

Estonia:

All you need to know about becoming an Insolvency Practitioner

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Development Fund, continues our series with an
examination of the rules and regulations in Estonia

In Estonia the term *ajutine haldur* is used for interim trustee, *pankrotihaldur* as trustee and *usaldusisik* as trusted representative in a natural person's bankruptcy proceeding, referred to altogether in this article as Insolvency Practitioner (IP)



Introduction – The IP as representative of debtor

According to the Estonian Bankruptcy Act § 54 an IP in Estonia is the debtor's legal representative in bankruptcy proceedings, who enters into transactions relating to the bankruptcy estate, performs other acts on behalf of the debtor and represents the debtor in court in disputes relating to the bankruptcy estate in Estonia. In the case of a debtor who is a legal person, the IP may represent the debtor in all transactions and legal acts. In the case of the bankruptcy of a debtor who is a natural person, the IP may perform only such transactions and legal acts which are necessary for achieving the objective of the bankruptcy proceedings and performing the duties of the IP.



Access to the profession

In Estonia, the following natural persons may become an IP.

- **Persons whom the examination board for IPs in bankruptcy formed by the Minister of Justice has granted the right to act as IPs.**
- **Lawyers (advocates) and the senior clerks of lawyers.**

The right to act as an IP is granted to a person with active legal capacity, who has passed the examination of IPs, is proficient in oral and written Estonian, and is honest and of moral character. The procedure for the grant and deprivation of the right to act as an IP is established by the Minister of Justice. The suitability of a person's professional skills and personal characteristics for the work of an IP shall be tested at an examination for IPs. The requirement to take the examination does not apply to lawyers and the senior clerks of lawyers, because they have passed their exams in the Estonian Bar Association. Indeed, theoretically there is no limitation for foreign IPs to access the profession if

they are acquainted with Estonian language and law, but in practice it is more common to have tight cooperation and to have a representative chosen among Estonian IPs when the insolvency proceeding is linked to Estonia.

The right to act as an IP shall not be granted to persons:

- **with a criminal record for an intentionally committed criminal offence;**
- **who have been removed from the position of judge, notary, prosecutor or bailiff or disbarred during the preceding 10 years;**
- **who have been released from public service for a disciplinary offence during the preceding five years;**
- **who are bankrupt;**
- **with regard to whom a prohibition on business applies; or**
- **who have been deprived of the right to be IPs or operate as an undertaking by a court judgment.**

At the request of a person acting as an IP, the Minister of Justice may suspend the person's right to act as an IP, but for not more than two years during a five-year period. During the time a person's right to act as a IP is suspended, the requirement for obligatory liability insurance shall not extend to the person. Usually, this suspension time is used for practical reasons: self-education, academic career etc. There is an electronical state register of IPs publicly available and accessible on-line in Estonia (www.just.ee/pankrotihaldur/jsf/pankrotihaldur/list.action). The registrar of the register of IPs is the Ministry of Justice.



Appointment and approval of IPs

An IP shall be appointed by the court and approved by the first general meeting of creditors. If an IP appointed by a bankruptcy order is not approved, the creditors shall elect a new IP whose approval shall be decided by a corresponding court ruling within five days after receipt of the decision of the general meeting. If a court does not approve an IP elected at a general meeting, the court shall appoint a new IP by a ruling and the IP need not be approved by a general meeting of creditors. A court shall not approve an IP elected by creditors if the IP does not meet the requirements provided for in the Bankruptcy Act, and it shall not appoint as IP a person whom a general meeting of creditors refused to approve. The court

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ruling shall also set out the reasons for refusal to approve the IP. An IP must have the confidence of the court and the creditors. He or she must not be an employee of the court and he or she shall be independent of the debtor and the creditors. When giving consent to the court to act as an IP, the person shall confirm in writing that he or she is independent of the debtor and the creditors. A person connected with the judge hearing the matter shall not be appointed as IP.



Supervision

There are several authorised bodies exercising supervision over the activities of IPs: the creditors' general meeting and committee, the debtor, the court and the state. A court may require an IP to submit information concerning the course of the insolvency proceedings and the activities of the IP, and to examine the IP's file at any time. If an IP violates his or her obligations, the court may impose a fine on the IP. The amount of the fine for one violation shall not exceed 100,000 EEK (ca €6,391). The Ministry of Justice shall exercise supervision over the activities of IPs to the extent provided by law. This means if complaint belongs to another supervising authority to handle, the ministry won't start the proceedings. The ministry shall exercise supervision over the activities of an IP on the basis of a complaint filed against the IP or other information which gives reason to believe that the IP has violated his or her obligations. In the course of the supervision, the ministry may appoint one or several persons to conduct a special audit of certain acts performed in the bankruptcy proceedings. It may order a special audit also in the event of abatement of the bankruptcy proceedings due to lack of assets. If violation of the obligations of an IP becomes evident, the ministry has the right to request the court to release the IP or impose a fine on the IP. If material or repeated violation of the



obligations of an IP is ascertained in the course of supervision, the Minister of Justice may deprive the IP of the right to act as an IP for up to five years. After the expiry of the term of deprivation of the right to act as an IP, the relevant person shall re-pass the professional examination of IP pursuant to the procedure prescribed by Bankruptcy Act.

Remuneration and Reimbursement

As a main rule, IPs perform their obligations personally. An IP may also conduct transactions relating to the bankruptcy proceedings through a representative. An IP may use the assistance of third persons in performing specific acts relating to the bankruptcy proceedings. On the proposal of an IP, the creditors' committee may appoint an assistant to the IP for performing specific duties.

IPs have the right to receive remuneration for the performance of their duties. The procedure for calculating the remuneration of IPs and the expenses subject to reimbursement, and the limits of remuneration as a percentage is established by the Minister of Justice. The court shall determine the remuneration of an IP upon approval of the final report of the insolvency proceedings after having heard the opinions of the IP, the debtor and the creditors' committee. The remuneration of an IP shall be calculated on the basis of the amounts which have 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 IP. The court shall determine the amount of the remuneration taking into account the volume and complexity of the work of the IP and his or her professional skills.

At the request of an IP, the court shall prescribe a preliminary remuneration for the IP after considering the opinion of the creditors' committee. The preliminary remuneration shall be set off against the remuneration prescribed for the IP upon

termination of the insolvency proceedings. The amount of the remuneration shall not be less than 1% of the amount calculated on the basis of the sums which have 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 IP. For example, the amount of the IP's remuneration for an estate value increase up to 100,000 EEK (ca €6,391) is 20-35% and between 1-5% if an estate value increase is more than 10,000,000 EEK.

If a compromise is reached or the insolvency proceedings are terminated without the winding up of the debtor who is a legal person, the court shall determine the remuneration of the IP taking into account the volume and complexity of the duties of the IP and his or her professional skills. If a debtor who is a legal person is wound up regardless of rehabilitation carried out in the course of the bankruptcy proceedings, the activities of the IP in the rehabilitation of the debtor shall also be taken into consideration in determining the remuneration of the IP.

An IP shall be liable for the activities of a third person, representative or assistant in the insolvency proceedings, as for his or her own activities. An IP pays remuneration to a third person, representative or assistant, out of his or her own remuneration according to the agreement between them. If using a representative is clearly necessary due to the complexity of the matter, remuneration may be paid to a representative out of the bankruptcy estate with the consent of the creditors' committee.

In addition to the remuneration of an IP, he or she has the right to the reimbursement of the necessary expenses incurred in the performance of his or her obligations. An IP has the right to be reimbursed for the expenses relating to legal counselling or auditing or accounting services if such expenses were necessary due to the large volume or complexity of the insolvency proceedings or a duty to be performed by the IP, and the IP could not be reasonably expected to perform the

duty himself or herself. With the consent of the creditors' committee, the IP may cover the expenses incurred in the course of the proceedings out of the bankruptcy estate as they occur.

Upon approval of the final report of the bankruptcy proceedings, the court shall verify whether the expenses incurred in the performance of the obligations of the IP were necessary and justified and approve the amount of the necessary and justified expenses. If the creditors' committee has given consent to unnecessary expenses incurred by the IP in the performance of his or her duties, the members of the creditors' committee who gave the consent shall be jointly and severally liable to the debtor with the IP. A claim for the return of the amount of such unnecessary expenses to the bankruptcy estate may be filed also by a creditor.

Estonia is one of the countries protecting public interest and has stipulated by insolvency law, that the remuneration and reimbursement of the IP has to be covered by the state budget if the debtor has filed the petition, debtor's bankruptcy proceeding has been opened, but the interim IP's report indicates that the debtor cannot be declared bankrupt by the court due to the lack of assets.

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