



Insolvency & Bankruptcy

OFFICE OF THE SUPERVISOR OF INSOLVENCY (OSI)

MINISTRY OF FINANCE

*Demystifying Bankruptcy and Insolvency
- Removing the stigma associated with
the Bankruptcy and Insolvency Act*

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Who Are We & What do We Do?

What are we?

- ❖ The OSI was created in June 2014 to operationalize the Bankruptcy and Insolvency Act, Chapter 9:70 (BIA) 2007, in an effort to improve the credit and economic environment of Trinidad and Tobago.
- ❖ A regulatory government agency headed by the Supervisor of Insolvency (Supervisor) and is charged with the responsibility of monitoring, protecting and strengthening the insolvency system of Trinidad and Tobago.

What do We Do?

- ❖ The OSI is responsible for the general administration of the BIA - Management of Insolvencies, Bankruptcies and Receiverships
- ❖ The objectives of the BIA are carried out through the participation of the debtors, creditors, Trustees, Court, trade unions and the Supervisor of Insolvency.



Who Are Our Clients?



The OSI's principal clients are:

- ❖ Debtors;
- ❖ Creditors (secured and unsecured);
- ❖ Individuals;
- ❖ Societies or Organisation;
- ❖ Corporations; and
- ❖ Licensed Trustees who may be appointed as Receivers.

Key Features of the BIA



As a regulatory body, the OSI enforces the BIA which envisages:

- ❖ Debtor and creditor protection;
- ❖ A fair and effective system for the restoration of assets to productive use;
- ❖ A beneficial scheme of distribution for the private sector;
- ❖ Usual priorities of secured creditors; and
- ❖ A framework for debtor counseling.

Key Features of the BIA (Continued)

- ❖ A public record of insolvencies in Trinidad and Tobago;
- ❖ Licensing of Trustees;
- ❖ In bankruptcy: an orderly liquidation of the bankrupt's assets and the eventual distribution of the value of assets amongst creditors; and
- ❖ Ease of doing business.



Key Stakeholders under the BIA

•An insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Trinidad and Tobago and, where the context requires, includes a bankrupt.

Debtor



•The Office of Supervisor of Insolvency established under section 175.

Supervisor



•A person who is licensed or appointed under this Act. Only a person who is licensed as a Trustee under this Act may be appointed a receiver under a security agreement.

Trustee



•The High Court and includes a judge sitting in chambers.

Court



•A person who is not bankrupt and whose liabilities to creditors provable as claims under this Act amount to not less than **four thousand dollars**

Insolvent Person



•A person who has made an assignment or against whom a receiving order has been made under section 5(10).

Bankrupt



•A person having a claim, unsecured preferred by virtue of priority under section 127 or secured, provable as a claim under this Act.

Creditor



•A person holding a mortgage, pledge, charge or lien on or against the property of the debtor or any part thereof as security for a debt due or accruing due to him from the debtor.

Secured Creditor



•A person who has been appointed to take, or has taken, possession or control pursuant to a security agreement; or a Court order made under any law that authorises the appointment of a receiver or receiver-manager.

Receiver



•The Supervisor is charged with investigating and intervening in complaints referred by Trade Unions against Trustees and debtors.

Trade Unions





Who is an Insolvent Person?

Section 3 of the BIA, Chap. 9:70 stipulates that, an **“Insolvent Person”** means a person who is not bankrupt and who resides, carries on business or has property in Trinidad and Tobago, whose liabilities to creditors provable as claims under this Act amount to **not less than four thousand dollars**, and-

- a) who is for any reason unable to meet his obligations as they generally become due;
- b) who has ceased paying his current obligations in the ordinary course of business as they generally become due;
or
- c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

Early Detection signs of Insolvency

Inability to meet your immediate and short term financial obligations;

Change in the business environment- COVID 19;

Continued Losses;

Cap/reduced credit limit from lenders;

Use of personal funds;

Selling of private assets - e.g. Cars, land; and

Net current assets are less than your current liabilities.

Proactive Steps

Understanding the Proposal process under the BIA;

Notice of Intention to file a Proposal;

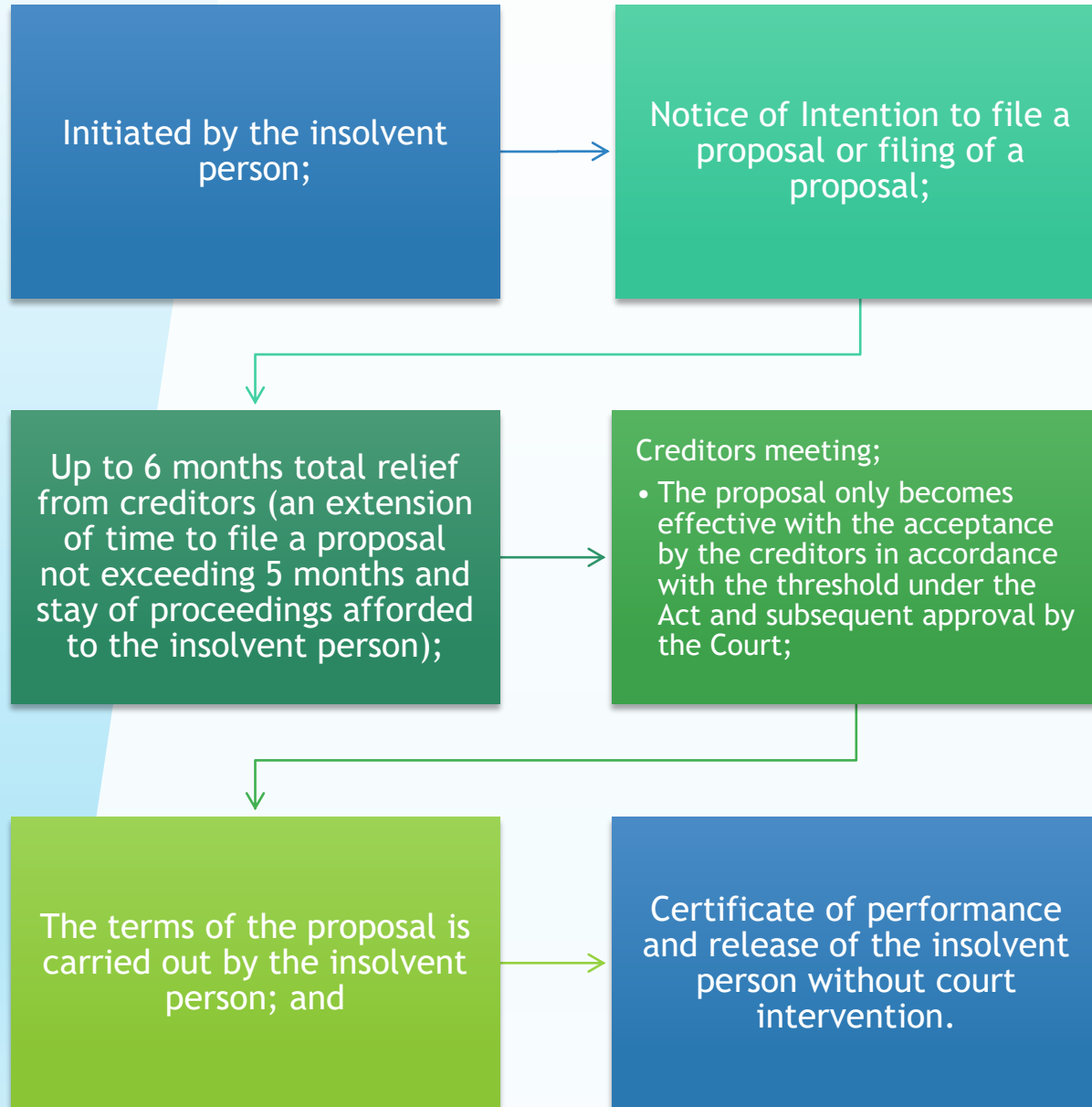
Trustee selection;

Re-organizing and Restructuring options; and

Proposal - legal backing under the BIA.



The Proposal Process



Proposal – **INDIVIDUAL & CORPORATE RESCUE**



A proposal is an alternative to bankruptcy whereby a debtor, with the agreement of the creditors and approval of the Court, is permitted to reorganize their credit arrangements with a view of pursuing solvency and economic well-being.



Proposals are enforceable before a Court and could result in bankruptcy if there is default by a debtor.



The proposal process is facilitated by a Trustee, regulated by the Supervisor and administered by the Court.

Stay of Proceedings

Section 55 -
Notice of
Intention to
make a Proposal

Once a notice of intention is filed with the OSI, this prevents creditors from seeking full recovery until the trustee has been discharged or the insolvent person becomes bankrupt.

Section 56 -
Upon
Bankruptcy

Similar to Section 55, prevents creditors from enforcing claims on the bankruptcy of any debtor until the trustee has been discharged.

Section 57 -
Application to
the Court for
the removal of
stay

A creditor who's affected by the operations of Section 55 or 56, may apply to the court for the removal of the stay.





Benefits of the Proposal

The insolvent person gains access to a Trustee (professionals in the industry) who provides advice on formulating a new business plan and rescheduling repayments to creditors;

A proposal is a proactive measure by an insolvent person to provide “breathing room” during a period of financial difficulty;

The process is Court driven where disputes are referred for resolution in accordance with the BIA;

Certainty of outcome (BIA based on Canadian Model);

Efficient processes (strict timelines that are enforced by both the OSI and the Court);

Promotes rehabilitation of companies as opposed to liquidation of the insolvent person; and

Maintains the going concern of the business, preservation of jobs and goodwill.

Protection of Interests to both Secured Creditors and Unsecured Creditors

- ❖ Creditors - Organisational perspective - reduced recovery cost, legal fees, credit risk, engagement for future businesses, reputational gains.
- ❖ Social interest - preservation of jobs and supply chains, mental well being of clients, rehabilitation of business and individuals and society at large.
- ❖ Appointed Trustees - regulated by the OSI, debtor's counselling, protection of Trustees/ Receivers.
- ❖ A better business climate - SME's.
- ❖ Ease of Doing Business - Resolving Insolvencies.

Who is a Bankrupt Person?



Section 3 of the BIA, Chap. 9:70 stipulates that, “bankrupt” means a person who has made an assignment or against whom a receiving order has been made under Section 5(10).



Bankruptcy is a legal proceeding involving a person or business that is unable to repay their outstanding debts. The bankruptcy process begins with a petition filed by the debtor, which is most common, or on behalf of creditors, which is less common. All of the debtor's assets are measured and evaluated, and the assets may be used to repay a portion of outstanding debt.



Bankruptcy

Bankruptcy proceedings may be viewed from the perspective of being either voluntary (jump) or involuntary (pushed and fall);

In the case of voluntary proceedings, an insolvent person makes an assignment to the benefit of the creditors (becomes operational when accepted by the Supervisor);

In the case of involuntary proceedings, the creditor relies on an “act of bankruptcy” to request the Court to make a receiving order;

Bankruptcy is applicable to both individuals and business entities;

Benefits include:

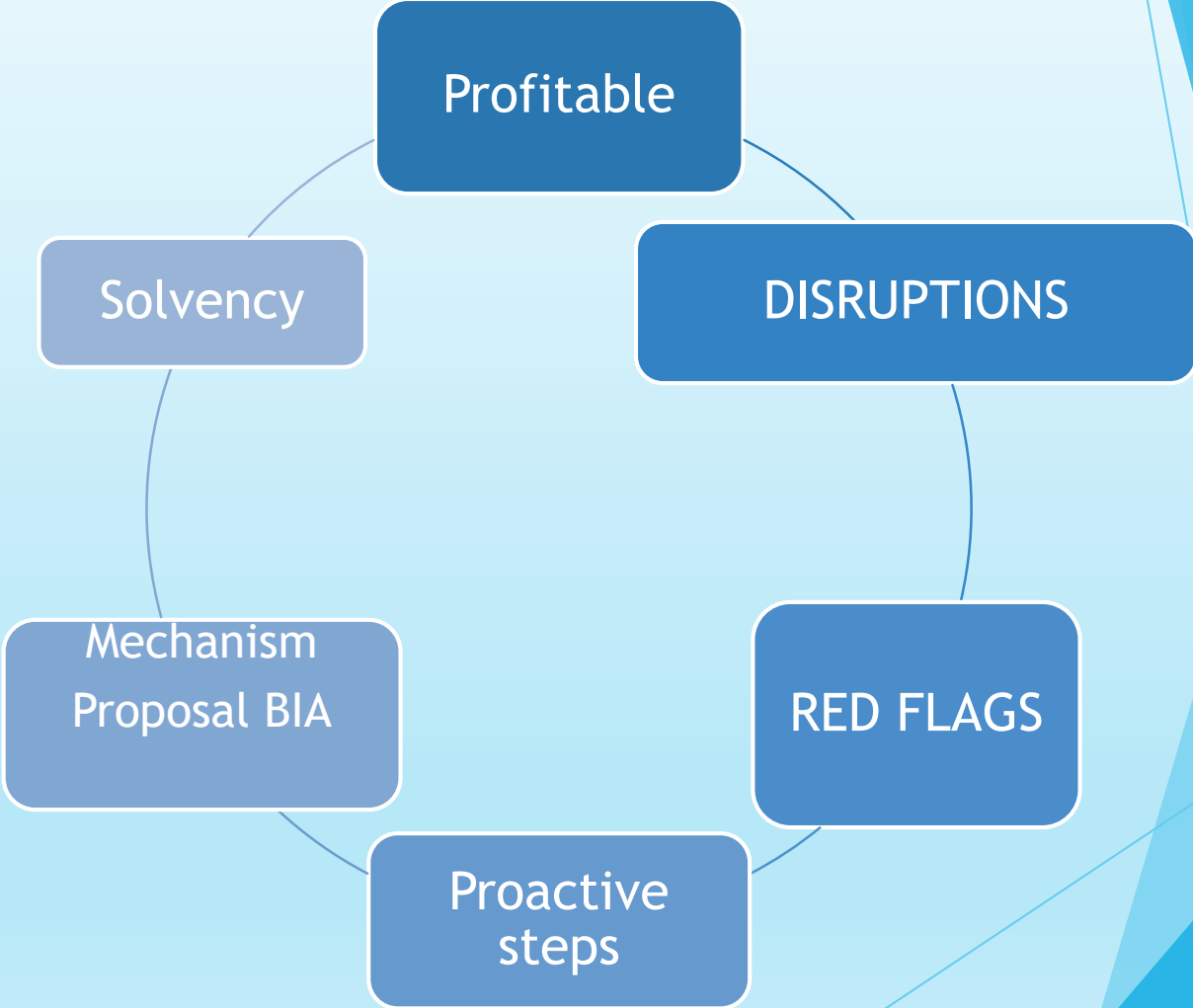
An orderly liquidation of the bankrupt’s assets and the eventual distribution of the value of assets amongst creditors;

For business entities, bankruptcy is an alternative to winding up;

Debtor counselling is available for individuals for rehabilitation; and

The bankrupt is discharged over a period of time.

SKY Company -Temporary Insolvency



Powers of the Supervisor under the BIA



Supervision of estate management and related matters



Trustee Licensing and monitoring



Compliance with the BIA



Conduct investigations



Maintenance of Public Records



Preservation of the Integrity of the Insolvency System

Crossroads

Making our mark

- Member of the IAIR
- Member of INSOL International
- 13 Licensed Trustees
- 34 Receiverships
- 4 Insolvents
- Networking
- Technical and Advisory support
- Judiciary Training



Improved Framework

- Improved regulation of Trustees
- a more modern insolvency system in line with best international practices.
- Improved creditor/ debtor relationships
- Improved EODB ranking
- Maximizing the value of companies' assets
- Increasing the possibility of preserving jobs and supply chains
- Decline in credit risk: a better business climate and support for SMEs



Challenging, but Effective

- Strategic Planning & Management
- Strong, knowledgeable resource base
- Ensure support of stakeholders
- Not an over night change




Recalibrating

- Outreach programmes
- e-brochure
- Building OSI capacity
- Maintenance of Public Records
- Trustee's Reporting and Meeting
- Harmonization of Legislation
- Part XI - International Insolvencies
- Corporate rescue mechanisms



“ We can envision a world where people come together to share their ideas, technology and resources to, individually improve the personal lives of as many as possible”

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Thank you!