Court File No: CL-26-00000261-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYSTONE HOLDINGS INC., PAYSTONE INC., ATOM GROWTH INC. and ATOM GROWTH (USA), INC.

FACTUM OF THE RESPONDENT, BDC CAPITAL INC.

June 22, 2026

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TO: **THE SERVICE LIST**

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PART I. - OVERVIEW

1. BDC Capital Inc. seeks to have the related-party sale proposed on this motion set aside in favour of a transparent and fair court-supervised sale process that would be in the best interests of all stakeholders. There are serious questions about the integrity of the process leading up to the APA. Paystone and its CRO, Reflect Advisors, LLC have conducted themselves in a fashion that is less than forthright and honest with its subordinated secured creditor.

2. BDC's loan to Paystone was subordinated only to the senior lending Syndicate. Following a series of payment defaults and forbearance agreements with the Syndicate and with BDC in early 2026, Paystone conducted a pre-filing sale process to refinance the Syndicate's debt. BDC offered to assist bidders but was repeatedly denied access. The CRO told BDC to wait for the Pre-Filing Process to conclude before negotiating a repayment plan with Paystone.

3. Nothing in Paystone's exchanges or the May 22 cashflow forecast suggested that a *CCAA* filing was imminent. After Paystone closed an alternate deal with a private investor, and mere days before the *CCAA* filing, BDC and the CRO booked a call for June 10, 2026 to negotiate next steps toward remedying the default.

4. BDC was thus completely surprised when a few days later, on June 5, 2026, Paystone filed for protection under the *CCAA* and concurrently sought the Court's blessing for a related party sale. Despite the parties' ongoing interactions, Paystone only told BDC about the Initial Application and provided its materials **less than two hours in advance**. BDC was unable to appear at the initial hearing, review the APA, or take any steps to intervene against the loss of its entire secured interest. This lack of good faith has already attracted the Court's scrutiny.

5. Delivery of salient information has not improved since the Initial Application. In exchanges

with the CRO, BDC has learned that there were no independent valuations performed and that several potential strategic bidders—including those that actively reached out to Paystone and the CRO to express interest—were excluded from the Pre-Filing Process. Paystone has opted not to notify its contractual counterparties about the AVO hearing, in the hope of only assigning contracts on consent. The APA schedules remain blank, making it impossible to understand what value may be relinquished by this move. Further, the Monitor did not serve its report until after BDC provided its own responding record, on the Friday night before this motion hearing, and Paystone delivered new materials and a second factum on Sunday morning.

6. Paystone cannot rely on the purported Pre-Filing Process to support the APA. The APA presented to the Court was not tested by it, as the Pre-Filing Process terminated with the Sandton Loan Agreement. The after-the-fact APA is a quick flip sale by Paystone to a company solely owned by Paystone's CEO—a fact that was not substantively addressed in Paystone's factum for the June 5, 2026 Initial Application. The adequacy of the consideration and the benefits that will accrue to the related parties at the expense of Paystone's creditors have still not been adequately canvassed in the materials served this weekend, which are replete with hearsay.

7. If granted, the AVO will effectively extinguish over $23 million of junior debt, including all of BDC's secured debt and that of other unsecured creditors. Because of the apparent lack of fairness, transparency and failure to deal in good faith with BDC and others, the AVO should be denied. Instead, the Court should authorize a 30-day court-supervised sale process, supported by DIP Financing, to allow for a better deal and improved recoveries for <u>all</u> stakeholders.

PART II. - FACTS

8. On June 5, 2026, the applicants, Paystone Holdings Inc., Paystone Inc., Atom Growth Inc.

and Atom Growth (USA), Inc. (together, "**Paystone**" or the "**Applicants**") brought this *Companies' Creditors Arrangements Act* ("***CCAA***") proceeding ("***CCAA* Proceeding**") and a motion for the Court's approval of an Approval and Vesting Order ("**AVO**") for a pre-filing sale agreement as between Paystone and the Purchaser (as defined below) ("**APA**").[1] Capitalized terms not defined in this factum are as defined in the affidavit of Imran Malik, sworn June 19, 2026 (the "**Malik Affidavit**").

9. BDC is a subordinated secured creditor of Paystone. BDC Capital Inc. is a wholly owned subsidiary of the Business Development Bank of Canada, a Crown corporation that provides funding and expert advisory services to support small and medium Canadian businesses.[2] BDC often takes subordinated secured lending positions to allow companies flexibility to negotiate with senior secured lenders.[3] BDC provided funds to Paystone (the "**BDC Loan**") to assist it with repaying the senior lending syndicate (the "**Syndicate**") as led by the National Bank of Canada (the "**Agent**"), among other things.[4]

10. As of June 5, 2026, Paystone owes BDC $12,679,471.29, which is secured by a general security agreement over all of Paystone's personal property and undertaking.[5] BDC subordinated the BDC Loan to the Syndicate's debt pursuant to a Priority Agreement, as further detailed in the Malik Affidavit.[6]

11. Following its February 2026 interest payment defaults to BDC and forbearance agreement with the Syndicate, Paystone reassured BDC that it was taking steps to refinance the Syndicate's

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[1] Affidavit of Imran Malik, affirmed June 19, 2026 at para 2 ("**Malik Affidavit**").
[2] Malik Affidavit at para 3.
[3] Malik Affidavit at para 3.
[4] Malik Affidavit at para 4.
[5] Malik Affidavit at paras 4, 9–11, Exhibit C, Exhibit D.
[6] Malik Affidavit at paras 12–13.

debt through a sale process run by Canaccord Genuity (the "**Pre-Filing Process**").[7] The opportunity was presented as a debt/equity refinancing or recapitalization of the Syndicate's debt, not a sale of Paystone's assets.[8] BDC repeatedly offered to assist prospective bidders or even provide new capital as part of the Pre-Filing Process, but Paystone and the CRO did not give BDC access to information or permit it to review any LOIs received.[9]

12. On May 8, 2026, Sandton Investments X (Luxembourg) S.à.r.l. ("**Sandton**") entered into a loan purchase agreement with the Syndicate to purchase its approximately $93 million of secured debt for $41 million (the "**Sandton Loan Agreement**").[10] The timeline that has emerged from the Applicants' materials indicates that Sandton first contacted Paystone's Principals in January 2026.[11] The CRO indicates that the Syndicate was not aware of Sandton and that Sandton was dealing directly with the Applicants without the Syndicate's knowledge until March 2026.[12] The Canaccord process began in earnest in February.[13] Sandton did not participate.[14] LOIs were received pursuant to the Canaccord process in March, following which Sandton closed the Sandton Loan Agreement on May 8.[15] All the while, BDC was told that its interests would be handled later.[16]

13. In the weeks leading up to the *CCAA* Proceeding, Paystone and its CRO each represented to BDC that Paystone was continuing to meet its obligations and work its way toward recovery.[17]

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[7] Malik Affidavit at paras 16–20.
[8] Malik Affidavit at Exhibit G (CIM deck at 153).
[9] Malik Affidavit at paras 23–25.
[10] Monitor's Second Report dated June 19, 2026 at 3.1.2–3 [Monitor's Second Report].
[11] Reply Affidavit of Adam Zalev, sworn June 21, 2026 at para 21 [Zalev Reply Affidavit].
[12] Zalev Reply Affidavit at para 21.
[13] Affidavit of Adam Zalev, sworn June 5, 2026 at para 12 [Zalev Affidavit].
[14] Zalev Affidavit at para 12; Monitor's Second Report at 4.0.9.
[15] Zalev Affidavit at para 14.
[16] Malik Affidavit at paras 27–30, 33.
[17] Malik Affidavit at paras 33, 35–36.

It is now apparent that this was a smokescreen designed to mislead BDC as to the nature of the out-of-court sale process and the refinancing deal that was ultimately achieved between the Syndicate and Sandton. Just the Monday before Paystone came before the Court, the CRO had scheduled a call with BDC to discuss next steps in negotiating a resolution of Paystone's default.[18]

14. The cashflow forecast provided by the CRO to BDC on May 22, 2026, two weeks before the *CCAA* filing, directly contradicts the Applicants' assertion in the *CCAA* application that Paystone would be unable to fund operations beyond June 26, 2026, without the APA closing.[19]

15. The purchaser, 1001632600 Ontario Inc. (the "**Purchaser**"), was newly incorporated by Paystone's CEO, Tarique Al-Ansari, on June 3, 2026.[20] Mr. Al-Ansari is the Purchaser's sole director.[21] Mr. Al-Ansari is the CEO and controlling shareholder of Paystone with co-founder Abdullah Saab, Paystone's CFO (together, the "**Principals**").[22] Mr. Al-Ansari has told the public that he and Mr. Saab will continue to manage Paystone following the close of the transaction.[23] Neither of the Principals have provided an affidavit in support of this AVO.

PART III. - LEGAL ARGUMENT

A. Legal Principles Governing Sale Approval

16. In determining whether to approve a sale, the Court considers the sale approval criteria set

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[18] Malik Affidavit at para 34.
[19] Malik Affidavit at para 30, Exhibit M.
[20] Malik Affidavit at para 40, Exhibit S. The Applicants describe at para 9 of the factum as being "controlled by" **both** of the Principals, which conflicts with the corporate profile report and with answers provided by the CRO on June 18, 2026 that the "purchaser entity has not yet been organized (i.e., shares have not yet been issued). The proposed purchaser will ultimately be controlled by Tarique Al-Ansari and Abdullah Saab."
[21] Malik Affidavit at para 40, Exhibit S.
[22] Zalev Affidavit at para 27.
[23] Malik Affidavit at Exhibit T (Norman De Bono, "London tech firm seeks creditor protection amid $92M debt load" *London Free Press* (17 June 2026)).

out in *CCAA*, section 36(3), as against the criteria in the *Soundair* test: [24]

(a) whether the court-appointed officer has made sufficient efforts to get the best price and has not acted improvidently;

(b) whether the interests of all parties have been considered, not just the interests of the creditors of the debtor;

(c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.

17. To assess whether the process leading to a proposed sale was reasonable in the circumstances, sufficient and independently-verified detail is required for the Court and interested parties to make an informed decision on the fairness and reasonableness of the related-party sale.[25] A lack of transparency as to the sequence of events leading up to the application may prove fatal for an application to approve a sale.[26]

18. Unfairness is apparent in situations where only some parties face economic risks while others benefit from the insolvency.[27] Using the *CCAA* to protect and benefit a debtor and purchaser while affecting third-party contracts risks unfairness and would be inconsistent with the statute's

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[24] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s 36(3) ("***CCAA***"); see also the framework set out in *Royal Bank of Canada v Soundair Corp*, 1991 CarswellOnt 205 at para 16, 1991 CanLII 2727 (ONCA) [***Soundair***].
[25] *CCAA*, s 36(3)(a); *The Toronto Dominion Bank v Canadian Starter Drives Inc*, 2011 ONSC 8004 at paras 5–8 [***Canadian Starter***].
[26] *9-Ball Interests Inc v Traditional Life Sciences Inc*, 2012 ONSC 2788 at para 32 [***9-Ball***].
[27] *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 75 [***Callidus***], citing Janis P Sarra, "The Oscillating Pendulum: Canada's Sesquicentennial and Finding the Equilibrium for Insolvency Law" in Janis P Sarra & Barbara Romaine, eds, *Annual Review of Insolvency Law 2016* (Toronto: Thomson Reuters, 2017) at 30 (emphasis removed).

objective.[28]

19. In considering the extent to which creditors were consulted and the effects of the sale on the creditors under sections 36(3)(d) and (e), the Court considers the contents and sufficiency of the required notice on affected creditors.[29] Further, fair and equitable treatment of third-party contractual counterparties is at risk where they are not given appropriate notice of the approval process, as are the remedial objectives of the *CCAA*.[30] As a result, it is best practice to serve all counterparties to contracts when assignment of the contracts are at issue to allow counterparties to consider their positions on the sale and produce any relevant evidence to assist the Court in its determination.[31]

1. Additional related party sale provisions

20. Where the purchaser is related to the company, such as a director or an officer, additional criteria must be considered in approving a sale.[32] The Court may only authorize a related party sale where it is satisfied that (i) good faith efforts were made to sell the assets to persons not related to the company and that (ii) the consideration from the proposed transaction is superior to the consideration that would be received under any other offer made in a Sale and Investment Solicitation Process ("**SISP**").[33] Paystone's materials fail to satisfy these related party criteria.

21. Likewise, fulsome evidence and even independent valuations of a company's assets should be provided in advance of a related-party sale hearing, as they form the evidentiary basis necessary

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[28] *Re Wallace & Carey Inc*, 2025 ABKB 750 at para 123 [***Wallace***].
[29] *CCAA*, s 36(2).
[30] *Wallace* at para 123.
[31] *Barafield Realty Ltd v Just Energy (BC) Limited Partnership*, 2015 BCCA 421 at para 35; *Re Veris Gold Corp*, 2015 BCSC 1204 at para 61.
[32] *CCAA*, ss 36(4)–(5).
[33] *CCAA*, s 36(4); *Pride Group Holdings Inc*, 2025 ONSC 357 at paras 8–10, citing *Re Target Canada Co*, 2015 ONSC 2066 at para 15.

for the Court to properly assess whether the consideration to be received for assets is reasonable, fair, and superior to the consideration that would be received under any other offer in the sale process.[34]

2. High burden on quick flip and prepack sale transactions

22. In the recent case of *Propostition de SRTX inc*, 2026 QCCS 570 [***Sheertex***], Justice Luc Morin of the Québec Superior Court provides a thorough review of the principles applicable to "prepack" sales transactions, given the scarcity of case law. He states that "prepacks are akin to unicorns" because the required near-unanimity and broad alignment between stakeholders with competing interests is difficult to achieve.[35] "If a key stakeholder raises a serious opposition, the Court must exercise caution, even in the face of liquidity constraints or asserted urgency."[36] *Sheertex* contains several key statements of law that are applicable to Paystone's situation.

23. Quick flip and prepack transactions require additional scrutiny of the adequacy and fairness of the sale process, which in turn requires a "robust and transparent record" to permit the Court to fulfill its supervisory function.[37] This includes a "more detailed report" from the court officer than would be expected in a normal *CCAA* transaction.[38] The report must provide "meaningful oversight by explaining how the interests of affected stakeholders have been considered or, where appropriate, why they have not been engaged or accommodated in the circumstances."[39]

24. Heightened advance disclosure for a quick flip must go "[a]bove and beyond" the

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[34] *CCAA*, ss 36(3)(f), (4)(b); *Re PaySlate Inc*, 2023 BCSC 608 at paras 138–42 [***PaySlate***]; *9-Ball* at para 33.
[35] *Propostition de SRTX inc*, 2026 QCCS 570 at paras 7–9 [***Sheertex***].
[36] *Sheertex* at para 9.
[37] *Montrose Mortgage Corporation v Kingsway Arms Ottawa*, 2013 ONSC 6905 at para 10; *Re Tool-Plas Systems Inc*, 2008 CanLII 54791 (ONSC) at para 15.
[38] *Sheertex* at para 27.3 (in the context of a Trustee's obligations under the *BIA*).
[39] *Sheertex* at para 27.3.

obligations in a conventional restructuring process, to the level of full and frank disclosure.[40] Transparency prevails over the usual strategic reticence of commercial negotiations, as a "broader level of disclosure is the price to pay for a streamlined and expedited process."[41]

25. There should be a broad level of support from a variety of stakeholders to assure the Court that meaningful consultation was undertaken with those whose rights and interests stand to be affected.[42] The Court must exercise caution where a key stakeholder raises serious opposition to such a transaction, even when urgency and liquidity concerns are asserted by the advancing party.[43]

26. Prepack transactions remain an exception to the traditional insolvency process. To benefit from an expedited process, the applicant bears the burden of proving that the process is justified by genuine urgency.[44]

3. Parties must act in good faith with their stakeholders and the Court

27. An applicant seeking relief under the *CCAA* has the burden to satisfy the Court that the order it seeks is appropriate, sought in good faith and with due diligence.[45] They must act "candidly, honestly, forthrightly and reasonably in their dealings with one another and the court."[46] The duty to commence and conduct proceedings in good faith is owed to both the Court and the stakeholders directly affected by the process, including investors and creditors.[47]

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[40] *Sheertex* at paras 26, 27.2.
[41] *Sheertex* at para 27.2.
[42] *Sheertex* at para 27.4.
[43] *Sheertex* at para 9. Morin J notes at para 36.4 that the concerned stakeholder raising an alternative equity investment outcome chose not to engage in the insolvency process once invited to do so by the Court.
[44] *Sheertex* at para 27.5.
[45] *CCAA*, s 18.6; *Callidus* at para 75, see also paras 49–50, citing *Century Services Inc v Canada (AG)*, 2010 SCC 60 at paras 59, 69–70 [***Century***].
[46] Janis P Sarra, "La bonne foi est une considération de base – Requiring Nothing Less than Good Faith in Insolvency Law Proceedings" in Janis P Sarra & Barbara Romaine, eds, *Annual Review of Insolvency Law* 2014 (Toronto: Thomson Reuters, 2015).
[47] *CCAA*, s 18.6; *Century* at paras 69–70; *Re San Francisco Gifts Ltd*, 2005 ABQB 91 at para 17.

28. A lack of good faith goes beyond merely acting in self-interest. It is evident where a party brings an insolvency proceeding for an oblique motive or improper purpose, where a party lies or misleads the other regarding the status of the loan, or where a party conceals a company's practices or relevant financial information.[48] The applicant has the burden to prove that it has acted in good faith and that the proposed prepack transaction "pursues a valid commercial objective, and that it serves the best interests of the debtor's stakeholders as a whole."[49] Where bankruptcy is not the only other alternative available, it is not in the best interests of the debtor's stakeholders as a whole to approve a sale to and for the benefit of a related party that would extinguishing a significant third-party interest.[50]

29. If the Court finds that a debtor failed to act in good faith and is using the *CCAA* for a purpose other than to attempt a legitimate reorganization, there is considerable discretion for the Court to make any order that it considers appropriate in the circumstances.[51] If a secured party will be disadvantaged by a sale process and there is "some doubt that the market has truly spoken" due to significant information being unavailable to all parties, the Court may dismiss the sale approval, leaving open the possibility that another more appropriate order can be sought.[52]

B. Paystone's APA does not meet the *Soundair* Test

30. The sale to the Purchaser should not be approved because the APA was not reached in a fair, transparent manner, or in good faith. There is no way to verify that the consideration from the proposed transaction would be superior to the consideration received under any other offer received

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[48] *CWB Maxium Financial Inc v 2026998 Alberta Ltd*, 2021 ABQB 137 at paras 58–59; *Re Canada North Group Inc*, 2017 ABQB 508 at para 64; *Sheertex* at para 27.1.
[49] *Sheertex* at para 27.1.
[50] *In the Matter of CannaPiece Group Inc*, 2023 ONSC 841 at paras 11, 69, 93–100 [***CannaPiece***].
[51] *CCAA*, ss 11, 18.6(2); *Laurentian University v Sudbury University*, 2021 ONSC 3392 at para 25, citing *Elan Corp v Comiskey (CA)*, 1990 CanLII 6979 (ONCA) at para 84.
[52] *Re Bron Media Corp*, 2023 BCSC 2109 at paras 87–88, 97 [***Bron***].

during a sale process, because the APA was not generated from a sale process: the Canaccord Pre-Filing Process was set aside when the Agent chose to close a deal with Sandton.[53]

31. The Monitor's Pre-Filing Report states that the Applicants "recently completed a comprehensive sale and investment solicitation process."[54] This statement refers to the Sandton Loan Agreement concluded on May 8, 2026 between Sandton, the Syndicate and Paystone, which refinanced the Syndicate's debt at a significant discount.[55] It also appears to have stripped other members of the Syndicate from security for other lines of credit.[56] It is the only agreement that could be rationally connected to the Pre-Filing Process. But that is not the deal presented to the Court on this AVO.

32. The June 5 APA between Paystone and the Purchaser has no connection to the Pre-Filing Process. It is a move from Paystone 1.0 to Paystone 2.0, with Sandton benefitting from the Purchaser shedding $23 million of Paystone's other secured and unsecured debts. The opportunity to **purchase Paystone's assets**—as opposed to refinance the Syndicate's debt—was never adequately put out to market. The Applicants have not met their burden to demonstrate how this APA is the result of a good faith effort to sell Paystone's assets to an unrelated party.[57]

33. As such, the APA does not satisfy *CCAA* criteria as established in *Soundair* and *CCM*:[58]

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[53] Zalev Affidavit at para 13; Monitor's Second Report at 4.0.9–4.0.10.
[54] Monitor's First Report dated June 5, 2026 at 1.0.3.
[55] Zalev Affidavit at para 14; Monitor's Second Report at 3.1.2–3.
[56] Monitor's Second Report at Schedule D.
[57] *CCAA*, ss 36(4)–(5) and *BIA*, ss 65.13(4)-(5) contain almost identical provisions for granting authorization of a sale and for additional considerations where there is a sale to a related party; *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009 at paras 42–45 (re test under *BIA*); *Canadian Starter* at paras 5–8.
[58] *Soundair* at para 16; *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at para 6.

(a) The fairness, transparency and integrity of the sale process was superficial at best, with Paystone not only failing to notify BDC in a timely manner, but misleading BDC altogether about the existence of the APA or that a *CCAA* proceeding was being contemplated. BDC was then short-served with the AVO before the Initial Hearing and had no opportunity to consider the APA's terms or how it would impact BDC's interests;

(b) Likewise, Paystone chose not to notify any contractual counterparties with an economic interest affected by this sale, which has deprived this Court of their positions or evidence regarding the impact of the APA, such that the interests of all parties have not been considered;

(c) There is no evidence of any other independent valuations or estimates carried out for Paystone's assets and liabilities which are required to assist the Court in assessing the reasonableness and superiority of the proposed sale consideration;[59] and

(d) No bidder other than the related-party insider could have participated in the negotiations for the APA, as it was never advertised or marketed.[60]

34. Paystone has failed to go "above and beyond" in its disclosure obligations and cannot benefit from an expedited sale process.[61] It could have brought BDC into the conversation around an asset purchase or refinancing its own debt. Under the Payment Standstill, giving BDC prior and adequate notice of the Initial Hearing would not have resulted in any prejudice to the Applicants,

[59] *PaySlate* at paras 125, 138–42.
[60] *Bron* at para 87.
[61] *Sheertex* at paras 26, 27.2.

as BDC would not have been able to enforce its security in advance.

C. The Pre-Filing Process Was Never Properly Concluded and Excluded Known Strategic Buyers

35. Even if the Court finds that the APA can be reasonably connected to the Pre-Filing Process, that Process itself was incomplete and does not meet the *Soundair* test.

36. Rather than allowing the Canaccord process to run to a competitive conclusion, the Syndicate pre-emptively accepted a separate private bilateral proposal from Sandton to purchase the Syndicate's rights under the senior credit facilities. At the time, approximately $92.375 million was outstanding under the senior credit facilities.[62] Sandton acquired those rights for approximately $41 million—a discount of more than $51 million from the face value of the debt.[63] The Syndicate accepted this material loss without testing any of the alternative proposals from the Pre-Filing Process or pursuing an auction—and without consulting BDC, which had offered to participate with prospective bidders to improve the terms of their offers through refinancing or providing new capital.[64]

37. The Pre-Filing Process was designed around the Syndicate's interest in recovering on its senior debt. The process targeted parties with the capacity to refinance the senior indebtedness. It was not designed to identify strategic purchasers of the business. As a result, several obvious, identifiable and motivated strategic buyers—some of whom reached out directly to the Applicants and to the CRO—were never contacted. BDC was not informed of this development in a complete or timely manner, despite frequently reaching out for updates.[65]

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[62] Monitor's Second Report at 3.1.4.
[63] Malik Affidavit at para 28.
[64] Malik Affidavit at paras 23, 25.
[65] See eg Malik Affidavit at paras 20, 23–26.

38. The Monitor now also describes an issue that has arisen between Paystone and one of the former Syndicate members, the Bank of Nova Scotia.[66] Because of the structure of the Sandton Loan Agreement, the Principals knew that the Bank of Nova Scotia would no longer have the security it previously held for chargebacks. The Applicants' materials do not address the late disclosure of this issue.

39. The Monitor played no role in designing or overseeing the Pre-Filing Process. Paystone sought its appointment on June 5, 2026.[67]

40. In the context of a pre-pack transaction, a court officer's report must provide a robust assessment to assist the Court in its supervisory role and to properly inform the stakeholders whose rights and interest may be affected. To do so, this assessment must answer several questions, including who is purchasing the assets and what is being purchased. In the context of a related party sale, the Monitor has a responsibility to explain what safeguards were put in place to ensure the integrity of the process.[68]

41. The Monitor's Second Report provides that "a newly incorporated company controlled by the principals of the Applicants" will be the Purchaser.[69] However, the structure of the purchasing company is not even settled at this stage, and it is unclear whether only one or both of the Principals will be controlling and operating this company. As a result, there is insufficient information to assess the Purchaser's ability to close on this transaction and their ability continue to operate the business.[70] Further, the Monitor's Second Report fails to provide the necessary details of what

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[66] Monitor's Second Report at 3.3.2.
[67] *Re Paystone Holdings Inc*, Initial Order dated June 5, 2026 (Court File No CL-2600000261-0000).
[68] *CCAA*, s 23(1); *Sheertex* at para 27.3.
[69] Monitor's Second Report at 5.0.2.d.
[70] *Sheertex* at para 27.3.

safeguards were in place for this insider deal. The Monitor does not address any of the risk factors affecting the certainty of closing the APA, even with contractual counterparties in the dark on this transaction and an uncertain closing date at play. Likewise, the Monitor is also unable to answer what is being purchased because the APA schedules remain blank, with critical information on customer contracts that may or may not be part of the sale being undisclosed. Without this information, an information asymmetry persists and neither the Court, nor the stakeholders are in a position to properly assess the reasonableness of the proposed transaction.[71]

42. The effect of this information asymmetry is further exacerbated by the delay in receiving the Monitor's Second Report. Barring any "truly exception circumstances, [the] delay [in receiving a court officer's report] should not be less than one week". The Monitor's Second Report was received on the Friday evening before Monday morning's hearing. This delay does not permit for proper review and meaningful analysis ahead of the hearing, particularly when the report includes brand new information about which stakeholders are unable to make any additional inquiries.[72] The Applicants' Principals are operating "business as usual" and admit to having sufficient liquidity to make it to at least July 1, 2026,[73] and have previously reported to BDC they have sufficiently liquidity to make it well into August.[74] The Applicants have not established there are any exceptional circumstances present that make this delay for the Monitor's Second Report reasonable.

D. The Principals should not benefit from Paystone's financial difficulties

43. The Court should not give its blessing to a related party transaction that stands to benefit

[71] *Sheertex* at para 27.3.
[72] *Sheertex* at para 27.3.
[73] Malik Affidavit at para 42, Exhibit T; Zalev Reply Affidavit at para 13.
[74] Malik Affidavit at para 30.

the Principals and Paystone's senior secured creditor at the expense of BDC and all other creditors.[75] Paystone was balance sheet insolvent, but as of a month ago, it was not in the liquidity crisis presented to this Court. It had a net positive cash balance and, following the Sandton Loan Agreement refinancing, had represented to BDC that there was a viable path forward to remedying its defaults.[76] At no time was a *CCAA* filing apparent or imminent.

44. Mr. Saab also signed the Management's Report on the cash flow statement in his capacity as Chief Financial Officer—meaning the cashflow document relied upon by the Monitor was prepared and certified by one of the insiders who will benefit directly from the proposed Sale Transaction.[77]

45. Paystone has not met its burden to prove that the proposed APA "pursues a valid commercial objective, and that it serves the best interests of the debtor's stakeholders as a whole."[78] The practical effect of the proposed APA is that Sandton's economic position is entirely preserved in a new corporate vehicle and it will earn economic recoveries in excess of what it paid to purchase the Syndicate's debt. At the same time, the existing Principals continue to own and operate the business, and BDC's entire $12.6 million debt is extinguished, along with all other indebtedness of other subordinate creditors. No cash consideration flows to BDC or other subordinate creditors.

46. The Principals have not provided affidavits in the *CCAA*. Given the absence of evidence from them about the relationship between the APA parties and the ways in which they stand to personally benefit, there is a high possibility of a breach of fiduciary duty, self-dealing or oppressive behaviour. BDC cannot support releases of the Principals, the CRO or Sandton as part

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[75] *CannaPiece* at paras 11, 69, 93–100.
[76] Malik Affidavit at paras 30–36.
[77] Second Monitor's Report at Appendix F.
[78] *Sheertex* at para 27.1.

of the AVO. BDC requests that the Monitor seek further information and reviews the Principals' conduct.

47. Purging $23 million of secured and unsecured debt while the Principals benefit from the upside on continuing Paystone's business does not serve the best interests of Paystone's stakeholders.

E. Obstacles to Closing

48. Paystone cannot close the APA in the expedient manner it describes for three reasons. First, the CRO has indicated that the Purchaser presently has no shareholders, meaning that it is not a validly constituted corporation under Ontario law and cannot direct its director to enter into transactions.[79] This is not a hurdle that would be faced by other established purchasers.

49. Second, the APA schedules are entirely blank. While it is understandable that a company's complex assets may be identified and refined as part of closing the transaction, it is not reasonable for there to be a complete absence of information. Paystone's business is largely held in its customer contracts; this information is a key part of any asset sale transaction. In the APA, the parties contemplate: "(b) The Parties shall cooperate and each use commercially reasonable efforts to obtain all Third Party Consents **prior to the sale approval motion**, provided that the Sellers shall not be required to pay any amount in order to obtain a Third Party Consent."[80] The CRO has further advised BDC that the Applicants intend to assign contracts to the proposed Purchaser

[79] *Business Corporations Act*, RSO 1990, c B.16, s 2 (the corporate statute does not apply to a body corporate without share capital).
[80] Monitor's Second Report at Appendix E (APA, s 2.5, emphasis added). The APA also defines the "CCAA Assignment Order" to be sought as preventing a counterparty from exercising any rights or remedies to prevent an assignment, among other things.

without incurring the costs of "forced assignment."[81] This means that there may be a significant volume of contracts that would need to be assigned, but there is no high-level indication in the APA of which types of contracts will be assigned and what may happen if there are cure costs involved.

50. Instead, in answers provided to BDC, the CRO has described a surreptitious process whereby Paystone will assign the contracts of contractual parties on consent without issue, while they will "work on" other relationships. Others may be simply left behind. Given that **these parties have no notice of this hearing** and the impact that it would have on their economic interests, the Court cannot approve the AVO. It is not acceptable for the Applicants to come to the Court for its blessing of an APA that is not complete or capable of closing on the timelines the Applicants say they require. The Applicants indicate that they opted not to provide notice in the name of avoiding alleged business disruption, but the *CCAA* is expressly intended for distressed parties to engage in negotiations and discussions with their stakeholders while reducing business disruption.[82]

51. Third, the APA does not provide for the ultimate corporate structure, meaning that it is not clear how the Purchaser intends to transfer the assets that may be subject to regulatory approvals. This motion is not for a reverse vesting order; there is no provision in the APA or AVO for the regulatory approvals that may be required for the transfer of a payments processing entity. It would be inappropriate and potentially unlawful for the Purchaser to continue operating Paystone following closing without properly transferring the assets and applying for regulatory approval, or otherwise circumventing the process.

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[81] Malik Affidavit, Confidential Appendix 1, Answers provided on June 18, 2026.
[82] Malik Affidavit, Confidential Appendix 1, Answers provided on June 18, 2026.

F. A SISP is appropriate for Paystone

52. That BDC has managed to produce LOIs from known potential bidders in less than two weeks speaks volumes about the possibility of superior recoveries if there is greater exposure of the Paystone opportunity to the market. These LOIs commit to preserving going concern value and ensuring continuity of operations and employment. In particular, the Shopley LOI provides for a greater overall consideration of $115 million, including a cash component to pay out secured and unsecured creditors that is absent from the APA for $93 million.[83] With such improved terms, the Purchaser's APA fails the related party sale test. In the circumstances, the Court should approve a sale with the greatest economic recoveries for all stakeholders, not the sale with merely the highest value on paper.[84] The Shopley LOI is a strong indication that improved outcomes for all stakeholders are available.

53. There is no urgency. Following the Sandton deal, in the May 22, 2026 cashflow, Paystone appeared to have net-positive cash flows and sufficient cash runway to last until August 7, 2026.[85] Payment processing receipts now appear to be expected to increase, along with a steep increase in professional fees including that of the CRO and Sandton's counsel.[86] There is nothing to demonstrate a loss of employees and contractors, erosion of enterprise value or uncertainty with suppliers.[87]

54. BDC does not take issue with the fees secured under the Administrative Charge for the Monitor, its counsel and counsel to the Applicants; these are customary costs of restructuring.

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[83] Supplementary Affidavit of Imran Malik, sworn June 21, 2026 at Exhibit A [**Supp Malik Affidavit**].
[84] *Pricewaterhousecoopers Inc v 1905393 Alberta Ltd*, 2019 ABCA 433 at para 13.
[85] Malik Affidavit at para 30, Exhibit M.
[86] Monitor's Second Report, Appendix F, Cash flow forecast.
[87] *Sheertex* at para 27.5.

However, the CRO and Sandton's counsel are included in the high weekly restructuring rates.[88] The Monitor should examine whether these fees are being charged to Paystone's detriment or in a manner that contributes to Paystone's liquidity issues.

55. Paystone should have the funding for a 30-day SISP to be completed and to allow the market to speak on its value. Following a debt-financed, rapid expansion, asset sales for some of Paystone's acquisitions may be the best option for right-sizing operations. It may also provide an opportunity for parties like Shopley and others to refinance and streamline multiple business lines. Thirty days is not an extended period for a process; there should be no prejudice to Paystone's customers, since the Principals are operating the "business as usual."

56. BDC is seeking authorization for Paystone, as debtor-in-possession, to borrow funds during the *CCAA* proceedings to finance its operations during the SISP (the "**DIP Financing**"). BDC has provided to the Monitor and Applicants the terms for a $2 million loan, as has another party, Aggregated Investments Inc. ("**Aggregated**"), for $5 million.[89] If financing is required to fund the SISP, both parties are seeking a priority charge to secure Paystone's obligations (the "**DIP Lender's Charge**"). The proposed DIP Lender's Charge will rank after the Administration Charge but rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise. BDC and Aggregated will not provide DIP Financing absent the DIP Lender's Charge. The DIP Financing and DIP Lender's Charge are necessary because Paystone is not able to conduct a SISP without further financing.

57. The DIP Financing meets the requirements of *CCAA*, section 11.2, including that BDC

[88] Monitor's Second Report at Appendix F, note 10.
[89] Supp Malik Affidavit, paras 4-5 and 8, and Exhibit B.

provided notice to Sandton, which will not be materially prejudiced by the DIP Financing; the charge is appropriate as based on the Monitor's cashflow forecast; and the DIP Financing does not secure pre-filing obligations.[90] The proposed interim DIP Financing would enhance the prospects of a viable SISP. While the terms are not yet binding and finalized given BDC's internal processes, BDC is committed to providing DIP Financing and working with the Monitor to ensure that Paystone is able to continue its operations and see through a SISP.

58. A SISP would allow Paystone to continue operations while other bidders are given the opportunity to provide improved offers, including those involving a cash consideration component that would be superior to a full credit bid. It would also provide the parties with the commercial certainty of a court-supervised sales process. Had the Applicants wanted to carry out their desired quick flip, they could have proceeded without the Court's intervention and considered other options for refinancing BDC's debt—BDC had been open to the possibility. However, by bringing the APA before this Court under the *CCAA*, the Applicants have subjected the proposed transaction to the requirements of transparency and judicial scrutiny.

G. Sealing order

59. BDC seeks a time-limited sealing order over the information contained in two exhibits to the affidavit of Imran Malik to protect commercially sensitive information. First, the elements of the consideration offered in the Shopley LOI should remain confidential until such time as a transaction is closed and approved by the Court, as revealing this information could be prejudicial to Shopley during a SISP. The information provided to BDC in the second exhibit as relating to

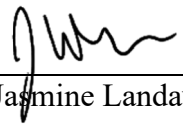
[90] *CCAA*, s 11.2(4).

the Canaccord Pre-Filing Process and interested bidders under NDA related could be similarly prejudicial if a SISP is to be conducted.

60. In conclusion, BDC has responded to the Applicants' surprise sale transaction with integrity and commercial pragmatism. The Court should not allow Paystone to circumvent the *CCAA*'s clear requirements for good faith dealings with—and appropriate notice to—stakeholders and counterparties. If the related party APA is approved, it would be to the detriment of BDC as a secured creditor and to the disproportionate benefit of Paystone's Principals and Sandton.

PART IV. - RELIEF SOUGHT

61. BDC respectfully submits that the AVO sought on this motion should be denied. The Court should approve BDC's motion for the 30-day SISP, DIP financing and SISP Order as set out at Tab 3 of BDC's record. A court-supervised sale process will ensure that all interested parties have a meaningful opportunity to participate, thereby maximizing recoveries and achieving a superior outcome for all stakeholders.



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SCHEDULE "A"

LIST OF AUTHORITIESCASE LAW:

1. *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10
2. *9-Ball Interests Inc v Traditional Life Sciences Inc*, 2012 ONSC 2788
3. *Barafield Realty Ltd v Just Energy (BC) Limited Partnership*, 2015 BCCA 421
4. *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750
5. *Century Services Inc v Canada (AG)*, 2010 SCC 60
6. *CWB Maxium Financial Inc v 2026998 Alberta Ltd*, 2021 ABQB 137
7. *Elan Corp v Comiskey (CA)*, 1990 CanLII 6979 (ONCA)
8. *Elleway Acquisitions Ltd v 4358376 Canada Inc*, 2013 ONSC 7009
9. *In Re Hudson's Bay Company*, 2025 ONSC 5998
10. *In the Matter of CannaPiece Group Inc*, 2023 ONSC 841
11. *Laurentian University v Sudbury University*, 2021 ONSC 3392
12. *Montrose Mortgage Corporation v Kingsway Arms Ottawa*, 2013 ONSC 6905
13. *Pricewaterhousecoopers Inc v 1905393 Alberta Ltd*, 2019 ABCA 433
14. *Pride Group Holdings Inc*, 2025 ONSC 357
15. *Propostition de SRTX inc*, 2026 QCCS 570
16. *Re Bron Media Corp*, 2023 BCSC 2109
17. *Re Canada North Group Inc*, 2017 ABQB 508
18. *Re PaySlate Inc*, 2023 BCSC 608
19. *Re San Francisco Gifts Ltd*, 2005 ABQB 91
20. *Re Target Canada Co*, 2015 ONSC 2066
21. *Re Tool-Plas Systems Inc*, 2008 CanLII 54791 (ONSC)
22. *Re Veris Gold Corp*, 2015 BCSC 1204
23. *Re Wallace & Carey Inc*, 2025 ABKB 750

24. *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ONCA)

25. *The Toronto Dominion Bank v Canadian Starter Drives Inc*, 2011 ONSC 8004

ACADEMIC ARTICLES:

1. Janis P Sarra, "La bonne foi est une considération de base – Requiring Nothing Less than Good Faith in Insolvency Law Proceedings" in Janis P Sarra & Barbara Romaine, eds, *Annual Review of Insolvency Law 2014* (Toronto: Thomson Reuters, 2015).

2. Janis P Sarra, "The Oscillating Pendulum: Canada's Sesquicentennial and Finding the Equilibrium for Insolvency Law" in Janis P Sarra & Barbara Romaine, eds, *Annual Review of Insolvency Law 2016* (Toronto: Thomson Reuters, 2017).

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date June 22, 2026

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

LEGISLATION

Companies' Creditors Arrangement Act, RSC 1985, c. C-36, ss 11.2(4), 18.6, 23, 36.
Bankruptcy and Insolvency Act, RSC 1985, c B-3, ss 65.13, 95-96.
Business Corporations Act, RSO 1990, c B.16, s 2.

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1. *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36

Factors to be considered
11.2(4) In deciding whether to make an order, the court is to consider, among other things,
(a) the period during which the company is expected to be subject to proceedings under this Act;
(b) how the company's business and financial affairs are to be managed during the proceedings;
(c) whether the company's management has the confidence of its major creditors;
(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
(e) the nature and value of the company's property;
(f) whether any creditor would be materially prejudiced as a result of the security or charge; and
(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Duty of Good Faith

Good faith
18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

Good faith — powers of court
(2) If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

[…]

Duties and functions

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than $1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at

least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

[…]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

> **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> **(b)** whether the monitor approved the process leading to the proposed sale or disposition;
>
> **(c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> **(d)** the extent to which the creditors were consulted;
>
> **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> **(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

> **(a)** good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
>
> **(b)** the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

> **(a)** a director or officer of the company;
>
> **(b)** a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

Preferences and Transfers at Undervalue

Application of sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

36.1 (1) Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* apply, with any modifications that the circumstances require, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

Interpretation

(2) For the purposes of subsection (1), a reference in sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

(a) to "date of the bankruptcy" is to be read as a reference to "day on which proceedings commence under this Act";

(b) to "trustee" is to be read as a reference to "monitor"; and

(c) to "bankrupt", "insolvent person" or "debtor" is to be read as a reference to "debtor company".

2. *Bankruptcy And Insolvency Act*, RSC 1985, c B-3

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

> **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> **(b)** whether the trustee approved the process leading to the proposed sale or disposition;
>
> **(c)** whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> **(d)** the extent to which the creditors were consulted;
>
> **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> **(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(6) For the purpose of subsection (5), a person who is related to the insolvent person includes

(a) a director or officer of the insolvent person;

(b) a person who has or has had, directly or indirectly, control in fact of the insolvent person; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

Restriction — intellectual property

(9) If, on the day on which a notice of intention is filed under section 50.4 or a copy of the proposal is filed under subsection 62(1), the insolvent person is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (7), that sale or disposition does not affect the other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

3. *Business Corporations Act*, RSO 1990, c B.16

Application

2 (1) This Act, except where it is otherwise expressly provided, applies to every body corporate with share capital,

(a) incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada;

(b) incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its registered office and carries on business in Ontario; or

(c) incorporated by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation within the meaning of the *Loan and Trust Corporations Act* except as provided by that Act. R.S.O. 1990, c. B.16, s. 2 (1).

Idem

(2) Despite *The Railways Act*, being chapter 331 of the Revised Statutes of Ontario, 1950, and subject to subsection 168 (6), this Act applies to a body corporate with share capital that is a company as defined in that Act but that is not engaged in constructing or operating a railway, street railway or incline railway. R.S.O. 1990, c. B.16, s. 2 (2).

Idem

(3) This Act does not apply to a body corporate with share capital that,

(a) is a company within the meaning of the *Corporations Act* and has objects in whole or in part of a social nature;

(b) is a corporation to which the *Co-operative Corporations Act* applies;

(c) is a corporation that is an insurer within the meaning of subsection 141 (1) of the *Corporations Act*; or

(d) is a corporation to which the *Credit Unions and Caisses Populaires Act, 2020* applies. R.S.O. 1990, c. B.16, s. 2 (3); 2017, c. 2, Sched. 12, s. 1 (2); 2020, c. 36, Sched. 7, s. 296 (1).

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYSTONE HOLDINGS INC., PAYSTONE INC., ATOM GROWTH INC., AND ATOM GROWTH (USA), INC.

Court File No: CL-26-00000261-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

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