

Belgium

Appointment

An IP is not appointed to all types of insolvency proceedings. A trustee (*curator/curateur*) is appointed in a bankruptcy proceeding (*faillissement/faillite*) and the *commissaris inzake opschorting/le commissaire au sursis* is appointed in a judicial composition (*gerechtelijk akkoord/ concordat judiciale*). In the case of an insurance debtor, the Commercial Court may give preference to a trustee who had previously been appointed in a similar case.

Qualifications

A trustee should be a lawyer admitted to the list of lawyers who are able to take appointments. The selection conditions are set out in a Royal Decree, and the decision is taken by the general meeting of all the judges of the Commercial Court. The *commissaris inzake opschorting/le commissaire au sursis* can be a person from a government institution, or a private institution nominated by the government or recognised to help companies in a difficult financial situation. Lawyers, notaries, auditors, accountants and bankers may also hold this office. In addition, a legal entity may hold office but the individual acting on behalf of the legal person needs to be listed. The required qualifications are determined partially by law and policy. The applicable laws are Article 29 of the Bankruptcy Act of 8 August 1997 and Article 19 of the Act of 17 July 1997 on judicial composition.

Selection

The bankruptcy judge at the Commercial Court appoints the trustee from the list of lawyers admitted to be appointed trustee. The *commissaris inzake opschorting/le commissaire au sursis* is also appointed from a list by the Commercial Judge. The creditors are not involved in the appointment of IPs but where they are unhappy with an appointment, they may challenge the appointment. The trustee in a bankruptcy proceeding can be removed by the Commercial Court.

Supervision

The special bankruptcy judge in the Commercial Court (ie *the juge – commissaire/rechter commissaris*) supervises the trustee and in the last resort the Commercial Court. The Commercial Court supervises the *rechter inzake opschorting/le commissaire au sursis*. A creditor can request the supervisor to examine particular aspects of a case.

Remuneration

The fee of the trustee takes into account the importance and complexity of the case. It is not just a percentage calculated on the assets sold. The rules and scales are fixed by Royal Decree and it also sets out which costs are separately indemnified. The fee of the *commissaris inzake opschorting/le commissaire au sursis* fixed by the Commercial Court in accordance with the rules and scales fixed by Royal Decree. It's an hourly rate based on the category of the specific profession. The rate is not linked to the amount of the assets and there is a ceiling. The Commercial Court approves an IP's remuneration. If the creditors do not approve the remuneration of an IP, in certain cases, they may appeal against the final judgment closing the bankruptcy or the judicial composition.

Regulation

The disciplinary codes of each profession to which the IP belongs, such as the Law Society, will apply.