IBA TOOLKIT ON INSOLVENCY AND ARBITRATION

QUESTIONNAIRE

NATIONAL REPORT OF CANADA

Sara Nadeau-Seguin

Partner at Teynier Pic

sara.nseguin@teynier.com

Yassine Alaoui

Associate at Teynier Pic

yassine.alaoui@teynier.com

Sylvain Rigaud

Partner at Woods

srigaud@woods.qc.ca

IMPACT OF NATIONAL INSOLVENCY ON DOMESTIC OR FOREIGN ARBITRATION

[These questions relate to the effects that insolvency proceedings initiated in Canada produce on arbitration commitments (foreign as well as national/local) involving the insolvent party.]

Part I: Impact of Insolvency Proceedings on the Ability to Commence or Continue Arbitration

1. Does the law of Canada contain any provision on the effect that the opening of insolvency proceedings produces on arbitration? If so, what is the source of the provision or provisions providing for the effects? That is, are the effects provided by the insolvency legislation as part of the consequences produced by the opening of insolvency proceedings? Or, are they provided by the arbitration legislation or law as a matter concerning the arbitrability of disputes, the capacity of the parties to arbitrate, the validity and effectiveness of arbitration agreements, or any other arbitration-specific category?

1. No. Insolvency and arbitration are regulated separately and there is no specific provision to harmonise or coordinate their joint application.

2. Does the insolvency legislation in Canada provide for the concentration of disputes concerning the insolvent debtor before the insolvency court (*vis attractiva concursus*)? If so,

- **a. Which disputes fall under the rules on *vis attractiva concursus*?**
- **b. Are disputes in arbitration or subject to an arbitration agreement covered by the *vis attractiva concursus*?**

2. Yes, although under a slightly different concept referred to as the "single proceeding model". Canadian courts apply the single proceeding model to favor the enforcement of creditor rights in bankruptcy and insolvency matters through a centralized judicial process. The single proceeding model applies to proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 ("BIA"), the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"), and other insolvency legislation. The single proceeding model is not absolute and bankruptcy courts must remain mindful of the presumption in favour of arbitral jurisdiction which is supported by Canadian jurisprudence, the pro-arbitration stance adopted in provincial and territorial legislation nationwide, and the foundational principle that contracting parties are free to structure their affairs as they see fit. However, in certain insolvency matters, it may be necessary to preclude arbitration in favour of a centralized judicial process, when arbitration would compromise the orderly and efficient conduct of a court-ordered receivership (see also the answer to Question 8 below). Even if a dispute involving an insolvent party may be validly subject to arbitration, the arbitration may be held to be inoperative due to practicability demands based on a factual evaluation by the court, who will conduct a review of different factors which may carry more or less weight depending on the circumstances of the case,

namely: "(a) *the effect of arbitration on the integrity of the insolvency proceedings*; (b) *the relative prejudice to the parties to the arbitration agreement and the debtor's stakeholders*; (c) *the urgency of resolving the dispute*; (d) *the effect of a stay of proceedings arising from the bankruptcy or insolvency proceedings*; *and* (e) *any other factors the court considers material in the circumstances*".[1] Over the past year, Canadian courts have rendered significant decisions declaring arbitration agreements inoperative by virtue of the "single proceeding model", prompting consideration of whether this might indicate the emergence of a broader trend (see the answer to Question 28 below).[2]

3. What are the effects (if any) of the opening of insolvency proceedings in Canada on the possibility to commence or continue arbitration proceedings?

In answering this question, please address separately each of the following points:

a. Does the law draw any distinction between arbitration proceedings where the insolvent party acts as defendant and as claimant?

3. Where the insolvent party acts as defendant, the opening of insolvency proceedings in Canada would operate as a stay (see sections 69.1 and 69.3 of the BIA and section 11.02 of the CCAA). This stay may be lifted, as explained below in response to Question 4.

4. On the other hand, the stay of proceedings does not operate as regards pending or new proceedings where the insolvent party acts as claimant, in which case the claimant may apply to the court, upon the opening of insolvency proceedings, to suspend the operation of arbitration agreements and any arbitration proceedings and litigate the claim before the bankruptcy court by invoking the single proceeding model described above in response to Question 2.

b. Does the law draw any distinction between insolvency proceedings aimed at the liquidation of the company and proceedings aimed at the financial restructuring or rehabilitation of the company?

5. No, it does not as it relates to arbitration.

c. Does the law draw any distinction based on the subject matter or relief sought in the arbitration?

6. Under the BIA, the stay of proceedings triggered by the opening of insolvency proceedings is limited to any step undertaken in relation to the recovery of debts (ie, "*any action, execution or*

[1] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at para 155.
[2] See eg, *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41 and *Mundo Media Ltd. (Re)*, 2022 ONCA 607 (CanLII).

other proceedings, for the recovery of a claim provable in bankruptcy").[3] The stay of proceedings imposed upon the opening of insolvency proceedings pursuant to the CCAA is more exhaustive and extends to any proceedings generally against the insolvent debtor or its property, business, and affairs.

d. Do these effects (if any) also extend to pre-insolvency proceedings or restructuring proceedings which do not require a declaration of insolvency?

7. Yes, the stay provisions under the BIA and CCAA both specifically apply to pre-filing (or pre-insolvency proceedings). It shall be noted that there exists an exception under the BIA with respect to enforcement proceedings by a secured creditor after the expiry of a statutory ten-day delay or after waiver of said delay by the insolvent party upon receipt of such ten-day notice.[4]

e. Does the law draw any distinction between arbitration proceedings which are pending at the time of the opening of insolvency proceedings and arbitration proceedings which commence after the opening of insolvency proceedings?

8. No, it does not.

f. Does the law regulating the effect of insolvency on arbitration make any distinction between voluntary and compulsory insolvency proceedings?

9. Yes, but this distinction would have no bearing upon the issue under consideration.

g. Do those effects intend to apply extraterritorially, ie, to every arbitration regardless of the location of the seat in Canada or abroad?

10. No, they do not. While it is long established, under Canadian law, that Parliament has the power to enact legislation with extraterritorial effect, the Supreme Court of Canada has clarified that it is presumed not to intend to do so, unless there are clear words in the legislation or necessary implication to the contrary.[5] In relation to a stay of the proceedings under Section 69.1 of the

[3] See sections 69 et seq. of the BIA, pursuant to whichthe stay affects "any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy". This has been interpreted very broadly as covering any kind of recovery, judicial or extrajudicial. The word "proceedings", in particular, refers to all and any procedural step taken in an action, from its commencement to the execution of the judgement.
[4] Sections 69.1(2) and 244 of the BIA.
[5] *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, [2004] 2 SCR 427, para 54. See also *Caterpillar Financial Services Corporation v. Boale, Wood & Company Ltd*., 2014 BCCA 419 (CanLII), para 24.

BIA, courts have declared that "[n]*othing in s. 69(1)(a) or any other related provision of the BIA expressly states that it applies extra-territorially*" and that the extraterritorial scope of other sections of the BIA (see answer to Question 15) "*cannot be taken to imply that Parliament intended s. 69 to have extra-territorial effect*".[6]

h. When do the effects (if any) of insolvency on arbitration become operative (eg, from the time of the opening of insolvency proceedings, the declaration by the court, its publication or service of process through other means on the affected parties or even the arbitrators, etc.)?

11. Canadian insolvency proceedings become operative upon the opening of insolvency proceedings.

4. Does the law of the jurisdiction permit relief from the effects above? If so, what procedures must be followed in order to proceed with an arbitration?

a. Can an interested party seek to intervene in the insolvency proceeding in order to proceed with arbitration?

b. What considerations will the insolvency court take into account in making the decision of whether to send the matter to arbitration?

12. An interested party can intervene in the insolvency proceeding and request a lift of the stay of proceedings resulting from insolvency and ask for leave to proceed instead through arbitration where the claim is subject to a valid arbitration agreement. However, as discussed in response to Questions 2 and 8, where arbitration would compromise the orderly and efficient resolution of an insolvent estate, the insolvency court can preclude arbitration in favor of a centralized judicial process. The factors that may be considered by the court are also discussed under Questions 2 and 8.

5. Can the insolvency courts give an order to stop arbitration proceedings (eg, an anti-arbitration injunction)? If so, does it depend on the seat of the arbitration being in the jurisdiction or abroad?

13. As a preliminary matter, it bears noting that there are no specialised "insolvency courts" in Canada. Section 183 of the BIA lists the courts that are invested with jurisdiction at law and in equity to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and insolvency matters. These courts include: the courts of first instance in each of the ten provinces, the courts of appeal through the country, as well as the Supreme Court of Canada or "SCC". The

[6] *Smith (Re)*, 2005 NWTSC 56 (CanLII)

SCC has confirmed that section 183 of the BIA confers courts broad powers to deal with such matters,[7] including the authority to preclude arbitration in favour of insolvency proceedings.[8] As a result of their equitable jurisdiction, Canadian courts sitting in insolvency and bankruptcy can grant any suitable relief, including an injunction or an order for specific performance.[9]

14. The SCC has also interpreted the CCAA, as granting courts broad and flexible authority to make the orders necessary for the reorganisation of the debtor company. This enables courts to exercise their inherent or equitable jurisdiction to fill in gaps in the CCAA and issue orders that are not explicitly provided by the statute.[10]

15. Furthermore, on the filing of a notice of intention by an insolvent person, section 69. 1 of the BIA precludes, subject to certain exceptions, creditors from "*commenc*[ing] *or continu*[ing] *any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy*". Similarly, sections 11.02 (1) and (2) of the CCAA empower courts to make an order staying, restricting or prohibiting, until otherwise ordered by the court, "*all proceedings taken or that might be taken in respect of the company*". The term "*proceedings*" has been broadly interpreted to include arbitration proceedings.[11]

16. Although there does not seem to be any Canadian court decision ordering an anti-arbitration injunction in a case dealing with insolvency, the Court of Appeal of British Columbia, in a case where a party breached its covenant not to pursue arbitration while an action was before local courts, ruled that courts can, as a matter of contract law, issue anti-arbitration injunctions, even when the arbitration is seated abroad (in this case, in China). Although the Court of Appeal acknowledged that courts should "exercise caution before granting any injunction affecting the conduct of foreign proceedings whether those be judicial or arbitral in nature", it deemed that it could exercise its *in personam* jurisdiction and rule upon the conduct of the party relying upon foreign jurisdiction.[12]

17. Therefore, courts sitting in insolvency in Canada are, in principle, empowered to stop arbitration proceedings, regardless of the seat of the arbitration. Whether or not the arbitral tribunal will consider itself bound to follow this court order is however likely to depend on the location of the arbitral seat, as the tribunal may consider that it is not bound to follow court orders issued by courts in jurisdictions that are not its arbitral seat.

6. Can the insolvency administrator or the insolvency court terminate or suspend the effectiveness of contracts that contain arbitration agreements concluded by the insolvent party before the opening of insolvency proceedings? If so, on what basis?

[7] *Sam Lévy & Associés Inc.* v. *Azco Mining Inc.*, 2001 SCC 92, at para 38.
[8] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at para 73.
[9] *Re Heron & Co. Ex Parte Robertson*, 1933 CanLII 118 (ON SC).
[10] See *Century Services Inc.* v. *Canada (Attorney General)*, 2010 SCC 60, at paras 19 and 64–70.
[11] *Luscar Ltd.* v. *Smoky River Coal Limited*, 1999 ABCA 179 (CanLII), at paras 31–33.
[12] *Li* v. *Rao*, 2019 BCCA 264, at paras 73–75.

18. Under Canadian law, contracts concluded by an insolvent party before the opening of insolvency proceedings can be terminated or suspended by a court-appointed receiver based on both common law and the court's receivership order.

19. Pursuant to section 243 (1) of the BIA, the court may appoint a receiver to take any action that the court considers just, convenient or advisable, including taking possession of or control over the insolvent party's property and business. As a result, Canadian courts may grant receivership orders that authorise a receiver to disclaim executory contracts concluded by the insolvent party, as the receiver is neither bound by the insolvent party's contracts nor personally liable for their performance. Furthermore, a receiver may also seek permission from the court to terminate a contract. The receiver's ability to disclaim contracts remains, however, subject to certain limitations. The receiver must not disclaim a contract arbitrarily or inequitably as it has a fiduciary duty to act honestly and cannot disclaim a contract that has granted a property right.[13]

20. Receivers can also disclaim contracts that contain arbitration agreements. For instance, this was the case in a recent first-instance decision where the court found that the receiver had the right and authority to disclaim an agreement that contained an arbitration clause.[14]

21. Moreover, pursuant to sections 65.11 of the BIA and 32 of the CCAA, a debtor company may disclaim or terminate any agreement to which it is a party on the day on which proceedings commence, provided that either the monitor or the court authorises the disclaimer or termination of the agreement.

22. As explained in the response to Question 8 below, the question as to whether an arbitration clause contained in an agreement entered into prior to the opening of the insolvency proceedings can be disclaimed or terminated pursuant to section 65.11 of the BIA, section 32 of the CCAA or the terms of the applicable receivership order, as the case may be, has not been decided conclusively under Canadian law.[15]

7. What is the effect (if any) on the arbitration agreement of the decision of the insolvency administrator or insolvency court to terminate/disclaim the contract that contains such arbitration agreement?

23. Canadian courts have yet to address the effect, on the arbitration agreement, of the decision taken in insolvency proceedings to disclaim the contract containing the arbitration agreement. However, recent decisions from the SCC regarding the doctrine of separability may provide guidance on this issue.

[13] See, eg, *101297277 Saskatchewan Ltd.* v *Copper Sands Land Corp.*, 2022 SKQB 39 (CanLII), at para 25 and *Canada (Attorney General)* v *Ernst & Young Inc*, 2019 ABCA 180 (CanLII), at para 10.
[14] *101297277 Saskatchewan Ltd.* v *Copper Sands Land Corp.*, 2022 SKQB 39, at paras 21 and 29.
[15] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at paras 120-121 (majority reasons) and 191 to 195 (concurring reasons).

24. The SCC has recognised the applicability of the separability doctrine in Canadian law and held that "an arbitration agreement is invalidated only by a defect relating specifically to the arbitration agreement itself and not by one relating merely to the underlying contract in which that agreement is found".[16] The SCC further reaffirmed that the purpose of separability is to safeguard arbitration agreements in the event of a challenge to the validity of the arbitration agreement or its underlying contract.[17]

25. Therefore, based on the separability doctrine as set out by the SCC, it appears very likely that, in the absence of a defect specifically relating to the arbitration agreement, the sole termination by the insolvency administrator or by the insolvency court of the underlying contract would not affect the arbitration agreement, which would remain valid.

8. Can the insolvency administrator or the insolvency court terminate or suspend the effectiveness of arbitration agreements themselves? If so, on what basis? What is the effect of such decision on pending arbitration proceedings derived from the arbitration agreement in question?

26. Under Canadian law, where a matter that is subject to an arbitration agreement is brought before the court, the court must, if requested by a party, stay the legal proceedings and refer the parties to arbitration unless it determines that the arbitration agreement is "*void, inoperative or incapable of being performed*".[18]

27. In a recent decision of the SCC, the majority held that a court-appointed receiver cannot unilaterally disclaim an arbitration agreement to render it ineffective and that "*only a court can make a finding that an arbitration agreement is inoperative or incapable of being performed*".[19] In the majority's opinion, the then-section 15 (2) of the British Columbia Arbitration Act[20] concerning the stay of court proceedings should be interpreted narrowly to "*prevent parties from avoiding arbitration in favour of what they view as a preferable procedure*", and not "*diminish the presumptive enforceability and predictability of arbitration agreements*", which is the legislative intent behind the Act.[21] The minority of the court disagreed on this specific issue only and opined that a receiver could validly disclaim an arbitration agreement to the extent that the terms of the receivership order rendered by the court authorised the receiver to sue in court in order to collect the accounts receivable.[22]

28. In any event, the SCC unanimously agreed that the power to declare an arbitration agreement inoperative belonged exclusively to the courts.[23] The SCC explained that the basis for this

[16] *Uber Technologies Inc.* v. *Heller*, 2020 SCC 16, at para 224.
[17] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at paras 167 and 168.
[18] See, eg, Article 8 in Schedule 2 of the Ontario *International Commercial Arbitration Act*, S.O. 2017, c. 2, Sched. 5.
[19] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at para 6.
[20] Now section 7 (2) of the British Columbia *Arbitration Act*, SBC 2020, c. 2.
[21] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at para 123.
[22] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at paras 191–193.
[23] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at para 197.

finding is the preservation of the integrity of the parallel insolvency proceedings and listed the relevant factors that can assist the court in its decision as including: "(a) *the effect of arbitration on the integrity of the insolvency proceedings*; (b) *the relative prejudice to the parties to the arbitration agreement and the debtor's stakeholders*; (c) *the urgency of resolving the dispute*; (d) *the effect of a stay of proceedings arising from the bankruptcy or insolvency proceedings*; *and* (e) *any other factors the court considers material in the circumstances*". [24]

29. The SCC further stressed that this analysis is context-specific and must be conducted on a case-by-case basis, considering all the relevant circumstances at hand. Where arbitration would compromise the orderly and efficient resolution of the insolvency proceedings, the court may declare the arbitration agreement inoperative or incapable of being performed, thereby granting paramountcy to the insolvency proceedings over the arbitration.[25]

9. Does the insolvency regime require the alleged creditor to take any step in the insolvency process to be able to commence or continue with the arbitration (eg, file the claim within the insolvency proceedings for verification/registration/ proof)?

a. If an alleged creditor files its claim with the insolvency proceedings and the claim is refused, does the existence of an arbitration agreement mean that an arbitral tribunal would have jurisdiction to decide on the existence and amount of the claim, so that it can be eventually submitted to the insolvency proceedings?

b. Does the filing of the claim with the insolvency proceedings amount to a submission of the jurisdiction of the insolvency court and a waiver of the arbitration agreement?

30. The alleged creditor wishing to commence or continue arbitration proceedings against an insolvent party would need to seek a lift of the stay of proceedings resulting from the opening of the insolvency proceedings and leave of the court to pursue its claim by way of arbitration. To do so, it would not need to submit a formal proof of claim. Where the only objective of the arbitration process is simply to liquidate or value a contingent, unliquidated or contested claim, the parties may well all agree to arbitrate the matter if it is more convenient to do so and request the court to remove the stay of the proceedings under Section 69.4,[26] it being understood that actual payment or satisfaction of an eventual arbitration award against the insolvent party would remain subject to the insolvency process.

31. For a party wishing to enforce an arbitration clause against an insolvent party subject to a stay of proceedings as a result of the opening of insolvency proceedings, it will need to seek leave of the bankruptcy court. Prudence would dictate that such a motion be made as soon as possible and that any proof of claim be filed under all reserve in support of such motion to avoid any

[24] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at para 155.
[25] *Peace River Hydro Partners* v. *Petrowest Corp.*, 2022 SCC 41, at paras 7–9 and 129.
[26] *Société en commandite Avestor (Proposition de)*, 2007 QCCS 4427 (CanLII) and *Industries Océan Inc.* (Faillite) c. *Anti-corrosion Industriel Des-Rochers Inc.*, 2003 CanLII 29955 (QC CS).

argument concerning possible waiver of the arbitration clause or submission to the court's competence over the subject-matter of the arbitral dispute.

10. In the event of a contract concluded by the insolvent party and a creditor prior to the opening of the insolvency proceedings, is an arbitration agreement contained in that contract enforceable in relation to an action commenced by the insolvency administrator to avoid that transaction based on grounds provided by insolvency law (insolvency *actio pauliana* or setting aside action)?

32. Both the BIA (sections 95 and 96) and CCAA (section 36.1) allow the insolvency administrator to seek the setting aside of preferences and fraudulent transactions before the court. There is, however, no Canadian authority addressing the issue of whether the arbitration agreement would apply to such action. The SCC has declared that, as a principle of common law, a trustee or a receiver that adopts a contract containing an arbitration clause becomes bound as a party to the arbitration agreement. This reasoning, however, applies to circumstances where the insolvency administrator seeks to enforce a contract on the behalf of the insolvent party.[27] Whether courts would follow the same reasoning in relation to an action to set aside the contract remains to be seen.

11. Can the insolvency administrator conclude new arbitration agreements after the opening of insolvency proceedings?

33. Yes, the insolvent party, unless bankrupt, can usually continue to operate its business and could enter into arbitration agreements. Further, under Canadian law, insolvency and bankruptcy administrators (a role mainly taken by the trustee, a licensed professional charged of administering insolvencies and bankruptcies) may enter into contracts that contain arbitration agreement after the opening of insolvency proceedings. Canadian courts have declared these arbitration agreements valid and found that administrators are bound by them.

34. More specifically, section 30 (1) of the BIA lists the actions that the trustee may undertake with the permission of the inspectors. These include the power to "*incur obligations*",[28] and to "*employ a barrister or solicitor or* […] *any other representative, to take any proceedings or do any business that may be sanctioned by the inspectors*".[29] Based on the latter provision, the Québec Court of Appeal ruled that the trustee could (with the permission of the inspectors) enter into a services agreement containing an arbitration agreement after the opening of the bankruptcy proceedings to manage the bankrupt party's tax reimbursement claims.[30] The Court of Appeal further held that the trustee was bound by the arbitration clause and that, absent a

[27] See *Peace River Hydro Partners* v. *Petrowest Corp*., 2022 SCC 41, at paras 105–110.
[28] Section 30 (1) (g) of the BIA.
[29] Section 30 (1) (e) of the BIA.
[30] Leave to appeal was granted by the SCC, but the appeal proceedings were later discontinued such that the Québec Court of Appeal's ruling stands as it is. See *Litwin Boyadjian Inc*. c. *Peter Kustec*, 2006 CanLII 16460 (SCC).

challenge brought under section 37 of BIA by a creditor or any other person affected by the bankruptcy proceedings within a reasonable time,[31] the arbitration did not contravene public order and could proceed.[32]

35. Similarly, and as already seen above, section 243(1) of the BIA enables the receiver to take any action that the court considers just, convenient or advisable, including exercising control over the property and business of an insolvent or bankrupt party. While there does not seem to be any court decision on this specific issue, this provision would presumably empower the receiver to conclude new arbitration agreements, as long as the receiver does so while acting "*honestly and in good faith*" and "*in a commercially reasonable manner*" as provided by section 247 of the BIA.

36. Additionally, the insolvency administrator could decide that the determination of the validity and the quantification of certain claims could be deferred to arbitration, provided that the court lifts the stay of the proceedings. As stated above in relation to Question 4, actual payment or satisfaction of an eventual arbitration award against the insolvent party would nonetheless remain subject to the insolvency process.

12. Do the effects of insolvency on arbitration (if any) operate after a creditors' arrangement has been agreed and approved by the competent authority?

37. Yes, they operate until the arrangement is fully implemented and the insolvency proceedings are formally terminated. The arrangement will deal with all claims (liquidated or not, fully adjudicated or not) which existed at the time of the commencement of the insolvency proceedings.

13. Are any or all the rules regulating the effects of insolvency on arbitration mandatory? That is, can an agreement between the insolvent party and one or more of its creditors (eg, the parties to the arbitration) exclude the application of those rules?

38. Yes, these rules are mandatory and cannot be waived in advance.

[31] Section 37 of the BIA provides that "[w]*here the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just*."
[32] *Experts en traitement de l'information (ETI) Montréal inc. (Syndic de)*, 2005 QCCA 1257 (CanLII), at paras 65-66 and 70.

14. Are arbitrators seated in the jurisdiction bound by the rules discussed above in considering whether to proceed with an arbitration?

39. Yes, arbitrators seated in Canada are bound by the rules of bankruptcy and insolvency law. While no Canadian court decision seems to have dealt with this issue, an award rendered in violation of these rules would likely be set aside or not be enforced on jurisdictional (eg, if the arbitration proceeds despite a court-ordered stay of the proceedings) or public policy grounds in accordance with the applicable provincial or federal legislation.

15. Does the court's personal jurisdiction over the party to the arbitration that is *not* in insolvency make any difference with respect to the effectiveness of the insolvency court's position on the arbitration?

40. Not in interprovincial domestic disputes. The BIA provides for a nationwide scheme for the adjudication of bankruptcy claims. The jurisdiction that a provincial court sitting in bankruptcy has over the insolvent party also extends to matters affecting the insolvent party's estate arising elsewhere in Canada. Thus, a court sitting in bankruptcy in one province can exercise its national jurisdiction over non-insolvent parties located in other provinces,[33] and its decisions and orders must be enforced by provincial courts across the country.[34]

41. The situation is less certain regarding disputes with foreign elements. There are no authorities directly on this point, but the following two considerations are relevant. On the one hand, the BIA grants Canadian courts jurisdiction over "*any type of property, whether situated in Canada or elsewhere*" and defines property very broadly as including, among other things, money, land, obligations and every description of property, whether real or personal, and every description of estate.[35] This has been interpreted as enabling courts to deal with property outside Canada and allowing them to issue orders with extraterritorial effect (although their realisation would ultimately depend on international comity).[36] On the other hand, since the BIA vests the rights of the debtor in the trustee,[37] court jurisdiction under the BIA operates *in personam*, and not *in rem*. Accordingly, the jurisdiction that a Canadian court sitting in bankruptcy assumes over the debtor and, incidentally, over its estate, should, in theory, not be affected by questions of personal jurisdiction over the non-insolvent party.

Part II: Considerations with Respect to the Arbitration Proceeding Where a Party Is Subject to Insolvency Proceedings

[33] *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92, at paras 25-28.
[34] Section 188 of the BIA.
[35] Section 2 of the BIA.
[36] *Caterpillar Financial Services Corporation v. Boale, Wood & Company Ltd*., 2014 BCCA 419 (CanLII), at paras 23-26.
[37] Section 71 of the BIA.

16. Will the insolvency administrator take part in the arbitration exclusively or will the insolvent party in some instances continue to have procedural capacity to participate in the arbitration in its own name (debtor in possession)?

a. If the insolvency administrator takes part in the arbitration, does she step into the shoes of (ie, replace) the insolvent party or can the insolvent party continue to appear in its own name? [in the latter option, what are the roles of the insolvency administrator and the insolvent debtor?]

42. In principle, if arbitration proceedings are authorised to continue despite the commencement of insolvency proceedings, the insolvent party will appear in its own name unless bankrupt, in which case the administrator (ie, the trustee in bankruptcy) would act on behalf of the estate. In certain circumstances, the court could direct that the insolvency proceedings be conducted instead by the insolvency administrator.

17. Do the considerations of confidentiality that apply in a non-insolvency scenario vary as a consequence of the opening of insolvency proceedings against one of the parties to the arbitration? For instance, are there any restrictions on the information that the insolvency administrator can share with the insolvency court or with the creditors in the insolvency concerning the conduct, status or content of the arbitration? Or can the creditors appear in the arbitration as parties interested in the outcome of the proceedings?

43. The Canadian judicial process is public and Canadian courts will only limit open judicial proceedings in exceptional circumstances. A party requesting the court to diverge from open proceedings must establish that (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects. A court may only grant a sealing order, a publication ban, a redaction order, or the exclusion of the public from a hearing when these prerequisites have been met. To obtain a confidentiality order for the purpose of protecting privacy, an applicant must establish that the order is necessary to prevent a serious risk of harm to their dignity. The same rules apply to insolvency proceedings. In practice, confidential documents are often filed under seal in insolvency proceedings and shared on confidential basis subject to confidentiality and non-disclosure agreements.

18. Does the name of a party change as a consequence of the opening of insolvency proceedings over it?

44. No.

19. Is the insolvency administrator (or the debtor in possession) empowered to reach a settlement in the arbitration, or is the insolvency court required to authorise any settlement for it to be effective?

45. Unless specifically provided for by way of a court order imposing such a requirement, it would not be necessary to obtain court approval for a settlement to be effective.

20. Can an arbitral tribunal adopt interim measures concerning a party subject to insolvency proceedings?

46. Canadian provinces have largely incorporated the content of the UNCITRAL Model Law on International Commercial Arbitration in their respective arbitration legislations. Certain provinces (Ontario and British Columbia) have also implemented the 2006 amendments to the UNCITRAL Model law, while others are expected to soon follow (Alberta, Prince Edward Island). As a result, arbitral tribunals seated in Canada are empowered to order interim measures unless the parties have agreed otherwise in the arbitration agreement.[38]

47. On this specific issue, the Ontario Court of Appeal has found that an arbitrator can issue interlocutory orders (relating, in this case, to a repayment motion and associated costs) against a party in bankruptcy. The Court of Appeal further declared that, under the Arbitration Act of Ontario, courts do not have jurisdiction to overturn interlocutory decisions rendered by an arbitrator.[39] However, in this case, orders had previously been made in bankruptcy proceedings lifting the automatic stays of the arbitration and the Court of Appeal noted that the enforceability of the arbitrator's interim orders would depend on the outcome of the bankruptcy proceedings. [40]

21. Does the opening of insolvency proceedings in Canada affect the validity of interim measures adopted against the insolvent party by an arbitral tribunal prior to the opening of the insolvency proceedings?

48. Although it appears that no Canadian legal authority has addressed this issue, the opening of insolvency proceedings should not affect the validity of interim measures ordered against the insolvent party by an arbitral tribunal prior to the opening of the insolvency proceedings, unless the interim measures in question amount to an "*action, execution or other proceedings, for the recovery of a claim provable in bankruptcy*", in which case the effects of the interim measures would be suspended in application of section 69 (1) of the BIA.[41] By way of illustration, Canadian

[38] See, for instance, Art. 17 in Schedule 2 of British Columbia's International Commercial Arbitration and Art. 17 in Schedule 2 of the Ontario International Commercial Arbitration Act. See also Art. 638 of the Quebec Code of Civil Procedure.
[39] *Universal Settlements International Inc.* v. *Duscio*, 2012 ONCA 215 (CanLII), at paras 32-33.
[40] *Universal Settlements International Inc.* v. *Duscio*, 2012 ONCA 215 (CanLII), at paras 40-43.
[41] *8032661 Canada inc.* c. *Moushaghayan*, 2015 QCCS 5721 (CanLII), at para 99.

courts have held, on this basis, that the opening of insolvency proceedings does not vacate or stay a court-issued Mareva injunction (or freezing order), which remains valid and in full effect insofar as that there is no conflict between the Mareva injunction and the court's receivership order, in which case the latter would prevail.[42]

22. Is the capacity of the insolvent party to settle the dispute in the arbitration affected by the opening of insolvency proceedings in the jurisdiction?

49. The formal ability of a party to Canadian insolvency proceedings to settle a dispute may be restricted by way of court orders (especially in receivership proceedings or proceedings under the CCAA). It would be advisable for any such settlement to be approved by the Canadian debtor and the Canadian insolvency administrator, and in accordance with any applicable court orders issued by the Canadian bankruptcy court.

Part III: Ability to Enforce an Arbitration Award in Insolvency Proceedings

23. Does the opening of insolvency trigger a general prohibition of individual enforcement actions by creditors against the insolvent estate?[43]

50. Yes, the rationale for the single proceeding model is to favour the enforcement of stakeholder rights through a centralized judicial process. As previously mentioned in response to Question 5, section 69 (1) of the BIA prohibits creditors, upon the filing of a notice of intention by an insolvent person, from commencing or continuing "*any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy*", the effect of which extends to enforcement proceedings. Section 69.3 of the BIA provides for a similar prohibition of any action, execution or other proceedings against a bankrupt debtor.

24. What is the status of a claim that is being pursued in arbitration but has not yet reached a final award? Will that claim be converted to a different status once the arbitration award has been rendered and/or becomes enforceable?

51. Under the BIA, a claim that is being pursued in arbitration but has not yet reached a final award is a "contingent or unliquidated claim" that may be filed and deemed a "provable claim" under the BIA subject to its examination by the trustee.[44] A contingent or unliquidated claim that is too speculative or too remote does not meet the sufficient certainty test required for its

[42] See, eg, *Re Osztrovics (No.1)*, 2014 ONSC 1567 (CanLII), at paras 34-36 and *Re Poreba*, 2014 ONSC 277 (CanLII), at paras 81-85.
[43] The expression "individual enforcement actions" refers to actions commenced outside of the insolvency proceedings for the enforcement of a credit.
[44] See sections 121 (1) and 121 (2) of the BIA.

inclusion in the insolvency process.[45] If determined to be a provable claim, the trustee will then value it and declare it a "proved claim" in the amount of its valuation.[46] Conversely, the trustee may also disallow the claim in whole or in part.[47] The trustee's determination or disallowance of the claim may be appealed before the court within 30 days after service of the notice of the trustee's decision.[48]

52. Therefore, a claim that is being pursued in arbitration would have to be reviewed by the trustee which will only approve and categorise it as a "proved claim" if found to be sufficiently certain. Once the arbitration award has been rendered and/or becomes enforceable, the claim is no longer contingent or unliquidated and becomes a provable claim by right for which the creditor may file an amended proof of claim (or a new proof of claim) that the trustee will review and value.[49]

25. Is a credit contained in an arbitration award a valid proof of credit (ie, valid title) for the purposes of the insolvency proceedings? If it is a foreign award, will it need to be recognised under the New York Convention for it to be accepted or is there any other requirement that needs to be satisfied?

53. There does not seem to be any Canadian legal authority addressing this issue. The answer presumably depends on the specific circumstances of the claim and the trustee's assessment of it. Indeed, section 135 of the BIA provides for a summary procedure for the determination of claims, pursuant to which the trustee must examine every proof of claim and may require further evidence in support of the claim. Courts have interpreted this provision as granting the trustee broad discretion and authority to seek additional information and documents from creditors. Courts have also stressed that the process is animated by objectives of speed, economy and informality.[50] Accordingly, it is possible, subject to the trustee's determination, that an arbitral award containing a credit could be deemed a valid proof of claim for the purposes of insolvency proceedings without the need for prior judicial recognition.

26. Are any or all the rules regulating the effect of insolvency on arbitration considered part of public policy?

54. Canadian insolvency and bankruptcy laws do not explicitly state which rules are part of public policy. This issue has rather been addressed by courts on a case-by-case basis and whilst some courts have declared that the provisions of the BIA and those of the CCAA as a whole fall under

[45] See *Newfoundland and Labrador* v. *AbitibiBowater Inc.*, 2012 SCC 67, at para 36
[46] Section 135 (1.1) of the BIA
[47] Section 135 (2) (a) of the BIA.
[48] Sections 135 (3) and (4) of the BIA.
[49] Although the BIA does not specifically provide for the filing of an amended proof of claim, this is admitted in practice.
[50] *YG Limited Partnership (Re)*, 2022 ONSC 6138 (CanLII), at para 56.

public policy,[51] this has not been yet confirmed by the SCC. As a result, there is no definite and exhaustive list of rules or legal provisions that form public policy.

55. However, considering recent case law, one can safely consider the principle of orderly and efficient resolution of insolvency disputes, which favours a single and centralised model for insolvency proceedings and may require courts to preclude arbitration under certain circumstances (see answer to Question 27 below),[52] to be part of public policy. Rules of anti-deprivation and of *pari passu* could also arguably be viewed as public policy (see answer to Questions 13 and 27).[53]

27. Is the principle of *par conditio creditorum* part of public policy? If so, is public policy linked to the equal treatment of creditors from a substantive point of view (ie, proportion of their credit that is satisfied in the insolvency process) or does it extend to the equal treatment of creditors from a procedural point of view (eg, prohibiting individual proceedings [eg, arbitration] outside the insolvency process)? [54]

56. The principle of *par conditio creditorum* is captured by the common law doctrine of "fraud on the bankruptcy law" and its rule of *pari passu* found in section 141 of the BIA, both of which are addressed above in response to Question 13. The *pari passu* rule is of mandatory application in Canada and although the SCC has not explicitly confirmed that it is part of public policy, there are strong reasons to consider that it is.[55]

57. In any event, the public policy objectives of the BIA include the orderly and efficient resolution of insolvency disputes, which is reflected in the single proceeding model.[56] According to the SCC, courts must favour the more expeditious and efficient procedure and, therefore, preclude arbitration in favour of a centralised judicial process where the multiplicity of proceedings would otherwise undermine the orderly and timely resolution of the dispute and result in

[51] See, eg, *Eagle River International Ltd., (Faillite) Re*, 2000 CanLII 9546 (QC CA), at para 44 in which the Québec Court of Appeal declared that "*the BIA is a legislation of public policy whose provisions must be strictly observed*". See also *Chef Ready Foods Ltd*. v. *Hongkong Bank of Canada*, 1990 CanLII 529 (BC CA) in which the Court of Appeal of British Columbia described the application of the CCAA and its provisions as a matter of public policy from which creditors could not be exempted.

[52] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, at para 73.

[53] *Chandos Construction Ltd.* v. *Deloitte Restructuring Inc.*, 2020 SCC 25, at paras 102-103.

[54] If the equality of creditors is part of public policy only from a substantive point of view, an award rendered by a foreign arbitral tribunal despite the prohibition of arbitration might still be effective in the insolvency proceedings because the award creditor will still abide by the *pari passu* distribution in insolvency. If, on the contrary, the public policy consideration of equality of creditors also extends to its procedural dimension, ie, every creditor should have its claim decided under the same procedure, an award rendered in breach/disregard of such procedures might not be effective in the insolvency proceedings.

[55] See *Chandos Construction Ltd. v. Deloitte Restructuring Inc.*, 2020 SCC 25 (CanLII), at para 110. While Justice Côté, writing in sole dissent, stated that the legislator intended for the *pari passu* rule to fall under the doctrine of public policy, the majority did not address this issue. See also *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, at para 73 where the SCC describes "the equal treatment of creditors" as a matter of public interest.

[56] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, at paras 54-55.

inefficiencies.[57] Thus, public policy under Canadian insolvency and bankruptcy law can be considered to extend to procedural matters and, in certain circumstances, prohibit individual proceedings outside the single, centralised judicial process.

28. Are there any other provisions or case law of Canada concerning the effect of national insolvency on arbitration that have not been mentioned in the previous answers?

58. Shortly before the SCC handed down its decision in *Peace River Hydro Partners v Petrowest*, the Ontario Court of Appeal issued a similar decision finding that an arbitration agreement was rendered inoperative by virtue of the single proceeding model and thus did not bind a court-appointed receiver, which could sue the insolvent party's debtor in court, rather than in arbitration.[58] Only future will tell whether this is an indication of a wider trend of Canadian courts refusing to enforce arbitration clauses to resolve insolvency disputes, or whether Canada will remain a pro-arbitration jurisdiction even when dealing with insolvency matters.

IMPACT OF FOREIGN INSOLVENCY ON ARBITRATION SEATED IN NATIONAL JURISDICTION

[These questions focus on the effects that foreign insolvency proceedings produce on arbitration seated in Canada **concerning the insolvent party]**

29. Do foreign insolvency proceedings need to be recognised under any formal [local] procedure to produce effects in Canada?

59. Yes, foreign insolvency proceedings may be recognized by Canadian courts pursuant to Part XIII of the BIA or pursuant to Part IV of the CCAA which serve to codify the UNCITRAL Model Law on Cross-Border Insolvency into Canadian insolvency legislation (the "Model Law").

60. Part XIII of the BIA describes the rules applicable to cross-border insolvencies and, in particular, to the recognition of foreign proceedings.[59] Section 269 (1) of the BIA provides that a "*foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative*".[60] To that end, the foreign representative must, in support of the application for the recognition of a foreign proceeding, provide the court with evidence (eg, a certificate from the foreign court or a certified copy of the relevant legal instrument) establishing (i) the existence of the foreign proceeding and, (ii) that the applicant is

[57] *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, at para 73.
[58] *Mundo Media Ltd. (Re)*, 2022 ONCA 607 (CanLII).
[59] See sections 269 to 274 of the BIA.
[60] Pursuant to section 268 (1) of the BIA, "*foreign proceeding means judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditor's collective interests generally under any law relating to bankruptcy or insolvency in which a debtor's property and affairs are subject to control or supervision by a foreign court for the purpose of reorganization or liquidation*".

a foreign representative in respect of the foreign proceeding.[61] Once these evidentiary requirements are met, the court will make an order recognising the foreign proceeding in accordance with section 270 (1) of the BIA. The court must also specify in its order whether the foreign proceeding is a foreign main proceeding (ie, a proceeding in a jurisdiction where the debtor has the centre of his or her main interests) or a foreign non-main proceeding.[62]

61. Part IV of the CCAA mirrors Part XIII of the BIA and sets out a similar mechanism for the recognition of foreign proceedings.[63]

30. Has the jurisdiction adopted legislation implementing the UNCITRAL Model Law on Cross-Border Insolvency? If so, does that legislation adopt the Model Law in full, or does it amend any provision of the Model Law related to the effect of insolvency on arbitration?

62. Yes, although Canada did not adopt the UNCITRAL Model Law on Cross-Border Insolvency in full, it amended both the BIA and CCAA to implement a legislative scheme that closely aligns with the Model Law and which is expressed through Part XIII of the BIA and Part IV of the CCAA.

63. In relation to the effect of insolvency on arbitration, one of the most significant divergences between the relevant Canadian legislation and the Model Law concerns "*foreign non-main proceeding*", which in Canada is more broadly defined as a "*a foreign proceeding, other than a foreign main proceeding*"[64] with no requirement for this proceeding to take place in a State where the debtor has an establishment, as is the case under the Model Law. Thus, in principle, Canadian legislation provides for a broader scope for the recognition and enforcement of foreign insolvency proceedings than the Model Law. This, in turn, entails a greater chance that arbitrations seated in Canada are impacted by insolvency proceedings taking place outside the country.

64. Another difference between Canadian law and the Model Law relates to the public policy exception. Whereas the Model Law states that "[n]*othing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State*", Canada has opted for a broader exclusion applicable to anything that would merely be "*contrary to public policy*".[65] Canadian courts have however interpreted this exception narrowly,[66] and there is no reported court decision in which the court refused to recognise a foreign insolvency proceeding on grounds of public policy.

[61] See sections 269 (2) to (5) of the BIA.
[62] Section 270 (2) of the BIA.
[63] See section 46 to 51 of the CCAA.
[64] See section 268 (1) of the BIA and section 45 (1) of the CCAA.
[65] See section 284 (2) of the BIA and section 61 (2) of the CCAA.
[66] See, eg, *Pelletier (Re)*, 2021 ABCA 264 (CanLII), at para 32.

31. Does the opening of insolvency proceedings outside of the territory of Canada produce any effect on arbitrations seated in the jurisdiction? What is the source of the rule or legislation providing for such effects?

65. Under the BIA and CCAA, foreign insolvency proceedings, if recognised by a Canadian court and subject to the content of the court order, may produce effects on arbitrations seated in Canada. There may, for instance, be a stay of the arbitral proceedings or a prohibition for a party to initiate arbitral proceedings until otherwise decided by the court.[67]

66. Without an order by Canadian courts recognising these foreign insolvency proceedings, however, the mere opening of insolvency proceedings outside of country does not produce legal effects. Foreign insolvency proceedings must first be recognised by a Canadian court under sections 269 to 274 of the BIA as described above (or under the equivalent provisions of the CCAA) before they produce any effect on proceedings taking place in Canada. The court order provides for the effects produced by the foreign proceedings. Moreover, the BIA and the CCAA distinguish foreign main proceedings from foreign non-main proceedings in respect of their effects in Canada. The recognition of foreign proceedings as foreign main proceedings results in an automatic stay against lawsuits concerning the debtor's property, whereas foreign non-main proceedings require an application to obtain such relief.

67. More specifically, section 271 (1) of the BIA, which addresses the "effects of recognition of a foreign main proceeding" provides that, on the making of an order recognising a foreign main proceeding (as opposed to a foreign non-main proceeding), "*no person shall commence or continue any action, execution or other proceedings concerning the debtor's property, debts, liabilities or obligations*" (subsection 271 (1) (a) of the BIA).[68] However, under section 271 (3) of the BIA, the court can subject the prohibition contained in section 271 (1) (a) to exceptions specified in the order recognising the foreign proceedings "*that would apply in Canada had the foreign proceeding taken place in Canada*" under the BIA. This would presumably empower the Court to refer, in its order, to section 69.4 under which the Court may lift the stay if its continuation would materially prejudice the creditor or another person affected by it, or if it would be equitable.

68. As regards foreign non-main proceedings, on application by a foreign representative, the court may make a similar order prohibiting the commencement or continuance of proceedings (and apply exceptions if appropriate) if the court is satisfied that such order is necessary for the protection of the debtor's property or the interests of a creditor or creditors (sections 272 (1) (a) of the BIA). Whether the foreign insolvency is a main or non-main proceeding, and on

[67] See section 271 (1) (a) providing for a prohibition or stay of any action, execution or other proceedings concerning the debtor's estate. See also section 272 (1) of the BIA providing for any order that the court considers appropriate for the protection of the debtor's estate.
[68] Pursuant to section 271 (2) of the BIA, the prohibition contained in section 271 (1) does not apply where proceedings under the BIA have already been commenced in respect of the debtor at the time the order recognising the foreign proceeding is made.

application by the foreign representative, the court further has broad discretion to make any order it considers appropriate.[69]

69. Likewise, subsections 48 (1) (b) and (c) of the CCAA provide that, on the making of an order recognising a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate, restraining any further proceedings or prohibiting the commencement of any proceedings against the debtor company, until otherwise ordered by the court.[70]

70. Further, subsection 49 (1) (a) of the CCCA provides that, in relation to foreign non-main proceedings, the court may render the same order referred to in section 48 (1) if it is satisfied that such order is necessary for the protection of the debtor's property or the interests of a creditor or creditors.

32. Are arbitrators seated in the jurisdiction required to take into account the rules on recognition of foreign insolvencies (if any) to evaluate the effects of such insolvencies in the arbitration, as described in the previous question?

71. Yes, arbitrators seated in Canada must consider rules relating to the recognition of foreign insolvency proceedings and, if applicable, refer to the court order recognising the foreign insolvency in addition to any other order issued in relation to the recognition of the foreign insolvency. As mentioned above in response to Question 1, the court order recognising the foreign insolvency proceeding also lists the effects of the recognition on the debtor, which may include a stay or prohibition of other any proceedings that concern the debtor's estate such as arbitration.[71] In such event, arbitrators must comply with the order.

33. Are the rules that regulate the effects on arbitration of foreign insolvency proceedings of mandatory application for arbitral tribunals seated in the jurisdiction?

72. Yes, as explained above, these rules are mandatory.

34. Will an award which does not respect the effects of insolvency provided by the relevant regime in the jurisdiction be set aside?

[69] Section 272 (1) of the BIA and *Pelletier (Re)*, 2021 ABCA 264 (CanLII), para 41.
[70] Pursuant to section 48 (3) of the CCAA, section 48 (1) does not apply if any proceedings under the CCAA have been commenced in respect of the debtor company at the time the order recognising the foreign proceeding is made.
[71] See sections 271 (1) and 272 (1) of the BIA.

73. Although there seems to be no Canadian legal authority addressing this specific issue, an award that violates the rules pertaining to foreign insolvencies would likely be annulled on public policy grounds.

74. Indeed, an award rendered in disregard of a court order recognising the foreign insolvency and its effects on arbitral proceedings seated in Canada would interfere with the orderly administration of justice and undermine the court's authority and, therefore, amount to contempt of court which in Canada is punishable by a fine and imprisonment.

35. Are there any other provisions or case law concerning the effect of foreign insolvency on arbitration seated that have not been mentioned in the previous answers?

75. No.