

# TA Hotel Management Limited Partnership and TA Hotel GP Ltd. – In Bankruptcy

August 27, 2020

## Frequently Asked Questions and Answers

The following is a list of frequently asked questions and answers typically received in a bankruptcy proceeding. The answers are based on a general set of circumstances. If you are in any doubt as to the action you should take, you should consult your own professional advisors.

### Who is the Licensed Insolvency Trustee?

The Licensed Insolvency Trustee ("**Trustee**") is an independent third party appointed by the Official Receiver (a representative of the Office of the Superintendent of Bankruptcy) or the Court. The Trustee is licensed by the Office of Superintendent of Bankruptcy.

### What is the role of the Licensed Insolvency Trustee?

The Trustee's primary role is to take possession of and secure all the assets owned by a bankrupt and realize upon these assets for the benefits of the bankrupt's creditors. The Trustee is also responsible for notifying creditors of the bankruptcy proceedings and any meetings of creditors, reporting to creditors, the Court and / or the Official Receiver, administering a creditor claim adjudication process, distributing funds to creditors and where necessary, investigating and reporting on the bankrupt's affairs.

### What is a stay of proceedings and how does this affect my recourse against a bankrupt in respect of a debt owed or in relation to an agreement / contract with the bankrupt?

Pursuant to section 69.3 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), there is a stay of proceedings due to the bankruptcy filing, in that no creditor has any remedy against the bankrupt or the bankrupt's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a debt owed.

Furthermore, pursuant to section 84.2 of the BIA, no creditor may terminate or amend any agreement with a bankrupt, or claim an accelerated payment, or a forfeiture of the term, under any agreement with the bankrupt, by reason only that the bankrupt is insolvent or by reason of the bankruptcy assignment.

## Will creditors get paid for amounts owing prior to the date of bankruptcy?

A distribution to creditors depends on the proceeds realized from the sale of the bankrupt's assets. After selling the assets, the Trustee will be required to consider the claims of any secured creditors, prior ranking claims, deemed trusts, statutory liens, and the costs of administering the bankruptcy, prior to repaying any amounts to other creditors. As such, an unsecured creditor will only be paid if there are any proceeds remaining after payment of all claims ranking in priority thereto.

## How do I ensure that I am on the creditor's list and will receive the notice of the bankruptcy and any meeting of creditors?

The Trustee is required to send a notice of bankruptcy and first meeting of creditors ("**Creditor Notice**") to all known creditors of the bankrupt within five (5) business days from the date of bankruptcy. Included with the Creditor Notice will be a list of creditors with names and amounts owing to each creditor, which is populated based on the bankrupt's records.

A copy of the Creditor Notice will also be made available on the Trustee's case website established for the bankruptcy proceeding. Check the creditor listing to ensure that your name is on the list and that the address listed is correct. If you are a creditor and are either not on the list or the address listed is incorrect, please contact the Trustee. Contact details for the Trustee are provided at the end of this Frequently Asked Question document ("**FAQ**").

## When will creditors get paid?

Trustees will generally make payments to creditors after selling a bankrupt's assets and in the event that there are available funds for distribution to unsecured creditors, after considering any secured claims, the costs of administering the bankruptcy, deemed trusts, statutory liens, and other prior ranking claims.

In order to be eligible for a payment from the bankruptcy proceeding, a creditor must file a proof of claim with the Trustee, accompanied with supporting evidence of the outstanding debt being claimed, such as a copy of an invoice, contract and / or a statement of account summarizing the total amount being claimed. Instructions will be provided with the proof of claim form.

The proof of claim form and supporting documents are reviewed by the Trustee. Any discrepancies between the bankrupt's records and the amount claimed by the creditor are investigated by the Trustee. Disputed claims are resolved in accordance with the BIA.

## As a supplier, can I repossess my goods/inventory after a customer has become bankrupt?

Section 81.1 of the BIA gives unpaid suppliers a right to repossess goods that have been delivered to a company that is bankrupt. However, the right to repossess goods/inventory is subject to the following:

- The unpaid supplier issues a written demand for the goods within fifteen (15) days from the date of bankruptcy;
- The goods were delivered to the bankrupt within 30 days prior to the date of bankruptcy;
- The goods must be used in relation to the bankrupt's business and also be in the possession of the Trustee;
- The goods must be identifiable, not fully paid for, and in the same state as they were on delivery, and
- The goods must not be sold or subject to an agreement for sale to an arms' length party.

## I have consignment goods or property located at the bankrupt's premises – how do I obtain my property from the Trustee?

Pursuant to section 81 of the BIA, you will be required to submit a completed property proof of claim form (Form 74) to the Trustee detailing the particulars of the property in the possession of the Trustee, as well as supporting evidence for your claim.

## As an employee, am I entitled to a priority claim for my unpaid wages? What are my rights?

An employee is entitled to a priority secured claim for unpaid wages and vacation pay, which were earned during the six (6) month prior to the initial bankruptcy event or the date of receivership. The amount of the priority is limited to \$2,000 per employee with an additional \$1,000 for disbursements made by a travelling salesperson, secured against the bankrupt's current assets (such as cash, accounts receivable and inventory). The priority claim for unpaid wages does not include termination and severance pay.

## What is the Wage Earner Protection Program ("WEPP")?

WEPP is a program delivered by Service Canada, which reimburses eligible employees for eligible unpaid wages, vacation pay, severance and termination pay that are owed after an employer becomes bankrupt or is subject to a receivership.

The maximum payment for an eligible employee is equivalent to seven (7) weeks of insurable Employment Insurance earnings less amounts prescribed by regulations. For 2020, the maximum amount that you will receive is \$7,296.17 (which will be reduced by a 6.82% deduction payable to Service Canada for administration of the program).

Payments under WEPP will be made directly by Service Canada and not by the Trustee. If a payment is made to an employee by Service Canada, then Service Canada will be entitled to any dividend payments made by the Trustee or to the employee, up to the amount paid by Service Canada.

Further information on WEPP can be obtained through contacting the following:

- Telephone Number: 1 (866) 683-6516
- Website: <http://www.servicecanada.gc.ca/eng/sc/wepp/index.shtml>

The Trustee will be sending out information to all employees in respect of WEPP very shortly following the bankruptcy filing, at which point an employee will need to file a proof of claim form with the Trustee and file an application form directly with Service Canada. Employees should await receipt of this information prior to taking any steps under WEPP.

## Will there be a meeting of creditors?

The Trustee is required to call a first meeting of creditors within 21 days of the date of bankruptcy. As outlined, a Creditor Notice will be sent out to all known creditors and will have details of the meeting.

As a creditor, you will be given the opportunity to file a proof of claim with the Trustee prior to the meeting. A proof of claim must be filed prior to the meeting for you to be eligible to vote at the meeting.

Please note that there is no requirement for you to attend the meeting in order to share in any distribution. The primary purpose of the first meeting is to: a) affirm the Trustee's appointment in the bankruptcy proceeding or substitute the Trustee; b) appoint up to five (5) estate inspectors to assist with oversight of the bankruptcy administration; c) the Trustee will present / discuss its preliminary report on bankruptcy administration and take any directions from creditors.

## I'm a shareholder - will my investment be returned?

As a shareholder, you may have an “equity claim” against the (Bankrupt/Debtor), however, an equity claim is subordinate to all other creditor claims and will not be paid until all other creditors have been paid in full.

## I am interested in purchasing the company's assets – who should I contact?

You should contact the Trustee. Contact details are provided at the end of this FAQ.

## How long does the process normally take?

It depends on the facts and circumstances of each bankrupt estate. It can be a multi-year process.

## How can I stay informed?

The Trustee is maintaining a case website at [www.grantthornton.ca/TAHotel](http://www.grantthornton.ca/TAHotel) which will be updated throughout the administration. Further, the Trustee has a designated email as follows:

**Email:** [TAHotel\\_Bankruptcy@ca.gt.com](mailto:TAHotel_Bankruptcy@ca.gt.com)

Creditors are encouraged to refer to the case website or submit questions to the Trustee by email, which the Trustee will endeavour to answer as quickly as possible. If necessary, the Trustee will update this FAQ as the administration is advanced.

**The Trustee – Grant Thornton Limited**

Email: [TAHotel\\_Bankruptcy@ca.gt.com](mailto:TAHotel_Bankruptcy@ca.gt.com)