

New Zealand... continued

further fees and advise their appointor of expected further fees to completion. Similarly, liquidators who work with a Liquidation Committee will often have their fees approved by the committee to avoid disputes later on.

There are provisions under section 284 of the Companies Act 1993 for the remuneration of liquidators to be reviewed by the High Court on application of a liquidation committee or with the leave of the Court, a creditor, shareholder, other entitled person or director of the company. If the Court finds that the liquidator has been paid an amount that is unreasonable, the liquidator can be ordered to refund the excess amount.

The Receiverships Act 1993 contains similar provisions in Section 34. An application to the Court may be made by the company, a creditor, a person claiming an interest in the property in receivership, a liquidator or the board of directors. The Court may review or fix the receiver's remuneration and require repayment of any amounts held to be unreasonable.

For IPs acting as managers of a Compromise Agreement, their right to remuneration is usually

dealt with in the agreement itself. At the meeting of creditors to approve the Compromise, creditors can put a resolution to the meeting for alterations to the agreement if they are dissatisfied with any provisions for the manager's remuneration.

Regulation

In practice there is very little 'external regulation' of New Zealand IPs. As noted above applications can be made to the High Court not only to review receivers or liquidators remuneration but also to review other acts and/or omissions of liquidators. The Companies Act 1993 contains some provisions that set out an IP's duties and, when breaches have taken place, the consequences.

IPs who are members of the New Zealand Institute of Chartered Accountants are governed by specific guidelines and ethics and may be brought before the disciplinary committee for breaches of the rules. There are similar provisions for those who are members of the Law Society of New Zealand.

Nigeria

Appointments

IPs may be appointed to any type of insolvency proceeding. Once appointed to a particular assignment, the IP is responsible for the proceeding.

Where an insurance company becomes insolvent the same IPs are able to deal with such proceedings.

IPs may be appointed by court or by creditors.

Qualifications

According to the Companies & Allied Matters Act, 1990, there is no minimum qualification a person has to satisfy to act as an IP. In practice, however, qualified lawyers and accountants act as IPs.

Selection

The party responsible for appointing an IP will depend on the type of insolvency proceeding. Usually, IPs are appointed by court or by creditors. When an appointment is to be made by a party other than a creditor, such creditors will have the right to agree with the debtor a suitable IP and suggest that person to the court for approval.

The creditors have the right to challenge the appointment of an IP.

Supervision

The person appointing an IP is also responsible for supervising his dealings. In addition, creditors have the right to ask the supervising party to examine a particular aspect of the case.

Nigeria... continued

Remuneration

IPs are remunerated on a percentage basis, which is usually approved by the party appointing the IP. If, however, some creditors object to the agreed remuneration of an IP, the majority creditors' view would prevail.

If remuneration has been fixed by the court, they can apply to court for an amendment of that remuneration.

Regulation

IPs are usually regulated by their professional bodies such as the Nigerian Bar Association, Institute of Chartered Accountants and, more recently, Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN).

Other matters

An important issue that requires further consideration is whether IPs in Nigeria require a licence to practice.

Russia

Appointment

Under the provisions of Federal Law on Insolvency (Bankruptcy) of 26 October 2002 No. 127-FZ, Federal Law on Amendments to Federal Law on Insolvency (Bankruptcy) of 24 October 2005 No. 133-FZ and Federal Law on Amendments to Article 45 of Federal Law on Insolvency (Bankruptcy) of 18 July 2006 No. 116-FZ an Insolvency Practitioner (Russian term – an Arbitration Manager) is a citizen of the Russian Federation who has been approved by the arbitration court to carry out bankruptcy procedures, and who is a member of a self-regulating organization. IPs can be appointed to the following types of appointment:

- **Interim manager** – to conduct observation proceedings
- **Administrator** – to conduct financial rehabilitation
- **External manager** – to carry out external management
- **Competitive proceedings manager** – to conduct competitive proceedings (compulsory liquidation).

The self-regulating organization of arbitration managers is a non-profit-making organization, created by citizens of the Russian Federation, listed in the consolidated state register of self-regulating organizations of arbitration managers, and with the objectives of regulating and supporting the activities of arbitration managers. An IP is required to have in force a general

security bond with a minimum amount of financial coverage of no less than three million roubles per year. In addition an IP is required to take out specific security in relation to every appointment of an amount depending on the book value of the debtor's assets

Qualifications

An IP should meet the requirements that he or she:

- is registered as an individual entrepreneur;
- possesses a higher education qualification;
- has worked in executive positions for not less than two years in total; working as the director of a legal entity or his deputy and having worked as an IP, in a role that involves undertaking the duties of a director, except in cases of bankruptcy procedures against an absent debtor;
- has passed the theoretical examination of the arbitration managers' training program;
- has had an internship as an arbitration manager for not less than six months;
- does not have any previous convictions for economic offences, or for crimes, serious crimes or capital crime.

In addition, an IP candidate for a particular appointment can be asked to meet special requirements as follows:

- a higher legal or economic education or an education in a specialty consistent with the nature of the debtor's business;
- have served a specified time in executive positions in organizations in the relevant economic sector;