

# Financial Services Flash

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## New Class of Protected Pension Claims Under the *BIA* and *CCAA*

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With the coming into force of the *Pooled Registered Pension Plans Act*, S.C. 2012 c.16 (the “PRPPA”), in December 2012, amendments to the *Bankruptcy and Insolvency Act* (the “BIA”) and the *Companies’ Creditors Arrangement Act* (the “CCAA”) took effect to extend existing pension protections to claims made under pooled registered pension plans. These new protections arise in bankruptcies (*BIA* s. 81.5), receiverships (*BIA* s. 81.6), proposal proceedings (*BIA* subs. 60(1.5) and 65.13(8)) and *CCAA* plans (*CCAA* sub. 6(6)), and apply to both federally and provincially regulated plans.

Pooled registered pension plans are defined-contribution pension plans, administered by financial institutions, for employees and self-employed persons who do not have access to workplace pension plans. The *PRPPA* governs pooled registered pension plans for employees working in federally regulated industries, including, without limitation, inter-provincial transportation, aviation, broadcasting and banking, as well as plans of employees or self-employed working in Yukon, Northwest Territories and Nunavut.

Section 31 of the *PRPPA* contains deemed trust language for amounts owing by an employer to a pooled registered pension plan. Thankfully, the deemed trust does not extend beyond the scope of the protection now provided to such plans under the *BIA* and the *CCAA*, namely, protection for: (a) employee pension contributions deducted at source

but unremitted; (b) any defined employer contributions owing to the plan; and (c) amounts owing by the employer to the plan administrator. Because pooled registered pension plans are, by definition, defined contribution plans, there is none of the uncertainty over trust claims for special payment amounts that can arise with defined benefit plans.

It is expected that a number of provinces will introduce their own pooled registered pension plan regimes, which will benefit from the protections now existing in the *BIA* and *CCAA*. As pension plans thereby become available to more and more Canadian workers, and more employers become indebted to such plans, we can expect the frequency of super-priority pension claims to rise in insolvencies and restructurings.

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