Assuris
Protecting your life insurance
Protection de votre assurance vie

July 7, 2014

Mr. Paul Halucha
Director-General
Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor, East Tower
Ottawa, ON
K1A 0H5

Dear Mr. Halucha:

Re: Statutory Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act (Discussion Paper)

Assuris is the not for profit organization funded by the life insurance industry that is mandated by the federal, provincial and territorial governments to provide protection to consumers if their life insurance company fails.

Winding-up and Restructuring Act

The discussion paper is focused on the Bankruptcy and Insolvency Act (BIA) and the Companies Creditor Arrangement Act (CCAA) however, it also asks for views on the future of Winding-up and Restructuring Act (WURA) and the insolvency provisions for financial institutions. As the insurance guarantee scheme, Assuris has a vital interest in the modernization of the insolvency legislation for life insurance companies.

Clarity of resolution of financial institutions

There is increasing realization that clarity in the resolution of financial institutions is important for financial stability. Since the 2008 financial crisis there has been increasing international emphasis on ensuring that important financial institutions can recover or be resolved without causing economic disruption and without direct government intervention. The Financial Stability Board (FSB) has provided leadership in issuing guidance on recovery and resolution for systemically important financial institutions.

250 Yonge Street
Suite 3110, P.O. BOX 23
Toronto, Ontario M5B 2L7

TEL|TÉL: 416-359-2001
www.assuris.ca

250, rue Yonge
bureau 3110, C.P. 23
Toronto, Ontario M5B 2L7

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Canada has an admirable reputation for a sound financial system. This reputation is built on clear statutes for the regulation of financial institutions that are regularly reviewed and updated.

Canada also has an efficient and effective insolvency and restructuring regime. The BIA and the CCAA provide a flexible framework, within which the courts can guide the administration of failed companies, preserving value and treating all stakeholders equitably. The legislation is regularly reviewed and updated.

The Canadian courts have also been effective in guiding the wind-down or restructuring of financial institutions including banks, trust companies, property and casualty insurance companies and life insurance companies.

Since the creation of Assuris in 1990 there have been four life insurance company failures: Les Coopérants (1992), Sovereign Life (1993), Confederation life (1994) and Union du Canada (2012). In each case the company was placed under the WURA and the business transferred to a solvent company. Although the restructuring of these failed companies was very successful, at times it was challenging to achieve a modern restructuring under WURA. WURA is a dated act that has been subject to minor revisions over the years, but unlike the BIA and CCAA has not benefitted from regular comprehensive reviews.

Assuris strongly supports a review of the insolvency legislation for financial institutions. The perceived financial stability of the Canadian financial system would be enhanced by a clear financial institution insolvency statute. This would facilitate modern insolvency practices and emerging best practices for important and systemically important financial institutions.

Options for reform

The discussion paper suggests that there are at least two options for reforming the insolvency provisions for financial institutions. WURA could be amended to apply only to financial institutions. Alternatively, WURA could be merged into a unified insolvency Act while maintaining the specialized rules relating to insurance companies. Assuris believes that either method could be workable but has a preference for maintaining a separate statute for financial institutions.

WURA to apply only to financial institutions

A single clear statute dedicated to the resolution of financial institutions would have several advantages, it would:

- enhance the perceived strength and stability of the Canadian financial system
- place the responsibility for the whole act clearly with the Department of Finance which is responsible for all other legislation governing financial institutions
- allow focus to be placed on maintaining the stability of the financial system including dealing with issues of systemic importance
- harmonize the treatment of banks and insurance companies where appropriate and differentiate between banks and insurance companies where necessary

A potential disadvantage is that there may arise differences between WURA and the other insolvency statutes, the BIA and CCAA on routine insolvency issues.

A process for reform

If this reform process were to be undertaken it should proceed in an orderly manner. The first step in the process to would be to make WURA apply to only financial institutions and then:

- Reform Part I to harmonize with the BIA and CCAA
- Simplify and update the language in Part III and codify best practice court rulings
- Introduce a receivership process to provide for a rapid resolution of large complex insurance companies
- Consider moving the insolvency provisions contained in the CDIC Act into WURA
- Commit to regular periodic review in order for the act to remain consistent with changes in the BIA and CCAA, changes to business practices and emerging international best practices

Merge WURA with the BIA and CCAA with special provisions for and insurance companies

Merging WURA with the BIA and CCAA would have the advantage of harmonizing the treatment of financial institutions with regular corporations. It would provide more consistent interpretation of court precedents and allow the expertise of Industry Canada to be brought into the reform discussions.

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The disadvantages are that the responsibility for the act would remain split between the Department of Finance and Industry Canada. It may also result in changes to the BIA and CCAA without adequately considering the specific requirements of the financial services industry.

Sincerely,

Gordon M. Dunning
President & CEO