

# Legal 500

## Country Comparative Guides 2026

### Canada

### Lending & Secured Finance

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Goodmans



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## Canada: Lending & Secured Finance

### 1. Do foreign lenders (including non-bank foreign lenders) require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

In Canada, there tends to be a material distinction between foreign banks and foreign non-bank lenders, with more regulation and licensing requirements for foreign banks. Foreign banks are regulated under the federal Bank Act (Canada), which restricts the types of activities that foreign banks can engage in without a license. The Bank Act is a very complicated statute and determining its application can be challenging as it is extremely fact-specific. That said, as a general high level rule the Act applies to entities formed by or under laws outside Canada that are regulated as banks in foreign jurisdictions or otherwise engage in the business of banking (such as accepting deposits) or engage in the business of providing financial services and are identified by a name that includes the word "bank" or its equivalent in another language. The Act also applies to affiliates of these entities, and so particular attention should be given when there is a foreign bank somewhere in the corporate structure. Foreign banks and their affiliates without proper authorization face broad prohibitions on carrying on business in Canada, although the prohibitions tend to focus on a presence within Canada (meaning that activities conducted outside of Canada from a distance with no business presence in Canada may be permissible in certain limited cases). Any foreign bank considering lending into Canada should obtain clear and specific legal advice on how to structure its activities. Many foreign banks operate Canadian bank branches (known as "Schedule III" banks under the Bank Act) that have been authorized by the Office of the Superintendent of Financial Institutions or "OSFI" (the federal Canadian banking regulator) to carry on business in Canada, and these branches regularly lend to Canadian-based borrowers.

For non-bank lenders that are not subject to regulation under the Bank Act, there are no specific licensing or regulatory approval requirements for extending commercial loans in Canada, and many non-bank lenders regularly make loans into Canada with relative ease. That said, certain possible licensing requirements may apply, as follows: (a) provincial statutes may require foreign lenders to extra-provincially register in a province where

they have a physical presence or office in the province; (b) certain types of security enforcement may require a license, such as for a party acting as a receiver in a receivership (discussed in more detail below); and (c) lenders who "carry on the business" of lending on the security of real estate security may be subject to registration as mortgage brokers or lenders under provincial laws, which requirements can vary on a province by province basis. Any foreign non-bank lender looking to lend into Canada should consult legal counsel to assess whether any of these requirements apply.

### 2. Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

Yes, section 347 of Canada's Criminal Code sets the general criminal rate of interest applicable across all Canadian jurisdictions at an annual percentage rate exceeding 35%. However, the underlying regulations to the Criminal Code, which were recently relaxed for commercial loans, provide for certain exemptions to the general rule, the most relevant being:

- (i) A higher criminal rate of interest of 48% APR for commercial loans between \$10,000 and \$500,000; and
- (ii) No criminal rate of interest for commercial loans greater than \$500,000.

Both exemptions require that the "borrowing is for a commercial or business purpose" and that the borrower is not a natural person. While the regulations exempt most commercial loans of consequence, there remains some uncertainty as to how certain commercial loans with availability greater than \$500,000 but with less than \$500,000 drawn (e.g., revolving loans) will be treated under the legislation.

In contrast, "consumer loans" (i.e., loans provided for personal, family or household use) are subject to the 35% criminal limit on interest and are also subject to regulation at the provincial level that mandates specific disclosure around the calculation of interest and imposes other requirements to protect consumers.

### 3. Are there any laws or regulations relating to

### **the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?**

No, legislation in Canada does not impose requirements relating to disbursement of foreign currency loans or the repayment of loans in foreign currencies, and many larger Canadian financings are denominated in U.S. dollars for their transferability across various jurisdictions. Secured lenders should be mindful that any judgments arising in Canada relating to a loan are typically awarded in Canadian dollars pursuant to provincial legislation which may result in a shortfall or windfall for the secured party depending on the exchange rate fluctuations at the time. To prevent such an outcome, secured lenders typically include a "judgment currency" provision in the credit agreement which requires borrowers to repay their obligations in the currency the obligation is denominated in.

### **4. Can security be taken over the following types of asset: i. real property (land), plant and machinery; ii. equipment; iii. inventory; iv. receivables; and v. shares in companies incorporated in your jurisdiction. If so, what is the procedure – and can such security be created under a foreign law governed document?**

#### *Real Property*

In Canada, security interests over real property are created by registration of a mortgage (in common law provinces) or an immovable hypothec (in Quebec) against title to the applicable property in the relevant provincial land registry system. In addition, secured parties typically require a general assignment of rents and leases, which should also be registered against title to perfect the lender's security interest in rental income and lease agreements associated with the property. Engagement of local counsel in the jurisdiction where the real property is located is essential to ensure compliance with applicable requirements.

#### *Personal Property*

For all Canadian jurisdictions other than Quebec, security interests in any type of personal property located in Canada are generally effective upon satisfaction of the "attachment" and "perfection requirements" outlined in the personal property security act (the "PPSA") in effect in the specific Canadian province. The first step, attachment, requires (a) the debtor to have signed a

security agreement that contains a description of the collateral sufficient enough to enable such collateral to be identified, (b) the secured party to have provided value to the debtor, and (c) that the debtor has rights in the collateral being granted a security interest over. Once the security interest has attached to the collateral, the secured party is required to "perfect" the security interest. In most instances, perfection is achieved by registration of a financing statement under the PPSA systems of the specific Canadian jurisdiction but other forms of perfection like possession or control are available for certain types of property like chattel paper, securities or commodities accounts and, most importantly, investment property such as shares in Canadian companies. Generally, perfection by possession or control has a greater priority than perfection by registration and secured creditors will have priority in the collateral they perfect by way of possession or control in an insolvency process. Perfection by possession and control were historically associated with tangible assets that the secured party had real possession over but the concept of control also covers uncertificated shares and securities or commodities accounts and, in those instances, perfection by control is typically achieved by entry into a control agreement between the debtor, the intermediary or broker (if applicable) and the secured party (which is similar to the U.S.). Unfortunately, the treatment of regular bank accounts or "deposit accounts" in Canada is not uniform from province to province and cannot be perfected by control in most provinces (which is a key distinction from the U.S.). The lack of ability to perfect by control over regular bank accounts is a key lending issue in Canada and creates risk in certain types of transactions where pledged cash is the primary security.

In Quebec, the only Canadian jurisdiction to not have PPSA type legislation, the Civil Code of Quebec also allows secured parties to secure all personal property of a debtor, including the aforementioned equipment, inventory, receivables and shares in Canadian domiciled companies by way of entry into a moveable hypothec which are substantially similar to security agreements entered into in common law jurisdictions. However, Quebec hypothecs must be signed by notarial deed which will require the hypothec to be executed in the presence of a notary.

Certain types of specific assets in Canada require additional unique steps to perfect security under federal legislation that are in addition to the requirements set out above, such as government receivables, registered intellectual property, aircraft, ships and vessels and rolling stock. Each asset requires different additional

steps, and so it is best to consult with legal counsel if the collateral package includes any of these items.

Foreign law documents are not typically relied on to secure property in Canada given the difficulties in interpreting and mapping foreign security concepts onto Canadian equivalents. Secured lenders and their counsel typically take the view that the benefit of any convenience derived from using a foreign security law document are not worth the costs of litigating foreign law concepts in a Canadian court. All of that said, Canadian security documents most closely resemble U.S. forms, and therefore it is common and relatively easy to modify U.S. forms for use in Canada (particularly in the context of cross-border transactions where a lender takes security in both Canada and the U.S.). In addition, pledges of Canadian companies are often done under a U.S. pledge agreement given the similarities in laws relating to stock pledges.

#### **5. Can a company that is incorporated in your jurisdiction grant security over its future assets or for future obligations?**

Yes, the PPSAs in each common law jurisdiction provide that a security agreement may cover after-acquired property (with certain exceptions for consumer goods or, in many jurisdictions, crops) and that a security agreement may secure future advances. The Civil Code of Quebec also contains similar language and provisions, but each hypothec requires a stated amount that is being secured. To account for this requirement in Quebec, secured parties typically have the secured amount in hypothecs be in excess of the amount of actual obligations such that the excess amount will cover any anticipated future obligations. Given the permissive language of the relevant Canadian legislation, it is essential for the secured party to ensure the security grant in the security agreement includes after-acquired property with language similar to "all present and after-acquired personal property" and that the scope of obligations for which the assets are secured is comprehensive enough to include any present and future obligations (including any accrued interest).

#### **6. Can a single security agreement be used to take security over all of a company's assets or are separate agreements required in relation to each type of asset?**

Canada is similar to the U.S. in that a single "general security agreement" can cover all asset types in Canada

without the need to do separate security agreements for separate types of assets as certain European jurisdictions require. The exceptions to this are real property (as discussed above) and assets that are located in the Province of Quebec, which uses a civil law system separate from the rest of Canada. Security interests in real property must be documented in a separate mortgage (in common law provinces such as Ontario) or immoveable hypothec (in Quebec) that complies with the laws of the province where the property is located. For assets located in the Province of Quebec, a separate moveable hypothec is required to secure any assets of a debtor in Quebec.

While not strictly necessary, certain secured lenders may prefer to have a separate pledge agreement securing equity interests. This preference is a result of the specific rules relating to the pledge of investment property as collateral and the need for more detailed covenants to address these rules. This is not a requirement though, and it is perfectly acceptable to have one single comprehensive pledge and security agreement that includes specific investment property covenants.

#### **7. Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?**

In all provinces except Quebec, there are no notarization or legalization requirements for securing personal property. In Quebec, all hypothecs (moveable or immoveable) must be executed by a notarial deed which requires execution in the presence of a notary. The specific requirements for securing real property depend on the real property statutes of the specific jurisdiction in which the real property is located and assistance from local counsel in such province will be required to ensure the requirements as to form, execution, and delivery of the charging document are met. For example, in Ontario, there is generally no requirement for notarisation or legalisation of real property security documents or mortgages, whereas in British Columbia, mortgages must be signed by a "witnessing officer" which is a class of persons that includes notaries under the Evidence Act (British Columbia).

#### **8. Are there any security registration requirements in your jurisdiction?**

Yes, personal property registrations are required under each applicable province's personal property security act or "PPSA" (or, in Quebec, under the Register of Personal and Movable Real Rights) and are simple filings referred

to as "financing statements" that can typically be done electronically with proper authorization from a borrower. Canada operates under the old U.S. system for the most part, where filings must be made in the province(s) in which a company and its assets are "located" (typically based on the chief executive office of a company and the location of its tangible personal property). This can result in the need to register PPSA financing statements in multiple Canadian provinces for a single financing, which is different from the more centralized approach in the U.S. In addition, the PPSAs in each province, while similar, are not entirely uniform (unlike the Uniform Commercial Code in the U.S.), which can result in the need to check the filing rules in each applicable province. Under each province's PPSA, the order of registration of financing statements typically determines the priority of a secured party's interest relative to other secured creditors. An exception exists for documents that can be secured by possession or control as discussed above such as investment property.

Real property filings on real estate title must also be made in respect of any security consisting of real property in the applicable provincial land registry offices. Lenders should be mindful that registration requirements for real estate can vary by province, and early engagement with counsel in the relevant jurisdiction is advisable to avoid delays and priority-related risks.

**9. Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement? If so, what are the costs and what are the approaches lenders typically take in respect of such costs (e.g. upstamping)?**

For personal property in Canada, there are nominal filing fees for registering PPSA financing statements against personal property. While these costs individually are not significant, they can become more material if a borrower operates in multiple Canadian provinces necessitating lien searches and PPSA financing statements in all of those provinces as part of a transaction.

For real estate, the costs of registering security can be more material. Such costs are dependent on the real property statutes of the specific Canadian jurisdiction and can include registration fees that scale in accordance with the principal amount being secured. Furthermore, secured parties commonly require title insurance policies to protect against title defects, survey issues, and other

covered risks. Premiums are a one-time cost paid at closing and vary based on the property value and coverage amount. It should also be noted that certain secured parties require that real property charges (and, in the case of Quebec, moveable hypothecs) secure an amount in excess of the amount of actual obligations in order to mitigate any need to reopen such documents and make additional registrations should the parties agree to any subsequent advances or additional obligations.

**10. Can a company guarantee or secure the obligations of another group company; are there limitations in this regard, including for example corporate benefit concerns?**

A company in Canada can generally guarantee or secure the obligations of another group company without significant analysis or issue. Canada is typically viewed as a favorable jurisdiction for providing guarantees, with most Canadian provinces having no express restrictions on financial assistance (and a handful of provinces having some extremely modest requirements that can usually be satisfied on a standard loan transaction). As a result of this, Canada is one of the few jurisdictions that does not require specific limiting language to be added to a guarantee to comply with local laws.

There are certain basic corporate law requirements that apply to a guarantee in Canada. First, directors in approving a guarantee must still be satisfied that it is in accordance with their statutory duties, including a duty to act honestly and in good faith with a view to the best interests of the corporation. Second, the transaction must be of commercial benefit to the guarantor company. This is usually not an issue for upstream and downstream guarantees where the value of borrowed money flowing between a parent and subsidiary can easily be demonstrated, but can be more challenging in a cross-stream guarantee scenario involving sister companies where the benefit is not as obvious. Third, most Canadian corporate statutes provide for a broadly drafted oppression remedy that imposes a general standard of fair conduct, which may affect guarantee transactions.

Separately, Canada has fraudulent conveyance rules that can lead to transactions being challenged if made with intent to defeat, hinder, delay, or defraud creditors. There are also fraudulent preference rules that could apply to transactions on the eve of an insolvency, if a transaction prefers one creditor over others. These rules can be applied to guarantees and are discussed in more detail in Section 18 below.

Finally, there can be tax issues that arise from the

provision of a guarantee in Canada, particularly where the value of the guarantor is disproportionately large relative to the value of the underlying loan. For this reason, it is always recommended to seek tax advice from legal counsel when providing a guarantee.

**11. Are there any restrictions against providing guarantees and/or security to support borrowings incurred for the purposes of acquiring directly or indirectly: (i) shares of the company; (ii) shares of any company which directly or indirectly owns shares in the company; or (iii) shares in a related company?**

Most corporate statutes in Canada have a test for a corporation to acquire its own shares that is focused on ensuring the corporation will remain solvent after completing the purchase. The purpose of these solvency tests is to ensure the company is not over-extending itself to pay its shareholders. Under the Canada Business Corporations Act or "CBCA", the solvency test is comprised of two parts. First, after giving effect to the share payment, there must be no reasonable grounds for believing the corporation would be unable to pay its liabilities as they become due. Second, the realizable value of the corporation's assets would, after the payment, be less than its liabilities plus the stated capital of all classes of shares.

It would be prudent to apply these same requirements to the purchase of shares of a parent company and shares of a related company. Apart from these requirements, Canadian corporate statutes do not currently have any express statutory restrictions on providing guarantees and/or security to support borrowings incurred for acquiring shares of the company, its parent, or related companies. This being the case, the same general considerations for providing any guarantee outlined in Question 10 would apply to a guarantee for this purpose.

Finally, Canada is different than the U.S. when it comes to lending on publicly traded margin stock. Canada has no comparable laws to Regulation T, U and X as promulgated by the U.S. Federal Reserve, and therefore most commercial lending in Canada is not subject to the strict margin-limits seen in the U.S. The exception to this is securities lending by investment dealers/brokers that are members of, and subject to the Rules of the Canadian Investment Regulatory Organization or CIRO.

**12. Can lenders in a syndicate (or, with respect to**

**private credit deals, lenders in a club) appoint a trustee or agent to (i) hold security on the lenders's behalf, (ii) enforce the lenders' rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?**

Canadian law recognizes the role of a security agent or trustee in syndicated and club lending facilities. Under Canadian law, an agent is permitted to serve as the secured party on behalf of multiple lenders. In Quebec (civil law), a "hypothecary representative" (*fondé de pouvoir*) acts on behalf of the secured parties with respect to Quebec hypothecs (security interests). The hypothecary representative may be one of the creditors, the only creditor, or a third person, and is appointed by the borrower, grantor of the hypothec, or one of the creditors. The collateral agent is typically authorized by the lenders under the loan documentation to enforce remedies if an event of default has occurred and is continuing. The agent can (i) hold security on behalf of lenders, (ii) enforce lenders' rights under loan documentation, and (iii) apply enforcement proceeds to claims of all lenders.

**13. If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?**

This question is not applicable to Canada, as Canadian law recognizes the role of a security agent or trustee. Unlike certain civil law jurisdictions that do not recognize security trusts, Canada's common law provinces (including Ontario) and Quebec's civil law system both provide mechanisms for holding security on behalf of multiple lenders.

**14. Do the courts in your jurisdiction generally give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?**

The Canadian legal framework is based on common law principles similar to those applied in the U.S. and the United Kingdom. Canadian courts generally give effect to the parties' choice of English or any other foreign law to govern their agreement, provided their choice is *bona fide*, legal, and not contrary to public policy. However, rules of

mandatory application (laws that apply irrespective of the parties' choice), such as the Competition Act or employment standards legislation, may override the chosen governing law. Where the parties make no express choice of law, courts may apply the law that has the closest and most substantial connection to the parties or transaction.

### 15. Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions (in particular, English and US courts) and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e. the New York Arbitration Convention)?

#### *Foreign Judgment Enforcement*

Canadian courts generally enforce foreign judgments, including those from English and U.S. courts, subject to meeting certain criteria. The foreign judgment must be final in the foreign jurisdiction. The foreign court must have been a court of competent jurisdiction with a "real and substantial connection" to the action. The defendant must have been given adequate notice and opportunity to defend. The judgment must not offend Canadian public policy or principles of natural justice. Canada has specific legislation for UK judgments: the Canada-United Kingdom Civil and Commercial Judgments Convention Act and provincial Reciprocal Enforcement of Judgments (U.K.) Acts.

#### *New York Convention*

Canada is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Canada acceded to the Convention on May 12, 1986, and it entered into force on August 10, 1986. Canada declared that it will apply the Convention only to differences arising out of legal relationships (contractual or not) that are considered commercial under Canadian law, except in Quebec where this limitation does not apply. For recognition and enforcement of arbitral awards, application may be made to any superior, district, or county court. Ontario has implemented the UNCITRAL Model Law through the International Commercial Arbitration Act, 2017.

### 16. What (briefly) is the insolvency process in your jurisdiction?

In Canada, insolvency is a matter of federal jurisdiction

and includes several distinct proceedings governed by the Bankruptcy and Insolvency Act (Canada) (the "BIA") and the Companies' Creditors Arrangement Act (Canada) (the "CCAA"), each of which is briefly summarized below. In addition, in certain cases, the corporate arrangement provisions contained in the Canada Business Corporations Act (the "CBCA") and equivalent provincial corporate statutes may be used in appropriate circumstances to implement a restructuring transaction rather than proceeding by way of an insolvency process under the BIA and the CCAA.

#### *CCAA Proceedings*

The CCAA is a flexible statute designed to enable compromises and arrangements between companies in financial difficulty and their creditors, with a view to avoiding the broader economic and social consequences of liquidation. CCAA proceedings are typically used to achieve one of several outcomes: (i) formulating a plan of arrangement with creditors, (ii) implementing a sale of the debtor's business or assets, or (iii) conducting an orderly wind-down of the debtor's operations. CCAA proceedings may be initiated upon application to the court by a debtor company or, less commonly, a creditor, where the debtor company has assets or carries on business in Canada, has total liabilities in excess of CA\$5 million, and is insolvent, bankrupt, or has committed an "act of bankruptcy." At the commencement of a CCAA proceeding, the court issues an initial order that, among other things, provides a stay of proceedings in favour of the debtor company and appoints a "monitor" to act as an independent court officer responsible for overseeing the debtor's activities, reporting to the court, liaising with creditors, and supporting the restructuring process. Throughout the CCAA process, the debtor company typically remains in possession and control of its assets and continues to carry on its business.

Pursuant to the CCAA, a debtor company may also seek court approval of debtor-in-possession ("DIP") financing, with a corresponding court-ordered priority charge securing such DIP financing, if additional liquidity is needed to operate the business during the CCAA proceedings. If a plan of arrangement is presented to the debtor company's creditors as part of the CCAA proceedings, the plan must be approved by a double majority of creditors in each class of affected creditors voting on the plan, being 50% plus one of the total number of creditors voting in each affected class, holding 66 2/3% of the total value of claims of the creditors voting in such class. If the plan is approved by the debtor company's creditors, it is then subject to court approval. The duration of a CCAA proceeding can vary depending on the complexity of the restructuring – ranging from

several weeks for a pre-packaged transaction, to several months or years for more complex matters. Given the flexibility inherent in the CCAA, proceedings may conclude with a variety of outcomes, including with the debtor emerging as a restructured going concern, the disposition of some or all of the debtor's assets, or the sale of the debtor's business on a going-concern basis.

#### *BIA Proposals*

A proposal process under the BIA enables an insolvent company to avoid bankruptcy by presenting a proposal to its creditors that typically involves reducing the overall debt burden, extending repayment timelines, or both. The BIA proposal process is more prescriptive and less flexible than CCAA proceedings and therefore may be less suitable for complex restructurings. A BIA proposal may only be filed by an "insolvent person" within the meaning of the BIA, or a representative acting on their behalf. The process is initiated by filing either a proposal or a notice of intention to file a proposal ("**NOI**") with the Official Receiver, being a government representative appointed under the BIA as an officer of the court to perform the duties and responsibilities specified by the BIA and the BIA General Rules. The BIA proposal process must proceed within defined time limits set out in the BIA. After filing a NOI, the debtor has 30 days to file a proposal. This 30-day period may be extended with court approval for up to a maximum of five additional months, with no individual extension exceeding 45 days. Failure to file a proposal within the applicable period (as may be extended by the court) will result in the debtor being deemed to have made an assignment in bankruptcy. During a BIA proposal proceeding, the debtor is protected by an automatic stay of proceedings and retains possession and control of its assets; however, a licensed insolvency trustee must be appointed to oversee the process. The trustee assists in preparing financial information, monitors the debtor's compliance with its obligations, and reports to the court and to creditors. Where the requisite majorities of creditors (at least two thirds in value of voting claims and a majority in number of voting creditors in each affected class) approve the proposal and it receives court approval, the proposal becomes binding, and the debtor will emerge from the proceedings, provided it satisfies its obligations under the proposal. If the proposal is rejected by the creditors or the debtor subsequently defaults on its obligations under an approved proposal, the debtor will be deemed to have made an assignment in bankruptcy.

#### *Bankruptcy*

Formal liquidation of an insolvent debtor may be effected through bankruptcy proceedings under the BIA, which are

intended to facilitate an orderly and equitable administration of the bankrupt's assets. A debtor that qualifies as an "insolvent person" under the BIA may voluntarily initiate bankruptcy proceedings by filing an assignment for the benefit of creditors, together with a sworn statement of affairs, with the Official Receiver. Alternatively, a debtor may be placed into bankruptcy involuntarily on application by one or more of its creditors, or as a consequence of failing to comply with, or obtaining creditor approval for, a BIA proposal. Upon the filing of an assignment in bankruptcy or the issuance of a bankruptcy order, the bankrupt's unsecured creditors will be subject to an automatic stay of proceedings, and the bankrupt's assets will vest automatically in the trustee in bankruptcy, who acts as an officer of the court with duties to all creditors. The trustee will proceed to liquidate the bankrupt's assets and distribute the proceeds in accordance with the priority scheme established under the BIA. The duration of a bankruptcy can vary depending on a number of factors, such as the complexity of the debtor's affairs, the nature of its assets, and the number and types of claims involved.

#### *Receiverships*

Receivership is primarily a secured creditor remedy. A secured creditor may enforce its security by appointing a receiver, either privately pursuant to the terms of its security documents, or by court order under the BIA. In a receivership, the debtor and the receiver will typically benefit from a court-ordered stay of proceedings, and the receiver will take possession and control of the debtor's assets and may, where authorized, continue to operate the debtor's business and/or sell the debtor's assets or business, with a view to maximizing realizations for the benefit of creditors and other stakeholders. A court-appointed receiver serves as an officer of the court and owes duties to all interested parties, not solely the appointing secured creditor. Material steps in a court-appointed receivership require court approval, and the receiver provides regular reports to the court and stakeholders. A court-appointed receivership typically concludes once all realizable assets have been monetized and the proceeds have been distributed to creditors in accordance with their respective priorities. The length of a receivership can depend on, among other things, the nature of the assets, the complexity of the debtor's business, and the number of creditors involved.

#### *CBCA Plan of Arrangement*

A plan of arrangement under the CBCA provides a mechanism for companies incorporated or continued under the CBCA to implement various types of transactions, including a restructuring of debt obligations,

without the need for an insolvency process or a declaration of insolvency. Equivalent arrangement provisions exist under various provincial statutes, with some variation on the applicable process and requirements among such statutes. CBCA arrangements can be used to restructure the rights of security holders (such as bondholders, lenders and shareholders). To proceed with a CBCA arrangement, the following statutory requirements must be satisfied: (i) the proposed transaction must qualify as an "arrangement" as defined under the CBCA; (ii) the applicant must be solvent; and (iii) it must not be practicable to effect the desired change under another provision of the CBCA. As part of a CBCA arrangement process, the applicant will obtain an interim order authorizing the calling of meetings of affected security holders to consider and vote on the proposed plan and, where appropriate, ordering a stay of proceedings. The CBCA does not prescribe any required stakeholder approval in respect of the CBCA arrangement, and courts have typically required approval by at least two-thirds in value of each class of affected stakeholders voting on the plan. Following stakeholder approval, the applicant seeks a final order from the court approving the plan, which makes it binding on all affected stakeholders upon plan implementation. CBCA arrangement proceedings do not require the appointment of a monitor or trustee.

### **17. What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?**

The commencement of restructuring, insolvency or bankruptcy proceedings under the CCAA, the BIA or the CBCA generally results in a stay of proceedings – whether automatic or court-ordered (as applicable) – that prevents creditors from exercising enforcement rights against the debtor or its assets, or commencing or continuing any legal action against the debtor. The scope and duration of the stay may differ depending on the type of proceeding, applicable statutory requirements and the exercise of the court's discretion in the applicable circumstances. Creditors may apply to the court to lift the stay of proceedings. Courts will balance the interests of all parties in determining whether to lift the stay of proceedings. Where lifting the stay would jeopardize the reorganization of the debtor, it would typically be refused by the court.

### **18. Please comment on transactions voidable upon insolvency.**

Upon the commencement of insolvency proceedings,

certain pre-filing transactions or payments may be challenged and set aside, including the following:

#### *Preferences*

A preference arises where an insolvent debtor makes a payment or transfer to a creditor in the period leading up to insolvency proceedings, with the effect that the recipient creditor receives a preference over other creditors. Preferences may take various forms, including cash payments, property transfers, the provision of services, or the granting of security interests over the debtor's assets. An arm's-length preference transaction can be set aside where it occurred within three months prior to the bankruptcy or commencement of insolvency proceedings with the intent to prefer the recipient creditor over others. Where the transaction has a preferential effect, intent to prefer is presumed unless rebutted. For non-arm's-length transactions, the look-back period extends to 12 months and there is no requirement to establish an intent to prefer the recipient creditor over others.

#### *Transfers at undervalue*

A transfer at undervalue occurs where a debtor disposes of property or provides services for no consideration, or for consideration that is conspicuously below fair market value. For transactions among arm's-length parties, courts can set aside such a transaction, or order that the recipient pay the difference between the value given and the value received, where: (i) the debtor was insolvent at the time of the transaction; (ii) the transaction occurred within 12 months prior to the bankruptcy or commencement of insolvency proceedings; and (iii) the debtor intended to defraud or delay creditors. Courts may infer fraudulent intent where it is established that the "badges of fraud" are associated with the transaction. Where the parties are not dealing at arm's length, the look-back period extends to five years. Further, for non-arm's-length transactions occurring within one year of the bankruptcy or commencement of insolvency proceedings, there is no requirement to prove fraudulent intent or that the debtor was insolvent at the time of the transaction.

#### *Improper payments*

In addition to reviewing certain pre-filing transactions, courts may review certain payments made by a debtor company, including the payment of dividends (other than stock dividends), the redemption or purchase for cancellation of shares, and certain employment compensation to directors and officers (including termination pay, severance pay, incentive pay or other

benefits), where such payments were made within the year before the initial bankruptcy event or the commencement of insolvency proceedings. Directors may be held jointly and severally liable for such payments where the court determines that the payment: (i) was made at a time when the company was insolvent or rendered the company insolvent; (ii) was conspicuously in excess of the fair market value of the consideration received; and (iii) was made outside the ordinary course of business. Directors may avail themselves of a due diligence defence and, under the terms of the BIA, directors may avoid liability by establishing that they protested to the making of the payments at issue in accordance with applicable law.

### 19. Is set off recognised on insolvency?

Yes, both the CCAA and the BIA expressly preserve the right of set-off. Courts have interpreted this right as permitting creditors to set off pre-filing obligations against other pre-filing obligations, provided that the applicable legal requirements for set-off are satisfied. Set-off between pre-filing and post-filing obligations is generally stayed in insolvency proceedings. However, courts retain discretion to lift the stay and permit pre-versus post-filing set-off in exceptional circumstances.

### 20. Are there any statutory or third party interests (such as retention of title) that may take priority over a secured lender's security in the event of an insolvency?

Yes, there are statutory interests (or third-party interests) that may rank ahead of a secured lender's security in an insolvency. Examples of such "super-priority" claims include the costs of environmental remediation incurred by federal or provincial governments, claims made by suppliers for the return of goods supplied to the debtor within the 30-day period before bankruptcy or receivership, government statutory deemed trusts for source deductions (including payroll deductions, Canada Pension Plan deductions, and unemployment insurance deductions), and claims for up to CA\$2,000 for unpaid salary, wages, commissions and benefits. The CCAA and the BIA were also recently amended to create deemed trusts for unpaid suppliers of perishable fruits or vegetables, subject to certain requirements and limitations. In addition, in CCAA, BIA proposal, and receivership proceedings, super-priority charges ranking ahead of secured creditors may be granted by the court, provided that the affected secured creditors have been given notice of the proposed charges. Common court-ordered priority charges include, among others:

(i) administration charge or receiver's charge – to secure payment of professional fees and disbursements, including the cost of administering the insolvency proceedings;

(ii) interim financing charge or receiver's charge – to secure interim financing and receivership funding obligations;

(iii) directors' charge – to protect directors from certain liabilities that may arise during the proceedings;

(iv) key employee retention charge – to secure retention payments to key employees that are essential to the debtor's business operations and/or the proceedings; and

(v) critical supplier charge – to secure payment for the provision of critical goods and services to the debtor company.

### 21. Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

Several impending and recently enacted reforms in Canada are relevant to foreign lenders and may affect the ease or complexity of lending into the jurisdiction.

On the anti-money laundering ("AML") front, as of October 2024, the federal AML regime now includes mortgage brokers, administrators, and lenders, triggering significant compliance obligations. British Columbia's Bill 29 (effective October 2026) introduces modernized mortgage licensing requirements that may affect foreign lenders operating in B.C., potentially requiring registration even for single transactions. Forthcoming amendments under the Strong Borders Act may increase maximum penalties to CA\$20 million.

The Retail Payment Activities Act ("RPAA") came into force in 2024–2025, requiring fintech payment service providers to register with the Bank of Canada and establishing the regulatory framework for them to eventually qualify for access to national payment systems. This creates new infrastructure access but also imposes compliance requirements.

At the provincial level, Quebec's Bill 72 (adopted November 2024) introduces stricter consumer lending rules affecting credit card issuers and lenders offering open credit. These reforms generally make lending more complex in terms of compliance.

## 22. What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

Traditional bank lending continues to dominate the Canadian market. The six largest Canadian banks maintain a large share of corporate lending activity, and, unlike in the U.S., the private credit market has not grown as rapidly. The Canadian banks also have the capabilities to arrange and underwrite significant public capital markets transactions in Canada (both debt and equity).

While U.S. private credit lenders have increased their presence in Canada, their focus has been largely concentrated on supporting private equity-backed acquisitions involving non-Canadian sponsors. The extension of private credit into wider segments of the Canadian market remains limited, and it is unclear whether that will change in the near term.

Several structural factors may have resulted in the lower growth of private credit in Canada, including that Canadian interest rates have generally tracked below U.S. rates and currency hedging costs can potentially further reduce returns for cross-border lenders. In addition, many non-Canadian private credit lenders have difficulties providing cash management products in Canada (particularly in Canadian dollars).

There are a few trends worth monitoring in the Canadian market. First, the current uncertainty surrounding trade policy may cause some banks to reduce their exposure to affected sectors, which could open space for private credit lenders. Second, Canadian banks are developing products designed to compete with U.S. private credit lenders. Whether private credit in Canada ultimately achieves the scale it has reached in the U.S. will depend in large part on how these structural and regulatory factors develop over time.

## 23. Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as new law, regulation or other political factors

Several external factors are currently influencing the drafting of secured lending documentation and deal structuring in Canada.

**Canada and United States Trade Tensions.** Canada and the United States are engaged in an ongoing trade dispute, which is the most significant external factor currently influencing secured lending documentation and deal structuring in Canada. The dispute has created widespread uncertainty across the lending market, and tariffs have become a primary concern for many Canadian businesses. In response, Canada Development Investment Corp. ("CDEV"), a federal Crown corporation, established Canada Enterprise Emergency Funding Corp. ("CEEFC"), which was mandated to establish and administer the Large Enterprise Tariff Loan ("LETL") facility. LETL facilities are intended to support large Canadian businesses affected by actual and potential new tariffs and countermeasures that face challenges accessing traditional sources of market financing. At the business level, lenders are increasingly vigilant when extending credit to businesses with significant cross-border exposure. The full impact on the Canadian lending market has yet to be fully appreciated, but there is concern that it may accelerate a broader slowdown of cross-border deals.

**CUSMA Renewal Deadline.** The Canada-United States-Mexico Agreement ("CUSMA"), which is the free trade agreement between Canada, United States and Mexico is subject to a joint review on July 1, 2026. The majority of Canada's exports are currently CUSMA compliant, which has helped preserve the competitiveness of Canadian exports overall. A negative outcome of the review (such as the giving of a withdrawal notice by the United States) could weaken the competitiveness of Canadian exports, lowering export volumes, which could have significant consequences for borrowers with material cross-border trade exposure. Lenders and borrowers may begin paying closer attention to the scope and language in material adverse change clauses in loan agreements, particularly where a business is dependent on the continuation of the CUSMA framework.

**The Defense, Security and Resilience Bank.** Canada is establishing a new multilateral Defense, Security and Resilience Bank (the "DSR Bank"), which is intended to provide financing for defense, security, and national resilience projects across allied nations. The DSR Bank is designed to provide long term and low cost financing for such projects. As DSR Bank becomes operational, it is anticipated to introduce new forms of government credit support and potentially new documentation standards for infrastructure and defense-related lending, which may in turn influence broader secured lending practice in Canada.

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