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<p>CANADIAN COMMERCIAL REORGANIZATION Richard H. McLaren Release 2024-2, April 2024</p>
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This publication is designed to help practitioners manage or avoid bankruptcy by keeping up to date on legislative and judicial changes. Updated regularly, with the Companies’ Creditors Arrangement Act (CCAA) provisions and the parallel Bankruptcy and Insolvency Act (BIA) provisions for each stage of reorganization set out, this title helps practitioners understand both the BIA and the CCAA. Up-to-date information includes key decisions relevant to insolvency practice and substantial BIA and CCAA amendments now in force.

What’s New in this Update:

This release features updates to chapters 2 (Statutory Requirements for Eligibility to Reorganize), 3 (The Application Process), 4 (Creation of a Reorganization Plan), and 5 (Creditors’ Voting Procedures).

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Highlights:

Voting Procedures Under the Bankruptcy and Insolvency Act — Voting on Plans of Reorganization — Proof of Claim — Preferences or Settlements Disentitlement — The Ontario Court of Appeal considered whether a trustee in bankruptcy could recover funds paid to investors as part of a Ponzi scheme. After determining that payments made to certain investors were preference payments owing to the insolvent nature of a Ponzi scheme, the court sought to determine when the claim to recover the funds was discoverable. The court ultimately decided not to apply the corporate attribution doctrine on public policy grounds, resulting in a ruling that the claim was only discoverable upon the trustee in bankruptcy being appointed. Accordingly, the court held that the claim to recover the payments was not statute-barred and held in favour of the trustee in bankruptcy: *Golden Oakes Enterprises Inc. v. Scott*, 2022 ONCA 509, 2022 CarswellOnt 9234.

Comparison and Connection Between Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act — Generally — The Ontario Superior Court sought to determine whether it was just or convenient for the applicant corporation to appoint a receiver of property owned by the respondent. The court ultimately decided that the appointment of the receiver provided an effective means of realizing the applicant's mortgage security which it held with respect to the respondent. Additionally, the Ontario Court of Appeal subsequently had to determine whether the respondent had an appeal as of right under the BIA. Given that the proposed appeal did not raise an issue of general importance, the court refused to grant leave to appeal: *Kingsett Mortgage Corp. v. 30 Roe Investments Corp.*, 2022 ONSC 2777, 2022 CarswellOnt 6465.

Jurisdiction of Courts Under the Bankruptcy and Insolvency Act — Generally — The Ontario Court of Appeal considered whether to grant a motion for a stay of execution of prior judgements against the applicant while a leave application to the Supreme Court of Canada was pending. The court found that the moving party did not meet the burden of proving that they would suffer irreparable harm if the stay were not granted and that the balance of convenience did not favour the moving party because it did not offer any security for the judgement. The court consequently dismissed the motion and did not extend the stay of execution of the judgements: *Ernst & Young Inc. v. Aquino*, 2022 ONCA 472, 2022 CarswellOnt 8880.

ProView Developments

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