

COURT FILE NO. 25-3002847 B301-002847  
ESTATE NO. 25-3002847  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY



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C121821

Jan 8, 2024  
COM

IN THE MATTER OF THE NOTICE OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.  
1985, c B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF INFARM INDOOR URBAN  
FARMING CANADA INC.

APPLICANT INFARM INDOOR URBAN FARMING CANADA INC.

**DOCUMENT APPLICATION (NOI EXTENSION)**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**McMILLAN LLP**  
1700, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

**Attention:** Adam Maerov/Preet Saini  
**Telephone:** 403.215.2752/ 403.531.4716  
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[preet.saini@mcmillan.ca](mailto:preet.saini@mcmillan.ca)  
**File Number:** 300427

#### NOTICE TO RESPONDENT(S):

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	January 8, 2024
Time:	2:00pm-4:00pm
Where:	Calgary Courts Centre via WebEx (see Appendix "A")
Before Whom:	The Honourable Justice C.M. Jones

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. The Applicant, Infarm Indoor Urban Farming Canada Inc. (“**Infarm Canada**”) seeks an order in the form attached hereto as Schedule “A”:
  - (a) abridging the time for service of this Application, if necessary, and declaring that this Application is properly returnable and that further service of this Application is hereby dispensed with; and
  - (b) extending the time for filing of a proposal in these proceedings to February 23, 2024, being the expiry of forty-five (45) days from January 9, 2024 when the current time for filing a proposal and stay expires;
2. Such further relief as counsel may request and this Honourable Court may grant.

**Grounds for making this application:**

**A. Background**

3. Infarm Canada is in business of vertical farming which is the practice of growing crops vertically in stacked layers. Infarm Canada sells vertical farming equipment to allow indoor and outdoor farming and sells produce prepared using its equipment. In doing so, Infarm Canada promotes sustainable and pesticide free produce using its supplies and methods.
4. Infarm Canada is an Alberta corporation continued from British Columbia.
5. Infarm Canada closed its operations in Calgary, Alberta and Vancouver, British Columbia. Infarm Canada’s only remaining operating facility is located in Hamilton, Ontario.
6. The most significant secured creditor of InFarm Canada is TriplePoint Capital (“**TPC**”). As of September 15, 2023, TPC was owed the principal amounts of approximately EUR 16,277,451 and USD 18,368,080.
7. Infarm Canada is indebted to TPC pursuant to a continuing guaranty and security agreement dated April 29, 2020 (“**Guarantee**”). As security for its obligations under the Guarantee, Infarm granted a security interest in favour of TPC in substantially all of Infarm Canada’s assets.
8. TPC made a demand for repayment and issued a notice of intention to enforce security to Infarm Canada on September 21, 2023.

**B. Infarm Canada Parent and Administration Proceedings Update**

9. On October 26, 2023, Infarm Canada filed a Notice of Intention to Make a Proposal to its creditors (the “**NOI**”).
10. On November 10, 2023, upon application by Infarm Canada, the Honourable Justice Dunlop granted an Order (the “**NOI Extension Order**”):
  - (a) approving a first ranking administration charge against all of InFarm Canada’s assets, property and undertakings in the maximum amount of CAD \$250,000 to secure the fees

and disbursements incurred by Infarm Canada's legal counsel and the fees and disbursements of the proposal trustee, KSV Restructuring Inc., and its legal counsel, in connection with services rendered to Infarm Canada both before and after the commencement of these proceedings (the "**Proposal Proceedings**"); and

- (b) granting an extension of time for Infarm Canada to file a proposal, and the corresponding stay of proceedings provided for in section 69 of the BIA until and including January 9, 2024.
- 11. The sole shareholder of Infarm Canada is a German company, Infarm – Indoor Farming GmbH ("**Infarm Parent**"). Infarm Parent is also indebted to TPC in the amounts described in paragraph 8 of the affidavit of Erez Galonska sworn December 21, 2023.
- 12. Infarm Parent is currently subject to administration proceedings in the United Kingdom (the "**Administration Proceedings**"). Pursuant to the Administration Order Damian Webb and Gordon Thomson of RSM UK Restructuring Advisory LLP were appointed as administrators of Infarm Parent.
- 13. The Administration Proceedings are expected to result in a sale by way of a credit bid of substantially all of Infarm Parent's assets, including all of the outstanding shares of Infarm Canada. The credit bid in the Administration Proceedings was scheduled to be completed in late November 2023. However, there were delays in the closing of the transaction.
- 14. Court approval of the credit bid transaction is expected to occur on or before January 15, 2024.
- 15. Infarm Canada has been in discussions with TPC regarding possible restructuring alternatives for an extended period of time. Infarm Canada understands from those discussions that TPC plans to make a credit bid for all of the assets of Infarm Canada.

**C. Extension of NOI and Stay Period**

- 16. Infarm Canada has maintained its operations in the normal course in Hamilton from the date of filing of the NOI. There have not any material disruptions to the business during that time.
- 17. The Proposal Trustee has reviewed and provided input on Infarm Canada's updated cash-flow statement that will be attached to the second report of the Proposal Trustee.
- 18. Since the NOI Extension Order was granted on November 10, 2023, Infarm Canada has been diligently pursuing activities aimed at the presentation of a proposal. In particular, Infarm Canada has been diligently:
  - (a) providing the Proposal Trustee with access to Infarm Canada's premises, property, and books and records;
  - (b) working with the Proposal Trustee and its counsel to report regarding compliance with the cash-flow statement and to identify issues with respect to the financial condition of Infarm Canada and the status of its creditors;
  - (c) engaging in discussions with the TPC regarding a possible credit bid for some or all of Infarm Canada's property and assets;
  - (d) responding to inquiries from various creditors regarding the status of the Proposal Proceedings;
  - (e) handling employee issues and maintaining employee relations;
  - (f) providing updates to the Proposal Trustee regarding the Administration Proceedings;

- (g) attending weekly update calls with the Proposal Trustee to discuss updates related to the Proposal Proceedings;
  - (h) continuing operations with a view to maximizing value of Infarm Canada's business and assets;
  - (i) disclaiming a lease not necessary to Infarm Canada's going concern operations;
  - (j) reviewing and assessing Personal Property Registry registrations and issuing notices to discharge security to those creditors with no outstanding obligations; and
  - (k) engaging a new distributor in Canada to distribute Infarm Canada's products to new customers.
19. Infarm Canada has acted and is continuing to act in good faith and with due diligence in completing the preliminary work and preparation with efforts to make a proposal to its creditors.
20. No creditor will be materially prejudiced if the extension being applied for is granted.

**Material or evidence to be relied on:**

21. The Affidavit of Erez Galonska, sworn December 21, 2023.
22. First Report of the Proposal Trustee dated November 8, 2023.
23. Second Report of the Proposal Trustee.
24. Order granted by the Honourable Justice Dunlop on November 10, 2023.
25. Such further material as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

26. Rules 6.47, 6.9, 9.14, 9.15, 11.27 and 13.5 of the *Alberta Rules of Court*; and

**Applicable Acts and Regulations:**

27. *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended s 50.4, 69;
28. This Court's equitable and inherent jurisdiction; and
29. Such further authority as counsel may advise and this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

30. None at this time.

**How the application is proposed to be heard or considered.**

31. In person before the Honourable Justice C.M. Jones on the Commercial List at the time, date and place referenced above by WebEx.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicants what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

## APPENDIX “A” – WEBEX INFORMATION

**Virtual Courtroom 60** has been assigned for the above noted matter:

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom60>

Instructions for Connecting to the Meeting

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:

<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

## **SCHEDULE “A”**

### **Form of Order**

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[preet.saini@mcmillan.ca](mailto:preet.saini@mcmillan.ca)  
**File Number:** 300427

**DATE ON WHICH ORDER WAS PRONOUNCED:** January 8, 2024  
**LOCATION WHERE ORDER WAS PRONOUNCED:** Calgary Courts Centre  
**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Justice Jones

**UPON THE APPLICATION** of Infarm Indoor Urban Farming Canada Inc. (“**Infarm Canada**”) for an order extending the time for Infarm Canada to file a proposal, and the corresponding stay of proceedings, until February 23, 2024; AND UPON noting that a certificate of filing of a notice of intention to make a proposal under subsection 50.4(1) of the *Bankruptcy and Insolvency Act* RSC 1985, c B-3 was issued on October 26, 2023; AND UPON reviewing the order granted by the Honourable Justice Dunlop on November 10, 2023 which extended the time for Infarm Canada to file a proposal and the corresponding stay of proceedings, until January 9, 2024; AND UPON hearing submissions by counsel for Infarm Canada, counsel for KSV Restructuring Inc. in its capacity as proposal trustee of Infarm Canada (“**Proposal Trustee**”) and any other counsel or other interested parties present; AND UPON reviewing the Affidavit of Erez Galonska sworn on December 21, 2023, and Second Report of the Proposal Trustee dated December 21, 2023;

**IT IS HEREBY ORDERED AND DECLARED THAT:**



## SERVICE

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

## STAY EXTENSION

2. Pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended (the “BIA”), the time for Infarm Canada to file a proposal, and the corresponding stay of proceedings provided for in section 69 of the BIA, be and is extended until and including February 23, 2024.

## MISCELLANEOUS MATTERS

3. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order, and to assist Infarm Canada or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to Infarm Canada and the Proposal Trustee, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist Infarm Canada or the Proposal Trustee and their respective agents in carrying out the terms of this Order.
4. Infarm Canada or the Proposal Trustee shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

## SERVICE OF ORDER

5. Service of this Order shall be deemed good and sufficient:
  - (a) by serving same on the persons who were served with notice of this Application and any other parties attending or represented at the hearing of the Application; and
  - (b) by posting a copy of this Order on the Proposal Trustee's website at <https://www.ksvadvisory.com/experience/case/infarm-urban-farming>.
6. Service of this Order on any other person is hereby dispensed with.
7. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

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Justice of the Court of King’s Bench of Alberta