

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

Luigi Varanelli, practicing insolvency practitioner in Ljubljana, summarises the rules and regulations in Slovenia



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Access to the profession

The status and remuneration of Slovenian insolvency practitioners (herein, IPs) is not substantially different from that in other countries. The Slovenian Insolvency Act (herein, Act) came into force on 1 October 2008 and is an act that globally governs all problems and areas regarding the insolvency of business companies.

The position of insolvency practitioners, their rights and obligations are regulated by the Act, as well as by a regulation on setting measures for the remuneration of bankruptcy trustees and other IPs. This regulation is a legal act issued to carry out the intent of the Act.

According to current Slovenian legislation, to become an IP a person has to fulfill the following requirements:

- Be a Slovenian citizen or a EU citizen with active knowledge of Slovenian language;
- Have the capacity to act and fulfils general health requirements;
- Have a higher education of first rank in legal or economic studies;
- Have at least three years' working experience in an area requiring an education in law or economics (i.e. attorney at law, auditor and so on);
- Have an insurance policy covering his liability for potential damages;
- Have passed an IP exam; and
- Is a person worthy of public trust to act as an IP.

Appointment

IPs are appointed by bankruptcy judges from a register. A new

insolvency procedure is entrusted to the IP stated under the next number on the list. In theory this appointment system sets limits to the discretionality of the judge in appointing the IP. It allows the appointment of all authorised persons with an IP licence and it also prevents cases where 'good' bankruptcies are entrusted always to the same IPs. An IP cannot be appointed in the bankruptcy case if he already handles five bankruptcy procedures in the court district where he operates.

Liability and Supervision

The recently passed Slovenian insolvency act has a completely new set of rules regulating the liability of IPs. An IP is, according to the new legislation, liable for damages caused by intentional acts as well as *all kinds of negligence*. This is an important novelty as the previous insolvency act held IPs liable only for damages caused by intentional acts and only for grave negligence. This is the reason why obligatory occupational insurance for damages is required for IPs so to minimise the risk they carry in regard to liability for damages. An IP is obligated to have an insurance policy issued by an insurance company, covering liability deriving from his occupation. There are only a few insurance companies in Slovenia prepared to offer occupational insurance to IPs. Insurance premiums range from €800 to €3,000 annually, depending on the insurance company. Minimum insurance for damages cannot be lower than €150,000. The Slovenian Ministry of Justice, in charge of keeping the list of

Slovenian insolvency practitioners, allows a person to become registered in the IP list only after proof of a valid insurance for an IP has been submitted to them.

IPs are liable for damages caused by intentional acts and grave negligence without limitation. In cases of ordinary negligence, their liability is limited to the amount that cannot exceed the amount of remuneration they received in the insolvency procedure in question, but cannot be lower than €5,000.

The function of the IP ceases if a person no longer fulfills any of the afore mentioned requirements necessary for his appointment. An IP is also recalled from his function in the following cases:

- if the assets of the insolvency debtor were deprived or damaged because the IP breached or abandoned his duties and obligations; or
- if the IP is responsible for committing two similar breaches in a five year period.

We can conclude that the liability of insolvency practitioners in Slovenia is very strict. The IP can also be punished with various fines for breach of duties and obligations. Fines range from €800 up to €4,100.

The new Act has introduced a supervisory authority, which operates within the Ministry of Justice. This authority supervises the work of IPs when there has been filed a request to recall an IP. The work of the IP concerning a single insolvency procedure is supervised by the judge who has appointed him.



Remuneration

There have also been some big changes regarding the remuneration of IPs. In composition with the creditors procedure, the practitioner is entitled to a reward consisting of four different reimbursements for:

- proofing of claims;
- writing a report on results of voting for composition with creditors;
- writing a report on subscription and payment of new shares; and
- supervision of the business of the insolvency debtor.

In bankruptcy procedures, the bankruptcy trustee is entitled to a reward consisting of reimbursement for:

- taking over premises, assets and the business of the insolvency debtor as well as preparing the opening report of the bankruptcy procedure;

- proofing of claims, set according to the number of claims that were submitted in time; and
- liquidation and distribution of the insolvency mass, set according to the amount that was distributed among the creditors.

Each specific reward in cases of bankruptcy procedure and composition with creditors procedure is calculated on the grounds of the afore mentioned regulation. The regulation is at the moment undergoing several changes. The amount of a reward, according to the regulation that was in force in Slovenia until October 2008, varied from €6,300 up to €102,000 in cases of composition with creditors procedure, and from €2,460 to €24,500 in bankruptcy procedures. The amount of the reward varied according to several factors, for example the difficulty of the

procedure, the amount of the balance sheet sum, the sum of the submitted claims and the amount of the claims that are settled. A new regulation that is still being prepared will change some of the provisions regulating rewards for insolvency practitioners. In bankruptcy procedures rewards will range from approximately €1,500 up to €66,000 with the possibility of up to a 30% increase or decrease. In cases of composition with creditors procedure, rewards are the same but will be multiplied or divided by a factor of half. However, in cases of composition with creditors procedure the IP will also be entitled to a monthly reimbursement for the supervision of the business of the insolvency debtor ranging from €500 to €1,500 per month. Please note that the new regulation is still being prepared, which may mean potential modifications of the afore mentioned amounts.

In cases where IPs are also lawyers and have power of attorney to represent insolvency debtors in court and other procedures in connection with the insolvency procedure, they are also entitled to remuneration according to lawyers fees prepared by the bar association.

An IP is also entitled to reimbursement for materials and other costs, deriving from his function as IP in every individual case. The amount of the reward of the IP is decided by the court, on the grounds of the provisions set forth in the regulation.

In practice, the biggest obstacle or set back regarding the reward and reimbursement of cost to the IP is most definitely lack of funds for payment. Funds are part of the insolvency mass. If there is no insolvency mass or the mass is very small, the IP cannot get any kind of reimbursement for his work or the costs. New legislation tries to solve this serious problem by ordering the person that has petitioned for the bankruptcy procedure to pay a certain amount of money in advance, covering anticipated costs as well as the anticipated reward of the insolvency practitioner.

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