Doane Grant Thornton

Frequently Asked Questions: CCAA Proceedings

Summarized below are a list of frequently asked questions and answers related to proceedings under the Companies' Creditor Arrangement Act ("CCAA"). The answers are based on a general set of circumstances and are *for illustrative purposes only*. **If you are in any doubt as to the action you should take, you should consult with your own professional advisors.**

Q: Is a company that has filed for protection from its creditors under the CCAA in receivership or bankruptcy?

A: In short- no. A company (also referred to as the "Debtor") that has filed under the CCAA for protection from its creditors is not in receivership or bankruptcy. Rather, it has filed under the CCAA to devise a plan of restructuring and compromise for its creditors that avoids the company going into receivership or bankruptcy, with a view to continuing operations, increasing the amount that may ultimately be paid to creditors and preserving the Debtor's employees' jobs.

Q: What governs what the Debtor can do while it is operating under the provisions of the CCAA?

A: The appointing Court Order and any subsequent Court Orders set out the conditions that the Debtor can continue operating under. These Court Orders generally also set restrictions on creditor actions.

Q: When do creditors get paid for pre-filing amounts owing?

A: Pursuant to most CCAA Orders, generally all payments to creditors owed at or before the CCAA filing are stayed, pending the creditors' vote on the Debtor's proposed plan of arrangement and compromise (the "Plan") or a further Order of the Court. If a Plan is created by the Company and then approved by the creditors and the Court, creditors will be paid in accordance with the payment provisions of the Plan. If the Plan is not approved by either the creditors or the Court, usually the stay is lifted and creditors can take action based on their pre-existing rights.

Q: As a supplier, can I repossess my goods/inventory after a customer has filed for protection under CCAA, pursuant to Section 81.1 of the Bankruptcy and Insolvency Act?

A: No- Courts across the Country have confirmed that creditors are unable to repossess their goods/inventory from a Debtor while it is operating under the provisions of the CCAA.

Q: Post CCAA filing, do I have to supply credit to the Debtor?

A: No, however, the provision of credit may assist the Debtor with its restructuring activities. Most CCAA Orders provide that the Debtor will carry on business in the normal course and pay for post-CCAA goods and services on normal credit terms.

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While suppliers don't have to provide credit, most CCAA Orders confirm that all persons having oral or written agreements with the Debtor for the supply of goods and/or services are restrained until further Order of the Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Company, just because of the CCAA Proceedings.

Q: Do all CCAA Proceedings result in a Plan of Arrangement?

A: Not all CCAA's will result in the Debtor submitting a Plan to its creditors to vote on. The goal of the CCAA is to restructure the Company's financial affairs and allow it to exit as a going concern, avoiding the economic fallout of a liquidation. This may result in a sales process for the company or its assets, and then a distribution of sales proceeds by the Court to creditors in the order of legal priority. If a Plan is created, creditors will receive a copy of the Plan from the Monitor once it has been drafted and you will have the opportunity to vote on it at a creditors' meeting. The Monitor will inform you of the date and location of the meeting when you receive the Plan.

Q: Who is the Monitor?

A: The Monitor is usually an independent firm of accountants appointed by the Court. These accountants include insolvency specialists.

Q: What is the role of the Monitor?

A: The Monitor's role is detailed in the appointing Court Order and may be modified in subsequent Court Orders. Generally, the Monitor's role is to monitor the operations of the Debtor to ensure they are operating in compliance with the Court Orders and to report to the Court as and when required, and help the Debtor in creating a restructuring plan. The Monitor is also responsible for distributing and reviewing creditors' Proofs of Claims, forming an independent opinion on the provisions of the Plan and on the alternatives for the creditors (in the event the Plan is not approved by either the creditors or the Court) and chairing the meeting of creditors.

However, as the Monitor is not managing or running the Debtor's operations, it is unable to provide any assurance as to whether the debtor has sufficient funds to meet all its post-filing debts.

Q: How do I ensure I will receive a copy of the Plan, if submitted, and participate in the vote?

A: Should the Debtor propose a Plan, all creditors will be sent a Proof of Claim by the Monitor, which you must complete and return to the Monitor by the due date. Creditors who fail to file a Proof of Claim by the due date are not entitled to make any claim against the Debtor and are not entitled to attend or vote at any of the meetings of creditors or to receive any distribution under the Plan.

To ensure you will receive a Proof of Claim, you should ensure the Debtor has your correct mailing address and contact person to whom the Proof of Claim should be directed to. All information, including updates on the CCAA proceedings and reports to the Court, will be available on the Monitor's website.

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Q: When Completing the Proof of Claim, am I a secured creditor?

A: Generally, unless you hold a specific charge over an asset, which charge has been registered (e.g. a mortgage), or have a special right pursuant to one of the provincial or federal lien acts, you are an unsecured creditor. If you consider yourself to be a secured creditor, you will be required to provide sufficient information on your Proof of Claim to enable the Monitor to confirm your understanding.