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**DEBT RESTRUCTURING  
Principles and Practice**

**John D. Honsberger, Q.C., and Vern DaRe**

**Release No. 64, February 2019**

**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.

**What's New in this Update:**

Release No. 64 features updates to case law and commentary in Chapters

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5 (Legal Issues) and 9 (Arrangements Under the *Companies' Creditors Arrangement Act*). This release also includes an update to the *Bankruptcy and Insolvency Act* found at Appendix 8A and the *Companies' Creditors Arrangement Act* found at Appendix 9A.

## Highlights

**Arrangements Under the Companies' Creditors Arrangement Act: Protection, Operations and Supervision of Debtor's Business During Proceedings — Supervision of Debtor** — The Court provided a detailed analysis of the factors that should guide a court's discretion whether to approve a Key Employee Retention Plan ("KERP") or Key Employee Incentive Plan ("KEIP") in a *Companies' Creditors Arrangement Act* ("CCAA") proceeding. *Aralez Pharmaceuticals Inc. (Re)*, 2018 CarswellOnt 19784, 2018 ONSC 6980 (Ont. S.C.J. [Commercial List]).

**Arrangements Under the Companies' Creditors Arrangement Act: Stay of Proceedings — Modification, Relief from and Termination of a Stay** — According to the commentary, the court has not lifted the stay to vary debtor in possession ("DIP") financing amendment orders granted by the court four or five years earlier in the CCAA proceedings where the DIP lender relied on the finality of the DIP amendment orders and would be materially prejudiced by their variance and where sufficient notice of the motions to approve the amendments was provided to the parties. To vary the final court orders in the circumstances would "throw the CCAA proceedings into chaos" based, in essence, on a "case of too little too late". The Court cautioned that potentially interested stakeholders cannot "sit idle and await the outcome of realization proceedings" and "must act to protect their interests or suffer the attendant consequences". *Crystallex International Corporation (Re)*, 2018 CarswellOnt 15724, 2018 ONCA 778.