



All you need to know about becoming an Insolvency Practitioner: Russia

Elena Raitskaya from the Ministry of Economic Development and Trade of the Russian Federation shows us what is needed to become an IP in Russia

Access to the profession

To become an Insolvency Practitioner (IP) in the Russian Federation, you must pass a theoretical IP training programme examination. To be admitted for this exam, you must have finished IP training, and have a degree in the field of law, economics or anti-crisis management. Applicants who have performed the duties of an IP for more than a year are also eligible for the exam.

You must have two years' professional managing experience, and six months' experience as an assistant to an established IP. An IP must have a good reputation, with no former convictions for economic crimes of any gravity.

IPs are required to have professional indemnity insurance of no less than 3 million Rubles (82,000 Euros) per year.

Appointment

There is a state register of self-regulating organisations (SROs) and a state register

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of IPs. An SRO chosen by the debtor or by a creditor presents a list of three candidate IPs, from which one is chosen by the Arbitration Court. An IP may be discounted if there is the possibility of a conflict of interest. The remuneration proposed by the creditor or by the Creditors' Committee is also approved by the Arbitration Court.

IPs work independently but their activity is controlled by the SRO of which they are a member. Legally, IPs need not specialise in any particular area, but there are additional requirements in the case of some types of debtors, for example equity market participants or strategic organisations.

Control body

An executive control body, the Federal Registration Service, controls the activity of SROs. The officials of the Federal Registration Service are entitled to make periodic legal reports on the SROs and to draw up statements of the administrative cases.

Rights and Duties

An IP is given authority by the Arbitration Court, and his rights and duties depend on the form of bankruptcy. In accordance with the law, the main rights and duties of an IP are:

- to convene Creditors' Meetings;
- to convene the Creditors' Committee;
- to apply to the Arbitration Court with claims and petitions;
- to get remuneration;
- to enlist the services of specialists at the debtor's expense to provide fulfilment of his duties;
- to take measures in respect of

- preservation of the debtor's assets;
- to analyse the debtor's financial status;
- to analyse the debtor's financial, economic and investment performances, its place on the commodity markets and other markets;
- to keep a creditors' claims register;
- to pay damages to the creditors, the debtor, and third parties for the losses caused by his actions and confirmed by judicial decree;
- to determine signs of fictitious and premeditated bankruptcy; and
- to exercise other rights and duties provided by the law.

An IP must perform his duties in good faith, on behalf of the debtor, the creditors and society. His personal authority provided by the law cannot be delegated to other persons.



Remuneration

The IP's remuneration is freely established by the creditor or by the Creditors' Committee, and the court is asked to approve the amount. The IP's remuneration cannot be less than 10,000 Roubles (275 Euros).

The law does not take into consideration the delivery of legal documents, nor the importance of the assets realised. If the insolvent company had no assets it is considered as an absent debtor in accordance with the law. In that case the remuneration is paid by the state from federal budget, and the IP's expenses are compensated as well.

The law currently in force does not provide any additional fees in accordance with the success of the outcome. However, Creditors or the Creditors' Committee can establish an additional remuneration, which is paid at their expense and depends on the results of the IP's activities.

Probable amendments of the law considered by The State Duma provide for changes in the status of an IP and in the principles of the calculation of his remuneration. In accordance with the draft, an IP is a citizen engaged in private practice and performs professional activity in the field of insolvency (bankruptcy). There is no requirement for an IP to be registered as sole proprietor. At the same time he can engage in sole proprietorship.

The law currently in force causes some problems with the equitability of an IP's remuneration. In practice there are situations when the size of the remuneration doesn't cover the expenses incurred by an IP in connection with his

duties. The above draft includes a provision which establishes new rules concerning remuneration.

According to the redrafted version the IP has a right to remuneration and right to full recovery of the expenses practically borne by him in performing his duties. The latter right is a necessary legal guarantee for the economical independence of an IP. The remuneration of the IP would be paid at the debtor's expense. It consists of two parts: a fixed sum and a percentage payment. The value of the fixed sum depends on the bankruptcy procedure: the least-paid procedure is financial improvement, and the highest-paid is bankruptcy proceeding.

The arbitration court has a right to increase the fixed sum of remuneration on the Creditors' Meeting decision or on the petition of a participant of the bankruptcy case. In this situation the value or the sum may depend on the scope and complexity of his job.

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The value of the percentage payment also depends on the bankruptcy procedure. It is calculated on the basis of book value of the debtor's assets during supervision and financial improvement proceedings. The percentage payment of an external manager (external management proceeding) depends on the results of the IP's activities. If the bankruptcy case is discontinued (the solvency of the debtor is recovered) the IP gets 3% of the sum paid off by the creditors in accordance with the creditors' claims register. If the result of the proceeding of the external management is bankruptcy proceeding this sum is 3% of the net book value of the debtor's assets, which increased during the external management.

Single creditors, state bodies (authorised to represent state claims for tax and non-tax debts) or a Creditors' meeting have the right to establish extra remuneration for the IP at the creditors' expense.

Comment

Artur Trapitsyn, Chairman of the NP Self-Regulated Organisation of Insolvency Practitioners at the Russian Chamber of Commerce gives his view and further information on the regulations and their affect on IPs in Russia.

At present the number of insolvency practitioners in Russia exceeds 6,500. At the same time, according to the Supreme Arbitration Court of Russia the average number of bankruptcy procedures per year in Russia is about 21,000-22,000. So, an average insolvency practitioner in Russia is involved in 3.38 procedures a year.

His remuneration, as recommended by the law (10,000 roubles per month per procedure), is 33,800 roubles per month (approximately 950 Euros) and as a rule he gets paid only after the disposal of the assets of the debtor, that is after 10-15 months of work. Out of his remuneration, the insolvency practitioner has to pay for his compulsory insurance, pay his membership fees as a member of a professional organisation (SRO), which is compulsory, and also taxes.

Under the current legislation the remuneration does not correlate with the value of the assets of the insolvent company, whereas the amount of the insurance cover is connected directly to the value of the debtor's assets. That is why not infrequently the insurance premium paid by the insolvency practitioner exceeds the amount of his remuneration. Still, the creditors, the state being the major one of them, are not prepared to significantly increase remuneration of insolvency practitioners. In this situation, a Russian insolvency practitioner deserves only sympathy. The current legal system does not motivate him to work conscientiously.

The proposed changes to the current legislation mentioned in the second part of the article by Elena Raitskaya will in part lessen the gravity of the problems, but will not resolve the main issue of the excessive number of insolvency practitioners in Russia. Only a significant reduction in the number of insolvency practitioners can increase the number of procedures per insolvency practitioner thus increasing his total remuneration. Such a transformation will greatly improve the prestige of the profession of the insolvency practitioner in Russia.