

## **The Impact of the *Capetown Convention Implementation Act* and Bill C-55 on the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act***

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On June 3, 2005, *An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts* (“**Bill C-55**”) was introduced in the House of Commons and was passed with two very minor amendments on November 21, 2005. Bill C-55 proposes both substantive and procedural amendments to the commercial and personal insolvency provisions of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and the *Companies' Creditors Arrangement Act* (the “**CCAA**”), and creates a program -- the Wage Earner Protection Program (the “**WEPP**”) -- to provide employees with up-front compensation for lost wages and vacation pay.

*An Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the “**Capetown Convention Implementation Act**”) received Royal Assent on February 24, 2005 and is intended to implement the *Convention on International Interests in Mobile Equipment* (the “**Capetown Convention**”) and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the “**Protocol**”). The Capetown Convention Implementation Act amended<sup>1</sup> the BIA and the CCAA to impose restrictions on the rights of a reorganizing debtor or bankruptcy trustee to use aircraft objects after the commencement of an insolvency proceeding.

The purpose of this brief paper is to outline, in no particular order, some of the most significant commercial insolvency-related amendments to the BIA and the CCAA that will result from Bill C-55 and to describe, in general terms, the changes that will be made to the BIA and the CCAA by the Capetown Convention Implementation Act. The paper should be read in conjunction with the blackline of the Bill C-55 and the Capetown Convention Implementation Act of the same name. A copy of this blackline (if not attached to this paper) can be obtained by contacting the author at [patrick.shea@gowlings.com](mailto:patrick.shea@gowlings.com) or (416) 369-7399.

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<sup>1</sup> The provisions of the Capetown Convention Implementation Act that amend the BIA and the CCAA were proclaimed in force on September 28, 2005.

### **A. Employee Remuneration**

Bill C-55 amends the BIA to create a charge in favour of employees for unpaid wages and vacation pay (but not severance or termination pay), up to a maximum of \$2,000, owing in respect of the six months prior to their employer becoming bankrupt or a receiver being appointed in respect of the employer. The employee remuneration charge will apply to all of the debtor's current assets. "Current assets" will be defined to mean unrestricted cash or any other asset that is expected to be converted to cash or consumed in the production of income within one year or the debtor's ordinary operating cycle, whichever is longer.

The employee remuneration charge will rank in priority to the claims of all creditors, but will be subject to the rights of unpaid suppliers and the statutory deemed trust claims that survive bankruptcy.

If a bankruptcy trustee or receiver realizes on any assets subject to the employee remuneration charge, the trustee or receiver will become personally liable for any employee claims that are secured by the charge up to the amount realized and will be subrogated to any rights that the employees might have to recover this claim. It is not clear whether bankruptcy trustees and receivers will be subrogated to an employee's right to recover under the WEPP, but the intention is likely that they will not.

While the WEPP will not compensate management or related party employees, or those employees that have been employed for less than three months, the BIA employee remuneration charge will secure wages and vacation pay owing to all of the debtor's employees. As a result, certain employees will have access to the employee remuneration charge to secure the payment of unpaid wages and vacation pay, but not the WEPP.

Bill C-55 will also amend the CCAA to require that plans provide for the immediate payment in full of employee claims that would have priority in a bankruptcy.

### **B. Undervalue Transactions**

Bill C-55 will repeal the provisions of the BIA dealing with settlements and reviewable transactions and replace them with a single provision dealing with "undervalue transactions". Undervalued transactions will be defined to mean transactions where the consideration received is conspicuously less than the fair market value of the assets or services transferred or disposed of in the transaction.

These new provisions will be similar in application to the current reviewable transaction provisions in that they allow the court to determine whether the debtor paid more or received less than fair market consideration in a transaction, and to award damages to compensate the estate for the difference between fair market consideration and what was actually received or paid.

In the case of an arms' length transaction, a remedy will be available where: (a) the transaction occurred up to one year prior to the initial bankruptcy event; (b) the debtor was insolvent at the time the transaction took place (or was rendered insolvent by the transaction); and (c) the debtor intended to defeat its creditors by entering into the transaction.

In the case of a non-arms' length transaction, a remedy will be available where: (a) the transaction occurred up to one year prior to the initial bankruptcy event regardless of the debtor's financial state or intention; or (b) the transaction occurred up to five years prior to the initial bankruptcy event where the debtor: (i) was insolvent at the time the transaction took place (or rendered insolvent by the transaction); or (ii) intended to defeat its creditors.

### **C. Disclaimer of Agreements**

Bill C-55 will amend the BIA and the CCAA to add specific provisions to each Act which will permit a debtor to disclaim agreements after the commencement of a reorganization other than: (a) eligible financial contracts; (b) collective agreements; (c) financing agreements where the debtor is the borrower; and (d) real and personal property leases where the debtor is the lessor. The amendments to the BIA will also prohibit the disclaimer of real property leases where the debtor is lessee, but that is because the BIA already contains specific provisions dealing with the disclaimer of real property leases where the debtor is lessee and these provisions of the BIA are not impacted by Bill C-55.

In response to a notice received from the reorganizing debtor, the other party to the agreement being disclaimed will be able to apply to the court for an order that the agreement cannot be disclaimed. The court may prohibit the debtor from disclaiming an agreement if it is satisfied that the disclaimer of the agreement together, with the other agreements the debtor is disclaiming, is not necessary to allow the debtor to reorganize. The concept is that the court will look at the "package" of agreements being disclaimed and determine if the disclaimer of all of these agreements is necessary for the reorganization to be successful.

In the case of an agreement pursuant to which the debtor provides the other party to the agreement with the use of intellectual property, the BIA and the CCAA will protect the ability of the other party to continue to use the intellectual property notwithstanding the disclaimer of the agreement by the debtor so long as the party continues to abide by its obligations in relation to the use of the intellectual property.

The other party to a disclaimed agreement will be able to file a proof of claim in the reorganization in respect of any damages resulting from the disclaimer.

The addition of the ability to disclaim agreements will represent an improvement to the BIA reorganization regime. The BIA does not currently permit a reorganizing debtor to disclaim any agreements other than real property leases.

#### **D. Assignment of Agreements**

Bill C-55 will amend the CCAA to permit the court, on the application of a reorganizing debtor, to order the assignment of agreements other than: (a) eligible financial contracts; (b) collective agreements; and (c) other agreements that are, by their nature, not assignable (personal service contracts for example).

The BIA will also be amended by Bill C-55 to add provisions that will permit a reorganizing debtor or a bankruptcy trustee to assign agreements. In addition to the exclusions contained in the CCAA provisions, the BIA provisions will exclude real property leases from the category of agreements that can be assigned. As a result, Provincial legislation such as the *Commercial Tenancies Act* (Ontario) will govern the right of a bankruptcy trustee or a debtor reorganizing under the BIA to assign real property leases

In deciding whether to order an assignment under the BIA or the CCAA, the court will be required to consider whether: (a) the proposed assignee will be able to perform the debtor's obligations under the agreement; and (b) it will be appropriate to assign the agreement to the proposed assignee. In the case of a debtor reorganizing under the BIA, the court will also be required to consider whether the debtor would be able to reorganize without the assignment.

Under both the BIA and the CCAA provisions, defaults under the agreement to be assigned will have to be cured. Under the BIA the court may not order an assignment of an agreement unless it is satisfied that there are no defaults under the agreement and, under the CCAA, it the court must be satisfied there are no financial defaults under the agreement. This distinction is likely a drafting error. In order for the new provisions to be practical, the debtor or trustee should be required to cure only financial defaults.

The new provisions may not be of much practical use in a bankruptcy. The ability of a bankruptcy trustee to assign an agreement will likely depend on the agreement not being terminated by the other party prior to the trustee effecting an assignment. The BIA does not currently prevent a party to an agreement with a bankrupt from terminating that agreement. Nor does the BIA deal with the enforceability of contractual bankruptcy or insolvency termination provisions in the context of a bankruptcy. Bill C-55 will amend the BIA to restrict the ability of a party to an agreement with an individual bankrupt from terminating or amending the agreement on the basis of bankruptcy or, in the case of leases or utilities, on the basis of the fact that amounts were owing as at the date of the bankruptcy. This provision will not, however, apply in respect of corporate bankrupts.

#### **E. Termination of Agreements under the CCAA**

Bill C-55 will amend the CCAA to restrict the ability of a party to an agreement – including a security agreement -- with a reorganizing debtor from terminating or amending the agreement on the basis of the CCAA filing or, in the case of leases or utilities, on the basis that amounts were owing as at the date of the debtor's initial application under the CCAA. The court will have the jurisdiction to declare that the new provisions do not apply where

the other party to the agreement can establish that the inability to terminate will likely cause “significant financial hardship”.

This is, for the most part, a codification of the current practice under the CCAA where the court commonly orders that parties to agreements with the reorganizing debtor may not terminate or amend those agreements. The new CCAA provisions will parallel existing provisions of the BIA.

#### **F. Interim Financing**

Bill C-55 will amend the BIA and the CCAA to provide for what will be known as “interim financing”.

The BIA and the CCAA will provide the court with specific jurisdiction to make orders granting security over a reorganizing debtor’s assets in favour of a lender who agrees to lend money to the reorganizing debtor. The court will have the jurisdiction to order that the security granted in connection with the interim financing ranks in priority to the claims of any existing secured creditor.

The amount that the debtor will be able to borrow will also be within the discretion of the court and the court will be able to impose terms on the interim financing.

In considering whether to authorize the interim financing and grant priority security to the interim lender, the court will be required to consider a number of factors including: (a) whether the loan will enhance the debtor’s prospects as a going concern; (b) the nature and value of the debtor’s assets; and (c) whether any creditor will be materially prejudiced as a result of the debtor’s continued operations.

The addition of specific provisions permitting a debtor reorganizing under the CCAA to obtain priority security to secure new financing represents, essentially, a codification of the existing practice of the courts in approving what is often referred to as “debtor-in-possession” or “DIP” financing. The amendments to the BIA will, however, represent a significant enhancement of the BIA reorganization regime.

#### **G. Pensions**

Bill C-55 will amend the BIA to create a charge over all of the assets of a debtor to secure: (a) any unremitted employee pension contributions; (b) any unpaid employer contributions in respect of defined contribution pension plans; and (c) any unpaid normal costs as required by the applicable pension legislation in respect of a defined benefit plan. This charge will not cover employer funding deficiencies under a defined benefit pension plan.

The pension contribution charge will rank in priority to the claims of all creditors, but will be subject to the rights of unpaid suppliers, statutory deemed trust claims that survive bankruptcy and the employee remuneration charge.

If a bankruptcy trustee or receiver realizes on any assets subject to the pension contribution charge, the trustee or receiver will become personally liable for the amounts secured by the charge up to the amount realized and will be subrogated to any rights that the pension plan might have to recover those amounts.

Bill C-55 will also amend the BIA and the CCAA to require that a proposal or plan provide for the payment in full of amounts subject to the pension contribution charge unless there is an agreement in place with respect to the payment of those amounts that has been approved by the appropriate pension regulator.

#### **H. Regulators and the CCAA Stay**

Bill C-55 will amend the CCAA to add provisions concerning the effect of the stay of proceedings on regulators. The new provisions will provide that the stay of proceedings will only prevent regulators from taking steps in their capacity as creditor and not in their capacity as regulators. The court will have the jurisdiction to stay regulators actions *qua* regulator, but only on an application brought by the debtor on notice to the regulator.

#### **I. Unpaid Suppliers**

Bill C-55 will amend section 81.1 of the BIA – the provision of the Act that deals with the rights of unpaid suppliers. Amended, section 81.1 will require that a supplier provide notice within 15 days after the date of bankruptcy or the appointment of a receiver to recover goods delivered within the 30 days prior to the filing.

Section 81.2 of the BIA – the provisions of the Act that deal with unpaid farmers, fishermen and aquaculturists etc. – will not be amended.

#### **J. Sale of Assets**

Bill C-55 will add provisions to the BIA and the CCAA to provide the court with the express jurisdiction to authorize the sale of assets by a reorganizing debtor free and clear of any security interests, charges or other restrictions.

Both the BIA and the CCAA will provide that once a reorganization has been commenced, the debtor may not sell any of its assets out of the ordinary course of its business without court authorization. The debtor will have to apply to the court to obtain authorization for any out of the ordinary course asset sales. Any application by a reorganizing debtor seeking authorization to sell assets will have to be made on notice to all secured creditors who are likely to be impacted by the transaction.

In considering whether to approve a sale, the court will be required to consider a number of factors including: (a) whether the process leading up to the proposed transaction was reasonable in the circumstances; (b) the effect of the transaction on stakeholders; (c) the views of the monitor or trustee concerning the proposed transaction; and (d) whether the

proposed transaction is fair and reasonable having regard to the value of the assets being sold. This, generally speaking, represents a codification of the existing case law with respect to asset sales by reorganizing debtors.

Where assets are to be sold to a party who is related to the reorganizing debtor, the court may only authorize the sale if: (a) good faith efforts were made to sell the assets to arms' length purchasers; and (b) the consideration to be received is superior to the consideration offered under all other offers.

Where the court authorizes a sale of assets, it will be able to order that the assets be sold free and clear of any interests that creditors might have in the assets being sold provided that it also orders that the proceeds received by the debtor are subject to those interests.

Bill C-55 will also amend the BIA to restrict the ability of a bankruptcy trustee to sell assets to a person who is related to the bankrupt. Any sale of assets to a person related to the bankrupt will have to be approved by the court. In determining whether to approve such a sale, the court must consider a number of factors including: (a) whether the process leading up to the proposed sale was reasonable; (b) the effect of the proposed transaction on creditors and other interested parties; (c) whether the consideration to be received is reasonable and fair taking into account the market value of the assets; (d) whether good faith efforts were made to sell the assets to an unrelated person; and (e) whether the consideration to be received in the proposed transaction is superior to the consideration offered under all other offers.

#### **K. Interim Receivers**

Bill C-55 will amend the provisions of the BIA respecting the appointment of interim receivers to restrict the term of the interim receiver's appointment. The appointment of an interim receiver in the context of enforcement by a secured creditor or a reorganization by the debtor will not be allowed to continue after the occurrence of an event such as the bankruptcy of the debtor or the appointment of a receiver. In addition, the broad jurisdiction of the court to authorize an interim receiver to "take such other actions as the court considers advisable" will be removed.

These amendments are intended to address the perception that the role of interim receivers was being improperly expanded to allow interim receivers to perform the functions of receivers appointed under Provincial legislation such as the *Courts of Justice Act* (Ontario). It is not clear that the proposed amendments would, in and of themselves, curtail this expansion. However, the amendment to subsection 243(1) to allow the court to appoint a receiver on the application of a secured creditor (see below) will likely render the issue largely academic because secured creditors will have the ability to seek the appointment of a "federal" receiver under the BIA with jurisdiction across Canada without having to resort to the appointment of interim receivers.

#### **L. Section 243 Receivers**

Bill C-55 will amend the BIA to provide the court with the jurisdiction to appoint a “federal” receiver on the application of a secured creditor.

Bill C-55 will also amend other provisions of the BIA to provide the section 243 receiver with certain of the same protection that is provided to trustees and interim receivers in connection with liability for pre-appointment liabilities and environmental matters. The court will also have the jurisdiction to authorize a 243 receiver to grant security over the debtor’s property in priority to the claims of creditors.

243 receivers will not be protected by the automatic stay of proceedings under section 215 of the BIA. The stay of proceedings under section 215 applies only to trustees and interim receivers and will not be amended to include section 243 receivers. In the context of a section 243 receivership, the stay of proceedings that protects the receiver will be imposed by court order.

The expansion of the role played by interim receivers in the insolvency process to include functions typically performed by receivers appointed under Provincial legislation such as the *Courts of Justice Act* (Ontario) was, to a large extent, driven by the utility of having an administrator appointed pursuant to Federal legislation with authority to act in respect of assets located across the country. The creation of a “federal” receiver under section 243 will satisfy this need and likely reduce the use of interim receivers to perform functions typically performed by receivers appointed under Provincial legislation.

#### **M. Private Receivers**

Bill C-55 will amend the BIA to provide privately appointed receivers with the same protection as is provided to trustees and interim receivers in connection with liability for pre-appointment liabilities and environmental matters. This protection will also apply to a secured creditor who lawfully takes possession of the debtor’s property.

The court will also have the jurisdiction to authorize a privately appointed receiver to grant security over the debtor’s property in priority to the claims of creditors to secure advances made to the private receiver.

#### **N. Corporate Governance**

Bill C-55 will amend the BIA and the CCAA to provide the court with the jurisdiction to remove and replace the directors of a reorganizing debtor.

Where the court finds that a director is unreasonably impairing, or is likely to unreasonably impair, the possibility of a viable reorganization it will be able to make an order removing that director and, should the court wish to do so, replacing him or her with a new director.

Bill C-55 will also provide the court with the jurisdiction to make an order creating a charge in favour of a reorganizing debtor's directors and officers for the purpose of protecting the directors and officers from any liabilities that may be incurred after the commencement of the reorganization. The court is required to exclude from the protection provided by the charge any obligation or liability incurred as a result of the gross negligence or wilful misconduct of a director or officer.

#### **O. Critical Suppliers**

Bill C-55 will amend the CCAA to provide the court with the jurisdiction to declare a supplier to be "critical" on the application of a reorganizing debtor. Where a supplier is declared critical, the court may order that the supplier supply goods and services to the reorganizing debtor. The court will have the jurisdiction to order that the supplier provide goods or services on terms that are consistent with the existing supply relationship or that the court considers appropriate.

If the court orders a critical supplier to supply goods or services to the debtor, it will also be required to provide the supplier with security over the debtor's assets to secure payment for the goods or services to be supplied to the debtor. The relative priority of this charge is not specified.

From the perspective of suppliers declared to be critical, the key issue that will likely arise is whether the security granted to them will be able to provide adequate assurance they will be paid for any goods or services supplied to the reorganizing debtor.

This amendment will represent a significant change to the present law in that it may oblige suppliers to provide goods or services on credit. The CCAA currently prohibits the court from ordering that a supplier provides goods or services to a reorganizing debtor on credit. It is also probably the case that the court does not currently have the jurisdiction to change the terms of an agreement between the debtor and a supplier.

#### **P. Collective Agreements**

Bill C-55 will amend both the BIA and the CCAA to deal with how collective agreements may be amended. As amended, the BIA and the CCAA will provide that a collective agreement may not be amended except in accordance with the terms of the BIA or the CCAA, or the laws of the jurisdiction governing the collective agreement.

The BIA and the CCAA will provide a procedure for a reorganizing debtor to reopen negotiations in respect of a collective agreement, but will not provide for the unilateral amendment of the collective agreement. If a reorganizing debtor requires that a collective agreement be amended as part of its reorganization and cannot reach an agreement with a bargaining agent, the debtor will be able to make a motion to the court seeking an order authorizing the debtor to serve a notice to bargain under the applicable labour relations laws. The court will have the jurisdiction to make an order authorizing the debtor to serve a notice to bargain where it is satisfied that: (a) a viable reorganization cannot be made given the terms of the current collective agreement; (b) the debtor has made good faith efforts to

renegotiate the terms of the collective agreement; and (c) the failure to make the order is likely to cause irreparable harm to the debtor.

Bill C-55 will make consequential amendments to the *Canada Labour Code* that contemplate the making of an order authorizing a reorganizing debtor to issue a notice to bargain. The proper implementation of the BIA and CCAA provisions respecting collective agreements will, however, require that amendments be made to Provincial labour relations legislation.

#### **Q. Professionals' Charge**

The BIA and the CCAA will be amended by Bill C-55 to provide the court with specific jurisdiction to make an order granting charges over a reorganizing debtor's assets to secure the payment of the fees and disbursements of a trustee, monitor or interim receiver and advisors retained by the trustee, monitor, or interim receiver and the fees and disbursements of the advisors retained by the reorganizing debtor.

The addition of these provisions to the CCAA is a codification of the existing practice. Orders securing the fees and disbursements of the monitor and advisors retained by the monitor, and the fees and disbursements of the advisors retained by the reorganizing debtor are common in CCAA reorganizations.

The addition of these provisions to the BIA is, however, new and, when combined with the other amendments to the BIA effected by Bill C-55, will significantly enhance the proposal provisions of the BIA.

The BIA and the CCAA will also be amended to provide the court with the jurisdiction to make an order granting a charge over the debtor's assets in favour of "interested parties" to secure the payment of advisors where the court is satisfied that the advisors are necessary for the interested party to effectively participate in the CCAA proceedings. This amendment will potentially enhance the ability of stakeholders to participate in the reorganization process and may open the door for American-style creditor committees.

#### **R. Cross-Border Insolvency**

Bill C-55 will repeal the current cross-border insolvency provisions of the BIA and the CCAA. They will be replaced by a modified version of the UNCITRAL Model Law on Cross-Border Insolvency. These new provisions will provide a complete code for the recognition of foreign insolvency proceedings.

#### **S. Business Trusts**

Bill C-55 will amend the definition of "person" to clarify that the BIA applies to trusts that have assets in Canada and the units of which trade on a prescribed stock exchange – to be defined as "income trusts". This probably represents a clarification of the BIA rather than an amendment. The definition of "person" is already inclusive and the British Columbia

Supreme Court has permitted a business trust to file a notice of intention to make a proposal on the basis of the current definition of “person”.

Bill C-55 will also amend the CCAA to provide that it applies to trusts that have assets in Canada and the units of which trade on a prescribed stock exchange. This represents a significant expansion of the CCAA. The CCAA currently applies only to corporations.

These amendments will address the pervasive use of business trusts and ensure that there are procedures available to deal with financially troubled, publicly traded business trusts.

#### **T. Equity Claims**

Bill C-55 will amend the BIA and the CCAA to effectively subordinate claims based on a rescission of the purchase of the reorganizing debtor’s or bankrupt’s shares or damages arising from the purchase of reorganizing debtor’s or bankrupt’s shares.

#### **U. The Monitor**

Bill C-55 will amend the CCAA to require that the monitor be a licensed bankruptcy trustee and to prohibit any trustee with prior relationships with the debtor within the prior two years from being appointed as monitor without court approval. Creditors will also have the express right to apply to the court to seek an order replacing the monitor chosen by the reorganizing debtor.

Bill C-55 will also amend the CCAA to clarify (and expand) the role that the monitor is to play in a CCAA reorganization. The monitor will, for example, be required to: (a) review the debtor’s cash flow to determine if it is reasonable and provide a report to the court on its findings; (b) prepare a list of creditors and make that list publicly available; (c) make all court documents filed with the court in the CCAA proceedings publicly available; and (d) conduct investigations and appraisals to determine (with reasonable accuracy) the state of the reorganizing debtor’s business and financial affairs, and the cause of its financial difficulties.

#### **V. Claims under the CCAA**

Bill C-55 will amend the CCAA to clarify what claims are provable in a CCAA reorganization and how creditors are to be classified for the purposes of voting on plans filed under the CCAA. These amendments will include provisions that restrict the ability of a reorganizing debtor to compromise claims of a type that could not be discharged in a bankruptcy and a codification of the “commonality of interest” test for classifying creditors.

Bill C-55 will also provide the court with the express jurisdiction to make an order fixing the date by which creditors must file claims against the reorganizing debtor. This represents a codification of the existing practice under the CCAA of establishing a bar date for claims against the reorganizing debtor.

**W. Obligations owing to the Crown in CCAA Reorganizations**

Bill C-55 will amend the CCAA to require that reorganization plan provide for the payment in full of certain Crown claims within six months after the court sanctions the plan. This new provisions is identical to existing provision of the BIA.

**X. Capetown Convention Implementation Act**

The purpose of the Capetown Convention is to facilitate and encourage asset-based lending. The Convention establishes a legal regime for the creation, enforcement, perfection and priority of “international interests” -- security interests or lease interests with defined rights - - in three categories of high-value uniquely-identifiable mobile equipment: (a) aircraft objects; (b) rolling stock; and (c) space property. Priority between international interests will be established when the holder of the interest files notice of its interest in an international registry. The Protocol implements the Capetown Convention with respect to aircraft objects -- airframes, aircraft engines and helicopters above a minimum size or power threshold.

The Capetown Convention Implementation Act amended the BIA and the CCAA to give persons who finance or lease aircraft objects the ability to exercise their remedies in an insolvency proceeding unless the debtor or bankruptcy trustee: (a) maintains the aircraft object in accordance with the applicable agreement; and (b), within 60 days of the commencement of the insolvency proceeding, cures all defaults under the applicable agreement (except insolvency defaults) and ensures that no new defaults occur (except insolvency defaults). This has the effect of significantly enhancing the treatment of persons who finance or lease aircraft objects in insolvency proceedings under the BIA and the CCAA when compared to persons who finance or lease other types of equipment.

There are, however, a number of technical deficiencies with the amendments to the BIA and the CCAA effected by the Capetown Convention Implementation Act. Bill C-55 will make further amendments to the BIA and the CCAA to address these technical deficiencies.

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