



OFFICE OF THE
SUPERVISOR OF INSOLVENCY
MINISTRY OF FINANCE
TRINIDAD AND TOBAGO

*A SECOND CHANCE
THE ROLE OF INSOLVENCY
IN TRINIDAD AND TOBAGO*

Presented by:

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Introduction

What is Insolvency

- Insolvency is a financial state in which an individual or a business is unable to pay their debts because their assets are insufficient to meet their liabilities

Who is an insolvent person in law

- In accordance with Part 1 section 3 of the BIA:
- 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.

Why an insolvency system?

Some main goals –

- it allows for keeping viable businesses operating;
- increases access to credit;
- improves creditor recovery; and
- strengthening of job preservation.

A good insolvency system should inhibit the premature liquidation of business.

Why should having a robust insolvency system matter?

From the viewpoint of the debtor there is individual and corporate rescue;

Beneficial to the financial system (as it is organized, predictable, transparent, and provide support to the economy);

Beneficial to the country (impacts GDP, Ease of Doing Business, aids international competitiveness and acts as a stimulus for investment); and

In the age of globalization, it provides a framework for cross-border insolvencies.

Role of the OSI

The OSI was established to operationalize the BIA, the focus being on improving the credit, and by extension, the financial and economic environment of Trinidad and Tobago. The Supervisor is responsible for the administration of the BIA and is charged with the role of Regulator.

The Supervisor as the Regulator of the Trustee ensures compliance with the BIA to preserve the integrity of the regime.

The Trustee is key as they give guidance to their clients on the best options to resolve insolvency issues. They play a vital role as persons must access the regime through a Trustee. Therefore it is critical that they be supervised to ensure they follow the process.

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

Supervisor of Insolvency

- supervise the administration of all estates and matters to which the BIA applies;
- make or cause to be made such inspection or investigation of estates and the conduct of a trustee;
- examine trustee's accounts of receipts and disbursements and final statements;
- intervene in any matter or proceeding in Court; and
- have access to and to examine and make copies of the banking accounts of a trustee in which estate funds may have been deposited.

Who Are Our Clients?

- The OSI's principal clients are:
- Debtors (Individuals and Corporate);
- Creditors (Secured and Unsecured);
- Trustees (Licensed and Potential).



Characteristics of the BIA

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

- Accomplish an efficient, fair and equitable **reorganization** where an economically viable business enterprise can be saved;
- Accomplish an orderly, fair and efficient **liquidation** of business enterprise when it cannot be saved;
- Accomplish an equitable **distribution of proceeds** to creditors, respecting type and rank of the claim in accordance with clear rules for doing so;
- Provide a method to **recycle** assets and labor back to productive use within an economy;

Characteristics of the BIA

Cont'd

- Provide clear and predictable **procedures**, deadlines and outcomes;
- Provide appropriate **incentives** for timely movement toward case resolution;
- Provide **protection** of creditors rights; and
- Serve as a backdrop for **negotiation** and out of court resolution of disputes.

Early Detection signs of Insolvency

- Inability to meet your immediate and short term financial obligations;
- Changes in the business environment- COVID 19;
- Continued Losses;
- Cap or reduced credit limit from lenders;
- Use of personal funds;
- Selling off private assets – e.g. Cars, land; and

Early Detection signs of Insolvency

- Current assets less than your current liabilities.
- Continued lack of disposable funds;
- Seeking other sources for credit/loans;
- Deferring repayment obligations;
- Downsizing;
- Additional mental pressure;
- Physical exertion from financial strain.

Trustees

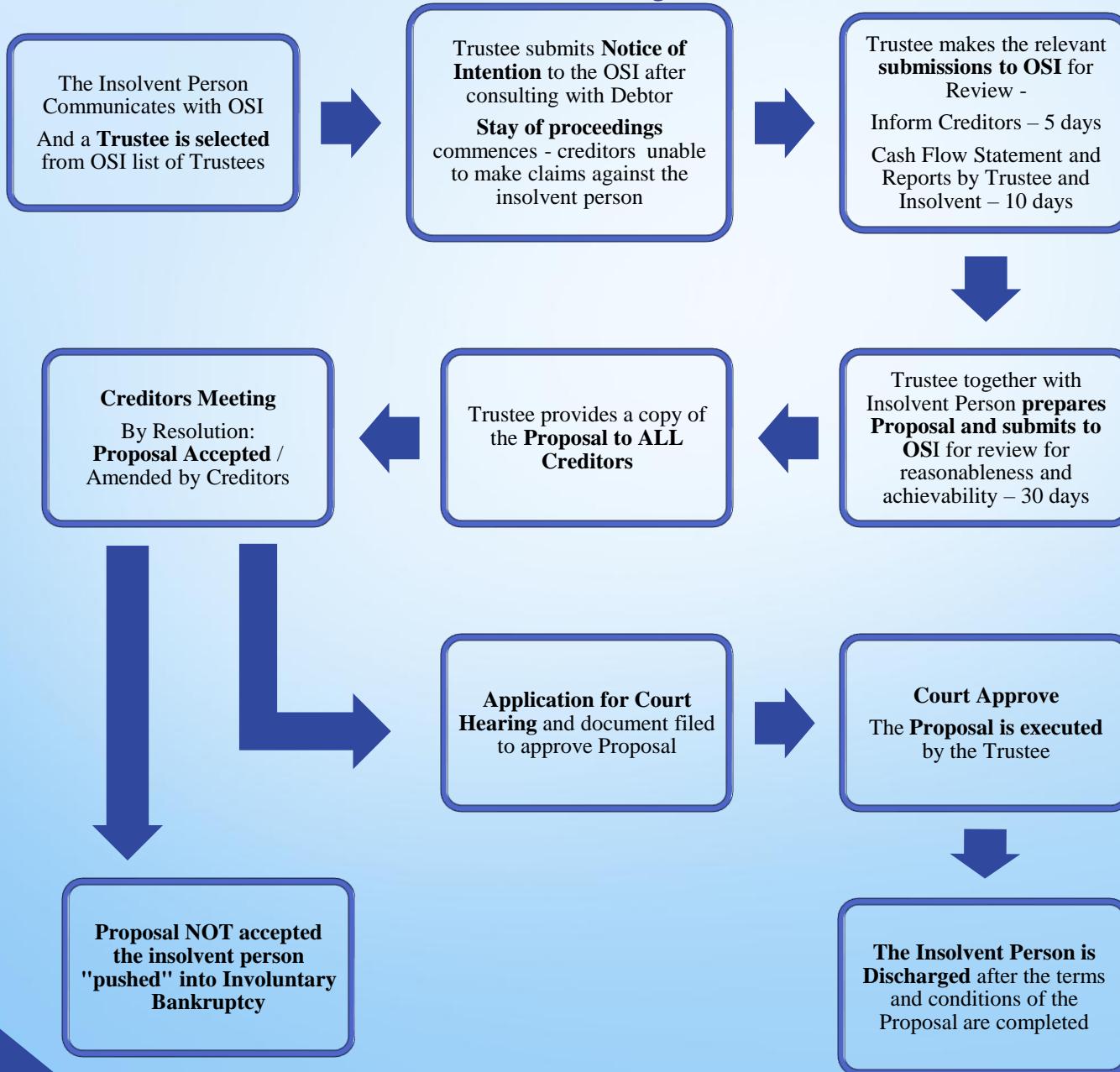
- There is a cadre of Trustees with a wealth of varied experiences that **provide financial advice and guidance** in accordance with the BIA to clients.
- The Supervisor ensures that each applicant meets the criteria of the Supervisors “Fit and Proper Test” (Schedule 3 BIA) before issuing a license to a Trustee.
- Part XVI of the Bankruptcy and Insolvency Regulations states that a Trustee shall be bound to the code of ethics.
- Conduct of Trustees – s 183-186 BIA.
- Monitoring and oversight of the Trustees.



Qualifications of a Licensed Trustee

- Under Section 180 (1) and 180 (2) of the BIA, an application for a Trustee licence is made to the Supervisor.
- Regulation 71 (a) of the Bankruptcy and Insolvency Regulations iterates, pursuant to section 180 (3) of the BIA, a person shall not be granted a licence as a trustee unless he is a member of one of the following professional bodies:
 - the Institute of Chartered Accountants of Trinidad and Tobago (ICATT);
 - the Institute of Chartered Accountants of the Caribbean (ICAC);
 - the Institute of Internal Auditors of Trinidad and Tobago (IIATT);
 - the Association of Chartered Certified Accountants (ACCA); or
 - Law Association of Trinidad and Tobago established under the Legal Profession Act (LATT).
- Once the Supervisor is satisfied that the applicant has fulfilled the requirements of the BIA and is considered “Fit and Proper”, a Trustee Licence is issued.

The Insolvency Process



PROPOSAL – 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.

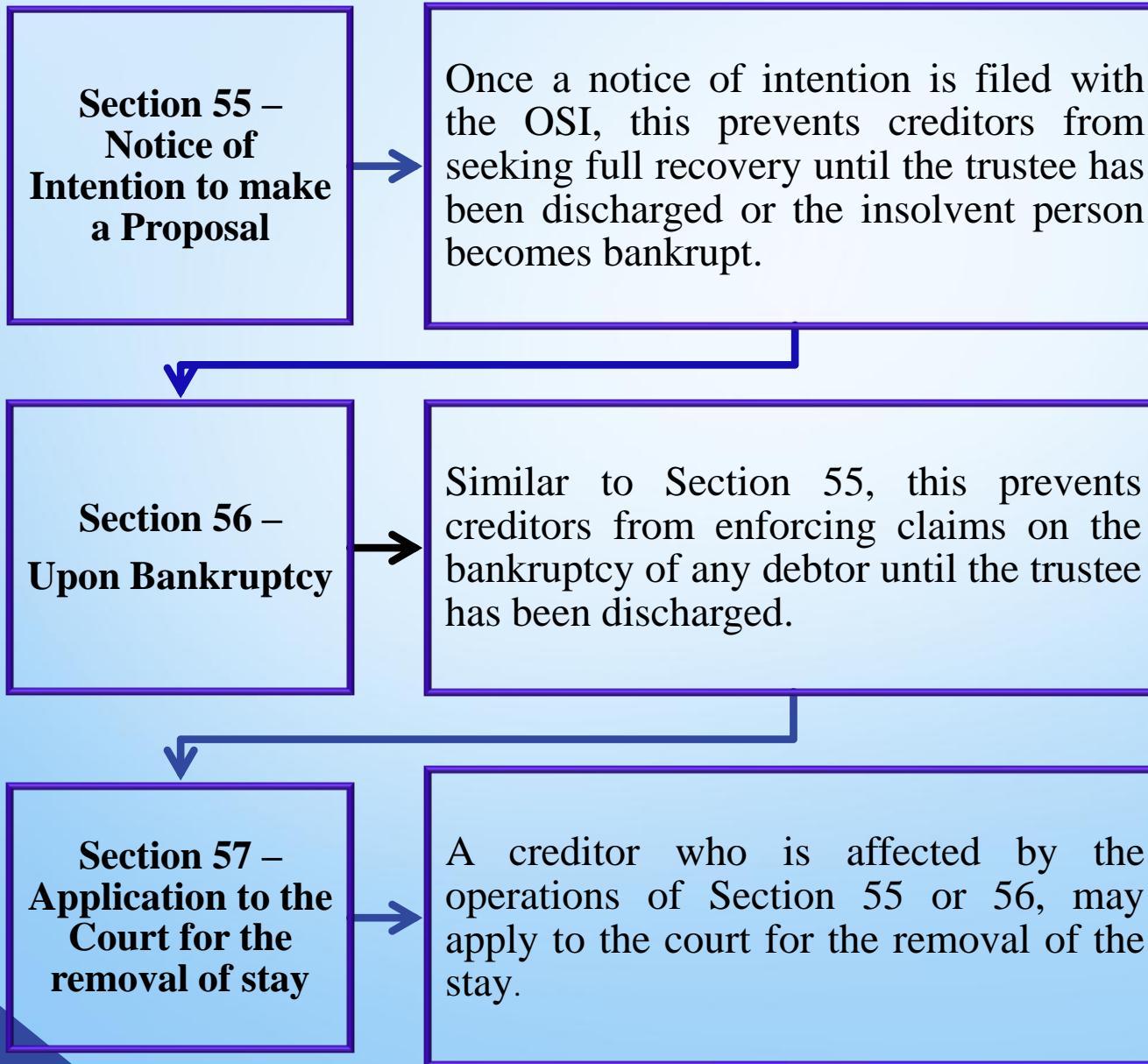


Proposals are enforceable before a Court and could result in bankruptcy if there is default by a debtor.



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

Stay of Proceedings (Automatic Stay)



Benefits of the Proposal

Access to a Trustee who provides **professional 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 through a defined process;

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 Societal Interests

- A high percentage of new businesses fail even in the best of economies in the best of times and a non-punitive, efficient insolvency system encourages taking chances on new ideas, however, this will not happen if the most creative entrepreneurs are stalled in endless procedural and punitive proceedings.
- The debtor is part of a system, which interfaces with employment issues, taxes and can have an effect on demand and supply.
- Having an efficient insolvency system in place can positively impact entrepreneurial activity, foreign direct investment and the country's competitiveness.

What is Bankruptcy

- Bankruptcy is a legal procedure, initiated when an insolvent party is unable to settle their debts through other means.

Who is a Bankrupt?

- Section 3 of the BIA, states that, “bankrupt” means a person who has made an assignment or against whom a receiving order has been made (under Section 5(10) - by the Court).
- A debtor who commits an act of Bankruptcy.

Acts of Bankruptcy

A debtor commits an act of Bankruptcy where the debtor:

- 1) either in Trinidad and Tobago or elsewhere makes an assignment of his property to a trustee for the benefit of his creditors generally, whether it is an assignment authorised by this Act or not;
- 2) either in Trinidad and Tobago or elsewhere makes a fraudulent conveyance, gift, delivery or transfer of his property or of any part of that property;
- 3) either in Trinidad and Tobago or elsewhere makes any conveyance or transfer of his property or any part of the property, or creates any charge on the property that would under this Act be void as a fraudulent preference;
- 4) with intent to defeat or delay his creditors, departs out of Trinidad and Tobago, or being out of Trinidad and Tobago remains out of Trinidad and Tobago, or departs from his dwelling house or otherwise absents himself;
- 5) permits any execution or other process issued against the debtor under which any of the debtor's property is seized, levied on or taken in execution to remain unsatisfied for twenty-one days, or if any of the debtor's property has been sold by the Marshal, or if the execution or other process is returned endorsed to the effect that the Marshal can find no property on which to levy or to seize or to take;

Acts of Bankruptcy cont...

- 6) exhibits to any meeting of his creditors any statement of his assets and liabilities that shows he is insolvent, or presents or causes to be presented to that meeting a written admission of his inability to pay his debts;
- 7) assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;
- 8) gives notice to any of his creditors that he has suspended or is about to suspend payment of his debts;
- 9) defaults in any proposal made under this Act; or
- 10) ceases to meet his liabilities generally as they become due.

The Bankruptcy Process

- 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:

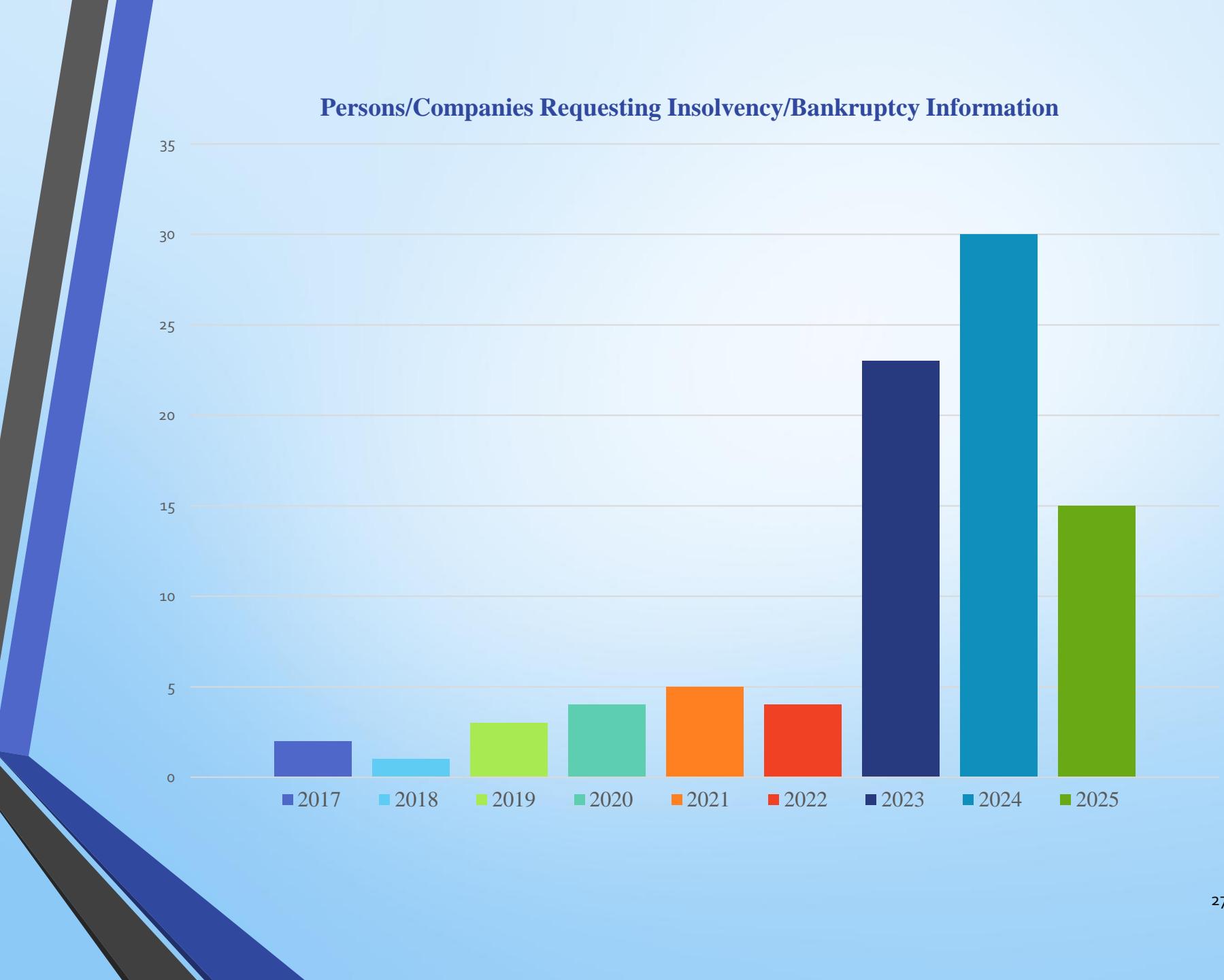
An orderly liquidation of the bankrupt's assets and the eventual distribution of the value of assets amongst creditors;

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

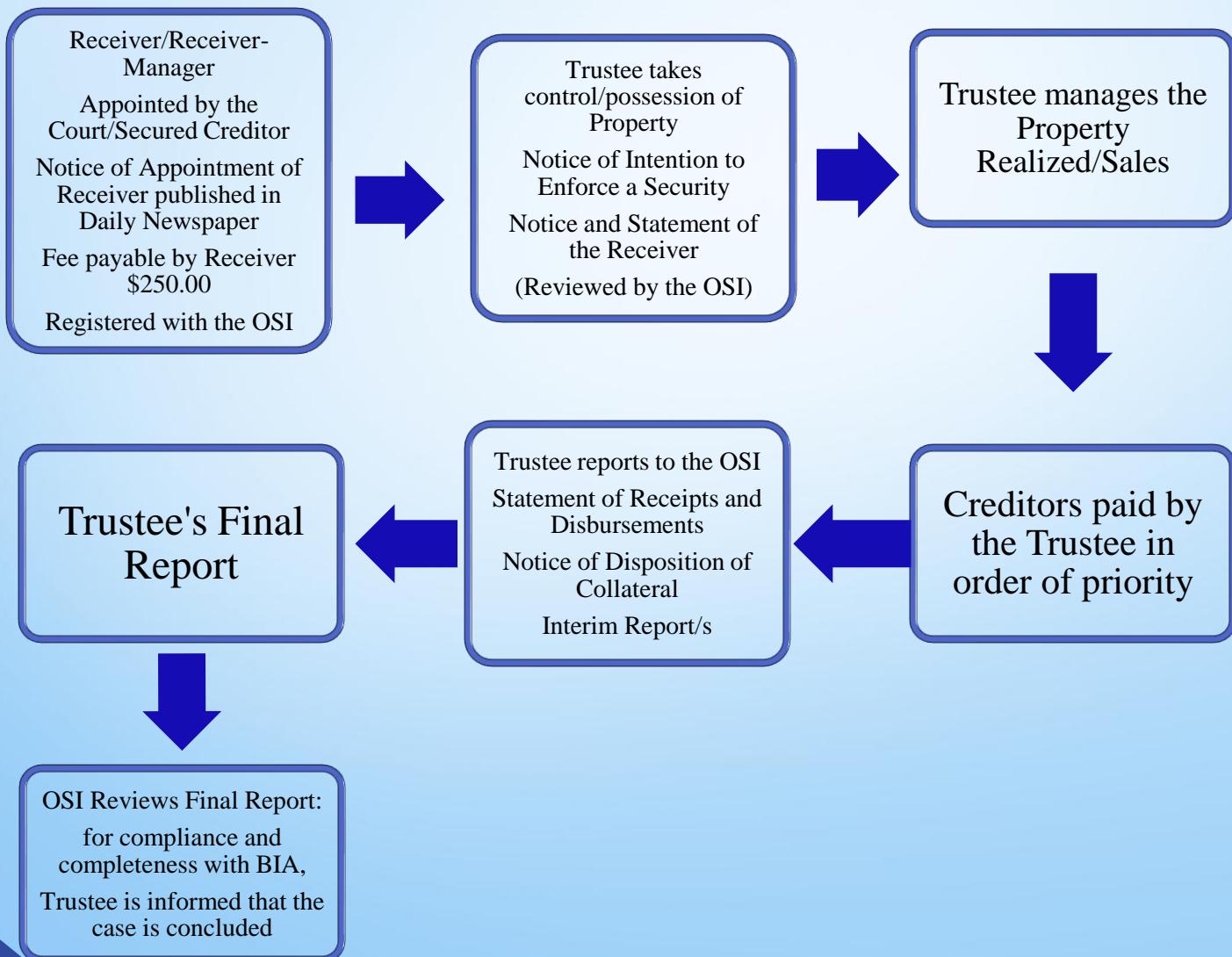
Debtor counselling is available for individuals for rehabilitation; and

The bankrupt is discharged over a period of time.

Persons/Companies Requesting Insolvency/Bankruptcy Information



The Receivership Process



BENEFITS

- ❖ It should be noted that creditors particularly unsecured, those holding floating assets, or partly secured have enhanced opportunities to recoup their investments through the proposal process or with the appointment of a receiver-manager;
- ❖ There are improved opportunities for issuing more loans to the debtor, downstream industries and employees;
- ❖ There is oversight of all mechanisms- allowing for transparency and fairness to all creditors;
- ❖ Positive effect of reducing the Non Performing Loans(NPLs) of creditors.
- ❖ Encourages creditors to deepen due diligence in debtor analysis.

Take-Away Points

Who is an insolvent person – An individual/company that is unable to repay its immediate debts

What is a Proposal – Arrangement to repay your creditors at a future date, accepted by the Creditors and approved by the Court.

Benefits – debtor is rehabilitated, option for creditors to manage NPL's, recover investments for re-lending.

Time Bound – Strict timelines – so as not to prejudice the right's of the Creditors and protection to the insolvent person.

The BIA – affords that protection to both debtors and creditors and contributes to a more robust financial economy

Contact Information



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E-brochure is available on our webpage



Thank you!

