The Bulk Sales Act — The End Of The Burden?

November 25, 2016

Bill 218 passed the first reading in the Ontario Legislature. The Bill is part of an initiative to reduce the regulatory burden on Ontario businesses.

On June 8, 2016, Bill 218, *Burden Reduction Act, 2016* passed the first reading in the Ontario Legislature. The Bill is part of an initiative to reduce the regulatory burden on Ontario businesses. Schedule 3 of the Bill repeals the *Bulk Sales Act* (the "BSA"), which was enacted in 1917 and has long been a source of frustration to people doing asset deals in Ontario.

The BSA is intended to protect trade creditors from a situation in which a seller liquidates its assets over a short period of time, leaving its trade creditors unpaid. In order to achieve this objective, the BSA applies to a broad range of transactions (any sale of goods, fixtures and chattels out of the usual course of business of the seller) and it imposes harsh consequences on the buyer for failure to comply (for instance, the transaction may be set aside by a court upon the application of a creditor of the seller who has not been paid in full).

Typically, the parties to an asset purchase transaction will deal with the BSA in one of three ways. The first option is to apply to a court for an order to exempt the transaction from compliance with the BSA. However, such an exemption will only be granted if it is clear to the court that the sale will be advantageous to the seller and that it will not impair the seller's ability to pay its trade creditors in full. This option is rarely used, as it inevitably increases legal fees and may delay closing.

Alternatively, the parties may decide to comply with the BSA. However, that process is also costly and time consuming. First, the seller must deliver to the buyer a statement (verified by affidavit) disclosing the names of its secured and unsecured trade creditors, as well as, for each of them, their address, the amount owed and, for each secured trade creditor, the nature of the security and the date the debt is due. If the buyer is satisfied that all of the seller's trade creditors have been paid in full, the buyer may pay the purchase price and acquire the assets. If not, the buyer must ensure that the seller has made the appropriate arrangements to pay its trade creditors in full, or the buyer may deliver the proceeds of the sale to a trustee (provided that the creditors have consented to this alternative). Within five days of the completion of the transaction, the buyer must then file its own affidavit setting out the particulars of the sale in each jurisdiction where all or parts of the assets are located.

Lastly, if the buyer determines that there is little risk that the seller's trade creditors will not be paid, it may agree with the seller to waive compliance with the BSA, in exchange for the seller (and the parent company of the seller, if the seller is likely to have few or no assets following the completion of the transaction) agreeing to indemnify the buyer in full for any consequences of non-compliance. This option significantly reduces transactional costs, but it is also risky, as Ontario courts have made it clear that the mere fact that the parties agree to waive compliance with the BSA does not absolve the buyer of its obligations under the BSA.

Ontario is the only remaining Canadian jurisdiction with bulk sales legislation. However, Bill 218 signals that Ontario lawmakers may 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).

By

Pierre Permingeat

Expertise

Corporate Commercial

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary
Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa
World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver
1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal
1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific

situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.