

SCHEDULE A

REFORM PROPOSALS

A. INTERIM FINANCING

1. Provide in CCAA cases for an express statutory power to authorize borrowing (“**D.I.P. loans**”) and grant security in specified amounts for post-filing advances and supplies of goods and services necessary to fund the debtor during the restructuring proceedings, such power to be authorized according to criteria to be specified in the statute.
2. Provide that in deciding whether or not to authorize a D.I.P. loan, the court should consider amongst other things, the following factors:
 - (a) what arrangements have been made for the governance of the debtor during the proceedings;
 - (b) whether management is trustworthy and competent, and has the confidence of significant creditors;
 - (c) how long will it take to determine whether there is a going concern solution, either through a reorganization or a sale, that creates more value than a liquidation;
 - (d) whether the D.I.P. loan will enhance the prospects for a going concern solution or rehabilitation;
 - (e) the nature and value of the assets of the debtor;
 - (f) whether any creditors will be materially prejudiced during that period as a result of the continued operations of the debtor; and
 - (g) whether the debtor has provided a detailed cash flow for at least the next 120 days.
3. Provide automatic statutory protection for D.I.P. lenders and debtors against tort damages and other claims for entering into court authorized D.I.P. loans in breach of pre-filing covenants and other obligations.
4. Provide that the court order itself can create the D.I.P. lien on the property of the debtor described therein without the need for security documents.
5. Provide that the D.I.P. lien need not be registered in order to be effective against pre-filing creditors or a trustee in bankruptcy, but notice of the order must be registered under the provincial personal property security laws applicable in the locality of the debtor, and against title to real estate in order to have priority over subsequent purchasers (with protection for purchasers acting in the ordinary

course of business) and secured lenders acting for value and without notice of the court order.

6. Provide that the court has jurisdiction to provide that the D.I.P. lien has priority (“prime”) over all or such other existing security interests as may be specified by the court (except source deduction deemed trusts).
7. Provide that the court shall not prime a registered or possessory security interest without at least 48 business hours notice to the affected secured creditor.
8. Provide that in deciding whether to exercise the power to prime other security interests, the court should be required to use the existing balancing of prejudices/limited prejudice test developed by the courts when exercising inherent jurisdiction.
9. Provide that at the time a priming D.I.P. lien is authorized, the court be given the statutory power to authorize and create liens to protect the primed secured creditors to the extent that they are prejudiced by reason that upon enforcement the proceeds of the collateral of such secured creditors are used to repay the D.I.P. loan (with the same rules concerning registration, priority, appeals etc. applying to such liens as apply to D.I.P. liens).
10. Provide that in the event that a priming D.I.P. lien is enforced, the court has the authority to allocate on a just and equitable basis how the burden of the D.I.P. lien is ultimately to be borne by the primed secured creditors.
11. Provide that with respect to advances authorized by a court order and made prior to receipt by the D.I.P. lender of written notice of any subsequent order (whether made by way of appeal or otherwise) varying, staying or rescinding the authorizing order, that the rights of D.I.P. lender under the authorizing order with respect to such advances shall not be affected by such subsequent order.
12. Provide (in both CCAA and BIA proposal cases) that unsecured claims for goods and services (including real property and true personal property leases) provided (in the ordinary course of business and consistent with the statutes and any court orders) post-filing have priority over pre-filing unsecured claims.
13. Provide (in both the CCAA and BIA proposal cases) that after filing, the debtor should not obtain additional credit from any person, including a supplier or a lender, without first giving the person appropriate notice of the proceeding.
14. Provide that the court shall not permit a CCAA or BIA proposal case to continue if it is not satisfied that adequate arrangements have been made for payment for post-filing goods and services.
15. Provide (in both CCAA and BIA proposal cases) that no payments are to be made or security granted with respect to pre-filing unsecured claims without prior court approval (obtained after the initial order), except that with the prior written

consent of the monitor/trustee (unless otherwise ordered by the court) the following pre-filing claims can be paid:

- (a) source deductions;
 - (b) wages (including accrued vacation pay), benefits and sales tax remittances not yet due or not more than seven (7) days overdue at the date of filing; and
 - (c) reasonable professional fees (subject to subsequent assessment) incurred with respect to the filing.
16. Provide (in both CCAA and BIA proposal cases) that no payments are to be made or additional security granted with respect to pre-filing secured claims (including security leases) that are subject to the stay without the prior approval of the court.
17. Provide that during a reorganization proceeding if there is no readily available alternative source of reasonably equivalent supply, then in order to prevent hostage payments the court has jurisdiction, on notice to the affected persons, to order any existing critical suppliers of goods and services (even though not under pre-filing contractual obligation to provide goods or services) to supply the debtor during the reorganization proceeding on normal pricing terms so long as effective arrangements are made to assure payment for post-filing supplies.

B. GOING CONCERN AND ASSET SALES

18. Provide that in CCAA cases the debtor may with the prior approval of the court sell part of its assets and/or business out of the ordinary course of business in order to downsize and/or raise capital for a restructuring plan.
19. Provide that in CCAA cases the debtor may with the prior approval of the court sell all or substantially all of its assets and business on a going concern basis.
20. Provide that in deciding whether or not to exercise its authority to approve a material sale in the course of a CCAA proceeding, amongst other considerations, the court shall have regard to whether the sales process has been conducted:
- (a) in a fair and reasonable manner;
 - (b) by an insolvency administrator;
 - (c) by a credible, independent chief restructuring officer reporting to a credible, independent restructuring committee of the board of directors either with or without supervision of the court; and/or
 - (d) in consultation with major creditors.

21. Provide that absent exceptional circumstances, the court shall not approve a sale if controlling shareholders, directors, officers or senior management of the debtor have a significant financial interest in the purchaser or in the sales transaction, unless there was a proper sales process either subject to court supervision or conducted by persons acting independently of such persons.
22. Provide that the court has the power to vest assets (and to make any ancillary orders necessary to give effect thereto) wherever located, that are subject to a court approved sale, in the purchaser free of any interest of the debtor or of persons (including the debtor's secured creditors) claiming through the debtor, with the proceeds of such sale being automatically subject to the same secured claims in the same priorities as the assets were immediately before the time of vesting.
23. Provide that provincial bulk sales legislation does not apply to sales approved by the court.
24. Provide that in connection with a sale approved by the court, the debtor and the applicable insolvency administrators may provide the purchaser with information subject to privacy laws restrictions, provided that the purchaser agrees to comply with the policies, if any, of the debtor with respect to privacy and with applicable privacy laws.
25. Provide that if the debtor is to cease carrying on business and all or substantially all of its remaining assets are to be realized upon or sold other than on a going concern basis, that unless otherwise agreed by the unsecured creditors of the debtor pursuant to a plan of arrangement or proposal, the debtor is to be placed into bankruptcy or receivership.

C. EXECUTORY CONTRACTS

26. Provide that in CCAA proceedings, BIA proposals and BIA liquidation proceedings, the debtor (with the prior written consent of the monitor/trustee) or the trustee in bankruptcy should have the power to disclaim executory contracts (including real property leases) existing as of the date of commencement of the proceedings subject to the following primary limitations:
 - (a) the right of disclaimer shall not apply to eligible financial contracts, or to other financing agreements including security leases where the debtor is the borrower or lessee;
 - (b) where the debtor is the lessor of real or personal property, or the licensor of intellectual property, the disclaimer shall not affect the rights of the counter-party to maintain possession and use of the leased or licensed property, subject to the counter-party continuing to perform its obligations under the applicable lease or license except to the extent that its payment obligations thereunder would have been released (but for the disclaimer)

by it setting off valid claims for damages for the debtor's failure to perform its obligations after the date of a disclaimer; and

- (c) to the extent that any payments made pre-filing pursuant to an executory contract for the purchase of property created a lien or ownership rights in certain assets of the debtor according to the law applicable to the assets, upon disclaimer of the executory contract the purchaser should have a lien on those assets subject to any security interests or other claims having priority over such pre-filing lien or ownership rights.
27. Provide that if such disclaimer rights are exercised in the course of a CCAA or BIA proposal case, the counter-party should have a provable pre-filing unsecured claim in the proceedings for any termination damages (determined according to existing formula in the case of real property leases) but no set-off rights with respect thereto.
 28. Provide that in a reorganization proceeding, the counter-party to an executory contract should have the right to set off pre-filing claims against pre-filing obligations but not against post-filing obligations.
 29. Provide that in connection with a court approved going concern sale of all or any part of the debtor's business, the purchaser may receive an assignment of any executory operating contracts (for greater certainty, not including eligible financial contracts) applicable to such business.
 30. Provide that trustees in bankruptcy and court-appointed receivers should have the power to assign executory contracts (not including eligible financial contracts) both in connection with going concern transactions and on a liquidation basis.
 31. Provide that the foregoing rights to assign should not be limited by any prohibition on assignment contained in the executory contract, but shall not be applicable to any executory contract which under the general law applicable to the contract is not by its nature assignable.
 32. Provide that the court may prohibit the assignment of an executory contract if the counter-party establishes that either:
 - (a) the proposed assignee does not meet, in a material way, lawful criteria reasonably applied by the counter-party before entering into similar agreements (e.g. franchise agreements); or
 - (b) the proposed assignee is less credit worthy than the debtor was when the executory contract was entered into, and reasonable assurances of payment have not been provided with respect to any credit required to be extended to the assignee by the counter-party under the executory contract after the assignment.

33. Provide that in the event of a CCAA filing, an executory contract (other than an eligible financial contract or financing agreement) should not be subject to termination by reason of the proceedings or the insolvency of the debtor.
34. Provide that in the event of a CCAA or BIA proposal case, any provision in an executory contract (other than an eligible financial contract) that by reason of the proceeding or the insolvency of the debtor changes the provisions of the executory contract in a manner that is materially adverse to the debtor's interests is void.
35. Provide that in the event of any insolvency proceeding with respect to a debtor, any provision in an executory contract (other than an eligible financial contract) that entitles the counter-party by reason of the proceedings or the insolvency of the debtor to purchase property of the debtor for total consideration that is less than current fair market value is void.
36. Provide that in connection with the approval of a plan of arrangement or proposal or of a sale in the course of a CCAA proceeding, the court has summary jurisdiction to declare an executory contract to be in full force and effect so long as there is no material uncured default other than the failure to pay pre-filing monetary claims.
37. Provide for express statutory recognition in the CCAA and BIA of the distinction between security leases and true leases of personal property, with security leases being treated as secured financings.

D. GOVERNANCE

38. Provide statutory authority during CCAA and BIA proposal cases for the court to appoint an interim receiver and manager (being a licensed trustee in bankruptcy) in order to protect the debtor's estate or the claims of creditors, with such authority as the court may determine including the authority to manage the reorganization proceedings.
39. Provide that during the course of a CCAA or BIA proposal case, the court has the authority to replace some or all of the existing directors of the debtor if the governance structure of the debtor is impairing or could impair the process of developing and implementing a going concern solution.
40. Provide that the directors and officers, and applicable insolvency administrators, have a duty to notify the court on a timely basis if they have actual knowledge that there is a material risk that the debtor will be unable to pay wages or other debts being incurred during the course of a restructuring proceeding.
41. Provide that in exercising their duties during the course of a reorganization proceeding, the debtor's directors and officers and the applicable insolvency administrators shall take into account the priority of the claims of creditors and

equity holders, and the apparent value of those claims in light of the likely range of values of the business and assets of the debtor.

42. Provide that an interim receiver or a receiver within the meaning of section 243 of the BIA (excluding mortgagees in possession and other secured creditors directly enforcing their security) and a CCAA monitor must be a licensed trustee in bankruptcy.
43. Provide that a monitor must, prior to its appointment, make written disclosure to the court of its business and legal relationships with the debtor.
44. Provide that during the course of a CCAA or BIA proposal case, the court has the authority to grant a court-ordered charge in favour of interim receivers and managers, monitors, trustees and other insolvency administrators up to a fixed amount to secure their reasonable fees and expenses, subject to assessment, and, up to another fixed amount to indemnify them against third party liability to the extent that insurance is not available on reasonable terms for such liability, with exclusions for wilful misconduct and gross negligence.
45. Provide that the same rules concerning registration, priority, appeals, etc. shall apply to charges in favour of insolvency administrators as apply to D.I.P. liens.
46. Provide that service of the initial CCAA order or of notice of the commencement of a BIA proposal case on an insurer that provides unexpired directors' and officers' insurance, shall be deemed to be notice within the policy period of all claims that are subsequently made against the directors and officers relating to the failure of the debtor to pay pre-filing claims or the insolvency of the debtor.
47. Provide that during the course of CCAA or BIA proposal cases, the court has the authority to grant a court-ordered lien up to a fixed amount in favour of the debtor's directors and officers to indemnify them against third party liability for post-filing conduct to the extent that insurance is not available on reasonable terms for such liability, with exclusions for wilful misconduct and gross negligence.
48. Provide that the same rules concerning registration, priority, appeals, etc. shall apply to charges in favour of directors and officers as apply to D.I.P. liens.
49. Provide that when deciding whether or not to grant a charge in favour of the directors and officers, particularly in CCAA cases, the court shall consider whether the debtor's board has established appropriate governance mechanisms, whether by establishing an independent board committee, retaining a CRO or other means, for the proper management of the debtor's affairs during the course of the restructuring proceedings.
50. Provide that during the course of a restructuring proceeding the debtor shall not pay, or enter into an agreement to pay, retention bonuses, success fees, severance or termination pay or other extraordinary remuneration to its senior management,

officers and directors without prior court approval, but that if so approved, the court shall have the discretion to provide that payment of all or part of those amounts are secured by a directors' and officers' charge.

51. Provide that the debtor's independent directors have protection from any personal statutory liability otherwise arising from the debtor's failure to pay pre-filing debts (e.g. wages, vacation pay, GST, etc.) so long as the debt is not more than seven (7) days overdue at the time of the commencement of a CCAA or BIA proposal case.
52. Provide that directors and officers shall have no personal liability for severance and termination pay claims arising during the course of a reorganization proceeding.
53. Provide that insolvency administrators shall have no personal liability for vacation, severance and termination pay claims arising upon the commencement of, or during the course of, insolvency proceedings, and that insolvency administrators shall have no personal liability for unfunded pension plan liabilities.
54. Provide that the court has the statutory authority to establish claims bar processes with respect to court created indemnity charges to facilitate the timely reduction of those charges during the course of the proceeding and their timely release at the end of the proceeding.

E. PLAN APPROVALS

55. Provide expressly for the court to have the authority to establish claims bar dates for voting and/or distribution purposes under the CCAA, and for appropriate summary proceedings to resolve disputes.
56. Provide that the proof of claim date for CCAA plans shall be the date of the initial order.
57. Provide that in a CCAA proceeding, the debtor is required to obtain court approval of the classification of creditors proposed in its plan of arrangement before the plan is circulated to the creditors for voting purposes.
58. Provide that the "head count" test provided for with respect to creditor class approval for a reorganization be eliminated to reflect the development of vulture capital markets, and provide for the repeal of Section 110 of the BIA.
59. Provide that the rule contained in Section 54(3) of the BIA should apply in CCAA cases.
60. Provide that in connection with the court application to approve a reorganization plan, the applicable insolvency administrator be required to provide an opinion

that it is reasonable to expect that any dissenting creditors will not receive less under the plan that they would receive in a liquidation.

61. Provide that a court approving a reorganization plan has the power to approve a reorganization of the equity of the debtor, either with or without shareholder approval.
62. Provide that all claims against a debtor in an insolvency proceeding that arise under or relate to an instrument that is in the form of equity, including claims for payment of dividends, redemption or retraction or repurchase of shares, and damages (including securities fraud claims) are to be treated as equity claims subordinate to all other secured and unsecured claims against the debtor, and which can be extinguished as against the debtor, in the discretion of the court, in connection with the approval of a reorganization plan either with or without the approval of the parties asserting such claims.

F. PREFERENCES

63. Provide for uniform rules under both the CCAA and BIA for challenging fraudulent preferences, conveyances at under-value and other reviewable transactions (collectively, “**reviewable transactions**”), with a CCAA monitor or a trustee under a proposal being authorized to exercise the same powers as a trustee in bankruptcy.
64. Provide for a complete code in federal insolvency law for challenging reviewable transactions by or on behalf of creditors, so that upon the commencement of insolvency proceedings, provincial laws (including the oppression remedy under corporate law) would no longer apply and a single national standard would be applicable.
65. Provide for the expansion of Section 100 and/or the adoption of an oppression type remedy to create a more flexible mechanism for dealing with reviewable transactions, subject to creating safe harbour provisions.
66. Provide for the continuation of the English subjective test for preference provisions.
67. Provide specific safe harbour provisions for certain transactions involving financiers unrelated to and dealing at arm’s length with the debtor, including:
 - (a) eligible financial contracts;
 - (b) sales pursuant to securitizations;
 - (c) security given before, or as condition of, making advances including security delivered on margin calls, unless a material portion of proceeds of

advances are used to repay unsecured obligations owed to the lenders or are otherwise received by the lenders or parties related to the lenders; and

- (d) guarantees from parent corporations of borrowings by its direct or indirect subsidiaries.
- 68. Provide that the court has the power to reduce or eliminate waiver fees, forbearance fees, work fees, default interest and other additional compensation paid to lenders and other creditors of the debtor within a specified period prior to the commencement of an insolvency proceeding as a result of defaults or expiry of credit facilities, if the court concludes such compensation was manifestly excessive in relation to additional risk and time being incurred or consideration provided by the creditors.
 - 69. Provide that there is no doctrine of equitable subordination in Canada.
 - 70. Provide for conflict of law rules with respect to reviewable transactions modelled after the PPSA conflict of law rules.

G. PRIORITIES

- 71. Provide that the BIA priority rules apply in CCAA proceedings and to receiverships of insolvent entities.
- 72. Provide that source deductions have automatic priority over all secured claims with respect to inventory and accounts receivable, other than purchase-money security interests, but not as against other secured claims.
- 73. Provide that the current priorities with respect to wage claims be maintained, with clarification that pension contributions are included in wages for the purposes of the BIA.
- 74. Provide that the existing 30-day supplier's rights be repealed entirely.
- 75. Provide that if the existing 30-day rights are retained, the existing provisions should be left unamended except to foreclose the possibility of greater revindication and resolution rights arising under provincial law during the course of insolvency proceedings.
- 76. Provide that the insolvency statutes expressly recognize voluntary contractual subordination, and provide that subordinations can be enforced during the course of insolvency proceedings by the debtor, applicable insolvency administrators or other creditors notwithstanding third party beneficiary/privity of contract rules.

H. BANKRUPTCY REMOTENESS/RISK MANAGEMENT

- 77. Provide that a business trust is subject to liquidation under the BIA, but cannot be reorganized.

78. Provide that a corporation that is designated as a special purpose vehicle in its constating documents, has no employees and has no assets other than financial assets relating to a specific financing transaction and publicly traded securities, cannot be subject to consolidated reorganization proceedings or a consolidated reorganization plan under the CCAA or BIA.
79. Provide that financiers unrelated to and dealing at arm's length with the debtor are not stayed in reorganization proceedings from enforcing security over marketable securities for amounts owing under an eligible financial contract.
80. Provide that an agreement between a senior creditor and a subordinate creditor entered into at the time of the subordinate creditor's financing giving the senior creditor the power to control the vote of the subordinate creditor in a reorganization is enforceable, unless the subordinate creditor satisfies the court that the terms of the reorganization plan with respect to the subordinate creditor are manifestly unjust.

I. ONE STATUTE OR TWO?

81. Provide that there shall continue to be two reorganization systems, one for big companies (CCAA) and one for smaller corporations and other entities (BIA proposals).
82. Provide that a CCAA monitor shall make the following filings with the Superintendent's Office for record keeping purposes:
 - (a) initial CCAA order within 10 days;
 - (b) debtor's initial list of creditors within 30 days;
 - (c) if a reorganization plan is consummated, a copy of the plan, the sanction order and a brief statement of affairs within 30 days; and
 - (d) if all or substantially all of the debtor's business is sold during the course of the proceeding, a brief statement of affairs within 30 days of closing.

J. INCOME TAX

83. Provide that distress preferred share treatment for tax purposes can be afforded for a specified period of time to qualifying debt by simply filing a notice of election without any need to actually convert the debt into preferred shares.
84. Provide that upon consummation of a plan of arrangement, the debtor can elect to use fresh start accounting for tax purposes as if it were a new taxpayer (including valuing its assets at fair market value), with prior tax obligations being dealt with as pre-filing claims.

K. INTERNATIONAL INSOLVENCY

85. Consider retaining the existing international provisions of the CCAA and the BIA with minor amendments since in substance they have worked successfully.
86. Whether the existing law is retained or the Model Law is adopted, provide for new provisions to ensure that Canadian creditors' interests are properly represented in any foreign proceeding by providing that as a condition precedent to the recognition by the court of foreign insolvency proceedings, the court must either appoint a creditors' committee or a licensed trustee as a monitor with the powers stipulated by the court, and ensure provisions are in place to provide the creditors' committee or monitor with reasonable funding.

March 15, 2002