

Thailand

Appointment

An IP is not appointed to all types of insolvencies. In most instances, such as in bankruptcy and liquidation the Official Receiver is appointed. In the case of court reorganisation and voluntary dissolution of companies an IP appointment is made.

Qualifications

In the case of voluntary liquidation as well as bankruptcy, specific qualifications are not required for a person to act as an IP. In court supervised reorganisation however, to act as planner or plan administrator, a licence for doing so is required. The Bankruptcy Act, BE 2483 (1940) and regulations specify the requirements.

Selection

Where a company is being wound up voluntarily, the company (debtor) appoints the IP. In bankruptcy, the Official Receiver is appointed automatically by law. In the case of a court supervised reorganisation either the creditor(s) or the debtor can nominate a planner or plan administrator for appointment. There are different voting thresholds for creditors to appoint their nominee and in both cases the nominee must be approved by the court.

If the debtor nominates an IP in rehabilitation, creditors can object and there is a creditors'

meeting at which a super majority of creditors must approve their nominee or the debtor's nominee is appointed by default.

Supervision

The performance of an IP may be supervised depending on the type of insolvency proceeding he has been appointed for. In the case of voluntary liquidations in practical terms the debtor's shareholders, who made the appointment, are responsible for supervision. If the company is in bankruptcy, the Official Receiver will be appointed by law and is subject to supervision of his or her department.

The Official Receiver (directly) and the court (for sanctions) supervises IP dealing with court supervised organisations. It is important to note that a creditor can request the supervisor to examine particular aspects of a case.

Remuneration

Where a company is in voluntary liquidation or court supervised reorganisation, an IP would be paid according to the prior agreed fees but no set scale is followed. For bankruptcies, there is a statutory scale that has to be followed. Shareholders approve the fees when it is a voluntary liquidation and creditors approve an IP's fees that relate to the court supervised reorganisations.

United Kingdom

Appointment

Under the provisions of the Insolvency Act 1986, an individual (where not the Official Receiver or the Accountant in Bankruptcy in Scotland, [both government officials]) appointed as an insolvency officer to the following types of appointment must be a Licensed Insolvency Practitioner ("IP"):

- Corporate insolvency: Administration, Administrative Receivership, Receivership under a floating charge, Provisional Liquidation, Liquidation, Company Voluntary Arrangement

- Personal insolvency: Bankruptcy, Sequestration, Individual Voluntary Arrangement, Trust Deed
- Partnership insolvency: Liquidation or Administration of Insolvent Partnership, Partnership Voluntary Arrangement

An IP is required to have in force a general security bond and, in addition, is required to take out specific security in relation to every appointment for which he requires an insolvency licence to act equivalent to the value of the insolvent's assets in such appointment, excluding assets charged to a third party.

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Whilst an insolvency licence allows an IP to take any appointment, the ethical guidelines and commercial considerations dictate that, in practice, issues of skills and resources are always given priority. When an IP takes an appointment, he or she would not only be suitably qualified but also have the required skills and experience to deal with that particular type of insolvency. For example, where the company in financial difficulty is an insurance company, only practitioners with appropriate experience should act, as this is a highly specialised area of insolvency practice.

Qualifications

The requirements to be satisfied are determined by law and the primary legislation is the Insolvency Act 1986.

To qualify as a Licensed Insolvency Practitioner, the examination set by the Joint Insolvency Examination Board must be passed. The insolvency licence is issued by one of the Recognised Professional Bodies or any one of the relevant competent authorities subject to the individual additionally satisfying the licensing body that he or she is a fit and proper person to hold an insolvency licence, which includes prescribed requirements as to experience and training.

In practice, many practitioners are also accountants (Chartered or Certified) and some are also solicitors.

Selection

Generally an IP can be appointed by the creditors, the debtor, the members (shareholders), the directors, a charge-holder (mortgagee), the court or the Secretary of State for Business, Enterprise & Regulatory Reform ("Secretary of State"), although the mechanism available to appoint a practitioner is dependent upon the type of appointment.

Where creditors have not appointed an office-holder, such creditors may, provided that they have sufficient voting power, impose their own selection of practitioner in most types of appointment. This may involve creditors petitioning the existing office-holder to convene a meeting of creditors for this purpose. Creditors may also ask the court to consider this issue if necessary.

The general exception to this is in relation to the appointment of a Receiver, in which the charge-holder or court, as appropriate, controls the appointment.

Supervision

There is provision in law and in professional best practice for a creditors' committee to be formed in relation to the majority of appointments, provided that the creditors agree and subject to a minimum number of three creditors being willing to sit on a committee. The role of the committee is to represent the general body of creditors and to liaise with the office-holder on matters such as legal actions or in relation to fixing the office-holder's remuneration.

If any party has a complaint about the practitioner's conduct they can also ask the practitioner's licensing body to undertake a formal investigation. Commercial disputes between creditors and the office-holder may be dealt with by the courts.

Remuneration

Generally, remuneration can be either on the basis of time costs or as a percentage of realisations and (if available) distributions to creditors. In certain circumstances the fee can be a 'fixed' one or a set amount. In relation to liquidations and bankruptcies, where members' or creditors' agreement (as appropriate) cannot be obtained, a statutory scale may be applied.

Dependent upon the type of appointment, remuneration will be agreed by the creditors' committee, the general body of creditors, the court or, in a receivership, by the appointor.

If creditors object to the amount of the office-holder's remuneration, they can make an application to the court challenging the payment.

Regulation

The licensing bodies are responsible for regulating practitioners and the Secretary of State is responsible for overseeing the regulatory regime.

In practice, the licensing bodies are responsible for enforcement of standards of fitness and propriety and professional competence. This is achieved in various ways, including conducting

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monitoring visits to practitioners to review their work and office systems, and by an analysis of information required to be provided to them by practitioners.

The licensing bodies have in place a structure of licensing, investigation, disciplinary and appeal committees to enforce regulation. However, the

powers of the Secretary of State, in relation to his or her role as a licensing authority, are currently restricted to the ability to withdraw authorisation from a practitioner.

The Insolvency Practices Council represents other stakeholders, including the general public, in insolvency practice.

USA

Appointment

An insolvency practitioner (IP) is appointed only in respect of some types of insolvency proceedings. In out-of-court and Chapter 11 bankruptcy matters, the company's management with the assistance of insolvency counsel and financial professionals administer the case. Similarly in Chapter 7 bankruptcy matters, a court-appointed trustee administers the case.

In some legal proceedings, including state court actions and Chapter 11 bankruptcy matters, the court may appoint professionals tasked as Examiners or Special Masters to investigate a specific issue and report directly to the court.

In state court receiverships a court-appointed receiver administers the receivership. The same types of IPs may be appointed for the various types of insolvency proceedings including insolvency of insurance companies. There is no specific rule or notion that would say different types of IPs would deal with insurance companies.

Qualifications

11 U.S.C. Section 321 of the Bankruptcy Code establishes the conditions for the eligibility to serve as a trustee. These include competence to perform the duties of the trustees as well as satisfying various resident requirements. A person who has served as an examiner in the case may not then serve as the trustee. 11 U.S.C. Section 327 of the Bankruptcy Code also provides for the appointment of professionals to assist with the bankruptcy case provided the professionals do not hold or represent an interest adverse to the estate and are disinterested persons. In Chapter 11 cases, committees

established pursuant to 11 U.S.C. Section 1102 of the US Bankruptcy Code may also engage professionals to assist the committee in carrying out its duties.

In state court receiver matters, qualification requirements, if any, are established on a state-by-state basis and vary accordingly. In addition, custom and practice, reputation, experience and licensing requirements have an influence. Specific industry organisations such as the American Bankruptcy Institute (ABI) and the Association of Insolvency and Restructuring Advisors (AIRA) have established and monitor programmes of professional competence in the areas of legal (ABI) and financial (AIRA – CIRA, CDBV) advisory in the troubled company area of practice.

Selection

The determination of selection is dependent upon whom the IP is representing. In a Chapter 11 case, the official committee(s) generally conducts interviews of interested professionals to choose a firm or firms to represent the committee. The committee selection is then placed before the court for approval. The debtor will likewise choose the firm or firms to assist in the restructuring. Outside of a court proceeding, no court approval is required. Once a bankruptcy case is commenced, the debtor must have its selection of professionals approved by the court.

In Chapter 7 bankruptcy cases the Office of the United States Trustee, an office of the US Department of Justice (OUST), will appoint an interim trustee for the case. The creditors have the option of electing another trustee of their choosing as provided under the US Bankruptcy Code.