

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Court No.: 31-3268936  
Estate No.: 31-3268936

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
IOVATE HEALTH SCIENCES INTERNATIONAL INC.

Court No.: 31-3268942  
Estate No.: 31-3268942

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
IOVATE HEALTH SCIENCES U.S.A. INC.

Court No.: 31-3268971  
Estate No.: 31-3268971

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
NORTHERN INNOVATIONS HOLDING CORP.

**FACTUM OF THE APPLICANTS  
(RETURNABLE OCTOBER 31, 2025)**

October 30, 2025

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## PART I - NATURE OF THE MOTION

1. On September 5, 2025, Iovate Health Sciences International Inc. (“**Iovate International**”), Iovate Health Sciences U.S.A. Inc. (“**Iovate USA**”), and Northern Innovations Holding Corp. (“**Northern Innovations**,” and together with Iovate International and Iovate USA, the “**NOI Applicants**”) each filed a Notice of Intention to Make a Proposal (each an “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), commencing the “**NOI Proceedings**.” KSV Restructuring Inc. (“**KSV**”) was appointed as the NOI Applicants’ proposal trustee (the “**Proposal Trustee**”).

2. The NOI Applicants, together with their affiliates Xiwang Iovate Holdings Company Limited (“**Xiwang Iovate**”) and Iovate Health Sciences Australia Pty Ltd (“**Iovate Australia**”, and together with the NOI Applicants, the “**Applicants**” or the “**Companies**”), have determined that a successful restructuring would require the breathing room and flexibility available under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”). The Applicants accordingly seek an order (the “**Initial Order**”):

- (a) declaring that each of the Applicants is a “debtor company” to which the CCAA applies;
- (b) directing that the NOI Proceedings be taken up and continued under the CCAA (as the “**CCAA Proceedings**”);
- (c) appointing KSV (the “**Proposed Monitor**”) as the monitor in the CCAA Proceedings (in such capacity, the “**Monitor**”);
- (d) granting the Stay of Proceedings (as defined below) until December 12, 2025, which extends to Infinity Insurance Co. Ltd. (“**Infinity Insurance**”), Iovate Health

Sciences Europe Limited (“**Iovate Europe**”), Muscletech LLC (“**Muscletech**”), XP Sports LLC (“**XP Sports**”), and Simplevita Nutrition LLC (“**Simplevita**”) (collectively, the “**Non-Applicant Stay Parties**”, and together with the Applicants, the “**Iovate Group**”);

- (e) ordering that the orders of this Court granted on September 9, 2025 (the “**September 9 Order**”), October 3, 2025, and October 17, 2025, and the relief granted thereunder, shall continue in full force and effect in the CCAA Proceedings;
- (f) expanding the September 9 Order to appoint Iovate International as the foreign representative of the Iovate Group in respect of these CCAA Proceedings and authorize it to apply for relief pursuant to the *United States Bankruptcy Code* in pending Chapter 15 proceedings (together, the “**Foreign Representative Relief**”); and
- (g) granting or continuing (as applicable) the Administrative Professionals Charge and the Directors’ Charge (each as defined below).

3. The Initial Order would extend critical relief granted in the NOI Proceedings and provide the Applicants with the space and stability necessary to achieve a successful going-concern restructuring.

## **PART II - THE FACTS**

4. The facts underlying this motion are more fully set out in the affidavit of Wesley Parris, sworn October 29, 2025 (the “**Initial Affidavit**”). Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Initial Affidavit.

### **A. The Iovate Group**

5. The Iovate Group operates a Canadian-based health and wellness company that develops, markets, and sells performance nutrition and weight management products under key brands including MuscleTech™ and Hydroxycut™.<sup>1</sup> Under the Iovate Group’s “asset light” model, all of its products are co-manufactured by a diverse group of trusted long-term partners, stored by third-party warehousing companies, and distributed by third-party logistics and/or transport companies.<sup>2</sup>

6. The Iovate Group’s parent company is Xiwang Iovate, which in turn is wholly owned by Xiwang Foodstuffs (Qingdao) Co. Ltd.<sup>3</sup> Xiwang Iovate directly or indirectly owns the other members of the Iovate Group,<sup>4</sup> which operate together as follows: (i) Iovate International is the principal Canadian operating entity;<sup>5</sup> (ii) the Iovate Group conducts its U.S. operations through Iovate USA, which wholly owns the Delaware Entities;<sup>6</sup> (iii) Northern Innovations holds the Iovate Group’s intellectual property portfolio;<sup>7</sup> (iv) Iovate Australia facilitates distribution of the Iovate Group’s products in certain markets;<sup>8</sup> (v) Infinity Insurance provides product liability insurance;<sup>9</sup> and (vi) Iovate Europe holds key European Union product registrations.<sup>10</sup> Most of the Applicants are incorporated in Canada, but the Non-Applicant Stay Parties are not.<sup>11</sup>

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<sup>1</sup> Initial Affidavit at paras. 8.

<sup>2</sup> Initial Affidavit at para. 55.

<sup>3</sup> Initial Affidavit at para. 24. A corporate chart showing the Iovate Group entities relevant to these CCAA Proceedings is attached as Exhibit “D” to the Initial Affidavit.

<sup>4</sup> Xiwang Iovate: (i) directly owns all of the issued and outstanding shares of Iovate International, Iovate USA, Northern Innovations, Iovate Australia, Iovate Europe and Infinity Insurance; and (ii) indirectly owns all of the issued and outstanding shares of Muscletech, XP Sports, and Simplevita (collectively, the “**Delaware Entities**”), which are directly owned by Iovate USA: Initial Affidavit at paras. 25, 47.

<sup>5</sup> Initial Affidavit at para. 31.

<sup>6</sup> Initial Affidavit at paras. 32, 47.

<sup>7</sup> Initial Affidavit at para. 36.

<sup>8</sup> Initial Affidavit at para. 39.

<sup>9</sup> Initial Affidavit at para. 42.

<sup>10</sup> Initial Affidavit at para. 45.

<sup>11</sup> Xiwang Iovate was incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 and has a registered office in Vancouver, British Columbia. Iovate International and Northern Innovations were continued and incorporated (respectively) under the *Business Corporations Act*, R.S.O. 1990, c. B.16 and have head offices in Oakville, Ontario (the “**Oakville Head Office**”). Iovate USA and the Delaware Entities, Iovate Australia, Infinity Insurance, and Iovate Europe are incorporated in and have a head office in Delaware, Australia, Barbados, and Ireland, respectively: Initial Affidavit at paras. 38, 41, 44, 47.

**B. The Applicants' financial position**

7. As at September 30, 2025, the Iovate Group had total consolidated assets and liabilities with unaudited book values of approximately \$488,000,000 and \$299,600,000, respectively.<sup>12</sup> The Applicants are current on corporate income tax and indirect tax obligations, as well as on all of their employee liabilities, including payroll and relevant statutory source deductions.<sup>13</sup>

**(a) Secured debt**

8. The Applicants' only secured creditors are the Lenders (as defined below).<sup>14</sup> On June 30, 2021, Iovate International entered into an amended and restated credit agreement (as amended, the "**Credit Agreement**") with RBC as administrative agent, issuing bank, joint lead arranger and joint bookrunner (in such capacity, the "**Administrative Agent**") and the financial institutions party thereto (collectively, the "**Lenders**").<sup>15</sup> Pursuant to the Credit Agreement, the Lenders agreed to make available to Iovate International a revolving credit facility totaling \$20,000,000 and a term credit facility in the amount of \$133,149,999.98 (together, the "**Loans**").<sup>16</sup>

9. Iovate International's obligations under the Loans were guaranteed by Xiwang Iovate, Northern Innovations, Iovate USA and Iovate Australia (collectively, the "**Guarantors**"), and secured by a comprehensive security package including security agreements granted by the Applicants.<sup>17</sup> As of August 31, 2025, there was a total amount of \$115,785,488 owing under the Credit Agreement.<sup>18</sup>

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<sup>12</sup> Initial Affidavit at paras. 93, 95. All references to currency in this factum are in USD, unless otherwise indicated.

<sup>13</sup> Initial Affidavit at paras. 96, 97.

<sup>14</sup> Initial Affidavit at para. 109.

<sup>15</sup> Initial Affidavit at para. 98. The Credit Agreement has since been amended on several occasions, most recently pursuant to Amending Agreement No. 10 dated February 28, 2025, which also extended the maturity date to January 2, 2026: Initial Affidavit at paras. 99, 100.

<sup>16</sup> Initial Affidavit at para. 100.

<sup>17</sup> Initial Affidavit at para. 101.

<sup>18</sup> Affidavit of Wesley Parris sworn September 6, 2025 at para. 25 (the "**September 6 Affidavit**").

**(b) Unsecured debt**

10. As of September 30, 2025, Iovate International, Iovate USA, and Iovate Australia had totals of \$26,247,059, \$3,630,516, and \$700,882 (respectively) in accounts payable.<sup>19</sup> Other unsecured obligations include intercompany borrowing between members of the Iovate Group and their affiliates,<sup>20</sup> and the Amended Judgment (as defined below) in the amount of \$12,500,000.<sup>21</sup>

**C. Events leading up to the NOI Proceedings**

**(a) The Applicants' financial difficulties**

11. The Applicants' financial performance has been impacted by declining revenue and lower margins due to higher logistics and commodity costs, reduced marketing expenditures, weaker performance in certain product categories and sales channels, pricing pressures, increased competition, and challenges in customer collection.<sup>22</sup> Beginning in May 2024, with the assistance of its financial advisor, KPMG LLP, the Applicants undertook various measures to improve profitability and address their immediate liquidity concerns.<sup>23</sup> Under their current management team, the Iovate Group has also implemented significant initiatives that have materially improved financial results.<sup>24</sup>

12. Two events in particular have strained the Applicants' finances: issues with a third-party logistics provider, Kenco Logistic Services LLC ("**Kenco**"), and an intellectual property dispute with Orgain, Inc. ("**Orgain**").

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<sup>19</sup> Initial Affidavit at para. 116.

<sup>20</sup> See the Initial Affidavit at paras. 124-126.

<sup>21</sup> Initial Affidavit at para. 132.

<sup>22</sup> Initial Affidavit at paras. 148.

<sup>23</sup> Initial Affidavit at para. 149. These measures included addressing operational challenges related to third-party logistics, reducing marketing expenditures while prioritizing efficiency, deferring orders from certain affiliates, implementing steps to mitigate commodity cost increases in order to preserve margins, and obtaining financial contributions from their ultimate parent company.

<sup>24</sup> Initial Affidavit at para. 91.

(i) **Third-party logistics issues**

13. The primary operational challenge for the Applicants arose from the transition of Iovate USA's distribution operations from its in-house facility to Kenco in September 2023.<sup>25</sup> Iovate USA and Kenco entered into a Warehousing & Logistics Services Agreement dated April 27, 2023 ("**Kenco Agreement**"), which appointed Kenco as the exclusive provider of certain warehousing services.<sup>26</sup> This transition ultimately proved unfavourable to Iovate USA, however, and by mid-2024, its third-party logistics costs significantly exceeded budget and historical levels.<sup>27</sup> In December 2024, Iovate USA decided to transition its customer procurement and fulfillment operations from Kenco to another third-party logistics provider, even though its contractual term with Kenco had not yet expired.<sup>28</sup> The parties discussed the termination of the Kenco Agreement but were unable to settle the matter by the time that the NOI Proceedings were commenced.<sup>29</sup>

(ii) **The Orgain judgment**

14. The Applicants' financial challenges have been exacerbated by legacy intellectual property litigation with Orgain, one of the Iovate Group's competitors, who commenced an action against Iovate International and Iovate USA in the United States District Court of Central District of California (the "**California Court**").<sup>30</sup> The jury returned a verdict in Orgain's favour, and the California Court entered a judgment.<sup>31</sup> The parties engaged in settlement discussions but later disagreed as to whether a binding settlement had been reached.<sup>32</sup> On August 30, 2024, Orgain brought a motion to enforce the settlement agreement before the California Court, which issued an

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<sup>25</sup> Initial Affidavit at para. 9.

<sup>26</sup> Initial Affidavit at paras. 118, 138.

<sup>27</sup> Initial Affidavit at para. 139.

<sup>28</sup> Initial Affidavit at para. 140.

<sup>29</sup> Initial Affidavit at para. 141.

<sup>30</sup> Initial Affidavit at para. 10, 129.

<sup>31</sup> Initial Affidavit at para. 10, 129.

<sup>32</sup> Initial Affidavit at paras. 130-131.

amended judgment awarding Orgain \$12,500,000 on November 17, 2024 (the “**Amended Judgment**”). Iovate International and Iovate USA are jointly and severally liable for payment of that award. The Applicants are not in a position to satisfy it given their current liquidity.<sup>33</sup>

15. Orgain sought to enforce the Amended Judgment by attempting to garnish receivables from some of the Iovate Group’s major customers, including Walmart, whose receivables fund a significant portion of the Iovate Group’s day-to-day operations.<sup>34</sup> On June 27, 2025, Orgain obtained a writ of garnishment (the “**Writ**”) in Arkansas. Walmart was served with the Writ in early August 2025 and as a result froze all payments to Iovate USA, exacerbating the Iovate Group’s liquidity issues.<sup>35</sup> Iovate International and Iovate USA’s motions in the Circuit Court of Benton County, Arkansas (the “**Arkansas Court**”) to quash the Writ were dismissed on August 25, 2025.<sup>36</sup>

**(b) Demand from Lenders**

16. On July 8, 2024, Iovate International, the Administrative Agent, and the Lenders entered into a default agreement acknowledging the occurrence of events of default under the Credit Agreement.<sup>37</sup> The parties subsequently entered into a forbearance agreement (as amended, the “**Forbearance Agreement**”) on September 24, 2024, pursuant to which the Lenders agreed to forbear from enforcing their rights until the earlier of any Termination Event (as defined in the Forbearance Agreement) and January 2, 2026.<sup>38</sup> On April 30, 2025, the Administrative Agent delivered a reservation of rights letter to Iovate International stating that Orgain’s enforcement

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<sup>33</sup> Initial Affidavit at paras. 10, 132.

<sup>34</sup> Initial Affidavit at paras. 12, 136. Payments from Walmart to the Iovate Group have averaged about \$5.8 million per month (year to date): Initial Affidavit at para. 136.

<sup>35</sup> Initial Affidavit at paras. 12, 137.

<sup>36</sup> Initial Affidavit at para. 13.

<sup>37</sup> Initial Affidavit at para. 106.

<sup>38</sup> Initial Affidavit at para. 107.



actions constituted both an event of default and a Termination Event (as defined in the Forbearance Agreement).<sup>39</sup>

17. After the Arkansas Court dismissed the motion to quash the Writ, Iovate International and the Guarantors received letters from the Lenders on August 27, 2025. They stated that several Events of Default under the Credit Agreement had occurred, demanded immediate repayment of the outstanding indebtedness under the Credit Agreement in the amount of \$115,700,995 as at August 26, 2025, and delivered notices of intention to enforce security under section 244 of the BIA.<sup>40</sup> The Lenders also concluded that their collateral was or may be prejudiced to the full extent of the amount of the Writ, and advised that they were actively considering initiating creditor-driven proceedings under the CCAA if the Iovate Group did not act promptly.<sup>41</sup>

#### **D. The NOI Proceedings**

##### **(a) The NOI filing and US recognition**

18. Following extensive discussion with key stakeholders, the Applicants determined that it was in the best interests of their stakeholders to commence the NOI Proceedings to pursue an orderly restructuring under the supervision of this Court, and to seek recognition of the NOI Proceedings in the United States.<sup>42</sup>

19. On September 5, 2025, the NOI Applicants each filed a NOI pursuant to the BIA, with the support of the Lenders. KSV was appointed as Proposal Trustee.<sup>43</sup> The NOI Proceedings provided an automatic stay of proceedings in respect of the NOI Applicants, their property, and directors,

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<sup>39</sup> Initial Affidavit at para. 108.

<sup>40</sup> Initial Affidavit at paras. 150-151.

<sup>41</sup> Initial Affidavit at para. 152.

<sup>42</sup> Initial Affidavit at para. 153.

<sup>43</sup> Initial Affidavit at para. 154.

which was (and remains) necessary to preserve the Iovate Group's enterprise value and protect its relationships with key customers as it pursues a restructuring for the benefit of all stakeholders.<sup>44</sup>

20. The September 9 Order: (i) granted a charge up to CAD \$750,000 (the “**Administrative Professionals’ Charge**”) over the assets of the NOI Applicants to secure the fees and disbursements of the Proposal Trustee, its counsel, KPMG LLP as financial advisor to the Iovate Group, and Canadian and U.S. counsel to the NOI Applicants (collectively, the “**Administrative Professionals**”); and (ii) authorized Iovate International to act as a foreign representative of the NOI Proceedings for the purpose of their recognition outside Canada, and to seek relief in such capacity pursuant to Chapter 15 of the *United States Bankruptcy Code*.<sup>45</sup>

21. On September 9, 2025, Iovate International filed petitions in the United States Bankruptcy Court for the Southern District of New York (the “**New York Court**”) pursuant to Chapter 15 of the *United States Bankruptcy Code* for recognition of Iovate International as foreign representative of the NOI Applicants and recognition of the NOI Proceedings as the “foreign main proceeding” (the “**Recognition Motion**”).<sup>46</sup> The next day, the New York Court entered an Order Granting Provisional Relief provisionally recognizing Iovate International as foreign representative of the NOI Applicants with full authority to administer their assets and affairs in the United States (in the “**Chapter 15 Proceedings**”) and applying the automatic stay with respect to each of the NOI Applicants and their property within the U.S.<sup>47</sup>

22. On October 3, 2025, this Court granted an order (the “**NOI Extension Order**”) extending

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<sup>44</sup> Initial Affidavit at para. 155.

<sup>45</sup> Initial Affidavit at para. 16.

<sup>46</sup> Initial Affidavit at para. 17.

<sup>47</sup> The New York Court later extended these protections until the hearing of the Recognition Motion by order entered September 19, 2025: Initial Affidavit at para. 18, 19.

the time for the NOI Applicants to file a proposal under the BIA to and including November 4, 2025.<sup>48</sup>

23. Following the commencement of the NOI Proceedings, Kenco, the Proposal Trustee, and the NOI Applicants engaged in extensive negotiations to resolve the issues concerning the Kenco Agreement while maintaining continuity of distribution operations.<sup>49</sup> These discussions culminated in a letter from Kenco dated October 8, 2025 (the “**Kenco Settlement Agreement**”).<sup>50</sup> On October 17, 2025, this Court granted an order (the “**Kenco Settlement Order**”) approving the Kenco Settlement Agreement and granting related releases.<sup>51</sup> The parties subsequently implemented the settlement, which included the payment to Kenco of \$2.8 million and amounts for services rendered to Iovate USA after September 5, 2025.<sup>52</sup>

24. On October 28, 2025, the New York Court granted an order (the “**Recognition Order**”) recognizing the NOI Proceedings as the “foreign main proceeding” under Chapter 15 of the United States *Bankruptcy Code*.<sup>53</sup>

25. Despite the initiation of the NOI Proceedings, the Applicants continue to face an ongoing liquidity crisis. The Lenders have demanded repayment. Iovate International and the other Applicants, who are Guarantors, are not in a position to repay the obligations outstanding under the Credit Agreement.<sup>54</sup>

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<sup>48</sup> Initial Affidavit at para. 5.

<sup>49</sup> Initial Affidavit at paras. 145.

<sup>50</sup> Initial Affidavit at para. 146. The events preceding the Kenco Settlement Agreement are discussed in additional detail in the Initial Affidavit at paras. 138-145.

<sup>51</sup> Initial Affidavit at para. 21.

<sup>52</sup> Initial Affidavit at para. 119. The key terms of the Kenco Settlement Agreement are set out in the Initial Affidavit at para. 146.

<sup>53</sup> Initial Affidavit at para. 22.

<sup>54</sup> Initial Affidavit at para. 168.

**(b) Developments relating to the Orgain dispute<sup>55</sup>**

26. On September 10, 2025, a Notice of Bankruptcy was filed with the Arkansas Court. On September 25, 2025, the Arkansas Court entered an order closing the Arkansas proceeding “until the bankruptcy proceedings of the Defendants are resolved.”<sup>56</sup>

27. Following discussions between counsel to Walmart and the Proposal Trustee, the NOI Applicants filed a supplemental brief in the Chapter 15 Proceedings on October 7, 2025, seeking the return of the receivable held by Walmart.<sup>57</sup> Orgain filed a limited objection in the Chapter 15 Proceedings on October 15, 2025, asking that the New York Court refrain from ordering Walmart to turn over the funds pending this Court’s determination of a motion that Orgain had filed the day before in the NOI Proceedings to lift the stay of proceedings under the BIA and permit the Arkansas Court to adjudicate the ownership of the funds (the “**BIA Lift Stay Motion**”).<sup>58</sup>

28. On October 17, 2025, at the hearing in respect of the Kenco Settlement Order, Orgain requested that a case conference be convened to schedule the BIA Lift Stay Motion.<sup>59</sup> The Court declined to do so in an endorsement issued on October 20, 2025, stating that “the question of whether to grant relief from the stay under section 362 of the *Bankruptcy Code* is a matter exclusively within the jurisdiction of the US Bankruptcy Court.”<sup>60</sup>

29. In the Recognition Order granted on October 28, 2025, the New York Court ordered Iovate International, as foreign representative of the NOI Applicants, to take immediate possession of the receivables retained by Walmart as a result of service of the Writ, and ordered Walmart to turn

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<sup>55</sup> These events are described in additional detail in the Initial Affidavit at paras. 159-167.

<sup>56</sup> Initial Affidavit at para. 158.

<sup>57</sup> Initial Affidavit at para. 159-163.

<sup>58</sup> Initial Affidavit at paras. 164-165.

<sup>59</sup> Initial Affidavit at para. 166.

<sup>60</sup> Initial Affidavit at para. 167.

over all sums owed to the NOI Applicants that it had retained as a result of service of the Writ and that were owed to the NOI Applicants in the ordinary course of business.<sup>61</sup>

30. Although Walmart has recently resumed remitting payments to Iovate USA, releasing approximately \$3.4 million since October 8, 2025, it still retains approximately \$13.7 million in respect of the Amended Judgment, which continues to constrain the Iovate Group's liquidity.<sup>62</sup>

### **PART III - THE ISSUES**

31. The issues addressed in this factum are whether:

- (a) the NOI Proceedings should be continued under the CCAA;
- (b) the Stay of Proceedings (as defined below) should be approved;
- (c) KSV should be appointed as Monitor;
- (d) the Administrative Professionals Charge should be continued and extended;
- (e) the Directors' Charge (as defined below) should be granted; and
- (f) the Foreign Representative Relief should be granted.

### **PART IV - THE LAW**

#### **A. The NOI Proceedings should be continued under the CCAA**

##### **(a) The test for continuance is met**

32. Section 11.6(a) of the CCAA provides this Court with express authority to continue the NOI Proceedings under the CCAA.<sup>63</sup> On a motion to continue an NOI proceeding under the

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<sup>61</sup> Initial Affidavit at para. 22.

<sup>62</sup> Initial Affidavit at para. 137.

<sup>63</sup> CCAA, s 11.6(a).

CCAA, courts consider whether: <sup>64</sup> (a) the debtor has filed a proposal under the BIA; (b) the proposed continuation is consistent with the purposes of the CCAA; and (c) the debtor has provided the Court with the information that would otherwise form part of an initial CCAA application under section 10(2) of the CCAA.<sup>65</sup>

33. The NOI Applicants satisfy each of these criteria. They have not yet filed a proposal in the NOI Proceedings,<sup>66</sup> and the information required by section 10(2) of the CCAA is before the Court.<sup>67</sup> Further, the proposed continuance of the NOI Proceedings under the CCAA is consistent with the purposes of the CCAA,<sup>68</sup> which include: (i) permitting “the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets”; and (ii) creating “conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair all.”<sup>69</sup> The Applicants intend to utilize the protection and flexibility afforded by the CCAA to preserve the going concern value of the Iovate Group and maximize value for the benefit of their stakeholders, including by returning before this Court to seek an order approving a sale and investment solicitation process to pursue a going concern transaction.<sup>70</sup> Courts have recognized that a sale of a debtor’s business as a going concern satisfies the purposes of the CCAA.<sup>71</sup>

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<sup>64</sup> (Re) *Clothing for Modern Times Ltd.*, [2011 ONSC 7522](#) at [para 9](#); *In the Matter of The Body Shop Canada Limited*, [2024 ONSC 3882](#) at [para 10](#) [*Body Shop*]; *In the Matter of a Plan of Compromise or Arrangement of Joriki Topco Inc. and Joriki Inc.*, [2025 ONSC 704](#) at [para 15](#) [*Joriki*]; *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#) at [para 21](#) [*Earth Boring*].

<sup>65</sup> [Section 10\(2\)](#) of the CCAA requires that an initial application be accompanied by: (i) a statement indicating, on a weekly basis, the projected cash flow of the debtor company; (ii) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and (iii) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

<sup>66</sup> Initial Affidavit at para. 171.

<sup>67</sup> Copies of the Iovate Group’s consolidated audited financial statements for the year ended December 31, 2024 and unaudited financial statements dated September 30, 2025 are attached to the Initial Affidavit as Exhibits “L” and “M”, respectively. The Cash Flow Forecast is discussed in the Joint Report at paras. 10.1-10.4 and appended as Appendix “A” to the Joint Report.

<sup>68</sup> Initial Affidavit at para. 171.

<sup>69</sup> *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#) at [paras 15, 70, and 77](#).

<sup>70</sup> Initial Affidavit at para. 200.

<sup>71</sup> *Body Shop* at [para 14](#).

34. It is also appropriate in the circumstances to continue the September 9 Order with appropriate conforming changes in accordance with the terms of the Initial Order. As they continue into CCAA Proceedings, the NOI Applicants will still require the benefit of the September 9 Order, which (among other things) granted the Administrative Professionals' Charge and authorized Iovate International to act as foreign representative of the NOI Proceedings, as well as under the Order granted on October 3, 2025, the Order granted on October 17, 2025.<sup>72</sup>

**(b) The NOI Applicants are companies to which the CCAA applies**

35. The CCAA applies in respect of a “debtor company” or “affiliated debtor companies” whose liabilities exceed \$5 million.<sup>73</sup> A “debtor company” means, *inter alia*, a company that is “insolvent.”<sup>74</sup> Whether a company is insolvent is evaluated by reference to the definition of “insolvent person” in the BIA<sup>75</sup> and the expanded concept of insolvency adopted by this Court in *Stelco*.<sup>76</sup>

36. The CCAA applies to the Applicants, as they are all “debtor companies” whose liabilities exceed \$5 million. Each of the Applicants are “companies” for the purposes of s. 2 of the CCAA because they are incorporated under Canadian provincial legislation and/or do business in or have assets in Canada.<sup>77</sup> Further, the Applicants are indebted to the Lenders in an amount exceeding

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<sup>72</sup> Initial Affidavit at para. 16.

<sup>73</sup> CCAA, [s. 3\(1\)](#); *MPX International Corporation*, [2022 ONSC 4348](#) at [para 46](#) [MPX]; *Laurentian University of Sudbury*, [2021 ONSC 659](#) at [para 25](#) [Laurentian]; *McEwan Enterprises Inc.*, [2021 ONSC 6453](#) at [para 24](#).

<sup>74</sup> CCAA, [ss. 2, 3\(1\)](#).

<sup>75</sup> [Section 2](#) of the BIA defines “insolvent person” as a person: (a) who is for any reason unable to meet his obligations as they generally become due; (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.

<sup>76</sup> *Laurentian* at [paras 30-32](#), citing *Stelco Inc., Re*, [2004 CanLII 24933](#) (ONSC) at [para 26](#) (“a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring”). See also *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, [2024 ONSC 6199](#) at [para 25](#) [Sandvine].

<sup>77</sup> Xiwang Iovate, Iovate International, and Northern Innovations were incorporated or continued under Canadian provincial legislation and have registered offices in Canada: Initial Affidavit at paras. 24, 28. Iovate USA and Iovate Australia have assets in Canada, including funds held in trust as a retainer by its Canadian counsel, Chaitons LLP: Initial Affidavit at paras.

\$115 million.<sup>78</sup> Finally, the NOI Applicants are “insolvent,” as they are unable to meet their obligations under the Credit Agreement, the Credit Agreement is currently in default and the Lenders have delivered demand letters, and the Applicants are facing an imminent liquidity crisis as a consequence of Walmart withholding payments of the Applicants’ accounts receivable.<sup>79</sup>

**(c) The Ontario Court has jurisdiction over this proceeding**

37. Subsection 9(1) of the CCAA provides that an application under the CCAA may be made to the court that has jurisdiction in the province in which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.<sup>80</sup> Each of the Applicants fulfils these requirements.<sup>81</sup>

38. Ontario is the proper forum for the restructuring. While the Applicants include two American and Australian affiliates, the Iovate Group’s business operations, including all finance, human resource, and payroll functions, are collectively managed from the Oakville Head Office.<sup>82</sup> Further, 159 of the Iovate Group’s 171 employees are located in Canada.<sup>83</sup> This Court has accepted that a multinational enterprise such as the Iovate Group’s business must be restructured as a global unit.<sup>84</sup>

**B. The proposed Stay of Proceedings should be approved**

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33, 39. The business operations of the Iovate Group are collectively managed from the Oakville Head Office: Initial Affidavit at para. 69.

<sup>78</sup> September 6 Affidavit at para. 25.

<sup>79</sup> Initial Affidavit at para. 168.

<sup>80</sup> CCAA, s. 9(1).

<sup>81</sup> See note 77 above. Funds held on retainer by counsel are sufficient to satisfy the CCAA jurisdiction requirements: *Sandvine* at [para. 19](#).

<sup>82</sup> Initial Affidavit at para. 69.

<sup>83</sup> Initial Affidavit at para. 71.

<sup>84</sup> See *Sandvine* at [para. 21](#).



39. Section 11.02 of the CCAA permits the Court to impose a stay of proceedings on an initial application for a period of not more than 10 days if it is satisfied that circumstances exist that make the order appropriate.<sup>85</sup> In exercising its discretionary authority to grant a stay under the CCAA, the Court must be informed by the primary purpose behind the CCAA, namely to maintain the *status quo* while the debtor company consults with its stakeholders with a view to continuing its operations for the benefit of its creditors.<sup>86</sup>

40. The stay extension granted in the NOI Proceedings is set to expire on November 4, 2025. Without continued protection, creditors could immediately commence or continue enforcement actions against the NOI Applicants, which would jeopardize the stability of the Iovate Group.<sup>87</sup> The Applicants accordingly seek an order staying until December 12, 2025, all proceedings and remedies taken or that might be taken in respect of the Iovate Group, the Monitor or any of their respective employees, advisors (including counsel) or other representatives acting in such capacities, or affecting the Applicants' business or the Property (as defined in the Initial Order), including any garnishments previously taken or taken on or after the date of the Initial Order, except with the written consent of the Applicants and the Monitor, or with leave of the Court (the **"Stay of Proceedings"**).<sup>88</sup>

41. The Stay of Proceedings under the CCAA would preserve the Iovate Group as a going concern, thereby maximizing enterprise value for the benefit of all stakeholders, and provide it with the necessary breathing space and stability for an orderly restructuring. Continuing the NOI Proceedings under the CCAA would also save costs by avoiding a return to Court every 45 days

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<sup>85</sup> CCAA, [s. 11.02](#)(1), (3)(a).

<sup>86</sup> *JTI-Macdonald Corp., Re*, [2019 ONSC 1625](#) at [para. 12](#) [*JTI-Macdonald*].

<sup>87</sup> Initial Affidavit at para. 169.

<sup>88</sup> Initial Affidavit at para. 7(d).

for approval of a stay extension.<sup>89</sup>

**(a) The Stay of Proceedings should extend to the Non-Applicant Stay Parties**

42. Due to the integration of the Iovate Group's business and operations, the Applicants seek to extend the Stay of Proceedings to the Non-Applicant Stay Parties and their respective directors, officers, and representatives.<sup>90</sup> This Court's authority to extend a stay to non-filing affiliates is derived from its broad jurisdiction under sections 11 and 11.02(1) of the CCAA, and has been exercised on numerous occasions, including in respect of foreign non-applicants.<sup>91</sup> In considering whether to extend a stay to non-applicant parties, courts have looked to factors including whether the business and operations of the non-applicants were integrated into those of the applicants, and whether extending the stay to the non-applicants would help maintain stability and value during the CCAA process.<sup>92</sup>

43. The Non-Applicant Stay Parties are each directly wholly-owned by an Applicant and are intertwined with the Applicants' operations.<sup>93</sup> Infinity Insurance provides global product liability insurance for the sales of Hydroxycut<sup>TM</sup> and has paid Iovate International a dividend of approximately \$351,000.<sup>94</sup> Iovate Europe holds the product registrations necessary for the Iovate Group's products to be sold in the European Union, generating cash that flows through Iovate International.<sup>95</sup> The Delaware Entities sell the Iovate Group's products under contracts with Amazon.com, Inc. or its affiliates as third-party sellers.<sup>96</sup>

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<sup>89</sup> Initial Affidavit at para. 172.

<sup>90</sup> Initial Affidavit at para. 173.

<sup>91</sup> *Laurentian* at [para 39](#). See, e.g., *Sandvine* at [paras 37-39](#); *MPX* at [paras 52-53](#).

<sup>92</sup> *JTI MacDonald* at [para 15](#).

<sup>93</sup> Xiwang Iovate directly owns Iovate Europe and Infinity Insurance, and Iovate USA (itself directly owned by Xiwang Iovate) directly owns the Delaware Entities: Initial Affidavit at paras. 25, 47.

<sup>94</sup> Initial Affidavit at para. 42.

<sup>95</sup> Initial Affidavit at para. 45.

<sup>96</sup> Initial Affidavit at para. 48.

44. Extending the Stay of Proceedings to the Non-Applicant Stay Parties would help maintain stability and value during the CCAA process and support the Applicants' restructuring efforts. By preventing uncoordinated realization and enforcement attempts in different jurisdictions, including actions against the Non-Applicant Stay Parties that would directly impact the Applicants and their stakeholders, the Stay of Proceedings would protect against immediate losses of value for the Iovate Group.<sup>97</sup>

**(b) The Stay of Proceedings should extend beyond 10 days**

45. The Applicants seek a Stay of Proceedings until December 12, 2025.<sup>98</sup> While section 11.02 of the CCAA contemplates that a court may impose a stay not exceeding 10 days as part of an initial order, this Court has recognized that a longer period may nonetheless be appropriate on a conversion from a BIA proceeding.<sup>99</sup>

46. In these circumstances, the Applicants' motion to convert and continue is more analogous to a motion under section 11.02(2), which permits this Court to grant a stay extension. Much of the relief sought simply extends the relief already granted in the NOI Proceedings.<sup>100</sup> The NOI Applicants have been protected by the automatic stay imposed in the NOI Proceedings since September 5, 2025.<sup>101</sup> The NOI Applicants' materials supporting this relief were before the court during the NOI Extension Order, and principal stakeholders and other affected parties, including the Lenders and Orgain, have had notice of the NOI Proceedings.<sup>102</sup> Further, the draft Initial Order

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<sup>97</sup> Initial Affidavit at para. 173.

<sup>98</sup> Initial Affidavit at para. 7(d).

<sup>99</sup> See, e.g., *Joriki* at [para 23](#); *Body Shop* at [para 19](#); [Endorsement of Kimmel J.](#) in *Re Hakim Optical Laboratory Limited et al*, dated May 15, 2025 at paras. 16-19.

<sup>100</sup> *Body Shop* at [paras 20-21](#); *Joriki* at [paras 25-26](#).

<sup>101</sup> Initial Affidavit at paras. 154-155.

<sup>102</sup> Initial Affidavit at para. 176; Affidavit of Wesley Parris sworn September 26, 2025 at para. 12.

provides that the parties may seek to amend its terms on seven days' notice.<sup>103</sup>

47. The Applicants have satisfied the requirements under section 11.02(2), as the Stay of Proceedings is appropriate in the circumstances, and the Applicants have acted, and are acting, in good faith and with due diligence.<sup>104</sup> The Applicants have sufficient liquidity to meet all of their day-to-day obligations until December 12, 2025,<sup>105</sup> and KSV (as Proposal Trustee and Proposed Monitor) and the Administrative Agent support the relief sought.<sup>106</sup> Requiring the parties to return before this Court in 10 days is “both unnecessary and inefficient” in these circumstances.<sup>107</sup>

### **C. KSV should be appointed as Monitor**

48. Section 11.7 of the CCAA requires that a trustee be appointed to monitor the debtor company's business and financial affairs. KSV should be appointed as Monitor in the CCAA Proceedings, as contemplated in the Initial Order.<sup>108</sup> KSV is a “trustee” within the meaning of section 2 of the BIA, is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA, and has consented to act as the Monitor in these CCAA Proceedings if the proposed Initial Order is granted.<sup>109</sup> KSV currently acts as the Proposal Trustee in the NOI Proceedings and has gained an in-depth understanding of the Applicants' business, financial circumstances, and restructuring efforts to date.<sup>110</sup>

### **D. The Administrative Professionals Charge should be continued**

49. The proposed Initial Order contemplates that the Administrative Professionals Charge

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<sup>103</sup> Initial Order at Tab 4 to the Motion Record of the Applicants dated October 29, 2025 (the “Draft Interim Order”) at para. 47.

<sup>104</sup> CCAA, [s. 11.02\(2\)-\(3\)](#).

<sup>105</sup> Initial Affidavit at paras. 196.

<sup>106</sup> Initial Affidavit at paras. 175. The creditors of the NOI Applicants also received a notice of the stay imposed following the commencement of the NOI Proceedings: Initial Affidavit at para. 170.

<sup>107</sup> *Body Shop* at [para 20](#).

<sup>108</sup> Initial Affidavit at para. 177.

<sup>109</sup> Initial Affidavit at paras. 177-179.

<sup>110</sup> Initial Affidavit at para. 177.

granted in the September 9 Order shall continue to be in the maximum amount of CAD \$750,000 but shall extend to also include FTI Consulting and Blake, Cassels & Graydon LLP (as financial advisor and counsel (respectively) to the Lenders) as Administrative Professionals. The Administrative Professionals Charge would have priority over all existing claims and encumbrances and the Directors' Charge (as defined below).<sup>111</sup>

50. Section 11.52 of the CCAA expressly provides the Court with the jurisdiction to grant an administration charge. The factors to be considered when granting an administration charge include: (a) the size and complexity of the business being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the monitor.<sup>112</sup>

51. The proposed Administrative Professionals Charge is appropriate and should be granted. The Applicants' business is large and complex, and they require the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administrative Professionals Charge during the proposed CCAA Proceedings in order to complete a successful restructuring. As each proposed beneficiary of the Administrative Professionals Charge is performing distinct functions, there is no duplication of roles. The quantum of the proposed Administrative Professionals Charge is fair and reasonable. The Proposed Monitor and the Lenders, the Applicants' only secured creditors, support the Administrative Professionals Charge.<sup>113</sup>

#### **E. The Directors' Charge should be granted**

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<sup>111</sup> Initial Affidavit at para. 187.

<sup>112</sup> CCAA, [s. 11.52](#); *Sandvine* at [para 51](#), citing *CanWest Publishing Inc.*, [2010 ONSC 222](#) at [para 54](#).

<sup>113</sup> Initial Affidavit at paras. 188-189.

52. The proposed Initial Order also includes a charge in favour of the Iovate Group's present and former directors and officers (the "**Directors and Officers**") in the amount of CAD \$1,310,000 (the "**Directors' Charge**"), which would rank subordinate to the Administration Charge, but in priority to all other claims and encumbrances. The Directors' Charge would secure the indemnification obligations and potential liabilities that the Directors and Officers may face during the CCAA Proceedings, and is a condition to their continued involvement.<sup>114</sup>

53. Section 11.51 of the CCAA provides this Court with jurisdiction to grant the Directors' Charge. The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred during the restructuring.<sup>115</sup> In determining whether to grant a directors' and officers' charge, courts consider whether: (a) notice has been given to the secured creditors likely to be affected by the charge; (b) the amount is appropriate; (c) the applicant could obtain adequate indemnification insurance for the director at a reasonable cost; and (d) the charge applies in respect of any obligation incurred by a director or officer as a result of the directors' or officers' gross negligence or willful misconduct.<sup>116</sup>

54. It is appropriate in the circumstances for this Court to grant the proposed Directors' Charge. Each of the remaining Directors and Officers has considerable experience with the Iovate Group's business, and stakeholders will benefit from their active involvement during the CCAA Proceedings to continue business operations in the ordinary course.<sup>117</sup> Notice has been given to

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<sup>114</sup> Initial Affidavit at paras. 191-192. These obligations may include unpaid accrued wages and vacation pay, along with certain unremitted taxes: Initial Affidavit at para. 189.

<sup>115</sup> [MPX at para 66](#).

<sup>116</sup> *Jaguar Mining Inc., (Re)*, [2014 ONSC 494](#) at [para 45](#); *Earth Boring* at [para 64](#).

<sup>117</sup> Initial Affidavit at para. 193.

affected parties of the Directors' Charge,<sup>118</sup> and the Lenders and Proposed Monitor support it.<sup>119</sup> The quantum of the Directors' Charge is fair and reasonable in the circumstances.<sup>120</sup> The Directors' Charge is designed to exclude amounts covered by the Directors' and Officers' liability insurance policies, which may otherwise be insufficient to protect them against the potential liability that they could incur in connection with the CCAA Proceedings.<sup>121</sup> Finally, the indemnification granted to the Directors and Officers does not apply to obligations or liabilities incurred as a result of gross negligence or wilful misconduct.<sup>122</sup>

**F. This Court should grant the Foreign Representative Relief**

55. The proposed Initial Order would expand the September 9 Order to authorize and empower Iovate International to act as the foreign representative of the Iovate Group for the purpose of having these CCAA Proceedings recognized and approved in a jurisdiction outside of Canada.<sup>123</sup> The Applicants intend that Iovate International would then apply to the United States Bankruptcy Court for relief in the pending Chapter 15 Proceedings.<sup>124</sup>

56. Section 56 of the CCAA provides that this Court has the jurisdiction to authorize any person to act as a representative in respect of any proceeding under the CCAA for the purpose of having them recognized in a jurisdiction outside of Canada.<sup>125</sup> Courts have consistently encouraged comity and cooperation between courts in cross-border insolvencies, and have

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<sup>118</sup> The service list has been served with the Applicants' Motion Record, which includes the Draft Interim Order: Initial Affidavit at para. 176.

<sup>119</sup> Initial Affidavit at para. 194.

<sup>120</sup> Initial Affidavit at para. 194.

<sup>121</sup> Initial Affidavit at para. 191; Draft Initial Order at para. 25.

<sup>122</sup> Draft Initial Order at para. 23.

<sup>123</sup> Initial Affidavit at para. 197.

<sup>124</sup> Initial Affidavit at para. 198.

<sup>125</sup> CCAA, [s. 56](#).

permitted foreign representatives to seek recognition of CCAA proceedings in the United States.<sup>126</sup>

57. Here, Iovate International is an appropriate entity to act as foreign representative in respect of the CCAA Proceedings. It serves as the principal Canadian operating entity within the Iovate Group, has already been authorized to act as the foreign representative in the NOI Proceedings by this Court, and has been provisionally recognized as such by the New York Court.<sup>127</sup> The Chapter 15 Proceedings are appropriate under the circumstances to protect the value of the Iovate Group's business and the "Iovate" brand as a whole in the United States.<sup>128</sup>

### **PART V - RELIEF REQUESTED**

58. The Applicants respectfully request that this Court grant the Initial Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** as of October 30, 2025.



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**Lawyers for the Applicants**

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<sup>126</sup> See, e.g., *Sandvine* at [paras 71-72](#).

<sup>127</sup> Initial Affidavit at paras. 18, 156.

<sup>128</sup> Initial Affidavit at para. 199.



## SCHEDULE "A"

### LIST OF AUTHORITIES

1. *CanWest Publishing Inc.*, [2010 ONSC 222](#)
2. *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#)
3. *In the Matter of a Plan of Compromise or Arrangement of Joriki Topco Inc. and Joriki Inc.*, [2025 ONSC 704](#)
4. *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, [2024 ONSC 6199](#)
5. *In the Matter of The Body Shop Canada Limited*, [2024 ONSC 3882](#)
6. *Jaguar Mining Inc., (Re)*, [2014 ONSC 494](#)
7. *JTI-Macdonald Corp., Re*, [2019 ONSC 1625](#)
8. *Laurentian University of Sudbury*, [2021 ONSC 659](#)
9. *McEwan Enterprises Inc.*, [2021 ONSC 6453](#)
10. *MPX International Corporation*, [2022 ONSC 4348](#)
11. *(Re) Clothing for Modern Times Ltd.*, [2011 ONSC 7522](#)
12. *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#)
13. [Re Hakim Optical Laboratory Limited et al.](#)
14. *Stelco Inc., Re*, [2004 CanLII 24933](#)

I certify that I am satisfied as to the authenticity of every authority.

Date     October 30, 2025



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*Signature*

## SCHEDULE “B”

### Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

#### Definitions

2 In this Act,

**insolvent person** means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (personne insolvable)

**trustee or licensed trustee** means a person who is licensed or appointed under this Act. (syndic ou syndic autorisé)

#### Notice of intention

**50.4(1)** Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

(a) the insolvent person's intention to make a proposal,

(b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and

(c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

#### Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

(a) a statement (in this section referred to as a “cash-flow statement”) indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;

(b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and

(c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

### **Creditors may obtain statement**

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

### **Exception**

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

(a) such release would unduly prejudice the insolvent person; and

(b) non-release would not unduly prejudice the creditor or creditors in question.

### **Trustee protected**

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person’s reliance on the cash-flow statement.

### **Trustee to notify creditors**

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

### **Trustee to monitor and report**

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

(a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

(b) shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

(i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

(ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

(c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

### **Where assignment deemed to have been made**

**(8)** Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

### **Extension of time for filing proposal**

**(9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons

that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

### **Court may not extend time**

**(10)** Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

### **Court may terminate period for making proposal**

**(11)** The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

### **Advance notice**

**244 (1)** A secured creditor who intends to enforce a security on all or substantially all of

- (a) the inventory,
- (b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

### **Period of notice**

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

### **No advance consent**

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

### **Exception**

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

### **Idem**

(4) This section does not apply where there is a receiver in respect of the insolvent person.

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

### **Definitions**

2(1) In this Act,

**company** means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies; (compagnie)

## **Jurisdiction of court to receive applications**

**9(1)** Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

## **Documents that must accompany initial application**

**10(2)** An initial application must be accompanied by

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

## **General power of court**

**11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

## **Stays, etc. — initial application**

**11.02(1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

### **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

### **Security or charge relating to director's indemnification**

**11.51(1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Restriction — indemnification insurance**



(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

### **Negligence, misconduct or fault**

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

### **Court may order security or charge to cover certain costs**

**11.52(1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Bankruptcy and Insolvency Act matters**

**11.6** Notwithstanding the *Bankruptcy and Insolvency Act*,

(a) proceedings commenced under Part III of the *Bankruptcy and Insolvency Act* may be taken up and continued under this Act only if a proposal within the meaning of the *Bankruptcy and Insolvency Act* has not been filed under that Part; and

(b) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act* but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from

(i) the operation of subsection 50.4(8) of the *Bankruptcy and Insolvency Act*, or

(ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the *Bankruptcy and Insolvency Act*.

### **Court to appoint monitor**

**11.7(1)** When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

### **Restrictions on who may be monitor**

**(2)** Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

### **Court may replace monitor**

**(3)** On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, to monitor the business and financial affairs of the company.

### **Authorization to act as representative of proceeding under this Act**

**56** The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE HEALTH SCIENCES INTERNATIONAL INC.

Court No.: 31-3268936

Estate No.: 31-3268936

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF IOVATE HEALTH SCIENCES U.S.A. INC.

Court No.: 31-3268942

Estate No.: 31-3268942

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NORTHERN INNOVATIONS HOLDING CORP.

Court No.: 31-3268971

Estate No.: 31-3268971

Court File No: BK-25-03268936-0031

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANTS  
(RETURNABLE OCTOBER 31, 2025)**

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