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SPECIAL OPERATING AGENCY



Office of the
Superintendent
of Bankruptcy

FRAMEWORK DOCUMENT

Canada



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INTRODUCTION

1.1 BACKGROUND

Section 91(21) of the *Constitution Act*, 1867, confers on the federal government exclusive legislative authority in the area of bankruptcy and insolvency. Control of the bankruptcy and insolvency process is exercised by the Superintendent of Bankruptcy in accordance with the provisions of the *Bankruptcy and Insolvency Act* (BIA), which defines the federal role.

The BIA confers on the Superintendent statutory responsibility for: supervising the administration of estates in bankruptcy, commercial reorganizations and consumer proposals (as alternatives to bankruptcy) and receiverships; maintaining a publicly accessible record of

bankruptcy and insolvency proceedings; recording and investigating complaints from creditors, debtors, and the general public; the licensing of private-sector trustees to administer estates; and the setting and enforcement of professional standards in estate administration in order to maintain the integrity of the process.

1.2 PURPOSE OF THE FRAMEWORK DOCUMENT

The Framework Document serves as the charter or constitution for the Office of the Superintendent of Bankruptcy (OSB) and sets out, inter alia, its mission, mandate, strategic direction and objectives. The document also details the relationships of the OSB with its home department of Industry



Canada and other organizations, as well as the organizational and accountability framework. It also identifies the authorities and flexibilities delegated to the Chief Executive Officer (CEO).

The Framework Document will be reviewed with Industry Canada a minimum of every three years.

1.3 SPECIAL OPERATING AGENCY STATUS

The OSB has received Treasury Board approval to become a provisional Special Operating Agency (SOA), and to use the transitional period to adjust to its new status.

The OSB is confident that the SOA's focus on increased accountability for results, in exchange for certain flexibilities and authorities, will permit the OSB to develop a distinct, business-like culture with a strong, shared focus on client needs and innovative approaches. Further, it is confident that SOA status will provide the tools necessary for the OSB to increase the quality and effectiveness of its regulatory services despite rising volumes.

1.4 AGENCY NAME

The official name of the Agency will be the "Office of the Superintendent of Bankruptcy."



MANAGEMENT FRAMEWORK

2.1 OBJECTIVE OF THE INSOLVENCY SYSTEM

The objective of insolvency administration in Canada is to promote investment confidence in the Canadian marketplace by providing a fair and effective system for the restoration of assets to productive use, a framework for debtor rehabilitation, a deterrent to fraud, and a public record of estates. This Government policy direction is carried out jointly by the OSB, private-sector licensed trustees, and bankruptcy courts across the country.

2.2 MANDATE AND MISSION

Section 5(2) of the BIA provides the Superintendent of Bankruptcy with the mandate to “supervise the administration of all estates and matters to which this Act applies.”

To fulfill its legislative mandate, the OSB has developed a mission statement which aims:

To provide an effective, cost-efficient and uniform national program that will ensure compliance with the Bankruptcy and Insolvency Act, to maintain a sound policy and regulatory base which permits adjustments to the law in response to changing conditions, and to encourage the participation of private-sector stakeholders in order to achieve efficiency in estate administration.

The OSB also has a public policy role in ensuring that the overall system (i.e. the trustee community, the courts and the OSB) works in harmony to maintain the bankruptcy and insolvency system in Canada.

In addition, the OSB plays an important role in Industry Canada’s marketplace services framework, as it contributes to the efficient



and effective functioning of the marketplace, maintains investor confidence, and provides a source of strategic information for business.

2.3 STRATEGIC OBJECTIVES

In order to both meet our clients' needs and fulfill our statutory mandate to supervise the administration of bankrupt and insolvent estates in a manner which reflects our principles and values as an SOA (see Section 2.4), the OSB has developed the following strategic objectives for the coming three years:

- To ensure the regulatory and policy framework reflects legislative changes and client needs.
- To protect the integrity of the bankruptcy and insolvency system in a more client-focused, business-like and cost-effective manner.
- To contribute to meeting Government and Departmental priorities.
- To foster a work environment that is acknowledged by OSB employees to be business-like, conducive to professional and personal growth, and responsive to client and employee needs.

- To provide a more efficient and relevant regulatory framework of consumer bankruptcy processes and services.

2.4 GUIDING PRINCIPLES AND VALUES

The following principles and values will be reflected in all we do as a Special Operating Agency:

- Our primary focus is on the effective delivery of our statutory mandate.
- Emphasis will be placed on developing an environment which fosters the growth, motivation and professionalism of our employees.
- We are committed to providing quality services which respond to client needs, in the most cost-effective manner, and we will seek out and use alternative delivery structures (e.g. commercialization) as needed to achieve this principle.
- Our services will be provided to our clients with due regard to recovery of full costs and fair market value.
- We will provide our services in a professional, open, impartial and fair manner.
- We will continue to operate under the purview of current federal acts, regulations and policies, and will support the policies and priorities of Industry Canada and the Government.



BUSINESS OVERVIEW

3.1 LINE OF BUSINESS

The OSB delivers its mission within one line of business: supervision of the private sector's administration of bankruptcies, receiverships and commercial and consumer proposals in Canada. This line of business is delivered through three primary activities:

- maintaining a policy and regulatory framework;
- ensuring compliance with the *Bankruptcy and Insolvency Act*; and
- providing the administrative infrastructure required by the BIA.

3.2 PRODUCTS AND SERVICES

Currently, there are ten services delivered within one line of business. Each of the ten services has a policy, compliance and infrastructure component (as outlined in Section 3.1). In addition, each service is delivered through a suite of statutory and program delivery activities. The majority of these activities, such as registration, examining specified reports and issuing letters of comment on the statement of receipts and disbursements, are mandatory under the BIA.

As a regulatory body, the OSB also has the discretion, under the BIA, to carry out other activities, such as the examination of the



debtor, chairing the meeting of creditors, or intervening in the discharge process. These activities are aimed at protecting the integrity of Canada's insolvency system against potential fraud or abuse. The ten services are:

1. Consumer Bankruptcy — Summary
2. Consumer Bankruptcy — Ordinary
3. Commercial Bankruptcy — Summary
4. Commercial Bankruptcy — Ordinary
5. Division I Proposals
6. Division II (Consumer) Proposals
7. Receiverships
8. Complaints
9. Maintenance of Professional Standards
10. Information Services (e.g. Name Search)

Program support services within the OSB are essential to the delivery of these ten services. They account for approximately 35% of the operating budget of the OSB and include informatics; revenue control and accounts receivables; operational training; operational and business management; program review; standards; and regulatory affairs.

The OSB may develop new products or services, including developments in information technology, to improve its service to its

clients. In addition, any fees associated with new products or services will reflect either the full costs of production or their market value, as per government guidelines.

3.3 CLIENTS, COURTS AND TRUSTEES

3.3.1 Clients

In its simplest form, a bankruptcy or insolvency represents a breakdown in the relationship between a creditor and a debtor. The clients of the OSB are therefore:

- **the creditors** to a bankruptcy or insolvency. They are the ones who rely on the legislative and regulatory framework, the trustees, the OSB and the courts to fulfill their roles to ensure that any dividends rightfully owing to them from the bankruptcy or insolvency are realized. As they are the ones who pay for the bankruptcy, they are cognizant that as the costs of the three parties involved in the bankruptcy rise, their dividend will be less.
- **insolvent businesses and individuals.** They rely on the bankruptcy and insolvency system to provide a mechanism for either reorganizing their affairs, or for going bankrupt in a fair and orderly manner. The objective of bankruptcy for debtors is a fair and orderly disposal of



assets, and a return to the marketplace as a productive member of society with skills which will help them avoid a repeat bankruptcy. Debtors seeking reorganizations benefit from the framework provided in the BIA, and use the services of the OSB to make their proposal(s) to their creditors in a timely and open manner.

- **potential lenders, creditors and investors.** These clients use bankruptcy and insolvency information to support their lending, credit and investment decisions. This client group includes the credit-granting community, credit bureaux, search houses, lawyers, investigative accountants, other government departments, users of strategic business information, and the public.

3.3.2 Courts

The courts are provincially run, and rely, in part, on court costs charged for various services under the BIA. There are 76 provincial court registrars, and their role is also specified in the BIA.

3.3.3 Trustees

The trustee community are private-sector practitioners licensed by the Superintendent of Bankruptcy to administer insolvent estates under the BIA. There are approximately 800 active trustees. They are represented in many policy matters through professional associa-

tions, but rely on the OSB to provide the monitoring, auditing and discipline processes needed to maintain their professional standards as trustees under the BIA.

3.3.4 Others

There are approximately 43 provincial administrators of consumer proposals whom the Superintendent has designated.

In addition, insolvency counsellors are required to meet the qualification requirements set out by the OSB.

Alliances and joint ventures may be formed with the private sector to deliver program components in a more cost-effective manner. Contractual arrangements will be used to ensure control of the quality and timeliness of services being provided.

3.4 PRIVATE-SECTOR SERVICE PROVIDERS

The OSB has, in the past, entered into agreements with private-sector service providers to deliver conference, training and accreditation services to clients. A prime example is the recent agreement with the academic community to deliver the training and accreditation services for potential *Bankruptcy and Insolvency Act* Counsellors.



As the OSB is committed to improving the responsiveness, cost-efficiency and accessibility of bankruptcy services, it will enter into partnerships, particularly for the delivery of non-statutory and/or non-core services which can be better provided by the private sector. In doing so, however, the OSB will ensure that its mandate or public policy role is in no way jeopardized.

3.5 FUNDING

Currently, the OSB is jointly funded from Government appropriations (i.e. the taxpayer) and the revenue it receives from its fees and levy. In addition, it receives services from Industry Canada and other Government

departments (e.g. accommodations and employee benefits), which are not reflected in its budget.

The OSB is committed to ensuring its products and services generate sufficient revenue to cover the full costs of their delivery in a cost-effective manner. To achieve this objective, the OSB is studying its costs, its delivery mechanisms, its existing fees and new services and fees. Further, the OSB will be seeking access to an alternative funding mechanism (i.e. a revolving fund) to access and better manage the delivery of its services, and will negotiate a period of time (e.g. four years) with Treasury Board, in which the OSB must break even.



ORGANIZATIONAL FRAMEWORK

4.1 ORGANIZATIONAL STRUCTURE

The OSB is a Special Operating Agency of Industry Canada. It currently consists of a central administration and 14 district offices and suboffices situated across Canada (see Appendix A for locations). The CEO ensures that the organizational structure of the OSB supports its business strategy and promotes responsiveness to clients and may, therefore, make periodic adjustments to that structure as conditions warrant.

4.2 CHIEF EXECUTIVE OFFICER

As an SOA, the OSB is headed by a Chief Executive Officer (CEO) who is the Superintendent of Bankruptcy. The CEO is accountable to the Assistant Deputy Minister of Operations, Industry Canada, for providing long-term strategic direction, ensuring that the

OSB meets its agreed-upon objectives and performance targets, and reporting upon actual versus target performance through the reporting framework described below.

The mandate of the Superintendent of Bankruptcy will in no way be changed by assuming CEO status as he or she will continue to exercise the powers and perform the duties conferred and imposed pursuant to the BIA and Bankruptcy and Insolvency Rules.

4.3 EXECUTIVE COMMITTEE AND OTHER SENIOR EXECUTIVE OFFICERS

The OSB Executive Committee is chaired by the CEO and constitutes the senior management decision-making body of the OSB. The Committee consists of all the senior executives of the OSB.



The other senior executive officers are currently the Deputy Superintendent of Operations, and the Deputy Superintendent of Programs, Standards and Regulatory Affairs. They report to the CEO, and are responsible for: directing and managing the operational services of the OSB; maintaining the policy and regulatory framework for bankruptcy; representing Canada's interests; maintaining ongoing cooperation and relations with both clients and stakeholders; and maintaining and updating operational policies. Other senior executive officers may be appointed by the CEO depending on business and client demands.

4.4 EMPLOYEES

Employees of the OSB will retain the status of public servants with all the associated rights, benefits and responsibilities. Existing collective agreements will remain in force and staff will continue to be represented by their bargaining agents in all negotiations with Treasury Board. Furthermore, employees will continue to be covered by the *Public Service Employment Act*, the *Workforce Adjustment Directive*, the *Public Service Staff Relations Act*, the *Financial Administration Act*, and other applicable legislation.

4.5 MANAGEMENT ADVISORY BOARD

A Management Advisory Board will be established to provide advice and guidance to the CEO, from an external, private-sector perspective, on the strategy, management and business decisions of the OSB. It will be strictly advisory in nature, and will not play a governance role, nor be involved in the day-to-day management of the OSB. For example, the Board will review and comment on the OSB Business Plan, the OSB's performance against the Business Plan, the OSB's costs and revenues and plans for full cost recovery, and the OSB's longer-term business strategies. The Board will also provide advice on ways to improve OSB service.

The Chairperson for the first transitional board will be appointed by the Deputy Minister on the recommendation of the Superintendent, and board membership will consist of a minimum of eight members from the private sector, representing a balance of OSB stakeholders, business leaders and academics.



ACCOUNTABILITY AND REPORTING FRAMEWORK

5.1 ACCOUNTABILITIES AND RELATIONSHIPS

5.1.1 Ministerial, Deputy Ministerial and Sector Head Accountability

The Minister of Industry Canada is formally accountable to Parliament for all activities of the OSB.

The Deputy Minister of Industry Canada is accountable to the Minister of Industry Canada for the effective governance of the Department, including the Operations Sector and the OSB.

The Assistant Deputy Minister (ADM) of Operations, Industry Canada, is accountable to the Deputy Minister of Industry Canada for the overall performance of the Operations Sector, which includes the OSB.

5.1.2 Accountability of the Superintendent and CEO

The CEO, in his or her capacity as Superintendent of Bankruptcy, is accountable, through the Departmental chain of command, to the Minister for meeting the legislative mandate of the OSB.

The CEO is also responsible for the day-to-day management of the OSB, and is accountable to the Assistant Deputy Minister of Operations, Industry Canada, for meeting the strategic and performance objectives mutually agreed to in the Transitional Business Plan. In addition, the CEO participates as a member of the Operations Sector management team and contributes actively to the achievement of Sector priorities and objectives. Finally, the CEO is responsible for



respecting and responding to Departmental direction and priorities, and for adhering to Departmental and Government policies.

5.1.3 Relationship with Industry Canada

The OSB will conduct its business in a manner that helps to develop the general policy direction of Industry Canada while being consistent with the mission and objectives of the OSB. It will also work closely with the Corporate Governance Branch to ensure that legislation pertaining to bankruptcy is relevant and operative against both Canadian and international expectations and standards.

Due to the independently accountable nature of the OSB as an SOA, the Department will afford the OSB the flexibility needed to meet its mandate in a less bureaucratic and more business-like, client-responsive and efficient manner. This includes providing the OSB with the option of continuing to receive corporate services from Industry Canada, to contract out for all or a portion of these services, or to recreate these services within the OSB.

Given that the accountability for the performance of the OSB rests with the CEO, he or she must have the ability to control the key elements of his or her operation on a national basis. Although this will require that all OSB

employees, including Bankruptcy District Office employees, report to the CEO, the OSB will establish communication links with the Regional Directors of Industry Canada to further Departmental priorities.

The Department needs to respect the basic tenet that new or additional demands placed on the OSB by Industry Canada, for which OSB clients do not directly benefit, may require funding from appropriations, as one cannot expect OSB clients to pay for services provided exclusively to the Department.

5.1.4 Relationship with Departmental Common Services

The OSB will examine and weigh the costs and benefits of using Industry Canada corporate services, and will, when deemed cost-effective and appropriate, negotiate Memoranda of Understanding (MOUs) both at headquarters and in the regions. These MOUs will outline the extent and costs of central services to be provided in the areas of human resources, finance, informatics, accommodations, communications and legal, policy or legislative advice and services. These central services are to be provided in a manner consistent with those currently made available to any operating unit of Industry Canada. The Department will continue to perform the routine interface with Treasury Board



Secretariat and other central agencies on such issues as the Departmental Business Plan and Main Estimates, questions in the House, possible issues, etc.

5.1.5 Relationship with Government Common Services Agencies

The OSB will respect all Government policy emanating from central agencies, including those pertaining to the introduction of new products or services. Initially, the working or service relationships between the OSB (as recipient) and central services agencies (e.g. Treasury Board Secretariat, Public Works and Government Services Canada, Public Service Commission, etc.) will remain unchanged with Industry Canada central services taking the lead. However, as MOUs are negotiated with Industry Canada corporate services, this relationship will be re-examined and the most effective approach for the OSB will be negotiated and adopted.

5.1.6 Relationship with Internal Clients

Internal clients are defined as those organizations which are listed within Schedules I or II of the *Financial Administration Act*. Internal clients will be charged fees for services and products received from the OSB (such as for copies of databases or for Name Search services). Fees will normally be charged through

a negotiated agreement or MOU between the parties, which includes the services to be provided, performance expectations, and costs to be incurred. Fees for these services will not exceed incremental costs, i.e., the costs actually incurred in the provision of the service that would not have been incurred otherwise.

5.1.7 Relationship with Other Government Departments

The OSB will continue to honour existing agreements with the RCMP, the Department of Justice and other Government departments providing services to the OSB.

5.1.8 Responsibility to Clients and Other Stakeholders

The OSB will be responsible for providing its clients and other stakeholders (i.e. the courts, trustees and provincial administrators) with high-quality, trusted, timely and efficient services, consistent with its mandate. In addition to using the Joint Committee on Bankruptcy, the Bankruptcy and Insolvency Advisory Committee and other existing committees, the OSB will be responsible for increasing its communications and consultations with its clients and stakeholders. The OSB will seek to involve its clients in matters which affect the SOA's business, such as the establishment of service levels and performance indicators. The OSB will establish a Management



Advisory Board comprised of clients, stakeholders and business leaders. The OSB will offer quality service consistent with private-sector regulators, and will deliver it in a professional, open, fair and impartial manner.

5.2 PLANNING AND REPORTING

5.2.1 Annual Business Plan

The Annual Business Plan will identify the operating objectives and revenue targets of the OSB for each fiscal year, the activities to be undertaken to meet these objectives, and the resources required. The CEO will be accountable to the ADM, Operations Sector, for meeting the targets set in the OSB's Annual Business Plan, in the overall context provided by the most current Framework Document.

Each year, the Business Plan will be submitted to the ADM, Operations Sector, Industry Canada, following consideration by and advice from the Management Advisory Board, and will be coordinated with the broader planning and reporting requirements of the Sector and the Department.

5.2.2 Annual Report

An Annual Report will be submitted to the ADM, Operations Sector, and will provide workload and financial statements; information relating to performance indicators; and measurement of the extent to which objectives and revenue targets have been met.

5.2.3 Performance Measurement

The aim of the performance measurement system is to provide OSB management and staff with the necessary information and feedback required to make decisions affecting the business of the OSB, and to report to the Department on OSB performance.

In addition to the full range of input and output indicators (e.g. volumes, time utilization, complaints, repeats, etc.) currently being used by the OSB, specific performance indicators and measures will be developed in consultation with the ADM of Operations during the 12 months following Special Operating Agency approval. During this period, the OSB will establish the necessary systems to measure and track performance



with respect to the identified measures and indicators. The measures and indicators to be developed will focus on:

- financial performance;
- operational efficiency (unit cost and productivity);
- program effectiveness (i.e. achievement of strategic objectives);
- client services; and
- organizational health.

The following is an initial set of performance indicators that the OSB will use as a starting point in developing its performance measurement system.

Financial Indicator

- the gap between full costs and revenues

Efficiency Indicators

- the OSB's unit cost per bankruptcy
- workload per Bankruptcy Officer

Effectiveness Indicators

- degree of fraud in the system
- speed of debtor discharge
- dividends as a percentage of realizable assets

Client Services Indicators

- quality and uniformity of OSB operations
- client's perception of professional, fair and impartial service

Organizational Health Indicator

- employee satisfaction, morale, acceptance of cultural change

Each year, the performance measurement framework will be reviewed and incorporated in the Annual Business Plan.

5.2.4 Financial Reports and Accounts

The OSB will submit its Annual Report and financial statements to the ADM of Operations to become part of the Sector's input to Industry Canada's Departmental Business Plan, Main Estimates and the Public Accounts of Canada.

5.3 ACCOUNTING, EVALUATION AND AUDIT

5.3.1 Accounting

The OSB will continue to operate a full financial control and management accounting system providing a monthly review of costs incurred against agreed budgets, operating



performance and cash flow. The system will allow senior management to monitor financial performance. In preparation for a revolving fund in 1998-99, the OSB will move to an accounting system capable of accrual accounting. In doing so, it will first seek existing internal solutions within the Department and/or Government to minimize costs.

The OSB's accounting system will be consistent with accounting requirements imposed on a revolving fund; will accommodate appropriate interfaces with the Departmental financial system; will be capable of reconciliation with the Departmental accounts; and will satisfy Departmental audit requirements as to security, comprehensiveness, separation of authorities and accuracy.

5.3.2 Evaluation

The ADM, Operations Sector, will be responsible for ensuring that formal evaluations of the OSB are carried out from time to time. The OSB's performance will be evaluated based on its ability to meet its objectives (as outlined in the Annual Business Plan). The CEO will be responsible for ensuring that the information necessary to conduct such evaluations is collected and made available. In addition, the CEO may initiate evaluations at any time.

5.3.3 Audit

The OSB will be subject to internal Departmental audits and reviews, as well as Auditor General audits, and may use private-sector audits as required.



REQUESTED AUTHORITIES AND FLEXIBILITIES

To operate in a business-like fashion within a strict accountability framework, the OSB is seeking the delegation of a number of authorities and flexibilities, in the areas of budget and revenue control; finance and accounting; human resources; informatics; and administration, from Industry Canada, Treasury Board, Public Works and Government Services Canada, the Public Service Commission and other central government agencies.

6.1 FROM INDUSTRY CANADA

The OSB will be negotiating several administrative, financial, human resources and information management flexibilities within the context of the Memorandum of Understanding with its home department, Industry Canada.

6.1.1 Financial Delegations

- Delegation of financial authorities to the level of ADM
- Section 33 of the *Financial Administration Act* (except for pay-related items)
- Multiple conference attendance, and single attendance outside of Canada
- Foreign travel
- More than one membership at the same geographical location for which there is no legal requirement
- Authority to approve official hospitality to a maximum of \$5,000
- Meals within the headquarters area
- Utilize lump-sum daily travel allowances
- Emergency purchase orders



- Employee relocation
- Contract administration and review
- Acquisition of goods and services

6.1.2 Human Resources Delegations

The OSB will adopt Industry Canada's *Delegation of Human Resources Approval and Signing Authorities* document and seek approval for the CEO to have the following ADM-level authorities:

- Pay in lieu of unfulfilled surplus period
- Date of retroactive classification over 12 months
- Appointments (e.g. short-term and long-term hiring and extensions, deployments)
- Acting appointments and assignments
- Interchange agreements and secondment agreements
- Establishment of grievance levels 1, 2 and 3
- Surplus declarations for both indeterminate and term employees
- Imperative staffing
- Salary above the minimum for appointments from outside the Public Service
- Educational leave

In addition, the OSB will seek authority to establish its own awards program.

6.1.3 Other Delegations

- Informatics standards and policies to meet the OSB's requirements
- Communications, publications and advertisement policies which meet the OSB's requirements
- Leasehold improvements and tenant services
- Ability to establish and operate our own central services (e.g. filing, mail, messenger and revenue control) when deemed cost-effective to do so
- Separate negotiations with Public Works and Government Services Canada and with the Department in matters of accommodations and lease agreements for OSB offices across Canada

6.2 FROM TREASURY BOARD

- Confirmation of the OSB's direction to establish and operate a revolving fund
- Confirmation of the OSB's direction to proceed in a contractual agreement with the private-sector to commercialize OSB information, revenue and informatics services
- Authority to access court-awarded costs
- Authority to access fees from estates under OSB guardianship



6.3 FROM THE PUBLIC SERVICE COMMISSION

- Promotion to Level (i.e. to PM-4) for employees in the Bankruptcy Officer Development Training Program
- Hiring of casuals for periods not to exceed 125 working days per year

6.4 FROM PUBLIC WORKS AND GOVERNMENT SERVICES CANADA

- Retain or assign copyright protection for materials created by the OSB
- Establish standing offers and authority to draw down or call up against those offers



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