

CCAA and BIA Amendments to Come into Force November 1, 2019

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Bill C-97¹ including certain proposed amendments to the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA) received Royal Assent on June 21, 2019. On September 4, 2019, it was announced that these amendments together with the proposed changes to the treatment of intellectual property rights in insolvency proceedings passed by Bill C-86² will come into force on November 1, 2019.

The amendments will only apply in respect of proceedings commenced under the BIA or CCAA on or after November 1, 2019.

A summary of certain of the amendments is below.

Amendments to the CCAA

Updates on the Initial Application

The maximum length of the stay period on an initial application will be reduced from 30 days to 10 days. The relief ordered under an initial application will also be limited to relief that is reasonably necessary for the continued operations of the debtor in the ordinary course during the initial stay period. Similarly, DIP financing during the initial stay period will be limited to funding that is reasonably necessary for the continued operations of the debtor in the ordinary course during that period.

Disclosure of Any Interested Person's "Economic Interest"

The amendments also allow any interested person to apply to the Court for an order requiring disclosure of "any aspect of" another interested person's "economic interest" in respect of a debtor. The section defines "economic interest" broadly to include a) claims, eligible financial contracts, options, mortgages and other security interests; b) consideration paid for any rights in the interests noted above; and c) any other right or interest.

In making its determination on whether to order disclosure of financial information the Court must consider a) whether the monitor approved the proposed disclosure; b) whether the disclosure would improve the change of a compromise or arrangement; and c) whether material prejudice would result from the disclosure.

Amendments Affecting Both the CCAA and BIA

A New Duty of Good Faith

In the case of both the CCAA and the BIA, the amendments create a duty for any interested person in an insolvency proceeding to act in good faith. On application to the Court, an interested person failing to act in good faith could be subject to any order the Court considers appropriate. The standard for “good faith” is not defined in the amendment.

Reviewable Transactions and Broader ‘Look-Back’ Provisions

New provisions have been introduced into the BIA (and incorporated by reference into the CCAA), to broaden the reviewable transaction provisions to include circumstances where compensation was paid to a director, officer or manager of the debtor within a one-year period prior to the initial bankruptcy event.

If such compensation is paid, the Court may order the directors to be personally liable, subject to certain restrictions.

¹ Bill C-97, *Budget Implementation Act, 2019*, No. 1.

² Bill C-86, *A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures*.