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DEBT RESTRUCTURING: Principles and Practice John D. Honsberger, Q.C., and Vern DaRe Release No. 3, July 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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What's New in this Update

This work is the authority on reorganization and debt restructuring of insolvent, or near insolvent, commercial and financial institutions and farmers in Canada. Included is a critical discussion of the history, theory and purpose of the debt restructuring process. Also included are discussions on drafting and an interpretation of the *Bankruptcy and Insolvency Act* (BIA) and the *Companies' Creditors Arrangement Act* (CCAA). Together this provides an in-depth and overall analysis and understanding of what's on the line during the debt restructuring process.

Release No. 3 features updates to case law and commentary in Chapters 3 (Structuring a Plan and Prefiling Procedures), 8 (Proposals Under the Bankruptcy & Insolvency Act), and 9 (Arrangements Under the Companies' Creditors Arrangement Act). This release also includes updates to Appendix 13A (Concurrent Foreign Proceedings: Cooperation, Integration, Assistance).

Highlights

Arrangements Under the Companies' Creditors Arrangement Act: Protection, Operation and Supervision of Debtor's Business During Proceedings—Downsizing and Sale of Assets— Section 11 of the CCAA provides the court with jurisdiction to issue a reverse vesting order but that discretion should be exercised in accordance with the objects and purposes of the CCAA. Also, the analytical framework of s. 36(3) of the CCAA for considering an asset sale transaction should be applied, with necessary modifications, to a reverse vesting order transaction even though s. 36 may not support a standalone basis for jurisdiction in a reverse vesting order situation. In addition to the s. 36 criteria, the parties must be prepared to answer the following questions: (a) why is the reverse vesting order necessary in the case? (b) does the reverse vesting order structure produce an economic result at least as favourable as any other viable alternative? (c) is any stakeholder worse off under the reverse vesting order structure than they would have been under any other viable alternative? and (d) does the consideration being paid for the debtor's business reflect the importance and value of the assets (i.e., licences and permits) being preserved under the reverse vesting order structure? As for the court's jurisdiction to cancel all outstanding shares and issue new shares of the debtor company to the purchaser as part of the reverse vesting order transaction, this can be found in corporate statutes.

Proposals Under the Bankruptcy and Insolvency Act: Alternative Remedies to a Proposal; Terms of a Proposal; Guarantees

of and Security for Proposals—Terms of a Proposal— *Bankruptcy and Insolvency Act*, s. 60(1.3). Under the provision, a court shall refuse to approve a proposal unless the proposal provides for payment of wage claims immediately after court approval of the proposal of amounts at least equal to their preference under s. 136(1)(d) of the BIA. Also, wage earners are eligible for payment under the Wage Earner Protection Program in the case of a proposal filed by the employer under the BIA.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
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- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages

