

Financial Services Flash

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Implications of the *Forfeited Corporate Property Act* for Creditors

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Creditors should be aware of important changes to the law regarding forfeiture of corporate property which have significant implications for the recovery of forfeited assets of dissolved corporations.

On December 10, 2016, the *Forfeited Corporate Property Act, 2015* (the “FCPA”), and a number of amendments to the *Business Corporations Act (Ontario)* (the “OBCA”), came into force. The FCPA establishes a new regime for managing forfeited personal and real property, the cancellation of encumbrances, the use of forfeited corporate property for Crown purposes and the disposing of forfeited corporate property.

Under the FCPA, when a corporation is dissolved, its property is automatically forfeited to and becomes property of the Crown. Under prior provisions of the OBCA, corporations had 20 years to revive the corporation and recover this forfeited property. Amendments to the OBCA have moved up these timelines considerably: while owners of a dissolved company still have 20 years to apply for the revival of the corporation, they are not entitled to recover the corporation’s personal or real property if that

revival takes place more than three years after the date of dissolution. After the three-year deadline has passed, the Crown may use, sell or dispose of the forfeited property for Crown purposes, and cancel or amend any encumbrances (including security interests) registered against the forfeited real or personal property. While the FCPA permits a person or entity with legal or moral claim to property to apply to the Minister of Infrastructure for relief from forfeiture, the threshold for meeting this onus remains untested.

Creditors should take note of these important changes to the law regarding forfeiture of corporate property and ensure that they are aware of the abbreviated timeframes under the FCPA in the event of dissolution, especially given that a dissolution may occur without a creditor’s knowledge.

The Financial Services Group at Aird & Berlis LLP has strong knowledge of these amendments and on repair and storage lien regulations generally. For more information, please contact any member of the Financial Services Group. Details can be found on our [Financial Services, Insolvency and Restructuring](#) web page, by clicking on [members](#).

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