

## PART XIII INTERNATIONAL INSOLVENCIES

### INTERPRETATION

#### Definitions

**267.** In this Part,

"debtor"  
« *débiteur* »

"debtor" means an insolvent person who has property in Canada, a bankrupt who has property in Canada or a person who has the status of a bankrupt under foreign law in a foreign proceeding and has property in Canada;

"foreign proceeding"  
« *procédures intentées à l'étranger* »

"foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor, under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally;

"foreign representative"  
« *représentant étranger* »

"foreign representative" means a person, other than a debtor, holding office under the law of a jurisdiction outside Canada who, irrespective of the person's designation, is assigned, under the laws of the jurisdiction outside Canada, functions in connection with a foreign proceeding that are similar to those performed by a trustee, liquidator, administrator or receiver appointed by the court.

1997, c. 12, s. 118.

### GENERAL

#### Presumption of insolvency

**268.** (1) For the purposes of this Part, where a bankruptcy, insolvency or reorganization or like order has been made in respect of a debtor in a foreign proceeding, a certified or exemplified copy of the order is, in the absence of evidence to the contrary, proof that the debtor is insolvent and proof of the appointment of the foreign representative made by the order.

#### Limitation on trustee's authority

(2) If a foreign proceeding has been commenced and a bankruptcy order or assignment is made under this Act in respect of a debtor, the court may, on application and on any terms that it considers appropriate, limit the property to which the authority of the trustee extends to the property of the debtor situated in Canada and to any property of the debtor outside Canada that the court considers can be effectively administered by the trustee.

#### Powers of court

(3) The court may, in respect of a debtor, make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of proceedings under this Act with any foreign proceeding.

#### Terms and conditions of orders

(4) An order of the court under this Part may be made on such terms and conditions as the court considers appropriate in the circumstances.

#### Court not prevented from applying certain rules

(5) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying such legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives as are not inconsistent with the provisions of this Act.

#### Court not compelled to give effect to certain orders

(6) Nothing in this Part requires the court to make any order that is not in compliance with the laws of Canada or to enforce any order made by a foreign court.

1997, c. 12, s. 118; 2004, c. 25, s. 102.

#### Foreign stays

**269.** A stay of proceedings that operates against creditors of a debtor in a foreign proceeding does not apply in respect of creditors who reside or carry on business in Canada with respect to property in Canada unless the stay of proceedings is the result of proceedings taken in Canada.

1997, c. 12, s. 118.

#### Commencement or continuation of proceedings

**270.** A foreign representative may commence and continue proceedings pursuant to sections 43 and 46 to 47.2 and subsections 50(1) and 50.4(1) in respect of a debtor as if the foreign representative were a creditor, trustee, liquidator or receiver of property of the debtor, or the debtor, as the case may be.

1997, c. 12, s. 118.

#### Court may seek assistance from foreign tribunal

**271.** (1) The court may seek the aid and assistance of a court, tribunal or other authority in a foreign proceeding by order or written request or otherwise as the court considers appropriate.

#### Applications for stays

(2) On application by a foreign representative in respect of a foreign proceeding commenced for the purpose of effecting a composition, an extension of time or a scheme of arrangement in respect of a debtor or in respect of the bankruptcy of a debtor, the court may grant a stay of proceedings against the debtor or the debtor's property in Canada on such terms and for such period as is consistent with the relief provided for under sections 69 to 69.5 in respect of a debtor in Canada who files a notice of intention or a proposal or who becomes bankrupt in Canada, as the case may be.

#### Powers of court

(3) On application by a foreign representative in respect of a debtor, the court may, where it is satisfied that it is necessary for the protection of the debtor's estate or the interests of a creditor or creditors,

(a) appoint a trustee as interim receiver of all or any part of the debtor's property in Canada, for such term as the court considers appropriate; and

(b) direct the interim receiver to do all or any of the following:

(i) take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value,

(ii) take possession of all or part of the debtor's property mentioned in the appointment and exercise such control over the property and over the debtor's business as the court considers appropriate, and

(iii) take such other action as the court considers appropriate.

#### Application of fees and expenses provision

(4) Section 47.2 applies, with such modifications as the circumstances require, in respect of an interim receiver appointed under subsection (3).

#### Examination may be authorized

(5) On application of a foreign representative in respect of a debtor, the court may authorize the examination under oath by the foreign representative of the debtor or of any person in relation to the debtor who, if the debtor were a bankrupt referred to in subsection 163(1), would be a person who could be examined under that subsection.

1997, c. 12, s. 118.

### Foreign representative status

**272.** An application to the court by a foreign representative under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other order of the court.

1997, c. 12, s. 118.

### Foreign proceeding appeal

**273.** A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application where such proceedings have been taken, grant relief as if the proceedings had not been taken.

1997, c. 12, s. 118.

### Credit for recovery in other jurisdictions

**274.** If any bankruptcy order, proposal or assignment is made in respect of a debtor under this Act,

(a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the debtor, and

(b) the value of any property of the debtor that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires outside Canada by way of a transfer that, if it were subject to this Act, would be set aside or reviewed under sections 91 to 101.2,

shall be taken into account in the distribution of dividends to creditors of the debtor in Canada as if they were a part of that distribution, and the creditor is not entitled to receive a dividend from the distribution in Canada until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend, the amount of which is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (a) and the value referred to in paragraph (b) is of that creditor's claim.

1997, c. 12, s. 118; 2004, c. 25, s. 103.

### Claims in foreign currency

**275.** A claim for a debt that is payable in a currency other than Canadian currency shall be converted to Canadian currency

(a) in the case of a proposal in respect of an insolvent person and unless otherwise provided in the proposal, where a notice of intention was filed under subsection 50.4(1), as of the day the notice was filed or, if no notice was filed, as of the day the proposal was filed with the official receiver under subsection 62(1);

(b) in the case of a proposal in respect of a bankrupt and unless otherwise provided in the proposal, as of the date of the bankruptcy; or

(c) in the case of a bankruptcy, as of the date of the bankruptcy.

1997, c. 12, s. 118.