

National Insolvency Review

General Editor: Justin R. Fogarty, B.A., LL.B., LL.M

VOLUME 26, NUMBER 3

Cited as (2009), Nat. Insol. Review

JUNE 2009

• CANADA ANNOUNCES IMPORTANT AMENDMENTS TO FINANCIAL INSTITUTION STATUTES •

Blair Keefe and Sunny Sodhi
Torys LLP

On February 6, 2009, the Canadian federal government tabled the *Budget Implementation Act, 2009* (“Bill C-10”) to enact a number of important amendments to several financial institution statutes¹ and other related statutes to implement the measures announced in the budget tabled on January 27, 2009. We outline certain particularly noteworthy amendments below.

FINANCIAL ADMINISTRATION ACT

Bill C-10 amends the *Financial Administration Act* (“FAA”)² to provide authority to the Minister of Finance, with the Cabinet’s approval, to enter into any contract that the Minister determines is necessary to promote the stability or maintain the efficiency of the Canadian financial system. This includes the authority to enter into contracts to purchase shares³ or other securities of, provide loans or loan guarantees to, or provide credit insurance on the

financial assets of any entity that is operating in Canada. The entity does not need to be incorporated under Canadian laws.

CANADA DEPOSIT INSURANCE CORPORATION ACT

Bill C-10 amends the *Canada Deposit Insurance Corporation Act*⁴ to provide the Cabinet with the authority to exempt Canada Deposit Insurance Corporation (“CDIC”) from the requirement that it pursue its objects in a manner that will minimize its exposure to loss in order to avoid a situation that may otherwise have an adverse effect on the stability of the financial system in Canada or public confidence in that stability. This is significant in that, ultimately, the expenses of CDIC will be borne by deposit-taking institutions, rather than the Consolidated Revenue Fund, administered pursuant to the *FAA*.

Bill C-10 also exempts CDIC from the ownership regimes applicable to banks and trust companies in the event that CDIC acquires shares in those institutions, including the prohibition on the issue of shares to agents of the Government of Canada. The Minister will also have the ability to issue a written direction to CDIC if the Minister believes that there might be an adverse effect on the stability of the financial system in Canada or public confidence in that stability. In addition, where CDIC has been appointed receiver of an institution, the Minister, by order, may direct the incorporation of a “bridge institution” (which may be either a bank or a trust or loan company). In that order, the Cabinet may exempt the particular financial institution or the bridge institution (or either of their subsidiaries) from any of the requirements of the financial institution statutes and a variety of other related statutes. The bridge institution will be a further resolution tool to help preserve critical functions and help maintain financial stability in the event that a CDIC member is no longer viable. It is expected that CDIC will own the bridge institution for only two years, but the Cabinet may grant up to three one-year extensions. The borrowing capacity of CDIC will also be increased to \$15 billion and future increases will be based on a formula related to the growth in deposits.

It is interesting that there is no corresponding provision in Bill C-10 for creating a bridge institution that is a life insurance company — presumably because Assuris incorporated a life insurance company for this purpose in the early 1990s after the failure of The Sovereign Life Insurance Company.

FINANCIAL INSTITUTION STATUTES

Bill C-10 amends the *Bank Act*, *Insurance Companies Act* and the other financial institution statutes to provide authority for Cabinet to override the prohibition on financial institutions issuing shares to the federal government (or its agents) if that is necessary to promote the stability of the financial system in Canada. In the event that such shares are acquired, the Minister may, by order, impose any terms and conditions that the Minister considers appropriate regarding the appointment, removal and remuneration of the financial institution’s senior officers and directors, the payment of dividends and the institu-

tion’s lending policies and practices. After two years (or earlier, at the Minister’s discretion), if the Minister determines that the holding of such shares is no longer necessary to continue to promote the stability of the financial system in Canada, the Minister is required to take the measures considered practicable in the circumstances to sell or otherwise dispose of the shares. For the purposes of this provision only, the meaning of “shares” has been expanded to include any conversion or exchange privilege, option or right to acquire shares.

The financial institution statutes will be amended to prohibit a financial institution from charging a borrower more than the “actual cost” to the financial institution of mortgage insurance, and provides regulation-making authority for determining the actual cost of that insurance and enhanced disclosure regarding mortgage insurance generally. Such provisions will become “consumer provisions” subject to the *Financial Consumer Agency of Canada Act*. No statutory amendments have been proposed for enhanced disclosure requirements for credit cards, presumably on the basis that those changes can be made in regulations under existing provisions. Bill C-10 provides a broad authority for the Cabinet to make regulations regarding what the financial institution may or may not do in carrying out any activities in which it is permitted to engage, or in providing any of the services that it may provide, and the time, place and manner in which any of those activities may be carried out or any of those services are to be provided.

CANADIAN SECURITIES REGULATION REGIME TRANSITION OFFICE ACT

Bill C-10 also establishes a transition office for the creation of a Canadian securities regulatory regime and an advisory committee of participating provinces and territories, and for payments to be made to, and agreements to be entered into with, the provinces and territories with regard to securities regulation.

[*Editors’ note:* Reproduced with permission from Torys LLP, © 2009 by Torys LLP, All rights reserved.

Blair Keefe, a partner at Torys LLP, is head of the firm’s Financial Institutions Group. He is repeatedly recognized as a leading banking and financial insti-

tutions lawyer in Canada. His practice focuses on corporate and regulatory issues relating to financial institutions, including mergers and acquisitions and corporate finance.

Sunny Sodhi, an associate at Torys LLP, practises in the firm's Corporate and Capital Markets Practice and is a member of the firm's Financial Institutions Practice. His practice encompasses a broad range of corporate and commercial law, including mergers and acquisitions for both public and private companies, corporate finance, corporate governance and restructurings.]

¹ These statutes include the *Bank Act*, S.C. 1991, c. 46; *Insurance Companies Act*, S.C. 1991, c. 47; *Trust and*

Loan Companies Act, S.C. 1991, c. 45; *Cooperative Credit Associations Act*, S.C. 1991, c. 48; and the *Financial Consumer Agency of Canada Act*, S.C. 2001, c. 9. This article does not discuss amendments to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.); *Competition Act*, R.S.C. 1985, c. C-34; *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.); or other statutes provided for in Bill C-10 that may also affect federal financial institutions.

² R.S.C. 1985, c. F-11.

³ This authority does not extend to purchasing shares in a federal financial institution in respect of which the purchase of shares is specifically dealt with in a particular financial institution statute, as discussed later in this article.

⁴ R.S.C. 1985, c. C-3.