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The International Comparative Legal Guide to:

Corporate Recovery and Insolvency 2012

6th Edition

A practical cross-border insight into corporate recovery and insolvency work

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Canada

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1 Issues Arising When a Company is in Financial Difficulties

1.1 How does a creditor take security over assets in Canada?

Personal Property

Personal Property Security Acts ("PPSA") in force in all of Canada's common law provinces and territories govern the creation and enforcement of security in personal property. Under the PPSA, before a security interest can be enforced against third parties, the security interest must have "attached" and be "perfected". Attachment, within the meaning of the PPSA, requires three conditions:

a) a security agreement signed by the debtor, or possession of the collateral by the secured creditor;

b) "value" or consideration sufficient to support a simple contract must be given; and

c) the debtor must have rights in the collateral.

Once the security interest has "attached", it becomes "perfected" under the PPSA by:

a) registration of a financing statement in a computer based registration system administered by the provincial government; or

b) the secured party obtaining possession of the collateral.

Real Property

Provincial legislation enacted in each province in Canada governs the formalities of creating an effective security interest in real property, the manner in which priority is obtained over other parties with interests in the real property, and the rights of the debtor and other subordinate creditors upon an enforcement. Generally, security is obtained over real property by taking a mortgage (or in the Province of Quebec, a deed of hypothec) which creates a charge on the land to secure payment, and which must be registered against title to the land. A debtor or subordinate secured creditor can redeem the mortgage on payment of the debt secured by the mortgage.

Under the *Federal Bank Act*, Canadian chartered banks can take security over inventory of a specific class of borrower, as well as certain equipment of farmers and fishermen and other specified property interests.

1.2 In what circumstances might transactions entered into whilst the company is in financial difficulties be vulnerable to attack?

Under provincial fraudulent conveyance legislation, transactions by a debtor which are intended to defeat, hinder or delay payment of creditor claims can be set aside. In addition, on the bankruptcy of a debtor, the federal *Bankruptcy and Insolvency Act* ("BIA") provides the trustee appointed to administer the debtor's estate (the "Trustee") with enhanced remedies to set aside transactions, including an ability to set aside preference payments to creditors made within three months of the debtor's bankruptcy, or within one year of bankruptcy, in the case of creditors not dealing at arm's length with a debtor. Under the BIA, the Trustee may also challenge any disposition of property by the debtor for no consideration or for consideration below fair market value ("Transactions at Under Value"). Under the BIA, any transaction which occurs during the period 12 months prior to the commencement of bankruptcy proceedings and has the effect of preferring a creditor related to the debtor is attackable as a preference. Where the preferential payment is made by the debtor to an arm's length creditor, it is also necessary to prove that the debtor intended to prefer the creditor. Where, however, the effect of the payment is to prefer the recipient, the debtor's intention to grant a preference is presumed, and the onus shifts to the arm's length creditor to rebut that presumption with evidence of another intention on the part of the debtor. For example, where the creditor is a critical supplier, a transaction may be defended on the basis that payment to the recipient was a condition of the continued supply of goods or services critical to the debtor's ongoing operations.

The remedies outlined above available to a Trustee under the BIA to set aside preferences and Transactions at Under Value are also applicable to a debtor which has commenced restructuring proceedings under the *Companies' Creditors Arrangement Act* ("CCAA"), unless the plan of compromise or arrangement provides otherwise.

Where, as is often the case, a Trustee does not have sufficient funds to conduct litigation to set aside preferences or Transfers at Under Value, section 38 of the BIA permits any creditor to apply to the court for an order assigning the Trustee's rights to set aside transactions to the creditor and all other creditors of the bankrupt have an opportunity to participate in the potential recovery by contributing to the costs and sharing in the benefits of the litigation.

1.3 What are the liabilities of directors (in particular civil, criminal or disqualification) for continuing to trade whilst a company is in financial difficulties in Canada?

When a corporation enters the "zone of insolvency", its directors and officers may become exposed to personal liability under numerous statutes for, among other obligations, wages and other compensation owing to employees, pension liabilities, environmental liabilities and taxes. Directors may also be held

personally liable for amounts paid by way of dividend or to redeem or purchase shares at a time when the corporation is insolvent or would be rendered insolvent by virtue of the payment.

Generally, directors of insolvent companies may defend claims for personal liability on the basis that they have exercised due diligence and properly performed their duties as directors. However, no such due diligence defence is available to directors in respect of unpaid wages or vacation pay owing to employees.

In addition, Canadian courts have recognised that as a corporation approaches insolvency, its directors and officers continue to have a fiduciary obligation to act in the best interests of the corporation, and in a manner that is not oppressive or unfairly prejudicial to creditors' interests. Under Canadian corporate law, directors and officers can be held personally liable for conduct which is oppressive or unfairly prejudicial to or unfairly disregards the interests of any creditor or shareholder.

Under the BIA, directors or officers who control a corporation or directly authorise, acquiesce or participate in the commission of any offence by a corporation, are personally liable for the offence. Offences under the BIA include fraudulently disposing of property, making false entries or material omissions in a statement or accounting, obtaining credit or property by false representations, and fraudulently concealing or removing any property. Such offences carry a potential penalty of a fine not exceeding $5,000.00 and/or imprisonment for up to one year.

Canadian courts have generally been reluctant to impose personal liability on directors for the criminal conduct of a corporation, unless the directors are guilty of intentional or reckless conduct.

2 Formal Procedures

2.1 What are the main types of formal procedures available for companies in financial difficulties in Canada?

Canadian insolvency law permits a debtor company in financial difficulty to devise a plan or proposal to compromise creditor claims, with a view to becoming viable in the future. Formal restructuring proceedings under the CCAA and the proposal provisions of the BIA are the procedures used most commonly by companies attempting to restructure. The *Winding Up and Restructuring Act* permits restructuring by financial institutions and the *Farm Debt Mediation Act* governs the restructuring of companies in the agricultural industry.

As an alternative to restructuring, Canadian insolvency law offers formal procedures for the liquidation of a debtor's assets through a bankruptcy proceeding under the BIA or a court-appointed or private receivership proceeding.

2.2 What are the tests for insolvency in Canada?

A debtor is insolvent for the purposes of the BIA if it is unable to meet its obligations generally as they come due, or ceases to pay current obligations in the ordinary course of business as they generally come due, or if the aggregate of its property is not, on a fair valuation, sufficient, or if disposed of at a fairly conducted sale, would not be sufficient to enable payment of all of its obligations, due and accruing due.

Although the CCAA does not include a definition of insolvency, in considering whether a company is insolvent and therefore meets the requirements for commencing proceedings under the CCAA, the courts have generally required that a company satisfy one of the two tests under the BIA set out above.

2.3 On what grounds can the company be placed into each procedure?

Bankruptcy

An insolvent corporation which carries on business or has property in Canada may voluntarily file an assignment in bankruptcy under the BIA.

A corporation may also be placed into bankruptcy, involuntarily, on the application of an unsecured creditor who is owed at least $1,000.00, upon proof that the corporation has committed an "act of bankruptcy" within six months immediately preceding the filing of the application.

The "act of bankruptcy" that most often forms the basis of a bankruptcy application is "ceasing to meet obligations generally as they come due". "Generally" requires proof that the debtor has not simply defaulted in the obligations owing only to the applicant creditor. An "act of bankruptcy" within the meaning of the BIA also includes making a fraudulent gift or transfer of property or a fraudulent preference payment.

Restructuring

Under the BIA, a corporation may commence a restructuring proceeding provided it is insolvent or bankrupt.

A restructuring proceeding under the CCAA can be commenced only by a corporation which has outstanding debt of at least $5,000,000.00.

Receivership

A receiver may be appointed by a secured creditor, privately, in accordance with the terms provided for in a security agreement granted by the debtor in favour of the creditor. A receiver may also be appointed by the court under the BIA or provincial legislation in most provinces where it is "just or convenient to do so". This broad language confers on the court a very wide discretion as to the circumstances in which the appointment of a receiver should be made.

The BIA requires that a secured creditor deliver written notice to a debtor prior to enforcing its rights under a security agreement to take possession or appoint a receiver to take possession of all, or substantially all of the assets of a debtor used in the operation of a business.

2.4 Please describe briefly how the company is placed into each procedure.

Bankruptcy

There are two ways of becoming bankrupt under the BIA:

An involuntary bankruptcy results from the filing of an application by a creditor and the making of a bankruptcy order by the bankruptcy court. A creditor must deliver notice of the application to the debtor at least 10 days before the date on which the application is to be heard. If the debtor wishes to dispute the application, a summary trial of the issues will be held before a judge, who will grant the application if satisfied on a balance of probabilities that (a) the debtor has committed an act of bankruptcy, (b) within the 6 months preceding the application, and (c) the creditor is owed at least $1,000.00 on an unsecured basis. The court may dismiss a bankruptcy application if it is satisfied that the bankruptcy order should be refused for "other sufficient cause". This discretionary power can be relied upon to dismiss an application if it has been brought for an improper purpose, for example, in an effort to put a competitor out of business.

Proposal

A debtor company can initiate a restructuring proposal under the

BIA by filing the written proposal or a Notice of Intention to Make a Proposal with a licensed Trustee and the Official Receiver in the debtor's locality.

A debtor who files a Notice of Intention to Make a Proposal under the BIA and fails to file a proposal within the time required under the Act is deemed to become bankrupt.

Receivership

As noted in question 2.3 above, a receiver may be appointed privately by a secured creditor under the terms of a security agreement, or by application for a court order in the Superior Court of the province where the debtor corporation carries on business or has its head office.

CCAA Proceedings

A CCAA proceeding can be commenced by a debtor or alternatively, by creditors, by making an application to the court for an initial order. CCAA proceedings are commenced in the court of the Province where the debtor has its head office or chief place of business, and in the absence of any business in Canada, in any Province where the debtor has assets.

2.5 What notifications, meetings and publications are required after the company has been placed into each procedure?

Bankruptcy

Upon bankruptcy, all of the debtor's assets vest in a Trustee appointed to administer its estate. The Trustee is required to give notice within five days of its appointment to all known creditors of the bankrupt and to convene a meeting of the bankrupt's creditors within 21 days of the bankruptcy.

BIA Proposal

Similarly, a Trustee named in a proposal is required to send a notice to all known creditors of the debtor which will include a copy of the proposal, a statement of the debtor's assets and liabilities and the date and time of the creditors' meeting called to consider and vote upon the proposal. The proposal Trustee will also provide a report to creditors with its comments on the creditors' likely recovery under the debtor's proposal as opposed to in a liquidation or bankruptcy of the debtor.

Receivership

A receiver must notify the federal Superintendent of Bankruptcy, and provide to any creditor upon request, a report of its appointment. A receiver is also required to prepare and submit further interim reports outlining its activities during the course of the administration.

CCAA

The CCAA requires that a Monitor be appointed as an officer of the court to assist and oversee the restructuring. The Monitor must send a copy of the initial order to every known creditor of the debtor company within a period of 10 days following its appointment. In addition, creditors will receive notice of the requirement to file a claim in order to be entitled to attend at the creditors' meetings and vote upon the proposed plan of arrangement.

3 Creditors

3.1 Are unsecured creditors free to enforce their rights in each procedure?

There is an automatic stay of proceedings under the BIA which restrains the enforcement of rights by unsecured creditors against the bankrupt and its property, upon bankruptcy or the commencement of a BIA restructuring process. Similarly, an order appointing a receiver or granting relief under the CCAA will typically include a broad stay of proceedings prohibiting unsecured creditors as well as secured creditors from enforcing any rights against the debtor or its property. In a private receivership, there is no stay of proceedings which would prevent unsecured creditors from taking steps to enforce their rights. However, any recoveries by unsecured creditors may be subject to the prior ranking claims of the secured creditor who has appointed a receiver.

3.2 Can secured creditors enforce their security in each procedure?

Under the BIA, the rights of secured creditors are not affected by a bankruptcy and secured creditors are free to continue to enforce their security notwithstanding a bankruptcy proceeding. However, if a debtor files a proposal, or notice of intention to file a proposal under the BIA, secured creditors will be precluded from enforcing their rights during the proposal proceedings unless written notice of intention to enforce security has been delivered by the secured creditor to the debtor more than 10 days prior to the BIA filing.

Notwithstanding the general stay of proceedings, creditors are able to apply to the court for an order lifting the stay in circumstances where creditors would be materially prejudiced by the continuation of the stay.

3.3 Can creditors set off sums owed by them to the company against amounts owed by the company to them in each procedure?

Legal and equitable set off continue to apply in restructuring proceedings under the BIA or CCAA. In the bankruptcy or receivership contexts, legal and equitable rights of set off continue to apply and the rights of the debtor vest in the Trustee or receiver, subject to any rights of set off that existed at the date of bankruptcy or receivership. However, as the appointment of the Trustee or receiver destroys the mutuality required under legal set off, post-bankruptcy or receivership claims arising following the appointment of the Trustee or receiver cannot be set off against pre-bankruptcy or receivership claims, except where permitted under the principles of equitable set off, (i.e. there exists such a close connection between the claims that it would be unconscionable or inequitable not to permit set off).

4 Continuing the Business

4.1 Who controls the company in each procedure? In particular, please describe briefly the effect of the procedures on directors and shareholders.

Upon bankruptcy, the debtor's assets vest in the Trustee and the debtor has no authority to carry on its business or exercise control over its assets. In the context of a court-appointed receivership, the extent of the receiver's powers and control over the debtor company and its business and assets depends upon the express terms of the court order appointing the receiver.

In a restructuring proceeding under the CCAA, or a proposal proceeding under the BIA, typically the debtor company remains in control and possession of its business and assets. The Monitor appointed under the CCAA and the proposal Trustee appointed under the BIA oversee or monitor the debtor's business and financial affairs during the restructuring, but control of the debtor rests with the debtor company. Accordingly, throughout a CCAA or

BIA restructuring proceeding, shareholders continue to have the power to appoint directors and officers of the company, and the directors continue to be responsible for management of the debtor's business, and may incur personal liability as result of any failure by the debtor to pay certain obligations.

4.2 How does the company finance these procedures?

Typically, a restructuring proceeding under the BIA or CCAA will be financed from the company's cash flow generated from operating the business. If additional financing is required to fund the cost of the restructuring and continued operations, the debtor may obtain an order of the court authorising debtor in possession financing ("DIP Financing") and imposing a charge upon the debtor's assets to secure repayment. The court has the power to grant super priority charges to secure repayment of DIP Financing, provided that prior notice of the court application is provided to all secured creditors. In exercising that power, the court will balance any prejudicial effect of the charge on existing secured creditors, against the broader benefits to be derived from the continuation of the debtor's business.

In a court appointed receivership, the court order often grants the receiver a power to borrow funds and to grant a charge to secure repayment of its borrowings on the debtor's assets in priority to existing security, again provided that prior notice to existing secured creditors is given.

4.3 What is the effect of each procedure on employees?

Upon a bankruptcy, there is a deemed termination of all employees of the bankrupt company. In restructuring proceedings under the BIA and CCAA, and in court appointed receiverships, the employment of the debtor's employees continues until such time as the debtor, or a receiver on its behalf, terminates such employment.

Upon bankruptcy or receivership under the BIA, employees are entitled to a super priority charge over the debtor's current assets, to secure payment of arrears of wages and vacation pay up to a maximum of $2,000.00 per employee. In addition, employees have a preferred claim ranking ahead of general unsecured claims for any additional unpaid wages and vacation pay, earned during the six months preceding the bankruptcy, up to a maximum amount of $2,000.00 per employee. Under the Wage Earner Protection Program Act, the Wage Earner Protection Program ("WEPP") is administered by the federal government. The program enables employees to claim up to four times the maximum weekly insurable earnings amount under the Employment Insurance Act ($3,531 for 2012), less amounts prescribed by regulation, from the government for unpaid wages in the six months prior to their employer's bankruptcy or receivership. In addition, employee claims for unremitted employer pension contributions now also receive a priority and have no maximum limit.

Any plan of arrangement or compromise under the CCAA or proposal under the BIA must include full payment all amounts the debtor's employees would receive upon a bankruptcy, and all wages and compensation for services rendered to the debtor for the period following the filing of restructuring proceedings.

In a restructuring process, collective agreements between a debtor employer and a union remain in force and cannot be altered except in accordance with applicable labour laws or the procedures set out in the CCAA. The CCAA permits a debtor to apply to the court for an order authorising it to serve a notice to bargain. Such an order will only be made if the court is satisfied that (i) a viable compromise or arrangement cannot be achieved by the company under the terms of its existing collective agreement, (ii) the company has made good faith efforts to renegotiate the collective agreement, and (iii) a failure to issue the order will likely result in irreparable damage to the company. Unless agreement is reached with the union, the court is unable to alter the terms of the collective agreement. The union can claim compensation under the plan for any concessions made in bargaining.

4.4 What effect does the commencement of any procedure have on contracts with the company and can the company terminate contracts during each procedure?

In a CCAA proceeding, the debtor company may disclaim an agreement to which it is a party with the approval of the Monitor. Similarly, under the BIA restructuring procedure, a debtor may, with the permission of its Trustee, disclaim agreements. Where the Monitor or Trustee does not approve of a proposed disclaimer, or a counter party objects to a proposed disclaimer, the court has the discretion to make an order permitting the disclaimer after considering the balance of convenience, including the financial hardship to the counter-party and whether the proposed disclaimer will enhance the prospect of a viable restructuring.

There are certain exceptions to the general rule which preclude the disclaimer of eligible financial contracts, collective agreements, leases in which the debtor is the lessor and financing agreements in which the debtor is the borrower. Also, debtors are not permitted to terminate a vested right to the use of intellectual property granted to a third party, provided that the third party continues to perform its obligations under the agreement.

In restructuring proceedings under the CCAA and BIA, third parties are generally stayed from terminating ongoing executory contracts with the debtor, provided the debtor continues to pay for all goods or services received thereunder from the date of the filing forward. Although suppliers are generally entitled to require immediate payment for goods or services delivered after the commencement of the restructuring, and courts will not generally require any person to advance further money or credit to a debtor, in the case of "critical suppliers", the court can order continued supply on such terms as the court considers appropriate.

5 Claims

5.1 Broadly, how do creditors claim amounts owed to them in each procedure?

In proceedings under the BIA, creditors are required to file a proof of claim, supported by an affidavit or other documentation evidencing the debt with the Trustee. The Trustee has the right to allow or disallow (in whole or in part) any claim, subject to a creditor's right to appeal to the court from a disallowance within 30 days.

In a court-appointed receivership or CCAA restructuring, the procedure for proving a claim is set out on a case-by-case basis by order of the court, and typically requires that creditors file a proof of claim with the monitor or receiver by a specified claims bar date.

5.2 What is the ranking of claims in each procedure? In particular, do any specific types of claim have preferential status?

Waterfall of Priorities

First priority is generally accorded to Canada's Revenue Agency ("CRA") in respect of unremitted payroll deductions. Other claims

of the CRA are, subject to certain exceptions, usually relegated to unsecured status.

The next priority is to fund payments under Wage Earners Protection Program ("WEPP").

Secured creditors generally rank next. Secured creditors are generally not affected by a bankruptcy order. Upon a bankruptcy order being made, a secured creditor must elect to either: (a) surrender its security to the trustee and file a claim in the bankruptcy as an unsecured creditor for all of its debt; or (b) enforce its security. Where the secured creditor enforces its security, it will be entitled to claim as an unsecured creditor in the bankruptcy for any shortfall.

The BIA next grants claims of certain creditors preferred status over unsecured creditors. Amounts owing to these creditors, known as "preferred creditors", are paid in the following priority:

a) the costs of the administration of the estate;

b) the levy payable to the government in respect of distributions made by the Trustee;

c) wages for services provided in the six months prior to bankruptcy - firstly to employees to the extent not paid under the WEPP, and then to secured creditors, to the extent of the WEPP super priority claim paid from their collateral;

d) Municipal taxes that do not form a charge on the real property of the estate;

e) rent owing to landlords, for an amount not exceeding (i) three months arrears and three months accelerated rent (provided the lease provides for accelerated rent), and (ii) the value of the assets on the premises;

f) the costs of a seizing creditor; and

g) claims of injured employees.

The remaining unsecured creditors will share in the remainder of the proceeds of the estate on a *pro rata* basis.

Until recently, the question of whether the waterfall of priorities under the BIA is the same under the CCAA was unsettled. It is generally accepted that the issue was resolved by a recent decision of the Supreme Court of Canada and that the ranking of claims in CCAA proceedings is the same as is in BIA proceedings.

The BIA also provides suppliers with the right to demand the return of goods delivered to the debtor provided that the supplier demands return within thirty days of delivery, the debtor is bankrupt, the goods are in the possession of the debtor or the trustee, the goods can be identified, the goods are in the same state as when delivered, the goods have not been resold or are not subject to an agreement for resale, and the trustee or debtor has not paid the balance owing to the supplier after receipt of the demand for payment.

5.3 Are tax liabilities incurred during each procedure?

The priorities accorded to unpaid tax obligations of a debtor company in proceedings under the BIA and the CCAA are set out above.

The post-filing tax obligations of a debtor who continues to carry on business during an insolvency proceeding are unaffected by the debtor's insolvency.

6 Ending the Formal Procedure

6.1 Is there a process for "cramming down" creditors who do not approve proposals put forward in these procedures?

In order for a restructuring proposal under the BIA or a plan of compromise and arrangement under the CCAA to be effective, it must be approved by a majority in number and two-thirds in value of the creditor claims voting at the meeting called to consider the plan or proposal. Therefore, if the double majority test is satisfied, and the plan is subsequently approved by the court, even opposing creditors falling into the 1/3 minority will be bound by the proposal or plan of arrangement.

6.2 What happens at the end of each procedure?

Bankruptcy

A corporate bankruptcy proceeding ends when a Trustee applies for its discharge. Generally, a company is not released from a formal bankruptcy because of the unlikelihood of creditors being paid in full. In order to apply for its discharge, the trustee must submit a final accounting regarding how the assets of the bankrupt estate were liquidated and how much the trustee's fees and expenses were. This will be done in a statement of receipts and disbursements schedule. This document is sent to the creditors and is submitted to the Office of the Superintendent of Bankruptcy. In seeking its discharge, the Trustee will apply to court for approval of its final accounting and for approval of its fees.

Bankruptcy Proposal

Once the proposal is approved by the creditors and by the court and implemented in accordance with its terms, a proposal trustee will apply for its discharge in a manner similar to the manner described above.

Restructuring Under the CCAA

If the requisite number of creditors have voted in favour of the plan of arrangement and the plan has been sanctioned by the court, the plan becomes binding on the creditors. Upon the debtor satisfying the requirements under the plan, the debtor emerges from court protection and the monitor will apply for its discharge in a manner similar to the manner required of a trustee.

7 Alternative Forms of Restructuring

7.1 Is it common to achieve a restructuring outside a formal procedure in Canada? In what circumstances might this be possible?

Informal arrangements can be reached among debtors with their creditors outside of a formal court proceeding. Often creditors enter into forbearance arrangements, and forbear from enforcing their rights, to provide the debtor with an opportunity to continue operating. The ability to achieve a restructuring outside of a formal court proceeding depends upon the agreement of all creditors to the terms proposed by the debtor. In the absence of unanimous agreement, the debtor remains vulnerable to action by dissenting creditors.

7.2 Is it possible to reorganise a debtor rather than realise its assets and business?

As outlined above, Canadian insolvency law provides debtors with an opportunity under the CCAA and BIA to develop and propose a restructuring to their creditors, with a view to continuing as a viable business operation.

7.3 Is it possible to achieve an expedited restructuring of the debtor by means of a pre-packaged sale? How is such a sale effected?

A sale by an insolvent corporation of its assets outside of the ordinary course of business, in the absence of a receivership or other formal court proceeding, is problematic and potentially subject to attack by creditors. A pre-packaged sale can be and often is presented to the court in the context of a formal insolvency proceeding. Before approving such a sale, the court must be satisfied that the process leading to the proposed sale and the consideration to be received for the assets are fair and reasonable. Where a pre-packaged sale is to a party related to the debtor, the court will also need to be satisfied that good faith efforts were made to sell the assets to persons not related to the debtor, and that the consideration is superior to that which would have been received pursuant to any other offer made during the process leading to the proposed sale.

8 International

8.1 What would be the approach in Canada to recognising a procedure started in another jurisdiction?

Both the BIA and CCAA largely adopt the UNCITRAL Model Law on cross-border insolvencies which now governs the recognition of foreign proceedings in Canada. Under the Model Law, Canadian courts are required to recognise foreign proceedings and cooperate with the courts supervising those proceedings to the maximum extent possible.

The key concepts of the Model Law are mandatory recognition for an insolvency proceeding (unless manifestly contrary to public policy), and classification of the foreign proceeding as either a foreign main proceeding or a foreign non-main proceeding. A foreign main proceeding is recognised on the basis of the debtors' centre of main interest ("COMI"). There is a presumption in the legislation that a debtor's COMI is in the jurisdiction of its registered office, although that presumption can be rebutted by evidence to the contrary. If a foreign proceeding is recognised as a foreign main proceeding, all insolvency proceedings in Canada must be stayed. If the foreign proceeding is a foreign non-main proceeding, local insolvency proceedings in Canada will not be stayed.

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Dickinson Wright LLP's Restructuring & Insolvency Practice advises financially troubled businesses, their creditors and major stakeholders, in connection with financial difficulties and the restructuring of failed business enterprises. This advice includes the analysis of the cause and extent of the financial difficulties, the nature of claims and the appropriateness of the conduct of management and others in connection with the troubled enterprise. Our attorneys will devise, negotiate and implement restructuring plans and act as counsel in obtaining necessary court approvals and in negotiating and documenting appropriate financing or related transactions.

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- International Arbitration
- Leveraged Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Telecoms, Media & Internet
- Trade Marks

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