

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

UNIFORM AND SIMPLIFIED TRUST INDENTURE LEGISLATION

**Second Report of the Working Group
of the Uniform Law Conference of Canada, Civil Law Section.**

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**Winnipeg, Manitoba
August, 2011**

UNIFORM AND SIMPLIFIED TRUST INDENTURE LEGISLATION

REPORT to the Uniform Law Conference of Canada (Civil Law Section) – August 9, 2011

Introduction

[1] This report is submitted by the undersigned on behalf of the Working Group on Uniform and Simplified Trust Indenture Legislation to summarize the status of proposed uniform and simplified trust indenture legislation. This is the second report of the Working Group to the Uniform Law Conference of Canada (“ULCC”).

Background

[2] The Working Group tabled its first report (the “**First Report**”) to the ULCC on August 24, 2010 (a copy of which is attached as Schedule A).

[3] One of the principal recommendations of the Working Group was that the Canadian Securities Administrators should develop a uniform national instrument that would replace all of the federal, provincial and territorial corporate law provisions governing the minimum requirements of trust indentures. The Working Group’s recommendations were endorsed by the ULCC in August 2010.

[4] Based on the Working Group’s principal recommendations, representatives of the Working Group (Philippe Tardif, Chair and Wayne Gray, Secretary and Gordon Raman) have worked with legislative counsel to develop proposed draft legislation (in the form of a national instrument to be adopted under applicable securities laws).

[5] A representative of the Working Group notified the Secretary General of the Canadian Securities Administrators of the Working Group’s report and its initiative in coordinating the drafting of the national instrument.

Summary of Draft Legislation

[6] A draft of the draft national instrument proposed for adoption by the Canadian Securities Administrators is attached as Schedule B. A draft of the amendments to corporate legislation

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(providing for an exemption from the relevant provisions of the statute for trust indentures which comply with prescribed law, including the national instrument) is attached as Schedule C.

[7] The proposed draft legislation is consistent with the trust indenture provisions of the *Canada Business Corporations Act* (the “CBCA”). The draft national instrument addresses the minimum requirements for trust indentures contained in Canadian corporate law (including the CBCA), including the following:

Sections 1 and 2: Interpretation and Application

[8] The proposed national instrument would apply to a trust indenture if, in respect of the distributions of debt obligations, the issuer files or is required to file a prospectus under securities legislation.

Sections 3 and 4: Classifications of trusts

[9] The proposed national instrument would require a trustee appointed under a trust indenture to be (i) incorporated under the laws of Canada or a province and authorized to carry on business of a trust company; or (ii) organized and carrying on business under the laws of the United States, a state or territory thereof, or permitted to act as trustee by the United States Securities and Exchange Commission.

Sections 5 to 9: Duties of Trustee

[10] The proposed national instrument would require a trustee to provide certain documents to holders of debt obligations.

Sections 10 to 13: Duties of Issuer

[11] The proposed national instrument would require an issuer to provide evidence of compliance with the relevant trust indenture.

[12] The draft amendments to the CBCA (attached as Schedule C) would provide that the relevant provisions of the CBCA only apply to a trust indenture in respect of a distribution of debt obligations in respect of which a prospectus is filed or required to be filed in Canada and the trust indenture does not comply with a prescribed law. It is proposed that the draft instrument would be recognized as “prescribed law”. The draft amendments also contemplate that the Director appointed under the CBCA would have discretion to grant exemptions from the

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application of the relevant provisions of the statute on a case by case basis where such exemption is not prejudicial to the public interest.

In Conclusion

[13] The proposed instrument and proposed amendments to the CBCA are responsive to the recommendations of the First Report. Members of the Working Group would be pleased to continue to assist the ULCC in coordinating the next phases of the Uniform and Simplified Trust Indenture Legislation project.

Philippe Tardif

Schedule A

<http://ulcc.ca/en/poam2/index.cfm?sec=2010&sub=2010h>

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Schedule B

[draft National Instrument to be attached]

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Schedule C**CBCA**

Proposed amendments to the *Canada Business Corporations Act* (“CBCA”)

CBCA, ss. 82(1):

The definitions of “event of default” and “trustee” are deleted in their entirety and replaced with the following:

“event of default” means an event specified in a trust indenture on the occurrence of which a security interest effected by the trust indenture becomes enforceable, or the principal, interest or other money payable under the trust indenture becomes or may be declared to be payable before maturity, once all conditions — such as the giving of notice or the lapse of time — provided for by the trust indenture in connection with the event have been satisfied.

“trustee” means any person appointed as trustee, including the administrator of the property of others, under the terms of a trust indenture to which a corporation is a party and includes any successor trustee.

CBCA, ss. 82(2) and (3):

Subsections 82(2) and 82(3) are deleted in their entirety and replaced with the following:

- (2) This Part applies to a trust indenture in respect of a distribution of debt obligations in respect of which a prospectus is filed or is required to be filed in Canada and the trust indenture does not comply with a prescribed law.
- (3) On application, the Director may exempt a trust indenture from this Part on any terms that the Director considers appropriate, if the Director is satisfied that the exemption would not be prejudicial to the public interest.