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Canada Federal Statutes

Companies' Creditors Arrangement Act

Part III — General [Heading added 2005, c. 47, s. 131.]

Agreements [Heading added 2005, c. 47, s. 131.]

s 32.

Federal English Statutes reflect amendments current to June 19, 2013

Federal English Regulations are current to Gazette Vol. 147:13 (June 19, 2013)

32.

32(1) Disclaimer or resiliation of agreements

Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act.

The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

32(2) Court may prohibit disclaimer or resiliation

Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

32(3) Court-ordered disclaimer or resiliation

If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

32(4) Factors to be considered

In deciding whether to make the order, the court is to consider, among other things,

- (a) whether the monitor approved the proposed disclaimer or resiliation;
- (b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and
- (c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

32(5) Date of disclaimer or resiliation

An agreement is disclaimed or resiliated

- (a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);
- (b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or
- (c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

32(6) Intellectual property

If the company has granted a right to use intellectual property to a party to an agreement, the disclaimer or resiliation does not affect the party's right to use the intellectual property — including the party's right to enforce an exclusive use — during the term of the agreement, including any period for which the party extends the agreement as of right, as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

32(7) Loss related to disclaimer or resiliation

If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

32(8) Reasons for disclaimer or resiliation

A company shall, on request by a party to the agreement, provide in writing the reasons for the proposed disclaimer or resiliation within five days after the day on which the party requests them.

32(9) Exceptions

This section does not apply in respect of

- (a) an eligible financial contract;
- (b) a collective agreement;
- (c) a financing agreement if the company is the borrower; or
- (d) a lease of real property or of an immovable if the company is the lessor.

2005, c. 47, s. 131; 2007, c. 29, s. 108; 2007, c. 36, ss. 76, 112(20)

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