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CANADIAN BANKERS ASSOCIATION

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July 17, 2014

DELIVERED BY EMAIL

Mr. Paul Halucha
Director-General, Marketplace Framework Policy Branch
Industry Canada
235 Queen Street, 10th Floor, East Tower
Ottawa, Ontario K1A 0H5
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Dear Mr. Halucha:

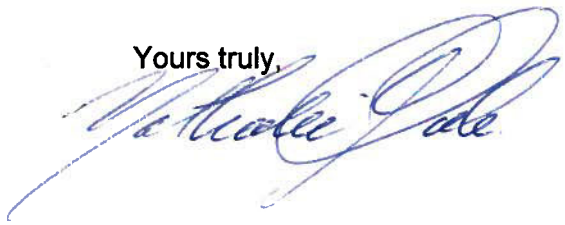
Re: Statutory Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act

The Canadian Bankers Association works on behalf of 60 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 280,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The Association also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness.

The banking industry is pleased to have the opportunity to provide you with our comments on the Statutory Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act. We have a number of specific comments on the proposals set out in the Consultation Paper, and these are tabulated in the attached chart.

We wish to thank you for the opportunity to comment on the Statutory Review and we look forward to hearing from you about next steps in this matter. In the meantime, please contact me if you have any questions.

Yours truly,



Enc.

BANKRUPTCY AND INSOLVENCY ACT AND THE COMPANIES' CREDITORS ARRANGEMENT ACT

A) CONSUMER ISSUES

ISSUES	SUMMARY	CBA COMMENTS
1. Protection of Consumer Interest		
▪ **Consumer Deposits**	Stakeholders are invited to make submissions regarding whether, and how, Canada could enhance protection for consumer deposits either through consumer liens or, alternatively, through other mechanisms within the insolvency regime.	Imposing a consumer lien is not efficient and may limit the availability of operating credit. The existence of a super-priority impairs the ability of creditors to accurately ascertain the financial position of a borrower at the time of lending. In addition, allowing this super-priority would increase the monitoring costs of the financial institutions, create and increase the potential for inaccurate reporting and ultimately limit the availability of credit for all borrowers that take consumer deposits, as creditors will have to adopt stricter lending practices and increase borrowing costs. Moreover, we believe that this will also impact unsecured creditors who may not have the ability to track the amount of consumer deposits being held by the retail business client. Super priorities may also increase the cost and complexity of administering loans and insolvencies. There has been no apparent push for reform, nor any requests for a federal solution that would provide nationwide protection. Finally, and as indicated during the discussions at several of the roundtables held by the government, this is not an issue that should be addressed through amendments to the BIA.
▪ **Responsible Lending**	Stakeholders are invited to make submissions regarding whether, and how, the BIA could take into account creditors' conduct that has contributed to the financial difficulties or insolvency of a debtor.	The current provisions in the BIA are adequate. There is no evidence to support that there is a need for, or that, any improvements would result from amendments that impose more responsibility on lenders for restraining consumer borrowing. In fact, experience in other jurisdictions shows that restrictions of this nature lead to fewer products, less innovation, and increased consumer complaints that may be frivolous and have no merit, the costs of which will burden the system. We believe that the existing consumer protection provisions currently available to consumers, such as the Cost of Borrowing Regulations under the *Bank Act*, provide adequate protection. The consumer credit market should operate freely. It is important to remember that consumer bankruptcies (i.e. individual bankruptcies rather than corporate bankruptcies) are not caused by an overextension of credit. Research has shown that consumer insolvencies are caused by unexpected life events such as loss of employment, reduced income, marital breakdown and illness or accident. For the most part, prior to this unexpected decrease in income or increase in expenses, the debt was manageable. Any changes proposed to the BIA should be considered with this in mind. In any event, credit is not offered at random, and it is important to distinguish between a marketing offer of credit and the actual granting of credit. The fact that an institution may do a

ISSUES	SUMMARY	CBA COMMENTS
		mass solicitation for credit cards does not mean that every person receiving such material will be approved for credit. Banks extend credit only to qualified borrowers, who they believe can and will repay the loan. They look carefully at the borrower's debt service ratio and the percentage of the borrower's gross income used to make total monthly payments. Banks have policies on the appropriate ratios for successful repayment. They use tools such as personal interviews with trained credit officers, credit scoring models based on the bank's past experience with customers with similar characteristics, references from credit reporting agencies on current debt obligations, and the individual's past payment practices to fully assess the borrower's credit worthiness. It is also important to stress that banks make every attempt to prevent delinquencies, offering in-house counselling, referrals to independent credit counselling agencies and flexible loan repayment arrangements as appropriate. Credit counselling is often offered at the branch level and this can be effective if problems are detected early. Banks also provide flexibility should a debt become unmanageable. Loan consolidation and lengthened terms to reduce payments may be offered. Moreover, the BIA also contains a consumer proposal mechanism which provides another avenue to facilitate compromise and rehabilitation of consumer debtors. These arrangements require commitments from the borrower to conduct their affairs responsibly.
2. The "Fresh Start" Principle		
▪ **Reaffirmation Agreements**	Stakeholders are invited to make submissions regarding whether reaffirmation agreements should be regulated under the BIA, either through the mechanisms discussed above or through other mechanisms within the insolvency regime.	From our perspective, reaffirmation agreements should not be restricted or prohibited. It should be left to the debtor to decide whether he or she wishes to repay a debt after it has been extinguished. If there are concerns that consumers are not sufficiently educated regarding their rights upon a discharge, credit counselling prior to the bankruptcy is one mechanism to prevent unscrupulous creditors from taking advantage of bankrupts.
3. Consumer Exemptions		
▪ **Registered Saving Products**	Stakeholders are invited to make submissions regarding the treatment of registered savings products in bankruptcy.	We support changes to the BIA that would clarify whether other registered savings products - such as RDSPs and RESPs - should be "prescribed plans" under the BIA and if so, necessary changes should be made to clearly include those plans in the exemption. Moreover, the BIA is currently silent as to whether the exempt status survives death of the planholder to the benefit of the spouse, heirs or estate of the deceased planholder and, if so, under what circumstances. We would appreciate some clarification in the legislation.
▪ **Federal Exemption Lists**	Submissions are invited as to whether the introduction of a federal list of exemptions should be considered.	We believe that there should be one system for exemptions from seizure. The BIA should either maintain the status quo or put in place one federal list of exemptions. But in any event, the list of exemptions should be known at the time of granting the loan. We oppose the creation of an optional list of federal exemptions which would allow a bankrupt to elect between the federal and applicable provincial exemptions. Such a process would defeat the purpose of streamlining the BIA. Also, such an approach would not eliminate any regional discrepancies and it would add more complexities to the process for little apparent benefit.

4. Protecting Families		
▪ **Equalization Claims**	Submissions are invited as to whether, and how, bankruptcy legislation could be amended so as to improve the status of equalization payments in bankruptcy.	We believe that enhancing the status of equalization payments in bankruptcy would increase the level of scrutiny required by lenders similar to that which is commented on in response to consumer deposits (see "Consumer Deposits" section above). Moreover, we believe that exemptions should be known at the time a loan is granted. It would be difficult for lenders to inquire as to the potential for separation as a necessary part of its credit granting due diligence, or be forced to always seek a spousal guarantee to mitigate the risk.
5. Treatment of Student Loans in Bankruptcy		
▪ **Discharge of Student Loan Provisions**	Stakeholders are invited to make submissions regarding whether the current provisions regarding the release of student loan debts should be amended.	The BIA was amended in 2009 to significantly reduce the waiting period for discharge. We do not support any further reduction of discharge time or timely hardship hearings. We believe that such changes are unnecessary as the federal government maintains interest relief programs for those with inadequate employment following graduation. While we appreciate the "fresh start" principle, we note that in many cases, students receive a life-time benefit from the loans.
▪ **Hardship Discharge**	Stakeholders are invited to make submissions regarding the current hardship discharge provisions.	We do not support any changes to the existing regime. (See above)
▪ **Partial Release of Debts**	Stakeholders are invited to make submissions regarding possible flexibility for court-ordered partial discharges on hardship grounds, including any factors the court should consider in exercising its discretion.	We do not support any changes to the existing regime. (See above)

B) COMMERCIAL ISSUES

ISSUES	SUMMARY	CBA COMMENTS
1. Encouraging Innovation through Intellectual Property Rights		
▪ **Copyright and Patented Items**	Submissions are invited regarding how to improve the existing rules to support the objective of encouraging innovation, while also balancing the competing interests in an insolvency proceeding.	We believe that substantial amendments should be brought to the BIA in respect of intellectual property (IP), namely insofar as existing sections 82 and 83 are outdated. In many bankruptcies, IP constitutes an important asset but existing protection is limited to patents and copyrights and offers limited protection in respect of "manuscripts" in an age where modern types of IP (such as software licences) are of far greater value. At this early stage, it is difficult to make specific recommendations as to the nature and breadth of potential amendments. We do, however, believe that the treatment of IP should be consistent through all insolvency proceedings, including receiverships.
▪ **2009 Amendments – Rights of IP Licensees**	Submissions are invited regarding how to improve the existing rules to support the objective of encouraging innovation, while also balancing the competing interests in an insolvency proceeding.	The 2009 Amendments to BIA and CCAA in this regard were made to mirror similar protection in the US Bankruptcy Code with respect to a licensee's limited right to continue using IP made available by an insolvent licensor following termination of the licence agreement. We believe that this limited protection should be reviewed insofar as it broadly relates to a "right to use" IP without ensuring that the licensee also benefits from other important features of the intellectual property (for example, maintenance, support and upgrade in a context of software licences). IP licenses should be protected in a bankruptcy/insolvency of a licensor to the fullest extent possible, especially given the increased use of technology service providers by financial institutions.
2. Encouraging Restructuring		
▪ **Streamlining Companies' Creditors Arrangement Act Proceedings**		
o Initial Orders	Stakeholders are invited to make submissions regarding the breadth of initial orders and potential options for streamlining the process.	We believe that it should be left up to the court to decide whether to approve the DIP/administrative charges as a part of the application. That being said, the need for interim financing and the difficulties associated with permitting interim financing as a term of an automatic stay are issues which require further discussion with the intent to streamline the process.
o Claims process	Stakeholders are invited to make submissions regarding the existing claims process and whether consideration should be given to a default process.	We believe the existing claims process is effective and do not support the proposal to have the Monitor fix creditor claim amounts and require objections in all circumstances. Currently the claims process is established by the court in the circumstances of the case. In some situations the reverse claims process can be a very cost effective method. In addition, the CCAA already has the flexibility to dispense with an unsecured claims process if there is no value for unsecured creditors. It is not clear that creating a default process will reduce the time and cost associated with a claims process.
o Court Application	Stakeholders are invited to make submissions regarding the existing role of court appearances in CCAA proceedings and whether consideration should be given to possible approaches to reduce the number and cost of such court appearances.	In our view, the existing system is effective. We feel that Monitors will be reluctant to exercise any newly given powers to settle disputes outside of court approval. Providing the debtor with enhanced discretion to take actions would be a slippery-slope and very difficult to manage. Instead, it may be more effective in reducing the number of and costs of court appearances by giving a court the express power to direct mediation or another consensual dispute resolution

ISSUES	SUMMARY	CBA COMMENTS
		process rather than enhanced powers for the Monitor. We recommend further discussion on this particular issue.
▪ **Balancing Competing Interests**		
o Role of Unsecured Creditors	Stakeholders are invited to make submissions regarding the effectiveness of the existing provisions and other potential mechanisms to ensure an effective voice for unsecured creditors in restructuring proceedings.	We believe that existing provisions which authorize the court to appoint professionals to represent specific creditor groups not otherwise represented is sufficient. Often, unsecured creditor committees (or UCCs) tend to complicate the CCAA process which increases costs and the time necessary to complete a restructuring. Unsecured creditors who have a significant interest in a CCAA proceeding have the option of retaining counsel to ensure their interests are adequately represented.
o Acting in Good Faith	Stakeholders are invited to make submissions regarding whether the CCAA should expressly address whether parties to proceedings have a duty to act in good faith.	We are opposed to the idea of including a statutory duty to act in good faith or not bring vexatious motions. Such a duty would not only be too difficult to define and enforce but can be potentially used to argue that any action taken by a lender to protect its interests is "bad faith," which in turn, creates uncertainty, complexity and delay. There is no evidence to suggest that the existing process is being particularly undermined by parties acting in bad faith. Vexatious proceedings to gain undeserved leverage can be penalized through costs awards/bond postings under existing rules of procedure.
o Eligible Financial Contracts	Stakeholders are invited to make submissions regarding eligible financial contracts, and their impacts on insolvency and restructuring proceeding, as well as potential policy responses (based on the Insolvency Institute of Canada (IIC) recommendations).	We fully support the submission of the International Swaps and Derivatives Association (ISDA) in this respect. We would like to highlight that eligible financial contracts (EFC) provisions are important not just for the derivatives market, but also for repurchase, reverse repurchase or buy-sell back agreements, securities/commodity lending and borrowing, as well as margin lending.
▪ **Professional Fees in CCAA Proceedings**	Stakeholders are invited to make submissions regarding the impact of professional fees on insolvency proceedings, including the utility of greater disclosure practices.	This issue has garnered attention at insolvency conferences as of late, and warrants further discussion before any recommendations are made. We agree that high professional fees in CCAA proceedings are problematic, and may in fact be discouraging some debtors (especially mid-sized debtors) from using the CCAA and seeking less ideal alternatives. Moreover, because such fees are generally secured by a charge which benefits from a superior rank to that of secured creditors, they often constitute additional credit risk to existing secured creditors. That being said, we are not persuaded that more disclosure will help as disclosure is not the primary problem. Perhaps, it is better left with the courts to better enforce the "fair and reasonableness" test.
▪ **Enhancing Transparency**		
o Creditor Lists	Stakeholders are invited to make submissions regarding imposing an obligation on the debtor company to maintain a creditors' list during a CCAA proceeding.	We believe that requiring debtors to maintain creditor lists would be too costly and would likely offset any benefits of such a list. Oftentimes, part of the reason the debtor is in CCAA is due to sub-par financial controls and capabilities and, as such, the debtor may not even be in position to maintain such a list.
o Empty Voting and Disclosure of Economic Interests	Stakeholders are invited to provide input on whether courts should be empowered to require greater disclosure of creditors' actual economic interests or to take account of those interests.	This is an area of great complexity. Any legislative amendments in this area may have unintended and serious consequences. Excluding distressed debt traders or assignees of debt and security from voting, or providing them with a reduced vote may discourage debt trading and assignment, which sometimes provides a market for debts that would otherwise not exist. Overall, it would be extremely difficult, if not impossible, to balance all competing considerations and it is, therefore, best to maintain the status quo. Thus, we believe the market

ISSUES	SUMMARY	CBA COMMENTS
		to trade debt should not be regulated by the BIA.
▪ **Role of the Monitor**		
o Pre-Filing Reports	Stakeholders are invited to make submissions regarding whether pre-filing reports should be permitted and, if so, in what circumstances.	We believe that all evidence in support of the debtor's application should come from the debtor.
o Conflict of Interest	Stakeholders are invited to make submissions regarding whether additional measures are necessary to address the potential for conflicts of interest where a monitor has a pre-filing relationship as financial advisor to a debtor company.	We do believe that the Monitor should be a licensed trustee in bankruptcy, as is currently required, and that the Monitor must make, prior to its appointment, written disclosure to the court of its business and legal relationships with the debtor. The Monitor should also be responsible for accurate and timely reporting. We also note that the Monitor has a duty once appointed by the court to be a neutral third party.
▪ **Asset Sales**		
o Credit Bidding	Stakeholders are invited to comment on whether credit bidding should be permitted and, if so, what limitations may be appropriate.	We believe that credit bidding is a valuable tool and we wholly support continuing to allow credit bidding and that statutory provisions should expressly support credit bidding. We note that the Monitor has a duty to report to the court on the sale of assets and the impact to creditors. If other creditors are prejudiced through credit bidding, this should be disclosed by the Monitor who may then go as far as to not recommend that the court sanction the sale. Therefore, in our view, there is already a check and balance in the current process to mitigate the concerns highlighted in the Consultation Paper.
o Stalking Horse Bids	Stakeholders are invited to comment on whether stalking horse bids should be expressly permitted under Canadian insolvency legislation and, if so, what limitations may be appropriate.	Stalking horse bids are very useful in creating value for creditors. Stalking horse bids, especially when they are made by financial or strategic bidders (i.e. companies that operate in the same or related space), can sometimes result in additional bids from other financial or strategic bidders in an effort to keep the assets out of their hands, thereby increasing recovery for creditors. We believe that the process should be codified in the statute. That being said, we would like to see some protections added to ensure that the stalking horse process is fair, and in particular a requirement that break fees be reasonable compared to the size of the debtor estate and available assets for creditors. Often, if a stalking horse process is contemplated and established by the debtor (or other sale process), creditors are not consulted and then stuck with generously negotiated financial advisor fees that rank ahead of secured lenders. Secured lenders need more influence over how these advisors are retained and the fee arrangements.
o Applicability of Asset Sale Test	Stakeholders are invited to comment on whether a materiality test is required to determine when asset sales will be subject to court approval.	We are of the view that the fewer instances where the company, Monitor, and legal counsel for all parties have to go to court the better. Consideration should be given, however, as to what dollar threshold AND qualitative conditions are appropriate. The threshold and conditions should be as simple as possible. Moreover, all asset sales should require secured lender consent.
▪ **CBCA Arrangements**	Stakeholders are invited to provide input regarding the practice of CBCA arrangements involving insolvent companies.	In principle, we believe that the skeletal provisions of the CBCA (and provincial corporate statutes the terms of which differ from jurisdiction to jurisdiction) in respect of arrangements should not be used to restructure the debts of an insolvent business as an alternative to restructuring under the BIA or CCAA. Section 192 of the CBCA does not, as drafted, afford sufficient protection to stakeholders to allow for the restructuring of the debts of an insolvent company. Before making specific recommendations for change, we need to better understand the risks, benefits and implications, including potential interpretation of "bank debt" as a

ISSUES	SUMMARY	CBA COMMENTS
		"security" and the ramifications thereof. Further, amendments to the CBCA will not provide uniformity where corporations are governed by provincial legislation.
▪ **A Streamlined Small Business Proposal Proceeding**	Stakeholders are invited to make submissions regarding whether a simplified, less expensive proposal process for SMEs would be warranted.	We would like to see more work done on simplifying this process to make it more efficient and less expensive and, therefore, more useful for SMEs and creditors. However, we should be mindful of the fact that it could ultimately lead to proposal mechanisms similar to those available to consumers where there are no mandatory meetings of creditors, deemed acceptance of the proposal and no necessary court ratification thereof. Any streamlining of the existing business proposal proceeding under the BIA should strike a reasonable balance between an insolvent debtor's right to restructure at reasonable cost and a creditor's right to be actively involved in the restructuring process, to vote on any proposal and to be heard by the court, where necessary.
▪ **Division I Proposals Extension**	Stakeholders are invited to provide input on extending the time for filing a Division I proposal following the filing of a notice of intention to file a proposal.	We believe that an extension of the six-month time limit within which an insolvent debtor must file a proposal under the BIA should not be introduced. The rationale for this approach is based upon the fact that BIA proposals are meant to be time and cost effective for all stakeholders involved.
▪ **Liquidating CCAA Proceedings**	Stakeholders are invited to provide input on whether the CCAA should be amended to codify protections for stakeholders and principles for the courts to consider in liquidating CCAA proceedings.	In our view, the core problem with "liquidating CCAAs" is that the CCAA does not contain a formal priority scheme similar to that contained in section 136 of the BIA. The absence of such priority scheme in the CCAA has led to significant controversy in Canadian case law recently, namely in matters such as *Indalex*, *White Birch*, *Timminco* and *Grant Forest Products*. If the CCAA is to be used for sales rather than for restructuring, it should provide more clarity as to the order in which creditors are to be paid where the assets of an insolvent company are sold pursuant to a CCAA filing. We do not recommend introducing new statutory provisions to govern or restrict the use of the CCAA for liquidation purposes, but we believe that there should be one scheme of distribution for the BIA and the CCAA.
3. Enhancing Equity		
▪ **Employees' Claims**	Stakeholders are invited to make submissions regarding whether, and how, Canada could enhance protection of employee claims in insolvency proceedings.	Previous legislative amendments, as well as recent case law, have already had a negative impact on credit availability. Any further enhancements to the priority for wages and vacation pay, as well as the priority with respect to normal cost contributions to a pension plan, would simply lead to further decrease in the availability of credit. Any fund designed for that purpose should come from general revenues rather than subordinating other creditor claims to these super priorities. These super priorities also make it more difficult for creditors to calculate expected losses from default, which in turn impact borrowing bases and general credit availability. Furthermore, we believe that severance and termination payments should not be included in the definition of wages. It would simply be too difficult and costly for creditors to Monitor a borrower's employee contracts on an ongoing basis. In addition, a further priority for severance and termination obligations, over and above the existing priority for wages and vacation pay, would reduce credit availability for all Canadian borrowers, not just the insolvent ones.
▪ **Hardship Funds**	Stakeholders are invited to make submissions regarding whether express authorization for interim dividends in certain circumstances is required and, if so, any potential limitations on the courts' discretion.	We would need more information on the circumstances of when interim distributions are required. We generally do not support any reordering of priorities, as they were considered when the initial lending decision was made. Certainty of criteria of such a distribution is always

ISSUES	SUMMARY	CBA COMMENTS
		preferred; however, we do not know if these distributions are frequent enough to require additional clarity.
▪ **Third Party Releases**	Stakeholders are invited to make submissions regarding whether third party releases are appropriate and, if so, whether the identified criteria are sufficient to prevent potential abuse.	The availability of third party releases can be valuable to CCAA proceedings (see Asset-Backed Commercial Paper or ABCP, for example). There is often a quid pro quo to supporting the granting of any third party release, i.e. assistance with the restructuring, etc. We believe that third party releases should constitute part of the arrangement plan and be voted on by creditors and be subject to court approval as is currently the case. The current criteria in the case law for permitting a third party release provides some guidance as to when and in what situations these releases will be granted. However, a more in depth discussion about the criteria is warranted before any recommendations can be made with respect to codifying any criteria.
▪ **Key Employee Retention Bonuses**	Stakeholders are invited to make submissions regarding whether employee bonuses should be permitted in an insolvency proceeding and, if so, whether terms and conditions should be codified. Stakeholders are also invited to make submissions regarding whether director and officer liability could be imposed for bonus programs created during an insolvency proceeding.	Retention bonuses are very important and we fully support allowing them in insolvency proceedings where appropriate. We believe they are appropriate where retention of employees is crucial to maximizing recovery to creditors. Please note that oftentimes, key employees of the CCAA companies will be looking to leave a restructuring company, so it is important to be able to encourage retention through financial means such as retention bonuses. That being said, we believe that key employee retention bonuses should require secured lender consent. Codifying specific terms and conditions of a key employee retention bonus will reduce the flexibility and, potentially, the utility of this tool; however, codifying the criteria for when such bonuses will be allowed and in what amounts will add certainty, consistency and perhaps assist in ensuring the reasonableness of the bonus. We would need more information on the circumstances and case law on when such bonuses are allowed before we can recommend specific criteria.
▪ **Interest Claims**	Stakeholders are invited to make submissions regarding the existing rules regarding interest claims.	We believe that the interest portion of the debt is just as valid as the principal portion and payment of the interest at a stipulated rate is a contractual element that creditors have fairly bargained for. Creditors should be entitled to recover or compromise on the interest portion in the same way they are entitled to recover or compromise on the principal portion.
▪ **Unpaid Suppliers**	Stakeholders are invited to make submissions regarding the treatment of supplier claims for goods delivered in the period immediately prior to insolvency proceedings.	We oppose any enhancement to unpaid supplier protection in the form of a super-priority. Indeed, we believe that sections 81.1 and 81.2 of the BIA should be repealed for the following reasons: • Limits the availability of operating credit; • Adds to the monitoring cost of creditors, which costs are reflected in higher interest rates applicable to all borrowers; • Adds to the costs of debtors who need to provide more detailed inventory accounting; • Duplicates existing supplier protection mechanisms including credit insurance, buyer monitoring, pricing policies and registering purchase money security interests; and • Helps to promote lax credit granting practices on the part of suppliers. The availability of credit against inventory would be further reduced if supplier protection were further enhanced. Indeed, it would have a detrimental effect on suppliers generally, as purchasers would receive less credit to purchase inventory from suppliers.

ISSUES	SUMMARY	CBA COMMENTS
▪ **Fruit and Vegetable Suppliers**	Stakeholders are invited to make submissions regarding the existing farmers' super-priority in section 81.2 of the BIA.	We oppose any potential extension of the 15-day delivery period in relation to which a super-priority is granted to farmers. Again, this would result in tightening of credit as these amounts will be factored into the credit granting decision.
4. Deterring Fraud and Abuse		
▪ **Director Disqualification**	Stakeholders are invited to make submissions regarding whether directors of a corporation that has become subject to insolvency proceedings should be disqualified from acting as a director due to misconduct.	We believe that the current model, especially in light of judicial decisions, appears to adequately protect creditors from excessive risks being taken by directors.
▪ **Related Party Subordination and Set-Off**	Stakeholders are invited to provide input as to whether debts of related parties should be allowed to be subordinated, and whether set-off among related parties should be expressly prohibited.	This is a complex topic which requires further discussion.
5. Cross-Border Insolvencies		
▪ **Foreign Claims under "Long-Arm" Legislation**	Submissions are invited regarding an appropriate response to long-arm legislation.	We believe that certainty of priority is needed so that creditors can properly evaluate the risk of lending. Overall, we believe the location of the assets should determine the applicable law, and the *situs* of the bankrupt to the extent relevant to address conflicts under applicable personal property security regimes. Furthermore, Industry Canada should also consider whether Canadian legislation would be able to legislate in an enforceable way given the involvement of other foreign legislation. Consideration should also be given to limiting the ability of Canadian courts' ability to enforce judgments of foreign main insolvency proceedings to the extent such judgments would reorder priorities of assets located in Canada.
▪ **Set-Off for Claims in Multiple Jurisdictions**	Stakeholders are invited to make submissions regarding the set-off of interest claims from another jurisdiction against principal.	In general, we believe that creditors should not be given the opportunity to collect more than 100% (principal plus interest and fees) of the debt owing to them unless all other creditors have been paid in full. We do, however, need more clarity as to what this proposal is trying to achieve.
▪ **Allocation of Proceeds**	Submissions are invited regarding access to, and conveyance and allocation of, assets in cross-border insolvencies.	We believe that certainty of priority is needed to properly evaluate the risk of lending. Overall, we believe the location of the assets should determine the applicable law.
▪ **Treatment of Enterprise Groups**	Stakeholders are invited to provide input regarding the treatment of enterprise groups in insolvency.	This is a complex topic and requires further discussion. Generally, the CBA is opposed to the adoption of the UNCITRAL Model Law if it would have an adverse effect on Canadian sovereignty or promote the use of substantive consolidation for large enterprise groups. It is important to ensure that the Model Law is consistent with the structure of the Canadian insolvency system and adequately protects Canadian creditors before Canada considers adopting it. As noted above, we believe the location of the assets should determine the applicable law and the enterprise group insolvencies should not change or put at risk that principal approach. One particular concern is that it is unclear how the Model Law will apply to corporate groups. One possible interpretation is to require that all entities in a corporate group be reorganized or liquidated in the jurisdiction where the head office of the ultimate parent organization is located. Many Canadian businesses are foreign-owned but have significant independent operations in

ISSUES	SUMMARY	CBA COMMENTS
		Canada that employ many Canadians. If the Model Law is interpreted to require a single, primary insolvency proceeding for all members of a corporate group, adoption of the Model Law could make it more difficult to finance significant Canadian businesses that are ultimately foreign-owned because of the uncertainty about what laws would govern the rights of the parties. Its adoption could also prevent Canadian social values, as expressed through its insolvency laws, being applied to the insolvencies of foreign-owned Canadian businesses.
▪ **"Centre of Main Interests"**	Stakeholders are invited to make submissions regarding the need for procedural protections in cross-border recognition matters.	We support additional procedural protections in cross-border recognition matters. These protections will be particularly important to the extent courts are willing to find comity in an "unfriendly" jurisdiction with an unsophisticated insolvency regime.
▪ **Unsecured Creditors' Committees**	Stakeholders are invited to provide input as to whether it is appropriate to develop principles and criteria for the recognition of foreign UCCs and to define the scope of UCC participation in Canadian insolvency proceedings.	We believe that UCC involvement in the insolvency proceeding should be restricted. UCCs tend to slow down the insolvency process and increase the cost of administration. If unsecured creditors have significant interest in the insolvency proceedings they can choose to retain counsel to adequately represent their interests. These parties should also prove they have a meaningful stake in the insolvency proceeding and should not be able to hold up progress and drive up fees simply because they have "hold up" value.

C) ADMINISTRATIVE ISSUES

ISSUES	SUMMARY	CBA COMMENTS
1. Renaming the Bankruptcy and Insolvency Act	Stakeholders are invited to make submissions regarding the potential social stigma associated with "bankruptcy" and whether Canadians may be better served if that term is downplayed in the legislation.	We do not believe anything can be gained from a name change as a new term will eventually collect the same stigma.
2. A Unified Insolvency Law		
▪ **Merger of the BIA and CCAA**	It has been suggested that the BIA and CCAA could be merged into a single Act, similar to the United States Bankruptcy Code that contains various insolvency proceedings under a single statute.	We would oppose the merger of these two pieces of legislation. A merger would likely increase the cost of restructuring due to uncertainty in the interpretation and application of new legislation.
▪ **Winding-up and Restructuring Act ("WURA")**	There are at least two options available for dealing with WURA. First, WURA could be amended to apply only to financial institutions. Alternatively, WURA could be merged into a unified insolvency Act while maintaining the specialized rules relating to insurance companies.	The CBA supports limiting the application of the WURA to financial institutions in order to eliminate overlap, increase efficiency and facilitate efforts to tailor the WURA to the needs of financial institutions.
3. Restricting Consumer Proposals	Submissions are invited as to whether the consumer proposal process should be amended to ensure that it is not used with respect to business debt.	In our view, if business debts are being caught in consumer proposals, then we agree with the concept of somehow limiting the use of consumer proposals.
4. Special Purpose Entities	Stakeholders are invited to provide input on whether to expand the application of the BIA and CCAA to trusts used as special purpose entities.	We support maintaining the status quo.
5. Receiverships		
▪ **Codification of Receiverships**	Stakeholders are invited to provide input as to whether it is appropriate to amend the insolvency legislation to clarify the role and authority of a receiver appointed under s. 243 of the BIA; and whether it is appropriate to standardize a set of rules regarding the authority of a receiver to act across all insolvency statutes.	We support the existing model receivership orders; they work well and can be tailored to suit specific needs of lenders.
▪ **No Action against Receivers without Leave of Court**	Stakeholders are invited to provide input as to whether it is appropriate to amend the insolvency legislation to require leave of the court before taking any action against a receiver.	We would support such a change as it would codify what is typically included in receivership orders and discharge orders.
6. Marshalling of Charges	Stakeholders are invited to provide input as to whether it would be appropriate to amend the insolvency legislation to codify the doctrine of marshalling charges.	We believe that the status quo should be maintained as the uncertainty that this change (as well as the need to investigate all creditors' interests) would likely drive up costs. Secured lenders need certainty that they can quickly and efficiently realize on collateral in priority to other creditors. This ensures a functional credit market. If this concept is nevertheless added to the legislation, it must be made clear that it cannot be applied where prejudice to secured lenders would result (such as delays, inconveniences or a more onerous process).

ISSUES	SUMMARY	CBA COMMENTS
7. Tax Issues	Tax issues are included to solicit information regarding the nature of concerns and the extent to which such issues potentially affect insolvency proceedings.	The Consultation Paper does not address specific tax issues that could be subject to eventual reforms. Nevertheless, we believe that the following reforms should be considered: (1) Tax authorities should be required to send a notice in accordance with s. 244 before issuing enhanced requirements to pay. (2) Accounts receivables that are subject to an enhanced requirement to pay should revert to the insolvent person and his or her creditors in the context of a bankruptcy or proposal. (3) The process for obtaining necessary tax clearing certificates from tax authorities where sales are conducted under the CCAA should be streamlined and an expedited process should be implemented to obtain them.

D) TECHNICAL ISSUES

ISSUES	SUMMARY	CBA COMMENTS
1. Bankruptcy and Insolvency Act		
▪ **Section 197 - Costs Against the Debtor**	Submissions are invited as to whether subsection 197(6.1) should be amended to permit costs to be awarded against the debtor.	We note that if the costs award is ultimately drawn out of the assets available for distribution to creditors, we do not see an actual benefit for creditors.
▪ **Section 204.3 – Losses Due to Bankruptcy Offences**	Submissions are invited as to whether s.204.3 should be broadened to capture all losses resulting from the BIA offence.	See above comment.
▪ **Disallowance of Claims**	Submissions are invited as to whether it is appropriate to provide the court with the authority to extend the period for appealing the disallowance of a claim.	In our view, the court should not have jurisdiction to extend the period for appealing a disqualified claim as it may cause the positions of the allowed claimants to be prejudiced. Late claims interfere with distributions and increase the costs of calculating and making multiple interim distributions. There needs to be finality so that distributions can be calculated and made.
▪ **Securities Firms Bankruptcies**	Submissions are invited as to whether securities regulators or customer compensation bodies should be able to apply for a bankruptcy order.	The CBA supports technical changes, which would aid in the efficient distribution of assets resulting from insolvency of a securities firm and would welcome the opportunity to review any specific proposals.
▪ **Preview of Proposals by the Trustee**	Submissions are invited as to whether proposal trustees should be provided with a mechanism to preview the size and complexity of a BIA proposal file before they accept it.	Further discussions on this issue are warranted.
▪ **Treatment of RRSPs in Bankruptcy**	Stakeholders are invited to make submissions regarding the treatment of RRSPs in bankruptcy and potential mechanisms to protect the integrity of the insolvency regime.	While we generally support the exemption, we believe that stronger anti-abuse mechanisms should be adopted. Specifically, we continue to believe that the clawback period should be extended to three years so as to prevent abuse.