to this was in Kosovo where none of the respondents had participated in insolvency proceedings. Respondents experience of reorganisation cases was lower than their experience of liquidation in seven countries (Belarus, Bulgaria, Croatia, Estonia, Kyrgyz Republic, Moldova and Ukraine), while there was only one

country (Macedonia) where creditors appear to have more experience of reorganisation.

There is a strong association between the number of creditors that have observed the IOH's work and those that have participated in a creditors' committee. In practice, creditors that have participated in insolvency proceedings as members of the creditors' committee would be expected to have had the opportunity to observe the IOH's activities. Nevertheless, in Macedonia, Lithuania, Morocco and Turkey some banks were seemingly appointed as members of the creditors' committee without observing the IOH's activities. More creditors observed the work of the IOH than participated in creditors' committees in Albania, Croatia and Hungary.

⁶⁵ This was not tested in the pilot assessment.

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