The Bulk Sales Act (Ontario) — Repealed

March 30, 2017

This article was updated in 2021.

On March 22, 2017, the *Burden Reduction Act, 2017* (the Act), part of an initiative to reduce the regulatory burden on Ontario businesses, received Royal Assent and came into force. The Act repeals the *Bulk Sales Act* (the BSA), which was enacted in 1917 and had long been a source of frustration for parties involved in asset sale transactions in Ontario, including the sale of a business by way of asset sale.

The BSA was intended to protect trade creditors from a situation in which a vendor liquidates its assets over a short period of time, leaving its trade creditors unpaid. Compliance with the BSA was an important consideration for both the purchaser and the vendor in an asset sale transaction in Ontario, particularly because non-compliance with the BSA could result in the transaction being declared void by an Ontario court upon application by an affected creditor and causing the purchaser to be liable to account to the creditors of the vendor for the value of certain purchased assets.

Rather than comply with the BSA, which compliance in some transactions could be quite onerous, it was common for a purchaser in an Ontario asset sale transaction to accept an indemnity from the vendor and/or the vendor's parent company in respect of non-compliance with the BSA. Typically, the purchaser made a decision as to whether to comply with the BSA or accept an indemnity from the vendor after completing due diligence to ascertain the amounts payable by the vendor to its creditors and determining which payables would be assumed by the purchaser or paid by the vendor from the proceeds of the sale.

Overall, the costs and risks of applying for an exemption from the BSA, complying with the BSA or opting out of compliance with the BSA were burdensome and out of line with other provinces as Ontario was the only remaining Canadian jurisdiction with bulk sales legislation.

The adoption of the Act and the repeal of the BSA signals that Ontario lawmakers have concluded, like their counterparts in other provinces, that the costs of complying with the BSA are no longer justified when other rights and remedies exist for trade creditors (for instance, under bankruptcy and insolvency and assignment and preference legislation). The Bulk Sales Act repeal should be a welcome change for those involved in asset sale transactions in Ontario.

The authors would like to acknowledge the contribution of Samantha Breaks in preparing this article

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