



# Insolvency Institute of Canada L'Institut d'insolvabilité du Canada

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**BY E-MAIL - [ic.osbregulatoryaffairs-affairesreglementairesbsf.ic@canada.ca](mailto:ic.osbregulatoryaffairs-affairesreglementairesbsf.ic@canada.ca)**

Ms. Elizabeth Lang  
Superintendent of Bankruptcy  
Office of the Superintendent of Bankruptcy  
Policy and Regulatory Affairs  
155 Queen Street, 4th Floor  
Ottawa, ON K1A 0H5

**Re: Comprehensive review of directives and regulations under the *Bankruptcy and Insolvency Act*<sup>1</sup> (BIA) and the *Companies' Creditors Arrangement Act*<sup>2</sup> (CCAA)**

Dear Superintendent Lang,

The Insolvency Institute of Canada ("IIC") is pleased to submit the following comments in response to the OSB's *Comprehensive review of directives and regulations under the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*.

The IIC is Canada's premiere private sector insolvency organization. A non-profit organization, the IIC is dedicated to improving the insolvency process and enhancing the professional quality of, and public respect for, the insolvency and bankruptcy practice in Canada. Its membership is comprised of Canada's most senior and experienced insolvency and restructuring professionals in the legal, accounting and financial fields. The IIC's members have had leading roles in virtually every significant insolvency proceeding in Canada since its inception in 1990. The mission of the IIC is to promote excellence and thought leadership in commercial insolvency and restructuring policy and practice in Canada. This response is based upon the volunteer efforts of the Policy Reform Committee of the IIC (the "Committee"). The mandate of the Committee is to proactively liaise with federal and provincial government policy and lawmakers on emerging issues in commercial restructuring and insolvency law and practice, seek opportunities to consult on proposed legislative responses and reform, and advocate for the continuous development and improvement of commercial restructuring laws and practices. This letter has been provided to the IIC Board of Directors which supports the submissions. However, neither the Committee nor the Board had an opportunity to undertake a broad consultation of the members to gauge their concurrence with the comments, conclusions or recommendations formulated by the Committee. Consequently, it does not purport to represent a consensus position of the IIC.

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<sup>1</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (BIA).

<sup>2</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (CCAA).

Consistent with the consultation request, this submission focuses primarily on a review of the *Bankruptcy and Insolvency General Rules*<sup>3</sup>, the *Companies' Creditors Arrangement Regulations*<sup>4</sup> and Directives.<sup>5</sup>

This submission is organized by the areas noted in the OSB consultation document. The IIC's response does not cover all the areas, instead it focuses on the topic areas consistent with the IIC's purpose.

## **1. MODERNIZATION/INNOVATION**

***Which technologies could be leveraged to modernize the insolvency system? How could technology further reduce administrative burden, transaction costs, and increase efficiency?***

Based on the IIC's experience over the past year technology can be leveraged to make the insolvency system more accessible by:

- Continued utilization of online platforms to host creditor meetings in BIA and CCAA proceedings. This should not be mandatory but should be an option available to practitioners as hosting large scale meetings in an online platform has practical limitations. For most meetings an online platform is a viable option and we have found that it leads to increased participation from creditors in the process.
- Continued use of electronic signatures for documents in lieu of original signatures.
- Under both statutes the IIC recommends the removal of the requirement for newspaper advertisements. Instead, the IIC recommends that notifications are posted on a website maintained by the OSB for this purpose and on insolvency practitioner websites as applicable. The cost of publishing advertisements in print format is significant and is unlikely to yield much value to the dissemination of information to the public, particularly since newspapers are no longer the default source of news with digital and online channels growing exponentially.
- There are limited software options for insolvency practitioners to use that interface with the OSB's e-filing system. Currently two for-profit firms in Canada service this market. There is an opportunity to review this model and determine if changes need to be made to ensure that insolvency practitioners have access to modern tools that meet the needs of the practitioners.
- There is an opportunity to modernize the submission of proof of claim forms through fillable forms and electronic portals, which would reduce the administrative burden on LIT firms, increase efficiency and reduce administrative costs. Proof of claim forms are often submitted electronically via email, but they still must be input into an insolvency system for purposes of preparing dividend sheets and other matters.

***Are there risks or concerns associated with the use of certain technologies?***

While technology can provide efficiencies there are certain risks that need to be addressed. With respect to the recommendations noted above, the following risks have been identified:

1. Cybersecurity is a risk to the insolvency system. A cyber-attack on an LIT firm that compromises debtors' personal information or access to trust accounts would seriously undermine the confidence of all stakeholders.

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<sup>3</sup> *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368, as amended (**BIGR**).

<sup>4</sup> *Companies' Creditors Arrangement Regulations*, SOR/2009-219 (**CCAR**).

<sup>5</sup> Section 5(4)(b) BIA, [Directives and circulars - Office of the Superintendent of Bankruptcy Canada](#).

2. As noted above, there are limited options available for insolvency software that interfaces with the OSB's e-filing system. This presents a significant risk. Given the size of the market it is also challenging for these vendors to invest resources to ensure the tools are robust, all-encompassing and have sufficient cybersecurity controls.

## **2. LICENSING MODERNIZATION (DIRECTIVE 13R7)**

### **B.1 - National License (BIA 13.1(b))**

*Should licences be issued on a national basis? What opportunities and/or challenges would this create?*

In the IIC's view local accessibility isn't a problem for commercial restructuring proceedings and therefore issuing a licence on a national basis is not necessary. To the extent that firms need a temporary license in a province in which they do not generally operate for a specific mandate, the IIC understands that LIT firms have been successful in managing this on a case-by-case basis with the OSB.

## **3. CCAA REGULATIONS AND FORMS**

The IIC has the following recommendations with respect to the CCAA regulations:

1. Incorporate the EFC regulations into the main CCAA regulations.
2. Incorporate a definition for "margin loan" in the EFC regulations.
3. Regulation 6 – as noted above the IIC recommends removing the requirement for advertising notices in newsprint. A publication on a website maintained by the OSB would be more effective.
4. Regulation 7 – should be updated to take into consideration privacy issues with disclosing the address or other private information for non-commercial creditors (e.g. students or employees). This should include removing the requirement to publish addresses for these types of creditors.
5. The CCAA should include a mechanism, like the BIA has, to give the Monitor direction on the course of action to take in respect of uncashed distribution payments to creditors. Presently, if a Plan is well drafted, it will indicate what the Monitor is required to do, but if it isn't or if a Plan is silent on this subject, the Monitor would benefit from a regulation that stipulated where the funds should be sent.

The IIC has the following recommendations with respect to the CCAA forms:

1. Forms 1, 2 and 3 should all be amended to allow for numerous legal entities in a single CCAA filing and to provide the flexibility of using software, such as Excel, to submit the information to the OSB. It is neither efficient nor effective to have the Monitor complete one form for each legal entity within the filing.
2. Form 2
  - a. Questions 2 and 16 (website address) are duplicative from Form 1 and should not be required again.
  - b. Trust claims - the word 'trust' is subjective and needs defining. For example, is it meant to refer specifically to deemed trusts?
3. Form 3
  - a. Questions 3, 4, 5 should not be required unless financial statements were filed during the proceeding. The information will be the same as the information provided on Form 2.

- b. Questions 6, 10, 11, 12 and 13 are duplicative from Form 2.
  - c. Question 8 – form does not accommodate a proceeding where more than one plan is filed.
4. Form 2 and 3 – amend to contemplate consolidated financial statements for the multiple entities that have been rolled up.

In addition, the IIC believes that there is an opportunity to update the CCAA forms to collect more pertinent and relevant data. The collection of this data would allow for the assessment of outcomes to assist with future regulatory reform. The IIC would be happy to consult further with the OSB on this topic, including providing recommendations and suggestions on the type of information that could be collected and the way this information could be reported.

We thank you for the opportunity to participate in this consultation. Should you have any questions arising out of our response or wish to discuss the matter further, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Huff', is written over a light gray rectangular background.

Pamela Huff  
Chair, IIC Policy Reform Committee