



OFFICE OF THE SUPERVISOR OF INSOLVENCY

The Office of the Supervisor of Insolvency (OSI) regulates the licensing of trustees, supervises the administration of estates and serves as a repository of records for insolvent estates.

TRUSTEES

A trustee is necessary for every process. There are private trustees and the Government Trustee.

Private Trustees

A trustee must be licensed as such by the Supervisor of Insolvency.

Government Trustee

In situations where no licensed trustee is willing to act or the insolvent person cannot afford a licensed trustee, the Supervisor may appoint the Government Trustee to act in the matter.

Misconduct of Trustee

In situations where trustees appear to be acting in a questionable manner, a complaint against the trustee can be filed with the Supervisor of Insolvency.



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For further information contact:

The Office of the Supervisor of Insolvency (OSI)

Address: 52-60 Grenada Crescent, Kingston 5

Telephone: 876-929-8332
876-929-8447
876-619-1475-6

Fax: 876-960-7310
Email: info.osi@miic.gov.jm

A division under the: Ministry of Industry, Investment & Commerce

Address: 4 St. Lucia Avenue, Kingston 5

Telephone: 876-968-7116

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The New Insolvency Regime

A General Overview



Act



The Act provides three (3) different methods of dealing with insolvent persons (both corporations and individuals) as follows:

- **Proposals**
- **Receiverships**
- **Bankruptcy (Receiving Orders and Assignments)**

PROPOSALS – Sections 9-56

The proposal regime gives debtors a chance to restructure or reorganize their finances in an effort to avoid bankruptcy.

The following documents should be filed with the Office of the Supervisor of Insolvency (OSI) to commence the proposal:

- Notice of Intention to File a Proposal [optional] (Form 4)
- Proposal outlining the payment plan
- Cash Flow Statement (Form 8)

Failure to abide by the proposal if accepted or default in performance will result in the debtor being deemed to have made an application for an Assignment.

RECEIVERSHIPS – Sections 67-80

Only Licensed Trustees may act as Receiver.

Interim Receivers may be appointed :

- To protect an estate after filing of an Application for Receiving Order
- When notice of Intention to enforce a security is pending
- When a Notice of Intention to File a Proposal or a Proposal has been filed

Receivers may be appointed by:

- Security instrument
- The Court

There are two ways to become a bankrupt:

RECEIVING ORDERS – Sections 58-66

This is bankruptcy through the Court. Creditors, including secured creditors willing to give up their security and debtors may apply to the Court for a Receiving Order.

The Receiving Order will appoint a trustee to act in the estate.

ASSIGNMENTS

This is bankruptcy through the OSI. An insolvent person or his legal representative may apply to the OSI for a Certificate of Assignment to be issued. A person can become bankrupt due to a failed proposal or voluntarily. The following documents must be filed with the OSI:

- Application for assignment (Form 27)
- Assignment for the general benefit of the creditors (Form 28)
- Statement of affairs (Form 3)
- Corporations must file a resolution passed by the members stating that the company is insolvent



STAY OF PROCEEDINGS

PROTECTING DEBTORS

When a Notice of Intention to File a Proposal or proposal is filed or a certificate of assignment has been issued for a debtor, a stay of proceedings takes effect.

Proposal

A stay takes effect against all creditors preventing them from having any remedy, commencing or continue any action in an effort of recovering debts from the debtor.

No security agreement has any force while the stay is in effect.

The stay terminates when a proposal is lodged or the insolvent person becomes bankrupt.

NB. Utility providers cannot discontinue their service for non payment of bills whilst the stay is in effect.

Bankruptcy

Secured creditors may elect to realize their security as the stay that takes effect on bankruptcy does not prevent them from doing so. However, all other creditors shall have no remedy, commence or continue any action against the bankrupt. This is because on bankruptcy all the property of the bankrupt vests in the trustee of the bankrupt's estate proceeds of which are used to pay the debts.