

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

Vol. 42 No. 10 October 2026

EVOLUTIONARY RESTRUCTURING TRENDS IN CANADA AND THE UNITED STATES

As restructuring options proliferate on both sides of the border, companies with U.S. and Canadian touchpoints have more choices than ever for managing financial distress. This article examines the evolving relationship between chapter 11 of the U.S. Bankruptcy Code and Canada's Companies' Creditors Arrangement Act ("CCAA"), highlighting the key procedural, strategic, and economic considerations that influence forum selection in cross-border restructurings. It also explores the growing use of out-of-court alternatives, liability management transactions, and innovative restructuring techniques, such as reverse vesting orders and the Texas Two-Step. Through recent restructuring cases, including Nortel Networks, Toys "R" Us Canada, Just Energy, and Coach USA, the article illustrates how relevant debtors are increasingly leveraging a range of U.S. and Canadian tools to achieve restructuring objectives in an evolving market.

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North American corporate restructuring continues to evolve. For decades, chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532, served as the gold standard, default forum for cross-border restructurings involving U.S. and Canadian businesses. The framework provided by chapter 11, including the debtor-protective automatic stay and the creditor-favorable committee participation and plan approval rights, allows for a comparably efficient debt restructuring while preserving the debtor's ability to continue business operations. As out-of-court alternatives in the United States have become more popular — particularly liability management exercises, but also Uniform Commercial Code foreclosures, assignments for the benefit of creditors ("ABC"), and receiverships — so has the possibility for exploring other insolvency proceedings including proceedings in

Canada. Today, practitioners recognize that Canadian proceedings, particularly those under the Companies' Creditors Arrangement Act¹ ("CCAA") may be a competing alternative given the right facts and circumstances. The choice between regimes now turns on which forum best fits the circumstances, with a view towards efficiency, predictability, and value maximization.

THE U.S. RESTRUCTURING FRAMEWORK

The long-dominant United States federal insolvency regime offers three formal insolvency proceedings: chapter 7 liquidates; no debtor-in-possession status, no

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¹ Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36.