

Blakes Bulletin

Restructuring & Insolvency

Insolvency Law Amendments to Take Effect on September 18, 2009

The federal government has announced that a major package of reforms to the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA) will soon come into force. Sweeping changes to the acts had been approved by Parliament in two separate bills – in 2005 and 2007 – but apart from a few changes that became effective in July 2008, most of those changes had not been implemented. The remaining changes will now take effect on September 18, 2009.

INSOLVENCY REFORMS

The main elements of the insolvency reforms that come into force in September include:

- The codification of much of the caselaw that has developed in restructurings under the CCAA, relating to the authority of the court to authorize debtor-in-possession (DIP) financing, to authorize the sale of assets in a restructuring proceeding and to permit the debtor to disclaim or assign certain contracts;
- Protections for collective agreements and licences of intellectual property;
- Provisions to permit the appointment of a national receiver with powers that are exercisable throughout Canada, not just in the province where the appointment is made and to specify what powers the court may give to such a receiver;
- Provisions to limit rights of equity claims in restructurings;
- The adoption of procedures for dealing with cross-border insolvency proceedings based on a UNCITRAL model law that has been adopted in various forms in a number of countries, including the United States (Chapter 15 of the U.S. Bankruptcy Code);
- Provisions protecting a receiver or trustee in bankruptcy from personal liability under a collective agreement or pension plan; and

- Replacing several technical remedies in the BIA with a general power to challenge “transfers at undervalue” by the debtor. This remedy will now also be available in CCAA proceedings.

For further details on the legislative reforms, please click [here](#).

THE COMING TRANSITION PERIOD

These amendments take effect for bankruptcies or restructurings that formally commence under the BIA or CCAA on or after September 18, 2009.

More specifically, the amendments to the BIA apply only to a person (which includes companies) who, on or after September 18, 2009:

- (a) becomes bankrupt;
- (b) files a notice of intention to make a proposal;
- (c) files a proposal without having filed a notice of intention;
- (d) has a proposal made in respect of that person without that person having filed a notice of intention;
- (e) has an interim receiver appointed in respect of the person's property and all or part of the person's property comes into the possession or under the control of the interim receiver; or
- (f) has part or all of their property come into the possession or control of a receiver.

The new amendments to the CCAA will apply to debtor companies whose CCAA proceedings commence on or after September 18.

We will shortly issue further bulletins about the impact of these changes on creditors, debtors and others who may be involved in Canadian insolvency proceedings.

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