

Financial Services Flash

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Ontario Repeals *Bulk Sales Act*

By: Steven Graff*

A century ago, Ontario drafted legislation to protect unpaid creditors from their debtors selling assets in bulk outside of the ordinary course of business. Over the years, with the introduction of other, more efficient creditor protection legislation, the business community began to consider bulk sales legislation to be an inefficient and outdated means of protection and it became more of a source of frustration, creating additional cost and risk with limited return. Every province (and 44 of 50 states) repealed its bulk sales legislation, with Ontario being the last Canadian holdout.

Now, in a long-awaited move, the province has repealed the *Bulk Sales Act*, R.S.O. 1990, c. B.14 (the “BSA”). Bill 27, the *Burden Reduction Act*, received Royal Assent on March 22, 2017, and Schedule 3, *Bulk Sales Act Repeal*, is now in force. The repeal of the BSA is good news for anyone doing (or financing) asset deals in Ontario.

Compliance with the BSA was generally considered to be costly and time-consuming. Parties to significant transactions involving Ontario-based assets typically sought court orders exempting compliance or negotiated waivers and indemnities among themselves. Bill 27 eliminates

these requirements, hopefully reducing the transactional costs of doing asset deals in Ontario and increasing deal certainty for vendors, purchasers and lenders alike.

Creditors and suppliers still have many ways to protect themselves from objectionable asset sales. Among other legal remedies, asset sales outside of the ordinary course of business can be reviewed via fraudulent conveyances or preferences legislation, or challenged using the oppression or derivative action provisions of the applicable corporate statute.

The Financial Services Group at Aird & Berlis LLP has extensive experience advising clients on their rights as creditors or debtors. 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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