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Exemption Protection for RRSPs, RRIFs and DPSPs

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INTRODUCTION

The availability of registered retirement plans in enforcement proceedings is of interest to all institutional lenders. Saskatchewan and Manitoba law, as it relates to enforcement proceedings against registered plans, is summarized below.

REGISTERED PLAN EXEMPTION PROTECTION IN SASKATCHEWAN AND MANITOBA

Saskatchewan and Manitoba Legislation

On March 4, 2003, *The Registered Plan (Retirement Income) Exemption Act* (the "Saskatchewan Act") was proclaimed in Saskatchewan. Subsequently, on November 1, 2007, *The Registered Retirement Savings Protection Act* (the "Manitoba Act") was proclaimed in Manitoba. The Saskatchewan Act and the Manitoba Act are very similar. Both statutes exempt "registered plans" from any enforcement process (i.e. garnishment, execution, seizure or attachment) taken by a creditor. A "registered plan" is a "deferred profit sharing plan" (a "DPSP"), a "registered retirement income fund" (a "RRIF") or a "registered retirement savings plan" (a "RRSP") as these terms are defined in the *Income Tax Act* (Canada).

Simply put, lenders are unable to take registered plans as security for indebtedness, and are unable to seize or garnish property held in registered plans. Registered plans are a "safe haven" for debtors who wish to skirt their creditors.

REGISTERED PLAN EXEMPTION PROTECTION IN BANKRUPTCY

The *Bankruptcy & Insolvency Act*

The *Bankruptcy and Insolvency Act* (the “BIA”) is federal legislation. Nonetheless, provincial exemption protection legislation flows into bankruptcy proceedings pursuant to section 67(1)(b) of the BIA. Section 67 states:

67. (1) The property of a bankrupt divisible among his creditors shall not comprise
- ...
- (b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides

The BIA, in its current state, does not explicitly exempt registered plans from enforcement. Rather, section 67(1)(b) "imports" provincial exemptions which, in Saskatchewan and Manitoba, include registered plans pursuant to the Saskatchewan Act and the Manitoba Act respectively.

Unproclaimed Amendments to the *Bankruptcy and Insolvency Act*

The federal government has amended section 67 of the BIA. However, such amendments are not yet in force. The relevant portions of the amended version of section 67 state:

67. (1) The property of a bankrupt divisible among his creditors shall not comprise
- ...
- (b) any property, other than property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides,
- ...
- (b.3) subject to any prescribed conditions and limitations, property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, other than property contributed to any such plan or fund in the 12 months, or in any longer period that the court may specify, before the date of bankruptcy,

Once the amendments to section 67 of the BIA are proclaimed, “registered plan” exemption protection in bankruptcy will be standardized across all Canadian jurisdictions. The revised section 67(1)(b) will have the effect of “carving out” the RRSP

and RRIF exemption schemes unique to each province. Section 67(1)(b.3), however, will set forth a new rule for RRSPs and RRIFs. Property contained in these investment vehicles will be exempt unless such property was contributed within 12 months of the date of bankruptcy or such longer period as the court may specify. As a result, evasive debtors will be significantly hindered in their ability to dupe creditors by contributing property to RRSPs and RRIFs immediately before declaring bankruptcy.

Please note that DPSPs are not expressly excluded from the application of section 67(1)(b) and are not mentioned in section 67(1)(b.3). Therefore, property held in DPSPs will continue to be exempt in bankruptcy pursuant to section 67(1)(b) in conjunction with the Saskatchewan Act or the Manitoba Act, as applicable.

CONCLUSION

For more information on registered plan exemption protection, please contact Layh & Associates at (306)743-5520 or visit our website at www.layhlaw.com.