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Restructuring & Insolvency 2025

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1 Overview

1.1 Where would you place your jurisdiction on the spectrum of debtor- to creditor-friendly jurisdictions?

Canada is a relatively debtor-friendly jurisdiction. Canadian insolvency legislation provides creditors and other stakeholders with broad rights, remedies and protections within a framework that enables financially distressed debtors to remain in possession of their assets and restructure their affairs under court supervision. Canadian courts have consistently interpreted the primary policy objective of Canadian insolvency legislation as facilitating restructurings where possible to avoid the significant social and economic consequences of bankruptcy or liquidation.

Insolvency is a matter of federal jurisdiction in Canada, and is generally understood to encompass two distinct processes: (a) bankruptcy, which entails a piecemeal liquidation of the debtor's assets; and (b) restructuring, which can be a reorganisation effected through an agreement between the debtor and its creditors or a sale of the debtor's business or assets on a going concern basis. A bankruptcy is typically effected through the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Restructurings can be effected under three main regimes: (i) the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**"); (ii) the BIA's proposal provisions; and (iii) the plan of arrangement provisions of federal or provincial corporate legislation. This chapter refers to the federal *Canada Business Corporations Act* (the "**CBCA**") when discussing restructurings under corporate legislation as it is the statute most often used.

1.2 Does the legislative framework in your jurisdiction allow for informal work-outs, as well as formal restructuring and insolvency proceedings, and to what extent are each of these used in practice?

In addition to the formal restructuring and insolvency proceedings mentioned above, out-of-court (or informal) restructurings are permitted in Canada and are commonly completed against the backdrop of potential court-supervised proceedings. The ability of a debtor to implement an out-of-court restructuring often depends on the complexity of the debtor's capital structure. Achieving consensus among, and requisite consents from, creditors with differing rights can be challenging without a court process.

Where an out-of-court restructuring is unachievable, companies may restructure without formal insolvency proceedings through a CBCA restructuring.

CBCA restructurings are unique to Canada. The CBCA's arrangement provisions permit federally incorporated companies to apply for a court order approving a "fundamental change" where such change is not practicable under any other provision of the CBCA. A CBCA reorganisation can be used to restructure the rights of security holders (such as lenders, bondholders and equity holders), but not the rights of general unsecured creditors.

In a CBCA restructuring, the debtor will typically negotiate a plan of arrangement with its most significant debtholders and seek an interim court order calling a meeting of the affected security holders to consider and vote on such proposed plan. The interim order also typically grants a stay of proceedings to prevent affected stakeholders from enforcing rights against the debtor while it seeks to have the plan approved and implemented. Court approval of a CBCA plan is needed to make it legally binding on affected stakeholders.

A CBCA restructuring does not involve a declaration of insolvency. In fact, an insolvent company cannot use the CBCA arrangement provisions. However, in several cases, courts have found the solvency requirement to be satisfied where a new solvent company was created to be an applicant along with an insolvent debtor. Courts will also consider the financial condition of the applicants after the arrangement is implemented.

2 Key Issues to Consider When the Company is in Financial Difficulties

2.1 What duties, key considerations and potential liabilities should the directors/managers have regard to when managing a company in financial difficulties? Is there a specific point at which a company must enter a restructuring or insolvency process?

Canadian corporate legislation imposes two principal duties on directors and officers: a fiduciary duty; and a duty of care. The fiduciary duty requires directors and officers to act honestly and in good faith with a view to the best interests of the corporation. The duty of care imposes an obligation on directors and officers to be diligent in supervising and managing the corporation's affairs. Directors' and officers' duties are always owed to the corporation, although the fiduciary duty to act in the corporation's best interests allows directors and officers to consider the interests of various stakeholders depending on the circumstances, including shareholders, employees, suppliers, creditors, governments and the environment. The interests of creditors may increase in relevance as a corporation's finances deteriorate, but directors' and officers' duties remain to act in the best interests of the corporation having regard to the need to treat all stakeholders fairly.

There is no specific point at which a company must enter a restructuring process. However, directors and officers risk facing liability, including for gross negligence, wilful misconduct, or through an oppression claim from creditors or other stakeholders in circumstances where a company continues to operate while insolvent. An oppression claim is a remedy available where a corporation or its board acts in a manner that is "oppressive or unfairly prejudicial" to the applicant's interests or "reasonable expectations".

Directors may also be personally liable for certain liabilities of the company, such as employee termination and severance pay, unpaid wages or vacation pay, environmental contamination and the corporation's obligations to collect, withhold or remit Canada Pension Plan contributions, income tax, employment insurance, and sales and value-added taxes. These statutory liabilities are not triggered by insolvency but often become a greater concern in times of financial distress as the company may not have the ability to pay such obligations.

2.2 Which other stakeholders may influence the company's situation? Are there any restrictions on the action that they can take against the company? For example, are there any special rules or regimes that apply to particular types of unsecured creditor (such as landlords, employees or creditors with retention of title arrangements) applicable to the laws of your jurisdiction? Are moratoria and stays on enforcement available?

The CCAA and the BIA's proposal provisions permit debtors to obtain a broad stay of proceedings in a restructuring to prevent most creditor enforcement actions. In a bankruptcy, the debtor will only benefit from a stay in respect of enforcement actions of unsecured creditors. A limited stay may be granted in a CBCA restructuring.

Below are certain key stakeholders that may influence a decision on a restructuring path.

Secured creditors – Secured creditors are often the most influential stakeholders in a restructuring as they have the statutory (and often contractual) ability to appoint a receiver to enforce their security over the debtor's assets and monetise such assets under a prescribed process, among other rights. Distressed companies often undertake CCAA or BIA restructurings as a protection against a receivership application. Also, increasingly complex capital structures with multiple layers of secured debt can present an ownership opportunity to secured creditors who wish to use their debt holdings to influence the restructuring, and acquire the debtor or its assets through a debt-for-equity exchange reorganisation or a credit bid in any sale scenario.

Landlords – In addition to any rights conferred under the terms of the applicable lease, landlords have a common law right to distrain, which permits landlords to seize and sell assets on the leased premises belonging to a tenant to recover rental arrears. The stay of proceedings under the CCAA and BIA denies landlords access to this remedy.

Government entities/regulatory bodies – The CCAA and the BIA's proposal provisions exempt a "regulatory body" from the scope of the stay of proceedings as it relates to investigations, actions and other proceedings, provided that, on application by the debtor on notice to the regulator and any persons to be affected by the order, a court may order that the stay applies to all proceedings or steps that may be taken by the regulator if a viable compromise or arrangement could not be made without such order and such an order is not contrary to the public interest.

Employees – A company's employees are often a key stakeholder group who may impact restructuring efforts. See question 6.1 for further discussion regarding the rights of employees in insolvency.

Suppliers/contract counterparties – Suppliers and other contract counterparties are another potentially key stakeholder group for a company to consider when evaluating restructuring options. See question 3.7 for further discussion regarding the rights of suppliers and contract counterparties in insolvency.

2.3 In what circumstances are transactions entered into by a company in financial difficulties at risk of challenge? What remedies are available?

Certain transactions may be challenged under the BIA by the trustee or under the CCAA by the court-appointed monitor if they took place within a certain period before a restructuring or bankruptcy proceeding. Challenges to "pre-filing" transactions are not common. Preferences and transfers at undervalue are two types of reviewable transactions, and are discussed below. The payment of cash dividends, redemption or purchase for cancellation of shares, and payment of termination pay and certain other employment compensation to directors and officers may also be challenged if made in the year before bankruptcy or the commencement of restructuring proceedings where the debtor was insolvent at the time or was rendered insolvent by the payment. Where a reviewable transaction is challenged successfully, directors and officers may be personally liable.

Preferences

Preferences are pre-filing transactions between an insolvent debtor and a creditor, which give that creditor more than their proportionate share of the debtor's assets than otherwise would have resulted in a bankruptcy distribution. A preference transaction can include, among other things, a payment, transfer of property, provision of services or granting of a charge on a property to or in favour of one or more creditors at the expense of other creditors.

Courts may declare any such transaction in favour of an arm's length creditor to be void if made less than three months before the debtor's bankruptcy or commencement of restructuring proceedings with the intent to give that creditor a preference over other creditors. There is a rebuttable presumption that the preference was intended if the effect of the transaction is preferential.

If the transaction is in favour of a non-arm's length creditor, proof of intent is not required and the relevant look-back period is one year.

Transfers at undervalue

A transfer at undervalue is a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than fair market value.

Courts may declare a transfer at undervalue to be void, or order that the beneficiary pay the debtor the difference between the value received and the value given, if: (i) the debtor was insolvent at the time of the transaction; (ii) the transaction occurred in the year prior to the debtor's bankruptcy or commencement of restructuring proceedings; and (iii) the debtor had intent to defraud or delay a creditor. It is difficult for the trustee or monitor to prove the intent of the debtor to defeat creditors. However, the court may infer intent, placing an evidentiary burden on the respondents to rebut the presumption where the trustee or monitor establishes that there are "badges of fraud" associated with the transaction.

If the transaction involves a non-arm's length party, the relevant look-back period is five years. Further, there is no requirement for the debtor to have intended to defraud or delay creditors, or to have been insolvent at the time of the transaction where the transaction with the non-arm's length party occurred, within the year prior to the debtor's bankruptcy or commencement of restructuring proceedings.

3 Restructuring Options

3.1 Is it possible to implement an informal work-out in your jurisdiction?

As referenced above, out-of-court (or informal) restructurings are permitted in Canada. In this type of restructuring, the debtor and all or some of its creditors work together to reach an agreement that will address the debtor's financial challenges. Out-of-court restructurings often involve forbearance agreements and implementation of some pre-emptive transaction, such as an equity injection, an asset sale, or new or refinanced debt. It is also common to combine out-of-court and in-court restructurings, in which a debtor negotiates a restructuring with certain creditors outside of a court process and agrees on a "support agreement" setting out the terms on which the creditors will support a court-supervised proceeding to implement the agreed restructuring transaction.

3.2 What informal or formal rescue procedures are available in your jurisdiction to restructure the liabilities of distressed companies?

While out-of-court restructurings are available, the CCAA is Canada's most prevalent restructuring tool for mid-sized and large companies in financial difficulty. The CCAA is skeletal in nature and provides courts with a general power to adapt procedures and relief appropriate to unique circumstances, thus making the CCAA popular for complex restructurings. The BIA's proposal regime is a more rules-based restructuring framework that offers a more expedient and often less costly means of restructuring. As described above, the CBCA plan of arrangement provisions allow for "balance sheet" restructurings. The CCAA and the BIA's proposal provisions can facilitate a restructuring of the debtor company through a plan of arrangement or a proposal, respectively, or a sale of the company's assets.

3.3 Are debt-for-equity swaps and pre-packaged sales possible? In the case of a pre-packaged sale, are there any restrictions on the involvement of connected persons?

Debt-for-equity swaps are often used in plan or proposal processes. In addition, creditors may credit bid the value of their debt in a sale scenario.

There is no express prohibition in either the CCAA or the BIA on pre-packaged sales. Companies have sought and obtained court approval of sale transactions shortly after commencing restructuring proceedings in circumstances where a pre-filing market test was undertaken. Generally, such transactions involve entering into a stalking horse purchase agreement after a pre-filing sales process and using it as a minimum bid in an abbreviated post-filing sales process. In a proposed sale to a related party (whether as part of a pre-packaged sale or otherwise), the court must be satisfied that the company made good faith efforts to find a third-party purchaser and that the proposed consideration is superior to what would be received under any other offer.

3.4 To what extent can creditors and/or shareholders block such procedures or threaten action (including enforcement of security) to seek an advantage? Do your procedures allow you to cram-down dissenting stakeholders? Can you cram-down dissenting classes of stakeholder?

Shareholders cannot block a sale transaction or a CCAA plan of arrangement or a BIA proposal. Shareholder approval is not required for an asset sale and shareholders do not vote on a plan or proposal unless the claims of all unsecured creditors are to be repaid in full. Shareholder approval is not required in a CBCA restructuring, and it is a matter of judicial discretion as to the appropriate level and type of stakeholder approval.

Creditors have more leverage than shareholders in a restructuring, as a CCAA plan or a BIA proposal require approval by each class of affected creditors by a double majority, being 50% plus one of the total number of creditors voting, representing roughly 66.6% in the total value of claims voting in the class. While there is no statutory requirement for stakeholder approval of a CBCA plan, courts typically require approval by at least 66.6% of each class of affected stakeholders voting on the plan.

There is no concept in Canada of "cram-down" as it is understood in the United States; however, a plan or proposal can be crammed down on the dissenting minority of an accepting creditor class.

3.5 What are the criteria for entry into each restructuring procedure?

The CCAA applies to a debtor company or group of affiliated companies that has assets in Canada (or carries on business in Canada) and has total claims against such debtor company or group of affiliated companies exceeding CA$5 million. The debtor company must be insolvent or have committed an "act of bankruptcy" (as defined in the BIA) to seek protection under the CCAA. Courts have interpreted the term "insolvency" broadly under the CCAA and have accepted that a debtor company will be insolvent if there is a reasonably foreseeable liquidity crisis.

CCAA proceedings begin with an application by the debtor or, occasionally, a creditor, and the issuance of an initial court order. The application is to be brought in the superior trial court in the province of the debtor's head office or chief place of business. The debtor company must file a 13-week cash-flow statement illustrating the company will have sufficient liquidity for the initial 10-day stay of proceedings and copies of its most recent financial statements as part of the initial application.

BIA proposal proceedings may only be commenced by an "insolvent person" or a person acting on their behalf, but not by a creditor. The BIA defines an "insolvent person" as a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities equal or exceed CA$1,000, and who: (a) is unable to meet their obligations as they become due; (b) has ceased paying their current obligations in the ordinary course as they become due; or (c) has property with an aggregate value that is insufficient, or, if disposed of, would not be sufficient to enable payment of all of their obligations due and accruing due. A court application is not required to commence BIA proposal proceedings as a company can file a notice of intention to file a proposal (a "**NOI**"), which gives rise to an automatic stay.

The CBCA's arrangement provisions are available to solvent federally incorporated companies seeking court assistance to effect a "fundamental change" in the nature of an "arrangement" that could not otherwise be achieved under the CBCA. The definition of "arrangement" under the CBCA includes the exchange of securities of a corporation (e.g., any equity security or debt obligation) for property, money or other securities of the corporation or of another body corporate. An insolvent company can utilise the CBCA's arrangement provisions if at least one applicant entity is solvent. This enables an insolvent debtor to incorporate a new company to be an applicant entity.

3.6 Who manages each process? Is there any court involvement?

The level of court involvement and oversight varies depending on the particular restructuring process.

An initial CCAA order must appoint a "monitor" as a court-officer to supervise and report on the debtor company's activities, liaise with creditors and assist in the debtor company's restructuring efforts. Court approval is needed for most steps in a CCAA restructuring, including an extension of the initial 10-day stay of proceedings, the approval of debtor-in-possession ("**DIP**") financing, the sale of assets outside of the ordinary course of business, the conduct of a claims process, the sanctioning of a plan of arrangement, and the granting of various court-ordered priority charges.

BIA proposal proceedings are commenced either by filing an NOI or a proposal. Debtor companies remain in possession and control of their assets and business but must name a licensed insolvency trustee to act as a trustee under the proposal. The trustee has legislatively mandated duties and responsibilities in respect of the debtor and the proposal itself, including assisting with the preparation of financial information regarding the debtor and reporting to the court and creditors. Court approval is also needed for most key steps in a BIA restructuring, including a number of those steps referenced above in the context of a CCAA restructuring.

CBCA restructurings involve the least amount of court involvement. A plan approval under the CBCA generally involves two appearances before the court. No monitor or trustee is appointed.

3.7 What impact does each restructuring procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? What protections are there for those who are forced to perform their outstanding obligations? Will termination and set-off provisions be upheld?

In CCAA and BIA restructurings, counterparties to existing contracts with the debtor are typically prohibited by the stay of proceedings from enforcing any claims they have as a creditor against the debtor or from exercising any other rights based on circumstances that exist as of the date the stay was granted. Further, the CCAA and BIA expressly prohibit contract counterparties from terminating, amending, or claiming an accelerated payment or forfeiture of the term under an agreement with a debtor company by reason only that the debtor has commenced CCAA or BIA proceedings or has become insolvent. However, suppliers (including landlords) are entitled to require immediate payment for goods or services (including rent) supplied to the debtor post-filing. The BIA also allows unpaid suppliers to repossess their goods in certain circumstances.

The CCAA and BIA both authorise the court, on notice to affected counterparties, to order the assignment of the debtor's agreements. In deciding whether to grant an assignment order, courts must consider whether the monitor supports the proposed assignment (in the case of CCAA proceedings), whether the proposed assignee can perform the debtor's obligations, and whether the assignment is appropriate, as well as any other relevant factors in the circumstances. The court cannot grant an assignment order in respect of: (i) an eligible financial contract; (ii) a collective agreement; or (iii) a post-filing agreement. All "cure costs" – being monetary defaults under an agreement to be assigned, other than those arising solely because of the debtor's insolvency or failure to perform a non-monetary obligation – must be remedied for an assignment order to be granted.

Further, the CCAA and BIA both give the debtor the option in a restructuring to disclaim certain pre-filing contracts provided 30 days' notice is given to the affected counterparties and the monitor or trustee. If the monitor or trustee does not approve of the proposed disclaimer, or a counterparty challenges the disclaimer, then the court determines whether to approve it. Among other things, the court considers whether: (i) the monitor or trustee has approved the disclaimer; (ii) the disclaimer would enhance the prospects of a viable proposal being made; and (iii) the disclaimer would likely cause significant financial hardship on the contract counterparties. Certain agreements, such as financing agreements, cannot be disclaimed.

The CCAA and the BIA both expressly preserve the right of set-off. Courts have clarified that this right allows creditors only to set off a pre-filing claim against another pre-filing claim (with some exceptions). While the right to set off pre- and post-filing claims is stayed by the stay of proceedings, the Supreme Court of Canada (the "**SCC**") recently held that courts have the discretion under the CCAA to lift the stay in exceptional circumstances to allow for such set-off.

The CBCA does not afford an applicant company the same statutorily prescribed protections and rights. Rather, the ability in a CBCA restructuring to stay certain contractual rights pursuant to an interim order under the CBCA is subject to the court's discretion.

3.8 How is each restructuring process funded? Is any protection given to rescue financing?

Debtors restructuring under the CCAA and BIA commonly seek court approval of DIP financing to finance their business and restructuring efforts. The CCAA and BIA both give courts authority to grant priority charges on the debtor's property in respect of DIP financing, which may rank ahead of pre-filing secured creditors on notice to such secured creditors. The amount of DIP financing that a court can approve on an initial CCAA application is limited to what is reasonably necessary for the continued operation of the debtor in the ordinary course of business during the initial 10-day stay period. However, the amount of approved DIP financing is typically increased at the subsequent comeback hearing.

If interim financing is required in a CBCA proceeding, the parties address this contractually in advance as part of a support agreement. The CBCA does not specifically provide for the granting of priority charges.

4 Insolvency Procedures

4.1 What is/are the key insolvency procedure(s) available to wind up or rescue a company?

Most wind-ups are completed through a bankruptcy under the BIA, although the insolvencies of federally regulated banks, trust companies and insurance companies are governed by the *Winding-up and Restructuring Act* (Canada) (the "**WURA**").

4.2 On what grounds can a company be placed into each winding up or rescue procedure?

A debtor company (that qualifies as an "insolvent person") may initiate bankruptcy proceedings under the BIA by filing an assignment for the benefit of its creditors in the prescribed form and a sworn statement of affairs with the Official Receiver (the federal government appointee responsible for administering the BIA). Alternatively, one or more creditors may file an application with the bankruptcy court for a bankruptcy order against a debtor. The creditor must establish that it is owed at least CA$1,000 from the debtor and that the debtor has committed an act of bankruptcy under the BIA (e.g., ceasing to meet its liabilities as they generally become due) within six months before the application.

A receivership proceeding often precedes a wind-up under the BIA. The appointment of a receiver is generally a secured creditor remedy and achieved by private appointment or court order.

As for proceedings under the WURA, a court may make a winding-up order in respect of a company:

(a) where the period, if any, fixed for the duration of the company by the WURA, charter or instrument of incorporation of the company has expired, or where an event has occurred that, under the WURA, charter or instrument of incorporation, requires the company to be dissolved;
(b) if the company, at a special meeting of shareholders, passes a resolution requiring the company to be wound up;
(c) when the company is insolvent;
(d) when the capital stock of the company is impaired to the extent of 25% thereof, and when it is shown to the satisfaction of the court that the lost capital will not likely be restored within one year; or
(e) when the court is of opinion that for any other reason it is just and equitable that the company should be wound up.

4.3 Who manages each winding up or rescue process? Is there any court involvement?

When a bankruptcy order is issued or an assignment in bankruptcy is filed, the bankrupt's assets vest in the trustee in bankruptcy (subject to the rights of secured creditors), who is appointed by the debtor in a voluntary assignment or by the creditor in a bankruptcy order application. At this point, the debtor no longer has any ability to deal with its assets and the trustee proceeds to liquidate the estate assets and distribute proceeds in accordance with the BIA priority scheme, as discussed below. The trustee is a court officer and has a duty to act in the interests of all creditors. At the first meeting of creditors, the trustee's appointment is confirmed and a board of approximately five inspectors is appointed. The court oversees the winding-up process in a bankruptcy, although the trustee can take certain actions with the approval of the inspectors rather than the court.

In a receivership, the receiver takes possession and control of the debtor company and its property and may also be authorised to operate the debtor's business. A court-appointed receiver is an officer of the court with a duty to act for the benefit of all interested parties, as compared to a privately appointed receiver that acts on behalf of the appointing secured creditor. All material steps in a court-appointed receivership will be subject to court approval.

In a winding-up of a company under the WURA, the court may appoint a liquidator. The liquidator must be licensed as a trustee under the BIA, unless the company is an incorporated building society or railway company. On appointment of a liquidator, it is solely responsible for conducting the affairs of the company to achieve final liquidation. The directors cease to have any powers in relation to the company, unless the court or liquidator sanctions the continuance of their powers. On or after a petition for a winding-up order, but before the first appointment of a liquidator, a court may appoint a provisional liquidator to have interim control of the company until the final determination of the winding-up application.

4.4 How are the creditors and/or shareholders able to influence each winding up or rescue process? Are there any restrictions on the action that they can take (including the enforcement of security)?

In a bankruptcy, the debtor's unsecured creditors are prohibited pursuant to an automatic stay of proceedings from commencing any proceedings against the debtor to recover their debts or from exercising any rights against the debtor or its property. Because the trustee takes the debtor's assets subject to the rights of secured creditors, secured creditors are not subject to the automatic stay and remain able to utilise enforcement remedies in a bankruptcy.

Although unsecured creditors are subject to the automatic bankruptcy stay, they can protect their interests in a bankruptcy through the appointment of inspectors. Any person (including a creditor) may be appointed as an inspector provided the person is not party to a contested action by or against the bankrupt estate. The BIA also has a mechanism that permits a creditor to apply for court authorisation to commence any proceedings against a third party that the creditor believes would benefit the bankrupt estate if the trustee is unwilling to do so.

In a receivership, there is no automatic stay of proceedings against the debtor, although orders appointing receivers will generally include a stay of proceedings in respect of the receiver and the debtor and its property to allow the receiver to realise against the collateral.

Creditors have the ability in bankruptcy and receivership proceedings (and in any other court-supervised insolvency or restructuring proceeding) to file objections to steps taken. Creditors may also apply to the court to lift or set aside the stay of proceedings. Courts will typically balance the interests of all parties when determining whether to grant any such request.

Shareholders have no influence over a bankruptcy or receivership process. In both cases, the debtor's directors, officers and shareholders cede all authority over management of the debtor to the trustee or receiver, as applicable. The claims of shareholders are postponed unless and until there is any surplus that remains after payment of all claims of unsecured creditors and postponed claims, plus payment to proven claims according to their priority of interest at 5% *per annum*.

In a proceeding under the WURA, a court may order that there be meetings of creditors and certain other stakeholders to ascertain their wishes. In such meetings, regard must be had to the amount of debt owed to each creditor. Similarly, with shareholders or members, regard must be had to the number of votes conferred on each shareholder or member by law or the company's regulations. The WURA explicitly states that with respect to all matters relating to the winding-up of a company, a court may have regard to the wishes of creditors and other stakeholders, as proved to it by sufficient evidence.

4.5 What impact does each winding up or rescue procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?

In a bankruptcy or receivership, the debtor's existing contracts are not automatically terminated (other than employment contracts in bankruptcy).

A receiver may continue to perform any existing contracts to which the debtor company is a party provided it first assumes them. Subject to the terms of the receivership order, a receiver may also terminate any such contracts.

A trustee may perform any of the debtor's existing contracts where it would be necessary or beneficial to the estate administration. Due to the automatic vesting of the debtor's property in the trustee, contractual rights and obligations are statutorily transferred and do not need to be expressly assumed. However, if the trustee does not take affirmative steps to insist on a contract's completion within a reasonable period of time, it may be treated at its end. The trustee also has the express right under the BIA to disclaim any lease, or other temporary interest in the bankrupt's property, provided that the counterparty may apply to the court to review such disclaimer. The automatic bankruptcy stay provision under the BIA has not been interpreted as to prevent contract counterparties from terminating their agreements with the debtor, and unlike the CCAA and the BIA's proposal regime, there is no separate provision that applies in a bankruptcy to prevent contract counterparties from terminating their agreements by reason of the debtor's bankruptcy.

4.6 What is the ranking of claims in each procedure, including the costs of the procedure?

The ranking of claims is codified under the BIA, although it is generally followed across all other insolvency procedures. The BIA's priority scheme is expressly subject to the rights of secured creditors, who are generally entitled to enforce against their collateral for payment of their respective claims. The priority as among secured creditors is determined according to the ordering of priorities set out in the *Bank Act* (Canada) and provincial statutes governing the creation, maintenance and enforcement of security interests. The trustee's rights in a bankruptcy are also limited to the bankrupt's property, which means trust claims or other competing property interest claims can result in the removal of assets from the estate.

In general, claims in a bankruptcy are ranked in priority as follows: (i) claims of owners of property in the bankrupt's possession (e.g., property held in trust); (ii) certain claims given "super priority" status under the BIA (e.g., government statutory deemed trusts for employees' withholdings on account of income taxes, employment insurance and employee contributions to the Canada Pension Plan, claims made by suppliers for the return of goods supplied to the debtor within the 30-day period before bankruptcy, claims for up to CA$2,000 for unpaid salary, wages, commissions and benefits, claims for unpaid pension plan contributions and deducted but unremitted employee pension contributions); (iii) claims of secured creditors (who must look to the assets charged by their security for payment of their respective claims); (iv) claims of certain preferred creditors (which, are described and ranked in the BIA, and include, among other things, the expenses and fees of the trustee and its counsel incurred in administering the estate); and (v) all other unsecured claims. Certain claims are postponed by the BIA so as to rank behind general unsecured claims, the lowest of which are "equity claims". Secured creditors who are under-secured may file a claim as an unsecured creditor for the balance of their claim, as may preferred creditors whose rights to payment are limited in the priority scheme outlined above. Unsecured claims are paid rateably.

In a CCAA, any court-ordered charges that have been granted, including any charge in favour of the DIP lender, are typically afforded priority status.

The WURA sets out its own priority regime, which varies depending on the type of company being wound up.

4.7 Is it possible for the company to be revived in the future?

A company that is wound up under the CBCA can be revived through the application of an interested person. An interested person includes a shareholder, director, employee, anyone in a contractual relationship with the dissolved corporation, or anyone with a valid reason for applying for a revival (e.g. a liquidator). The revived corporation will be restored to its previous position in law and liable for the obligations that it would have had if it had not been dissolved, regardless of whether they arose before or after its dissolution.

While a bankrupt company may be revived under the BIA, such revival will not change its bankruptcy status.

5 Tax

5.1 What are the key tax risks that might apply to a restructuring or insolvency procedure?

The commencement of restructuring or bankruptcy proceedings do not impose any significant incremental tax risks on debtor companies, although there are certain tax implications that should be considered, including, for example, that a bankrupt debtor's taxation year-end will be deemed to have occurred on the day immediately before its bankruptcy. In addition, various tax consequences may arise from steps undertaken as part of a restructuring. It is particularly important for any party acquiring a debtor or its assets through a restructuring transaction to consider the potential tax consequences of the transaction so that the transaction can be structured in a manner that preserves the debtor's tax losses and other tax attributes to the fullest extent possible.

6 Employees

6.1 What is the effect of each restructuring or insolvency procedure on employees? What claims would employees have and where do they rank?

A bankruptcy immediately terminates the employment of the debtor's employees. Restructuring proceedings, on the other hand, do not have any automatic effect on the employment of the debtor's employees. Among other things, the CCAA and BIA both prohibit a debtor from terminating collective bargaining agreements. However, it is relatively common in CCAA and BIA restructurings for debtors to terminate some or all of their employees and address employee claims as part of the restructuring.

Although claims of employees are generally unsecured pre-filing claims and frequently compromised in restructuring proceedings, certain employee claims are afforded a limited priority and/or cannot be compromised under a plan or proposal. As referenced above, there are limited priority charges under the BIA in favour of employees for certain unpaid compensation and expenses, unpaid employer contributions to prescribed pension plans, and deducted but unremitted employee pension contributions. A court cannot sanction a CCAA plan or approve a BIA proposal that purports to compromise these priority claims, and absent payment of all employee wages, salaries, commissions or compensation for services rendered after the commencement of the applicable restructuring proceedings.

Employees of an employer that is subject to restructuring or insolvency proceedings also benefit from the Wage Earner Protection Program ("**WEPP**"). WEPP is a federal programme that enables terminated employees who are owed eligible wages – including salary, commissions, vacation pay, and severance or termination pay – that were earned or arose during the six-month period before the restructuring or insolvency proceeding to receive a one-time payment from the federal government for such amounts, in an amount of up to seven times the maximum weekly insurable earnings under the *Employment Insurance Act* (Canada) (CA$8,507.66 for 2024). Before certain recent amendments, only those employees whose employment was terminated in, or as part of, a bankruptcy or receivership proceeding were eligible to receive payments under WEPP. Eligibility is now extended to employees whose former employer is subject to CCAA or BIA proposal proceedings where all of the restructuring company's employees in Canada have been terminated (other than as needed to assist with a wind-down) and a court order has been granted determining that such prescribed eligibility criteria is satisfied.

7 Cross-Border Issues

7.1 Can companies incorporated elsewhere use restructuring procedures or enter into insolvency proceedings in your jurisdiction?

The CCAA and BIA are available to foreign companies if certain conditions are met. Under the BIA, "an incorporated company, wherever incorporated", may seek protection if it is authorised to carry out business in Canada or has an office or property in Canada. Similarly, any company wherever incorporated may seek to restructure under the CCAA as long as it has assets or does business in Canada and meets the CCAA's other technical requirements.

The test for "having assets or doing business in Canada" under the CCAA is disjunctive, such that either "having assets" in Canada or "doing business in Canada" will suffice. Courts have avoided applying a *de minimis* standard when considering whether a company has assets or is carrying out business in Canada such that having only nominal assets in Canada enables a foreign corporation to access the CCAA.

7.2 Is there scope for a restructuring or insolvency process commenced elsewhere to be recognised in your jurisdiction?

The CCAA and BIA both provide a framework for recognising foreign insolvency and restructuring proceedings as each have largely adopted the United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency.

Recognition proceedings in Canada are commenced by a foreign representative of the foreign proceedings, typically the debtor company or the entity responsible for supervising the foreign insolvency. It must convince the Canadian court that it is a "foreign representative", and that the application relates to a "foreign proceeding" as those terms are defined in the CCAA or BIA. If the court agrees, it will then determine whether the foreign proceedings are "foreign main proceedings" or "foreign non-main proceedings". The distinction dictates the relief granted, with foreign main proceedings being offered greater protections.

Foreign main proceedings are foreign proceedings in a jurisdiction where the debtor company has the centre of its main interests ("**COMI**"). Unless evidence to the contrary is provided, a debtor company's COMI is the jurisdiction in which its registered office is located. COMI must be considered on an entity-by-entity basis; however, courts will consider the level of integration of an entity within a corporate group.

In determining a debtor company's COMI, courts will consider:

(a) where corporate decisions are made (i.e., the location of the head office or "nerve centre");
(b) the location of employee administrations functions, including human resource functions;
(c) the location of marketing and communication functions;
(d) whether the enterprise is managed on a consolidated basis;
(e) the extent of integration of international operations;
(f) the existence of shared management within entities in an organisation;
(g) where cash management and accounting functions are overseen; and
(h) the location that significant creditors recognise as being the centre of the debtor's operations.

Where a court is satisfied that the foreign proceedings are foreign main proceedings, it must make an order, on terms it considers appropriate, granting the debtor company a stay of proceedings and prohibiting the debtor company from selling or otherwise disposing of its property in Canada outside of the ordinary course of business. The court is not statutorily obligated to make such an order where the foreign proceedings are foreign non-main proceedings. However, it retains discretion to do so. In the case of either foreign main proceedings or foreign non-main proceedings, the BIA and the CCAA confer broad discretion on the court to make any order it considers appropriate where it is satisfied that it is necessary to protect the debtor company's property or the interests of a creditor or creditors.

CCAA courts have increasingly appointed information officers in recognition proceedings as a means of ensuring the court is kept informed of developments in the foreign proceeding. The information officer is akin to the monitor in a CCAA proceeding.

7.3 Do companies incorporated in your jurisdiction restructure or enter into insolvency proceedings in other jurisdictions? Is this common practice?

Subject to the laws of the proposed foreign jurisdiction, Canadian federally and provincially incorporated companies can enter insolvency proceedings in jurisdictions outside of Canada. This may happen in cases where a Canadian debtor entity is part of a larger corporate group that has its COMI outside of Canada and is a common practice particularly with filings in the United States.

8 Groups

8.1 How are groups of companies treated on the insolvency of one or more members? Is there scope for co-operation between officeholders?

There are multiple approaches to dealing with corporate groups upon the insolvency of one or more of its members. As noted above, the CCAA applies to a debtor company or group of affiliated companies, and as such, each member of a corporate group that requires protection may be included as an applicant in the filing, assuming the other requisite criteria are met. As circumstances change, members of the group may be added as applicants subsequent to the initial filing. Courts may impose a stay of proceedings in respect of non-applicant related parties where it is important to the restructuring. Although the definition of a "debtor company" under the CCAA does not include partnerships, where partnerships exist in a corporate group, the stay may be extended to the partnerships as non-applicant entities.

Corporate groups may also pursue a restructuring under the BIA as a group by each entity filing a NOI and thereafter seeking a court order procedurally consolidating the proceedings into a jointly administered case. The extension of a limited stay of proceedings to non-applicants is also available in CBCA restructurings.

As discussed above, corporate groups incorporated or having operations in multiple jurisdictions may initiate insolvency proceedings in the foreign jurisdiction in which their COMI is located and thereafter seek recognition in Canada. This approach may be applied in reverse where the COMI is in Canada. In that case, the foreign representative – often the monitor – will seek recognition of the Canadian proceeding as a foreign proceeding in such other jurisdictions in which the debtor corporate group has material operations or assets. Although less common, each member in a corporate group may instead commence separate plenary insolvency proceedings in their respective jurisdictions. In such cases, court approval of a protocol concerning the coordination of the proceedings is often sought as a means of ensuring cooperation and court-to-court communication.

9 The Future

9.1 What, if any, proposals exist for future changes in restructuring and insolvency rules in your jurisdiction?

The CCAA and BIA have recently been amended to create deemed trusts for unpaid suppliers of perishable fruits or vegetables if: (i) the supplier provides notice within 30 days of the receipt by the purchaser of the perishable fruits or vegetables, informing the purchaser of their intention to avail themselves of their right as beneficial owner of the perishable fruits or vegetables and, if applicable, the proceeds of sale; (ii) the purchaser has 30 days or less to pay the entire balance owing; and (iii) the purchaser, or trustee or receiver, if applicable, does not pay the supplier the entire balance owing when it becomes due as provided in the invoice. These amendments are in force and located in section 8.1 of the CCAA and section 81.7 of the BIA.

The CCAA and BIA will also be amended to exclude public post-secondary educational institutions from becoming subject to proceedings under either of these statutes. These amendments will come into force on June 26, 2026.

In addition to legislative changes, there may be an impactful court decision on the horizon. Over the past decade, a new restructuring transaction known as a reverse vesting transaction has emerged. The reverse vesting transaction, which is implemented through a reverse vesting order ("**RVO**"), involves a purchaser acquiring shares of a debtor company and unwanted assets or obligations of the debtor company being vested out to a new corporation, colloquially known as "ResidualCo". The result of the RVO is that the debtor company retains ownership of certain assets (essentially the purchased assets), while ResidualCo takes ownership of the remaining (and non-purchased) assets and obligations.

Since their development and initial use in the 2015 CCAA proceedings of Plasco Energy Group Inc., RVOs have become a well utilised tool in CCAA and BIA proceedings, and as of 2024, have also been used in a CBCA restructuring. The SCC may soon grant leave to appeal to the Province of British Columbia in *British Columbia v. Peakhill Capital Inc*, 2024 BCCA 246, which would provide an opportunity for the SCC to examine the scope and requirements of RVOs.

9.2 What, in your opinion, is the outlook for the restructuring and insolvency market in your jurisdiction over the next year? Are there any specific macroeconomic factors expected to cause, or any particular sectors expected to be impacted by, financial distress?

The outlook for the Canadian restructuring and insolvency market will inevitably be impacted by the final outcome of tariff decisions made by the United States against Canadian goods. The implementation of such tariffs has the potential to produce an extremely negative economic shock for certain Canadian industries, including the automotive, steel and aluminium, and forestry and agriculture industries. Similarly, the cloud of uncertainty surrounding tariffs may also impact decisions made by creditors, investors and financiers, further affecting the Canadian restructuring and insolvency market.

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