



Rumanek & Company Ltd.
Licensed Insolvency Trustees

Submission by Rumanek & Company Ltd.

On

Comprehensive Review Of Directives And Regulations under the Bankruptcy and Insolvency Act

Submission dated: June 3, 2021

This submission is being forwarded by Rumanek & Company Ltd. ("Rumanek") in response to the call for submissions by the Office of the Superintendent of Bankruptcy ("OSB") on how to modernize the insolvency system through changes to directives, forms and regulations.

OUR BACKGROUND

Rumanek & Company Ltd., a Toronto-area consumer insolvency practice, has been operating since 2000. We have three (3) full-time trustees: Carl Rumanek, our founding trustee and President of Rumanek & Company Ltd., has been involved in the insolvency industry since 1981, and became a licenced trustee in 1989. Jordan Rumanek, Vice President, has been employed in the insolvency industry since 1992, received his license in 2007 and past president of OAIRP and Karen Adler, Associate Trustee, received her license in 2007, having entered the insolvency industry in 2003.

Rumanek & Company Ltd. has administered more than 23,000 consumer estates and has regularly attended Bankruptcy Court in Toronto over the past 20 years.

OUR OBJECTIVES

Rumanek & Company Ltd. is committed to assisting those experiencing financial distress in obtaining a fresh start, free of the burden of their insurmountable debts.

COMMENTS ON INDUSTRY CANADA'S PUBLIC CONSULTATION

About the Office of the Superintendent of Bankruptcy

A well functioning insolvency regime, comprised in Canada of the *Bankruptcy and Insolvency Act* (BIA), the regulations that support each of these Acts, and directives from the Superintendent of Bankruptcy, is key to creditor and investor confidence and a well-functioning society and economy.

The aim of the insolvency regime is to minimize the impact of a debtor's insolvency on all stakeholders. It does this by pursuing the key objectives of the equitable and orderly distribution of the debtor's assets and providing a fresh start for the debtor. It seeks to ensure these objectives by providing certainty in the marketplace to promote economic stability and growth and by striking the appropriate balance among competing interests.

Regulatory review

The Function of the Office of the Superintendent of Bankruptcy

The Office of the Superintendent of Bankruptcy (OSB) is responsible for the administration of all estates and matters under the BIA, as well as certain aspects of the CCAA, including investigating complaints regarding the conduct of monitors. It licenses and regulates the insolvency profession, supervises compliance with the insolvency process, and maintains public records and statistics. These activities are vital to ensuring that the insolvency regime functions effectively such that it contributes to an efficient marketplace and promotes confidence in the Canadian economy. To reinforce these activities, the OSB provides detailed requirements through directives and forms and by developing regulations. Directives, forms and regulations contribute to the goal of increased predictability and are able to more

nimbly reflect current realities of the insolvency system and the economy, all of which ultimately supports improved financial outcomes for Canadian consumers and businesses.

The objective of the regulatory review

The OSB is undertaking a comprehensive regulatory review to identify areas of Canada's insolvency system that can be made more agile, transparent and responsive without jeopardizing the integrity of the system. The OSB will consider potential amendments to the regulatory framework, specifically the Superintendent's directives, forms and regulations, to position the insolvency system for success now and in the future.

In this regulatory review, the OSB will strive for an outcome- and principle-based approach, where appropriate, while also maintaining a predictable, fair and level playing field for all stakeholders. The central theme will be to explore how the OSB can better deploy the tools within the scope of its authority to ensure that the insolvency system continues to function as intended and is able to effectively adapt in an ever-changing environment.

Consultation

The OSB is inviting stakeholders to contribute comments and suggestions on how to modernize and improve the regulatory framework, enhance the effectiveness of its administration, and increase accessibility to insolvency proceedings.

The OSB is interested in receiving submissions on topics that concern stakeholders. Previous feedback from the OSB's continuing engagement with stakeholders, along with some OSB perspectives, are set out in the Annex. To encourage broad stakeholder input, this paper has been intentionally framed with high-level concepts.

We thank you for the opportunity to respond to the draft Directive.

Yours very truly,

RUMANEK & COMPANY LTD.

Per:


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Submissions

Instrument	Stakeholder/OSB feedback previously received	Rumanek Comments
<u>Regulations (<i>Bankruptcy and Insolvency General Rules</i>)</u>		
Section 53 of the <i>Bankruptcy and Insolvency General Rules</i> (electronic transmission)	Allow for electronic submission of any complaints related to the Code of Ethic (s. 36 to 52) and remove the reference to the Division Office to allow more flexibility in how the complaints are to be received by the OSB.	Agreed
Sections 60 and 62 of the <i>Bankruptcy and Insolvency General Rules</i>	Streamline the process to address the potential delays related to taxation in Ordinary Administrations and Division I Proposals.	deemed taxation unless opposition filed within a certain amount of days of the notice being send to the proven creditors
Sections 64 and 65 of the <i>Bankruptcy and Insolvency General Rules</i> (30-day Rule)	Amend BIA Rules 64 and 65(1) to repeal the requirement for LITs to wait 30 days after mailing the notice of Form 15 to draw their final fees. Historically, the 30-day rule was designed to allow creditors to object to the Trustee’s final Statement of Receipts and Disbursements before the Trustee was paid. The proposed amendment would not remove the ability of creditors to object to the LIT’s final SRD.	trustee to draw fees after receiving their letter of comment and will return fees if taxation is opposed within 30 days of the notice being sent
Section 68 of the <i>Bankruptcy and Insolvency General Rules</i> (Retention of files)	Currently, LITs are required to keep files for 4 years after the LIT’s discharge. Consider amending the requirement to 2 years after the LIT’s discharge given that the OSB has the majority of the information.	Agreed
Sections 7 and 72, and subsections 70(2) and (3) of the <i>Bankruptcy and Insolvency General Rules</i>	Update the Rules to add flexibility by allowing for electronic transmission of documents, where appropriate. This rule for serving documents may be outdated.	LIT to serve documents by mail, facsimile or electronic means
Paragraphs 64(2)(a), 66 (2)(a), 100(2)(a) and 102(2)(a), sections 94.1, 95, 113 and 124, and	Delete the requirement for registered mail.	Agreed, proof of sending with affidavit is all that should be required

subsection 104(3) of the *Bankruptcy and Insolvency General Rules* (Registered mail)

Points raised:

Registered mail is expensive.

Agreed

In Quebec, proceedings are allowed to be served via email along with an acknowledgement of receipt.

Consider using the provincial rules and/or subject to the court's requirements, specify the LIT is accountable for the delivery.

Agreed

Alternatively, consider deleting those where it makes more sense, e.g., requirement to send by registered mail, yet creditors appeal via email.

If creditor provides email address, LIT to use email address to send documents unless directed otherwise. Registered mail if fax or email transmission are not available

Keep the onus on the LIT for disallowances and bankruptcy orders.

Agreed

Section 97 of the *Bankruptcy and Insolvency General Rules* (in person)

Clarify that an "in person" requirement can be satisfied by videoconference participation.

as long as they show ID to the moderator/chair/ to verify whom they are

Section 105 of the *Bankruptcy and Insolvency General Rules* (mediation)

Provide the procedures governing the mediation if an opposition to discharge solely on grounds referred to in either one or both of paragraphs 173(1)(m) or (n) is withdrawn. In such a case, a bankrupt that was eligible for an automatic discharge before the opposition was filed could again be eligible for an automatic discharge.

Agreed

Section 128 of the *Bankruptcy and Insolvency General*

LIT fees and disbursements have not kept pace with the cost of inflation (in particular labour and technology).

Should have annual cost of living adjustment

Rules (Trustee fees and disbursement)	<p>Increase the frequency of draws for administering personal bankruptcies, while not increasing the total amount of fees to: improve the LIT cash flow; serve creditors by encouraging LITs to make interim distributions; support OSB interests by providing earlier payments of the OSB Levy; and reduce the risk of LITs holding large sums of money in their Consolidated Trust Account.</p>	Agreed
	<p>Review the Rules surrounding disbursements in summary administrations and consumer proposals, especially since LITs incur a variety of non-discretionary, administrative costs in their duties to complete a bankruptcy or a consumer proposal.</p>	Costs of a real estate appraiser, interpreter for OR examination, costs to attend a discharge hearing
	<p>Recommend that the OSB revise the administrative fee to \$135, indexed annually for inflation.</p>	Agreed
	<p>Consider revising section 128 to establish an appropriate fee structure for low income/low asset debtors.</p>	Agreed
Section 131 of the <i>Bankruptcy and Insolvency General Rules</i> (Counselling Fees)	<p>Increase the counselling fees to \$140 per session and add an annual inflation adjustment as the counselling fees have not been increased since their inception in 2002.</p>	Agreed
Subsection 132(1) of the <i>Bankruptcy and Insolvency General Rules</i> (Filing fees)	<p>Change the deadline for filing fees from the 15th of the following month to the 30th of the following month. The additional time for payment avoids LITs having to lend money to the debtor's account in order to cover the filing fees for people who file at the end of the month.</p>	Agreed
<u>Regulations (<i>Companies' Creditors Arrangement Regulations</i>)</u>		
Schedule of the <i>Companies' Creditors</i>	<p>Review forms to remove redundant information, streamline information, and increase data integrity, where appropriate.</p>	No comment; not my area of expertise

<i>Arrangement Regulations</i>	Review forms to increase transparency regarding professional fees and allow for better information collection regarding interim financing.	No comment; not my area of expertise
<u>Directives and circulars</u>		
Directive 1R6, <i>Counselling in Insolvency Matters</i>	Review the possibility of adding a third counselling session when deemed required by the LIT. (Consider a regulatory amendment for the additional fee associated with this counselling session).	Agreed
	Include financial literacy education and rehabilitation counselling in post-insolvency counselling to better rehabilitate insolvency debtors.	Agreed
Directive 4R, <i>Delegation of Tasks</i>	Review this Directive in the context of low income/low asset debtors to determine whether additional tasks may be performed by the administrator or other employees of the LIT, particularly in support of an appropriate fee structure for low income/low asset debtors.	Agreed
Directive 5R6, <i>Estate Funds and Banking</i>	Given advancements in technology, review the requirement to maintain individual estate bank accounts (for ordinary administrations and Division I Proposals).	Consolidated OA and division I proposal account
Directive 6R3, <i>Assessment of an Individual Debtor</i>	Review the requirement that debtors are to attend the assessment in person. Consider other amendments, as necessary, to modernize and improve the assessment process.	Agreed, option given to debtor to decide if they want an in-person or virtual assessment
Directive 7, <i>Inventory of Estate Assets</i>	While reviewing the related Directives 16R and 25, review this Directive to ensure consistency regarding requests for supporting documents to verify the statement of affairs.	Agreed
	Update the Directive in the context of low income/low asset debtors.	Need to define what is a low income/low asset debtor

	Assess the issues that technological innovations raise with respect to the insolvency system, including the verification and realization of assets related to assets such as cryptocurrencies.	
Directive 9R3, <i>Electronic Filing and Other Methods</i>	Review the ability to file documents by fax and evaluate the alternatives to file documents by email or other methods to accommodate physical distancing.	LIT to serve documents by mail, facsimile or electronic means
	Standardize the requirement to provide supporting documents while reviewing the surplus income calculations completed by LITs.	Agreed
Directive 11R2, <i>Surplus Income</i>	Review the calculation of the surplus income as it has become a central issue in bankruptcy.	Review surplus income guidelines as right now it is close to the poverty line
	Add clarification for instances where the legislation explicitly excludes the amount from the calculation of the surplus income.	we need to change the wording of "surplus income" as it is misleading to a debtor
	Review the education requirement for LITs.	Agreed
	The requirement for resident and non-resident offices would need to be reviewed in light of the remote-service delivery model currently being studied by the OSB.	Agreed
Directive 13R7, <i>Trustee Licensing</i>	Assess the impact of the recent technological and operational innovations, taking into account evolving LIT business models, and debtors and creditors preferences for insolvency services.	Agreed
	Consider a bifurcated licensing process whereby a candidate could apply for a consumer only, commercial only, or full license. The Oral Board would be adapted accordingly and the CQP could be updated to reflect this change as well.	Need to define consumer administration for bankruptcies and proposals

Directive 16R, <i>Preparation of the Statement of Affairs</i>	Standardize the requirements regarding supporting documents to verify the statement of affairs.	Agreed
	Clarify what is an acceptable real property valuation and how to verify charges against the property.	comparative market analysis/opinion of value unless opposed requested by a stakeholder
Directive 17, <i>Retention of Documents by the Trustee</i>	Amend the retention requirement to 2 years after LIT discharge since the OSB has the information anyway.	Agreed
	Clarify the length of time for the retention of documentation related to Consolidated Trust Accounts.	Agreed
Directive 20, <i>Bankruptcy Assistance Program</i>	Review the fees allotted to the LITs and provide a lower cost option to debtors with little or no income and assets.	Agreed, what are the fees when an LILA is converted to another administration
	Consider a pro bono program similar to those offered by other professions in replacement of the Bankruptcy Assistance Program.	Agreed
Directive 23, <i>Publication in Local Newspaper</i>	Consider amending the requirement to allow electronic notifications. With the prevalence of online media, the general public and potential creditors, are already aware of the insolvency. LITs have advised that new creditors do not come forward after having read a newspaper notice. The concept of using the newspaper to alert creditors is no longer useful, particularly for consumer files.	Consider a page on the OSB web site
Directive 25R, <i>Realization of Estate Assets</i>	Standardize the requirements regarding supporting documents to verify the statement of affairs.	Agreed
Directive 28R, <i>Non-resident Office</i>	Review the requirements relating to resident or non-resident offices given the evolution of remote-service delivery with a view to empowering debtors to choose the LIT and service delivery method they prefer.	Agreed

Directive 32, <i>Trustee Electronic Recordkeeping</i>	Clarify the length of time for the retention of documentation related to Consolidated Trust Accounts.	Agreed
Directive 33, <i>Trustee Designation and Advertising</i>	Review and clarify the requirements related to advertising and co-location of LITs and counsellors.	Agreed
Circular 3R3, <i>Employment Insurance</i>	Review the guidelines respecting the procedure to be followed in determining whether overpayments of Employment Insurance (EI) benefits are owed to Service Canada (SC) when individuals produce claims for unpaid salary to an LIT and, where applicable, the procedure to be followed for forwarding that payment to SC.	when is EI overpayment a dischargeable debt or not?
<u>Forms</u>		
Directive 8R18, <i>Bankruptcy and Insolvency Act Forms</i>	Review forms to remove redundant information, streamline information and increase data integrity, where appropriate.	Agreed
	Add the ability to print amended forms, where appropriate. Stakeholders have suggested the option of adding the word "Original" or "Amended."	Agreed, this should be on all statutory forms
Directive 34R, <i>The Licensing Form Under Section 13(1) and 13.1 of the Bankruptcy and Insolvency Act</i>	Review the Licensing forms to ensure consistency between the paper form and OLAA.	Agreed
form 79, Statement of Affairs	Update wording of commissioners statement	I, _____, of the _____ of _____ in the Province of _____, do swear (or solemnly declare) that this statement is, to the best of my knowledge, a full, true and complete statement of my affairs on the _____ day of _____ and fully discloses all transactions, and property of every description that is or was in my possession or that may

devolve on me, in accordance with
the Bankruptcy and Insolvency Act.
