

Insolvency and Restructuring Bulletin

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Exemption of RRSPs and RRIFs in Bankruptcy: Bill C-62 Will Change the Changes Made by Bill C-55

Currently, registered retirement saving plans (RRSPs) and registered retirement income funds (RRIFs) that are based on annuities issued by life insurance companies are immunized against creditor seizure by provincial laws, under which annuities are classified as policies of insurance and insurance policies are exempted from seizure. The same exemptions also apply against a bankruptcy trustee, due to an incorporating reference to provincial law exemptions in section 67 of the Bankruptcy and Insolvency Act (BIA). Only property that falls into a debtor's estate vests in the bankruptcy trustee and is divisible amongst the debtor's creditors. Section 67 provides that property does not fall into the bankrupt estate if it is exempt from creditor seizure under a provincial law that applies to the debtor.

Chapter 47 of the 2006 Statutes of Canada, which has not been brought into force, amends section 67 of the BIA to provide that provincial law immunities from creditor seizure do not apply to RRSPs and RRIFs in bankruptcy. Instead, Chapter 47 amends section 67 by inserting an exemption that is not confined to life insurance registered plans but is limited in three ways - namely, (i)

RRSPs and RRIFs are protected against falling into the debtor's estate only if they are locked-in, (ii) the exemption is subject to a total dollar limit to be set by regulation and (iii) contributions made in the 12 months immediately preceding the bankruptcy are not exempt.

Bill C-62, which will amend Chapter 47 in various ways and make additional changes to the BIA, was sent directly to the Senate by all-party consent in Parliament. It is awaiting second reading in the Senate, and referral to the Senate Banking, Trade and Commerce Committee for study, when the current legislative session resumes.

If passed and brought into force, Bill C-62 will alter Chapter 47, and thus section 67 of the BIA, in two ways. (1) It will restore the application of provincial law exemptions for RRSPs and RRIFs in bankruptcy. (2) In the case of RRSPs and RRIFs that are not covered by provincial law exemptions it will provide an exemption in bankruptcy with no requirement that the registered plans be locked-in and no provision for a total dollar cap on the exemption, but still subject to the limitation that contributions made in the 12 months preceding bankruptcy will not be exempted.

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The Bill C-62 changes would not result in an exemption from creditor seizure for non-life insurance registered plans if the individual is not bankrupt. The provinces do not currently have laws that refer to exemptions created by the BIA, so as to make them apply outside of bankruptcy. Provinces could enact such laws. Or, provinces could enact unlimited exemptions for all registered plans, which would then apply in bankruptcy if section 67 is changed in the manner set out in Bill C-62.

If it becomes law, Bill C-62 will diminish but not eliminate life insurers' competitive advantage with individuals who value creditor-proofing, because the provincial exemptions for life insurance registered plans are not subject to a carve-out for contributions

made in a 12-month period. So, perhaps banks, investment dealers and other participants in the market for RRSPs and RRIFs, and consumers groups, will lobby provincial legislators to create full equality of treatment by affording a creditor seizure exemption to non-life insurance registered plans on the same exception-free basis as applies to life insurance ones.

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