

Germany

Appointments

The office of an IP can only be held by an individual. When a company files a petition for insolvency, the court would appoint an IP as a court examiner to decide if the company is in fact insolvent and whether there is merit for the petition to the allowed (provisional insolvency). In larger cases, particularly where the business is ongoing, the court may appoint an IP as a court examiner and empower the IP with different levels of powers depending on the circumstances. If insolvency proceedings are later commenced, the court examiner will, in almost all cases, be appointed as the administrator or trustee of the proceedings.

Qualifications

The German Insolvency Code merely states that an IP has to be qualified and disinterested. The German Bar Association allows an IP to use the title, which translates as 'lawyer specialised in insolvency', and this title may only be used if the office-holder has passed a particular insolvency course. Most IPs are lawyers but some also have additional accounting qualifications.

Selection

The court has sole discretion in choosing an IP for an insolvency proceeding. The creditors do not have any legal right to influence the court's decision. The creditors may try to influence the court with their choice of IP but whether such a request would be accommodated would depend entirely on the individual court. Creditors, however, have the right to challenge the court's choice of IP at the first creditors' meeting but in practice creditors may rarely use this right as it is felt the case is too advanced to warrant a change in the office-holder.

Supervision

Overall supervision is by the court. In addition, in the case of a provisional insolvency the court appoints a 'provisional creditors committee', and in the case of an actual insolvency a 'creditors committee'. These committees act as a forum for the office-holder to discuss any issues and are also responsible for supervising the case.

Creditors do not have the right to request an IP to investigate certain aspects of the case, instead they may make a request to the court to do so on their behalf.

Remuneration

When an IP acts as a court examiner he or she would be paid on an hourly basis. Where an IP acts as a provisional administrator or an administrator, he or she would be paid on a percentage basis. The court approves all fees. If the creditors do not agree with the terms of remuneration they could appeal the court's decision. The debtor as well as an IP has the same right of appeal.

Regulation

The German Insolvency Code (*Insolvenzordnung*) is the primary legislation that regulates IPs. In addition, the *Gebührenordnung* applies to any issues relating to remuneration. Where an IP is a lawyer, such individuals will be governed by the laws/regulations that apply to lawyers. These laws however will not apply to them in their capacity as IPs. There are no other external bodies that regulate the IPs. In practice, there have been rarely any cases filed against IPs for fraud or misconduct.