Canada

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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 creditor-friendly jurisdiction. Canada's restructuring legislation is drafted to provide creditors with sufficient remedies and latitude while balancing those remedies with protections in favour of the debtor to ensure fairness.

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

Many restructurings never become public and are not formalised. In order to avoid the costs of a formal restructuring process, parties often attempt an informal restructuring prior to commencing a public insolvency filing.

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

2.1 What duties 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?

Under Canadian law, the directors of a company have a fiduciary duty to the company and not to its creditors, shareholders or other stakeholders. This is so even when the company is facing insolvency. However, directors may consider the interests of various stakeholders, including shareholders, creditors, employees and suppliers, in fulfilling their fiduciary duty. The fiduciary duty is a duty of loyalty – it requires directors to act honestly and in good faith with a view to the best interests of the company. This means that a director must prefer the interests of the company over, for example, the interests of a shareholder who nominated the director to the board or the director's own interests in a business opportunity that properly belongs to the company.

Directors also have a duty of care that requires them to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In other words, directors must take steps to ensure that they are making informed decisions, including by considering all relevant information, identifying reasonable alternatives and seeking input from appropriate advisors.

Directors face many potential liabilities as regards a financially troubled company. A variety of stakeholders have standing to seek an oppression remedy against a director where the director's conduct was oppressive, unfairly prejudicial or unfairly disregarded the interests of a shareholder, creditor, director or officer of the company. In such circumstances, the court can make any order it deems fit, including holding the director personally liable for any damages. In addition, various statutes impose personal liability on directors for the company's failure to meet its obligations. Examples include a company's failure to pay wages or vacation pay to its employees and to remit source deductions for employee income taxes and Employment Insurance and Canada Pension Plan contributions.

While there is no statutory requirement to enter a restructuring or insolvency process at a particular time, a company must be "insolvent" in order to qualify for insolvency protection. For proceedings under the *Companies' Creditors Arrangement Act* (CCAA) (Canada's primary restructuring statute for large companies, which is discussed in greater detail below), courts have interpreted the term "insolvent" broadly, finding that a company is insolvent if it is reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.

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?

A variety of stakeholders may influence the company's situation in the pre-filing context. For example, secured creditors may have the ability to compel the company to file for insolvency protection or may have a contractual right to appoint a receiver to take over the company's business and/or realise on its assets. The government is also a key player in the pre-filing context, as it is able to impose financial sanctions on the company for a variety of reasons, including environmental, pension and other wrongdoings. A company's employees may also affect a company's decision about whether to file for insolvency protection and there are very limited circumstances under which a collective agreement can be altered in both a bankruptcy and restructuring situation. Other than any restrictions that may exist in a contract between the company and a given stakeholder, there are virtually no restrictions on the actions the stakeholder can take against the company in the pre-filing context.

In the post-filing context, there are restrictions on the actions certain stakeholders can take against the company. If a company files for protection under the CCAA, typically all creditors (secured

and unsecured) are stayed from exercising their rights against the company. By contrast, if the company files for protection under the *Bankruptcy and Insolvency Act* (BIA), only unsecured creditors are restricted from pursuing their rights against the company.

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

There are generally two types of transactions entered into by a financially troubled company that are at risk of challenge. The first occurs where the company makes a transfer (e.g., a gift, conveyance, assignment, payment of dividends, premiums, etc.) to or for a creditor at the expense of other creditors. The second occurs where the company makes a transfer and the consideration received by the company (if any) is far less than the value of the consideration given by the company.

It is possible to challenge such transactions under various provincial and federal statutes. Where the company has filed for insolvency protection under either the BIA or the CCAA, typically the party challenging the transaction is the court officer overseeing the insolvency proceedings, although it is possible for a creditor to do so where the court officer refuses or neglects to act. A creditor can also challenge the transaction under various provincial statutes, regardless of whether the company has filed for insolvency protection.

The requirements to prove that such a transaction has occurred vary depending on the statute pursuant to which the transaction is challenged. For example, in certain instances, it is necessary to prove that the company intended to defraud, defeat or delay a creditor, while in other cases it is not necessary to prove intent. Where a creditor successfully challenges a transaction under a provincial statute, the transaction is void against any person injured by the transaction. Where the company has filed for insolvency protection under either the BIA or the CCAA and the transaction is successfully challenged by the court officer overseeing the proceedings, typically the transaction is void as against the court officer. In certain cases, it is also possible for the court officer to order that a party or any other person who is privy to the transaction make a payment to the company's estate to make it whole.

3 Restructuring Options

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

Often an informal restructuring of a company's balance sheet or sale of assets is approved through an abridged court process. In appropriate circumstances, the court will approve a consensual restructuring that is in the best interests of the debtor company and its creditors without a full-blown insolvency proceeding.

3.2 What formal rescue procedures are available in your jurisdiction to restructure the liabilities of distressed companies? Are debt-for-equity swaps and pre-packaged sales possible?

Formal restructuring proceedings are provided for under the BIA and the CCAA to either liquidate or restructure a company's indebtedness. A formal restructuring may also be implemented by a corporation's governing statute. This chapter will focus on the mechanisms by which a debtor may restructure it liabilities; as a result, certain other liquidation and sale mechanisms will not be fully explored.

A restructuring under the BIA typically takes the form of a restructuring proposal to the company's creditors. If a proposal process is commenced, a licensed trustee in bankruptcy (trustee) is appointed as proposal trustee who will work with the debtor company to prepare a proposal to put to its creditors. The proposal trustee is required to monitor the business of the debtor but management of the corporation remains under its control.

A debtor company is not restricted in what its proposal may include. Typically, a proposal under the BIA will offer to pay a percentage of the debt owing to compromised creditors or establish a pool of money which is to be divided up among creditors and/or provide an extension of the time required to pay the amounts afforded under the proposal. The restructuring proposal must be put to a vote by the creditors being compromised at a meeting established for that purpose. During the creditors' meeting, at least 51 per cent of creditors holding at least 66⅔ per cent of the voting claims must approve the proposal for it to be passed and approved. Even if approved by the required majorities, the proposal must also be approved by the court. In the event that the proposal is not approved by the required majorities or the court, the proposal will fail and the company will automatically be deemed bankrupt.

Debtor companies with liabilities of at least $5 million may commence restructuring proceedings under the CCAA. The CCAA is designed to be a flexible and discretionary statute by which larger companies are able to restructure their indebtedness. A CCAA plan of arrangement must be approved by at least 51 per cent of creditors holding at least 66⅔ per cent of the voting claims and the court. Unlike a vote under a BIA proposal, there is no deemed bankruptcy if a CCAA plan is not approved by the creditors or the court. However, in the event that the creditors of a debtor under the CCAA fail to approve the debtor company's plan of arrangement, it is likely that the creditors will move to pursue a liquidation of the debtor's assets for the benefit of its creditors.

A debtor company may also successfully restructure its obligations under the provisions of its governing statute, whether such company is provincially or federally incorporated. Certain restructurings do not require the extensive relief afforded by the BIA or CCAA and, as such, its governing statute may provide the flexibility to restructure certain discrete aspects of a corporation's capital structure. In Canada, such restructurings are not common but have become more prevalent in recent years.

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

A bankruptcy proposal may be filed by an "insolvent person". An insolvent person is defined by the BIA as one whose liabilities amount to $1,000 and (i) who is unable to meet his obligations as they generally become due, (ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or (iii) the aggregate of whose property is not, at a fair valuation, sufficient to pay its obligations. A bankruptcy proposal is commenced by either filing (i) a notice of intention to make a proposal (NOI) together with a statement of creditors having claims in excess of $250, or (ii) the filing of the actual proposal together with a statement of the financial affairs of the debtor, with a government office known as the official receiver. The NOI must also appoint a trustee to act as proposal trustee.

In order to qualify to restructure under the CCAA, a debtor company or affiliated debtor companies must have total obligations in excess of $5 million. A CCAA restructuring is commenced by way of application to the court in the province within which the head office or chief place of business resides. In the event that the company has

no place of business in Canada, a company may file in any province where the company's assets are situated.

A restructuring under a corporation's governing statute is dependent on the particular framework of that statute. This type of restructuring is typically reserved for a solvent corporation that is attempting to make a fundamental change; however, the courts have used a flexible approach to this interpretation.

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

The proposal trustee manages the process of a BIA proposal. The debtor company remains in possession and control and any proposal approved by the debtor's creditors must be approved by the court.

A CCAA restructuring is also a debtor-in-possession process. A monitor is appointed by the court (Monitor) to oversee the process on its behalf. The CCAA is a purely court-driven process. Any plan of arrangement approved by the creditors of the debtor must be approved by the court.

A restructuring under a corporation's governing statute is managed by the corporation. The court typically plays a central role in the arrangement process. The court establishes the process by which the arrangement will be presented to the company's stakeholders which must then be approved by the court prior to implementation.

3.5 How are creditors and/or shareholders able to influence each restructuring process? Are there any restrictions on the action that they can take (including the enforcement of security)? Can they be crammed down?

In each process, the debtor company's creditors are instrumental to a successful restructuring. The creditors must ultimately vote in favour of any restructuring proposal/plan/arrangement. If the vote is successful, those creditors not in favour will be subjected to the will of the majority and have the proposal/plan/arrangement crammed down on them.

3.6 What impact does each restructuring procedure have on existing contracts? Are the parties obliged to perform outstanding obligations? Will termination and set-off provisions be upheld?

Once the BIA proposal process has commenced, a debtor may disclaim or resiliate any agreement to which the debtor is a party by giving notice in a prescribed manner to the other parties to the agreement and to the proposal trustee. A stay of proceedings is granted which prohibits parties from terminating or failing to honour their obligations under the proposal process unless such agreement is disclaimed. Creditors are not permitted to set off for goods and services delivered by them after the date of filing.

During a CCAA process, the court order will grant a stay of proceedings prohibiting a party from exercising any rights or remedies against the debtor, including the termination of contracts. Parties are expressly prohibited from terminating a contract for reason of the commencement of the proceedings. The purpose of the CCAA is to preserve the *status quo* in order to allow the debtor to restructure its affairs. The CCAA explicitly states that the law of set-off applies in CCAA proceedings.

The terms and structure of a restructuring under a corporation's governing statute is completely discretionary. Typically, the stay of proceedings is very limited.

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

In the event that sufficient funding is not available to sustain the business through the process, Debtor-in-Possession (DIP) financing may be obtained in either a BIA proposal process or a CCAA process.

Under both the BIA and the CCAA, the court may grant a super-priority charge in favour of the DIP lender which ranks ahead of all other creditors of the debtor. The ranking of charges is discussed in more detail in question 4.7.

4 Insolvency Procedures

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

Depending on the nature of the company, it may be wound up through bankruptcy or receivership proceedings under the BIA or the *Winding-up and Restructuring Act* (WURA). The WURA governs the liquidation and restructuring of certain types of financial institutions including incorporated banks or savings banks, authorised foreign banks, trust companies, insurance companies, loan companies having borrowing powers and building societies having a capital stock. The WURA also applies, but is rarely used to liquidate federally regulated corporations, including not-for-profit corporations. The WURA has been used sparingly in recent years and will not be discussed in detail in this chapter.

While the CCAA is primarily a restructuring statute, it is possible to liquidate or wind-up a debtor company under the CCAA if attempts to restructure the debtor company under the CCAA fail.

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

Bankruptcy proceedings in Canada can be commenced on a voluntary or involuntary basis. A voluntary bankruptcy proceeding may be commenced by a company that meets the statutory definition of "insolvent person" under the BIA. An insolvent person is defined as a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to $1,000, and:

(a) who is for any reason unable to meet his obligations as they generally become due;

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

By contrast, an involuntary application may be initiated by one or more unsecured creditors where: (i) their debt owing to the applicant creditor(s) is at least $1,000; and (ii) the debtor company has committed a prescribed act of bankruptcy within six months preceding the filing of the application. A secured creditor may also commence an involuntary bankruptcy application provided that it can establish that the debtor company has unsecured debts of at least $1,000 owing and that an act of bankruptcy has occurred with six months preceding the filing of the application.

With respect to receiverships, a creditor's contractual right to appoint a receiver is often triggered by a default under the terms

of the security document governing the credit relationship. A receiver may be privately appointed by a creditor if the right to do so is contained in the security documentation governing the credit relationship.

Alternatively, a creditor may seek a court-appointed receiver where such appointment is "just or convenient". In determining whether an appointment would be "just and convenient", a court may look to the following factors:

- whether the company's default justifies the appointment of a receiver;
- whether a right to appoint a private receiver exists;
- whether it is in the interests of all parties to have a receiver appointed by the court;
- whether appointment by the court is necessary to enable the receiver to carry out its work and duties;
- whether the assets of the company are in jeopardy;
- whether the appointment would cause prejudice to innocent third parties; and
- whether the appointment would maximise recoveries for all creditors.

If a company qualifies for liquidation under the WURA, it may be liquidated if it is: insolvent; in liquidation or in the process of being wound up and asked to be brought under the WURA by petition of any stakeholders, assignees or liquidators; or a financial institution and it is (or its assets are) under the control of the Superintendent of Financial Institutions and is subject to an application for a winding-up order.

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

Bankruptcy proceedings under the BIA are managed by a trustee. At the time of the trustee's appointment, all property of the debtor company passes to the trustee, including property located outside Canada and property of the company in the possession of third parties. After taking possession of the debtor company's property, the trustee will sell the company's property and distribute the proceeds to creditors, subject to the rights and actions of secured creditors.

The trustee will compile certain statutory documents in accordance with the BIA, notify creditors of the debtor company's bankruptcy, investigate the affairs of the debtor company and arrange for the first meeting of creditors to provide creditors with information on the bankruptcy. Following the distribution to creditors, the trustee is discharged and the company is usually discharged from its debts. As part of the bankruptcy process, the trustee will provide the court with periodic reports and must seek court approval when taking certain steps, such as selling the debtor company's property and finalising its discharge.

With respect to receiverships, the winding-up process is managed by a receiver. A receiver may take control of the debtor company's business (at which point the receiver becomes a receiver-manager) and dispose of the company's property. As noted above, a receiver may be privately appointed or appointed pursuant to court order. Privately appointed receivers will generally only act on behalf of the secured creditor that appointed them and will realise on the property specifically covered by the relevant security or loan agreement under which they were appointed. Privately appointed receivers are not overseen by the court. Court-appointed receivers are officers of the court and act on behalf of all creditors of the debtor company. The powers and rights of court-appointed receivers are included in the court order that appointed them. Similar to trustees, court-appointed receivers will provide the court with periodic reports and must seek court approval when taking certain steps.

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

Under liquidation proceedings under the BIA, a secured creditor may proceed to enforce its security without obtaining the consent of the trustee or leave of the court. The stay of proceedings that comes into effect on the bankruptcy of a company does not apply to a secured creditor in realising or otherwise dealing with its security unless the court orders otherwise, which occurs infrequently.

Under CCAA proceedings, all creditors, including secured creditors, are stayed from taking enforcement action against the debtor company.

Shareholders typically have very little or no influence over the wind-up of a debtor company under each of Canada's insolvency and restructuring regimes.

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

The rules applicable to contracts in insolvency differ depending on whether the company is being wound-up under the BIA or CCAA. In certain cases, existing contracts may be disclaimed by the debtor company (i.e., rejected) or they may be assigned to purchasers notwithstanding that the agreement contains a restriction on assignment. However, post-filing contracts, eligible financial contracts and collective agreements are not assignable. Counterparties to a contract with the debtor company may also be stayed from exercising what are commonly known as *ipso facto* clauses, which purport to terminate, amend or accelerate payment in the event that the counterparty to the contract becomes insolvent.

Termination or acceleration rights triggered by insolvency or bankruptcy are stayed in CCAA proceedings but may not be stayed in bankruptcy proceedings under the BIA where the company is being wound-up.

The disclaimer of contracts by a company is statutorily authorised under the CCAA with the consent of the Monitor, subject to the right of any party to the contract to move before the court for an order that the company should not be permitted to disclaim the contract. If the Monitor does not consent to the contract rejection, the company may move before the court on notice to all parties to the contract for an order permitting the rejection of the contract. It is important to note that certain types of categories of contracts may not be disclaimed: an eligible financial contract; a collective agreement; a financing agreement if the company is the borrower; and a lease of real property if the company is the lessor.

While a trustee does not have the statutory right to disclaim a contract made by the company, the common law has held that the trustee has a right to do so. With respect to intellectual property, while a licensor may reject a licence, the licensee continues to be entitled to use the intellectual property during the term of the licence agreement provided the licensee continues to perform its obligations under the licence agreement. As noted above, the CCAA explicitly states that the law of set-off applies in CCAA proceedings. While the law of set-off in the bankruptcy context is different from that under the CCAA, it continues to apply in BIA proceedings.

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

The BIA contains a statutory scheme that governs the ranking of claims. The rights of secured creditors will rank ahead of substantially all claims against the debtor company, except for certain "super-priority" claims. These super-priority claims include: (i) claims for unpaid payroll tax deductions (known as source deductions); (ii) claims made by suppliers for the return of goods supplied to the debtor company in the 30-day period priority to bankruptcy; and (iii) claims for up to $2,000 for unpaid salary, wages, commissions and benefits. Once super-priority claims and secured claims are satisfied, preferred claims are paid. Preferred claims include fees of the trustee and its legal counsel and claims for up to three months of arrears of rent and three months of future rent by landlords. Once preferred claims are paid, the claims of general unsecured creditors are paid *pari passu*. If the debtor company has funds remaining after all unsecured creditors are paid, equity holders and other subordinated claims may receive a distribution.

The CCAA does not contain a statutory scheme for distribution. However, the BIA scheme of liquidation and distribution supplies the backdrop for distribution if a CCAA reorganisation is ultimately unsuccessful and a company is liquidated under the CCAA. Under the CCAA, the court typically grants super-priority charges which rank ahead of secured creditors for certain claims. These super-priority charges often include: (i) fees for professionals such as the Monitor and its counsel, fees for counsel to the company and fees for other restructuring professional such as a chief restructuring officer (administrative charge); (ii) DIP financing (DIP financing charge); and (iii) amounts to pay post-filing suppliers to the company that are deemed critical suppliers (critical supplier charge).

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

A dissolved company that is insolvent or bankrupt may be revived. A revival, however, does not change the company's status under the BIA. When the company is revived, the rights, liabilities and obligations arising before and after the dissolution are restored to the revived company. The company is put in the same position as though it was never dissolved. The company benefits from, is bound to and is liable for, all acts taken while the corporation was dissolved. Also, any changes to the internal affairs of the company are deemed valid. Any legal actions dealing with the internal affairs of a revived corporation taken between the time of its dissolution and its revival are valid.

5 Tax

5.1 Does a restructuring or insolvency procedure give rise to tax liabilities?

Certain steps in a restructuring or insolvency procedure may give rise to tax liabilities. The primary tax consideration in a restructuring or insolvency proceeding is the potential application of the debt forgiveness rules contained in the *Income Tax Act*. In general terms, the debt forgiveness rules apply where debt of a company is forgiven or settled for payment of an amount that is less than the principal amount owing. The forgiveness causes a reduction in various tax accounts or tax attributes or, ultimately, an income inclusion. In addition, the sale of a company's assets may give rise to tax liabilities if the debtor company does not have sufficient tax losses to offset the gains made on the sale of the assets.

6 Employees

6.1 What is the effect of each restructuring or insolvency procedure on employees?

None of the three procedures discussed in this chapter have an automatic effect on the status of the employment of the debtor's employees. However, in the event that a BIA proposal is unsuccessful and a debtor is deemed bankrupt, the act of bankruptcy automatically terminates the employees of the debtor. The BIA and CCAA both prohibit the termination of collective bargaining agreements during a restructuring.

Notwithstanding that the employment relationship remains unaltered, in each process, certain amounts owing to employees may be compromised.

7 Cross-Border Issues

7.1 Can companies incorporated elsewhere restructure or enter into insolvency proceedings in your jurisdiction?

Companies incorporated in a foreign jurisdiction can restructure or enter into insolvency proceedings in Canada. In order to restructure or enter into insolvency proceedings under the CCAA, a debtor company must be incorporated in Canada or have assets or conduct business in Canada. Companies not incorporated in Canada, but seeking to restructure in Canada, will often have to establish that their centre of main interest (COMI) is situated within Canada. Three factors generally determine where a debtor company's COMI is situated: (i) the location of the company's headquarters or head office; (ii) the location of the company's management; and (iii) the location which a significant number of creditors' recognise as the company's COMI. Other secondary factors, which a Canadian court may review in determining COMI, include:

- the location where corporate decisions are made;
- the location of human resource functions;
- the existence of shared management within entities and in an organisation;
- the location where cash management and accounting functions are administered;
- the location of the debtor company's marketing and communication functions;
- whether the debtor company is managed on a consolidated basis;
- the extent of integration of the debtor company's international operations;
- the centre of the debtor company's corporate, banking, strategic and management functions;
- the location where pricing decisions and new business development initiatives are made; and
- the location of the debtor company's treasury management functions, including management of accounts receivable and accounts payable.

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

Foreign restructuring or insolvency proceedings may be recognised by courts under the BIA (in the case of a bankruptcy) or the CCAA

(in the case of a restructuring). To commence the process, a foreign representative must apply to the court for recognition of a foreign insolvency proceeding. If the applicant is successful in convincing the court that he or she is a "foreign representative" and that the application relates to a "foreign proceeding" as those terms are defined under the CCAA and the BIA, the court must make an order recognising the foreign proceeding.

If the court is satisfied that the applicant is a foreign representative and that the application relates to a foreign proceeding, the court must determine whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding". If the proceeding is characterised as a foreign main proceeding, the court will issue an order staying all proceedings against the debtor, restraining further proceedings in any action. By contrast, if the proceeding is classified as a non-main proceeding, a stay is not automatic. Rather, the court has the discretion to make any order necessary for the protection of the debtor's property or the interests of creditors.

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

Companies incorporated in Canada can enter into insolvency proceedings in other jurisdictions. However, this is rare given that Canada's insolvency regimes are advanced and Canadian insolvency practitioners and courts are recognised around the world.

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 a number of different approaches for seeking insolvency protection for a corporate group in Canada. A company or group of companies may file in a foreign jurisdiction and seek recognition of that foreign proceeding in Canada. Alternatively, a company or group of companies may file in the jurisdiction that is the group's COMI, with each debtor company filing in only one jurisdiction and then coordinating each separate filing either through recognition proceedings or some other mechanism. Finally, each member in a corporate group may make separate full filings in Canada and the foreign jurisdiction(s).

Coordinated filings are often implement in circumstances in which there is a corporate group consisting of entities that are related but not centrally managed or highly integrated.

Concurrent main filings involve full insolvency proceedings under the CCAA or BIA as well as a full filing in the foreign jurisdiction(s) by the same entity. This approach is administratively complex and has rarely been used since the UNCITRAL Model Law on Cross-Border Insolvency was adopted by Canada in 2009.

Courts and office holders (professionals administering the debtor company's insolvency) involved in multi-jurisdictional insolvency proceedings typically enter into communication or cooperation protocols to ensure that cross-border insolvency proceedings are managed in a harmonious and efficient manner.

9 Reform

9.1 Are there any proposals for reform of the corporate rescue and insolvency regime in your jurisdiction?

There are not currently any fundamental proposals of reform that have been tabled in respect of the restructuring regime in Canada.

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Thornton Grout Finnigan LLP ("TGF") is a Canadian boutique law firm with an office located in the financial district of Toronto, Ontario, practising exclusively in two areas: (i) insolvency and restructuring, and (ii) commercial litigation. As one of the first Canadian firms to recognise the value provided by a high-end boutique model, TGF was founded in a spirit of innovation with a view to providing a more focused and efficient vehicle for delivering legal services to sophisticated clients. TGF is a mix of senior restructuring and litigation lawyers with a full range of experience gained by years of practice, both inside and outside major full service law firms, combined with talented and energetic younger lawyers who thrive in the entrepreneurial environment of a boutique firm.