



Streamlining Financial Recovery: A Concise Guide to Division 1 Proposal Restructuring in Canada

Revitalize, Restructure, Rise

What is a Division 1 Proposal (“Div 1”) Restructuring?

Div 1 Restructuring is a strategic legal process available under the Bankruptcy and Insolvency Act (BIA) in Canada which enables to:

- **Pause Legal Actions:** Immediately upon filing a Notice of Intention (“NOI”) to file Div 1, all legal actions and creditor collection efforts against the debtor are legally paused without leave of the court. This provides a critical period of relief and protection. This halts all creditor legal actions, including lawsuits, foreclosures, and asset seizures, giving you the breathing room needed to develop a comprehensive restructuring plan.
- **Assess Financial Situation:** The debtor gains time to assess its financial situation, explore restructuring options, and negotiate with creditors.
- **Asset Protection:** Assets, including equipment and inventory, are protected from seizure, ensuring the debtor can continue to operate during the restructuring process.

- **Creditor Negotiations:** Div 1 Restructuring facilitates constructive discussions with creditors, increasing the likelihood of their cooperation.
- **Debt Restructuring:** The debtor can develop a proposal to restructure its debts, often resulting in reduced debt burdens, extended payment terms, or partial repayments.

Who may make a Division 1 Proposal Restructuring?

An insolvent person, a bankrupt, a receiver (in relation to an insolvent person), a liquidator of an insolvent person’s property or a trustee of the estate of a bankrupt may make a proposal.

An insolvent person is a person who is not bankrupt and who is insolvent on a cash-flow or balance-sheet basis. Persons include corporations, partnerships, and other legal entities.

Debts Encompassed

The Div 1 Restructuring under the Bankruptcy and Insolvency Act (BIA) can include various debts such as:

- Secured Debts: Backed by collateral (e.g., property, equipment).
- Unsecured Debts: No specific collateral (e.g., trade payables, credit card debt).
- Trade Payables: Debts to suppliers for goods or services.
- Bank Loans: Both secured and unsecured loans.
- Lease Obligations: Debts from lease agreements.
- Employee Obligations: Includes unpaid wages and benefits.
- Tax Debts: Some tax obligations may be included.
- Contractual Obligations: Debts from contractual agreements.

Note: Not all debts may be eligible, and specific rules apply.

Share Restructuring

Div 1 restructuring can not only revitalize the company's equity structure but also makes it an appealing prospect for new investors, by cancelling the existing shares and/or issuing new shares, offering them a clean slate and a stronger financial foundation for future growth and success.

Canada Revenue Agency Debts

A Div 1 allows for restructuring of debts (subject to some exclusions and conditions) owed to Canada Revenue Agency by debtor and may waive off their right to pursue the Director of a corporation personally for debts owed by the corporation and rights under Sec 160 of Income Tax Act.

Director's Personal Liabilities

Directors of a corporation can be personally liable for various statutory liabilities for acting in their position. In Div 1 Restructuring, claims against directors and officers are automatically stayed and can only be brought with the leave of the court. Resolution or settlement of claims and/or lawsuits against directors and officers will usually be included in the Proposal. Most Proposals under the Bankruptcy and Insolvency Act (BIA) will include a release of claims against officers and directors, although these releases may exclude claims for fraud wherein it's vital to seek legal advice due to the intricate legal implications involved.

Conclusion

Div 1 Restructuring is a vital lifeline for Debtors facing financial challenges. It provides a protective framework for regrouping, negotiating, and safeguarding assets. Successfully emerging from this process grants Debtors a fresh start, relieving them of debts and legal pressures. This newfound financial freedom unlocks opportunities for growth, market exploration, and innovation, unburdened by past obstacles. Div 1 Restructuring isn't just about survival: it's a strategic leap toward thriving in the aftermath of adversity.

