

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C. C 36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
GUARDIAN FINANCIAL CORP. AND THE OTHER ENTITIES LISTED ON SCHEDULE "A"**

**(Applicants)**

**FACTUM OF THE APPLICANTS  
(Re: CCAA Initial Application)  
(Returnable August 31, 2020)**

August 30, 2020

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**Lawyers for the Applicants**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

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**(Applicants)**

**PART I - OVERVIEW**

1. The Applicants seek creditor protection and certain other ancillary relief pursuant to an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), substantially in the form of the draft order attached to the Application Record at Tab 3.
2. The Applicants are part of the IWG multinational corporate group that offers a network of on-demand office and co-working spaces, and ancillary services and support, to a variety of clients across a host of industries in over 1,000 locations in the United States and Canada.
3. Due to external factors caused by the COVID-19 pandemic, certain of the Applicants' affiliates in the United States (the "**Chapter 11 Debtors**") filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") between July 30, 2020 and August 17, 2020 (such proceedings in the U.S. Court, the "**Chapter 11 Cases**").
4. Certain of the Chapter 11 Debtors (the "**Guarantor Debtors**") are guarantors of 85 Leases in Canada. Pursuant to approximately 38 of these guaranteed Leases, the commencement of the Chapter 11 Cases by a guarantor is a technical event of default. Due

to concerns that Landlords may take action under the Leases, the Chapter 11 Debtors sought recognition of the Chapter 11 Cases under Part IV of the CCAA. On August 24, 2020, this Court recognized the Chapter 11 Cases as “foreign main proceedings”.

5. This application is brought by 39 Canadian affiliates of the Chapter 11 Debtors. Each of the Applicants hold one or more Lease in Canada, and all of these Leases are guaranteed by a Chapter 11 Debtor. All of the Leases may be in technical default due to the commencement of the Chapter 11 Cases.

6. The Applicants require the protection of the CCAA and the relief provided thereunder so that they can mitigate the risk of their technical default under the applicable Leases. Protection under the CCAA will bring immediate stability to a volatile situation where a significant portion of the Canadian Centres could be involuntarily closed on no or limited notice. The CCAA Debtors intend to use the “breathing room” provided by the CCAA to advance their restructuring efforts in a coordinated manner with the Chapter 11 Cases.

## **PART II - THE FACTS**

7. The facts with respect to this motion are more fully set out in the affidavit of James S. Feltman sworn August 30, 2020 (the “**Feltman Affidavit**”). Capitalized terms used within this Factum but not otherwise defined have the meanings ascribed to them in the Feltman Affidavit.

### **A. Overview**

8. IWG is in the business of entering into long-term non-residential leases with Landlords that provide the Company with unoccupied office space (the “**Centres**”). IWG engineers each of the Centres to meet specific standards, and then markets the Centres

under a brand name. Occupants enter into Occupancy Agreements to use portions of the Centres, which are customizable as to duration, configuration, services, and amenities.

Feltman Affidavit at para. 9, Application Record at Tab 2.

9. Generally, the Lease Holder under each Lease is a special-purpose entity formed for this specific purpose. Another IWG entity may then partially or fully guarantee the Lease Holder's obligations under the Lease. In the case of the Guarantor Debtors, they are guarantors of, or co-liable as original tenant-assignor, of 653 Leases in total (85 of which are in respect of Centres in Canada).

Feltman Affidavit at para. 10, Application Record at Tab 2.

10. The COVID-19 pandemic has caused significant challenges for IWG, including reduced occupancy rates as a result of work-from-home policies. Many Occupants have also had difficulty paying their Occupancy Fees on time.

Feltman Affidavit at paras. 39-40 and 43, Application Record at Tab 2.

11. IWG has implemented various measures to reduce the impact of the COVID-19 pandemic, including deferring rent payments and engaging with Landlords to negotiate forbearances, temporary accommodations, and, in certain instances, permanent modifications to various Leases. IWG has had various successes in negotiations with Landlords; however, in certain instances, the negotiations have reached an impasse.

Feltman Affidavit at para. 41, Application Record at Tab 2.

12. The breakdown of negotiations between certain of the Chapter 11 Debtors and the Landlords resulted in the Landlords issuing notices of their intention to lock certain of the Chapter 11 Debtors out of their respective Centres, which pushed them to commence their respective Chapter 11 Cases. Certain other Chapter 11 Debtors commenced their Chapter 11 Cases shortly thereafter to pre-empt both a potential "run on the bank" by Landlords

exercising their rights under the various guarantee agreements and to attempt to restructure their obligations while maintaining the Company's viable lease portfolio.

Feltman Affidavit at para. 42, Application Record at Tab 2.

**B. The Need for CCAA Protection**

13. The Canadian Affiliates operate 137 Centres in Canada. The Guarantor Debtors are liable or partially liable for 85 of the Leases related to these Canadian Centres. The Leases in respect of the other Centres are not guaranteed or are guaranteed by other affiliates of IWG which are not debtors in the Chapter 11 Cases.

Feltman Affidavit at para. 17, Application Record at Tab 2.

14. Each Lease Holder in Canada is typically a special purpose limited partnership formed specifically to enter into individual Leases with various Landlords and to hold an individual Lease for a single Centre in Canada.

Feltman Affidavit at paras. 12-13, Application Record at Tab 2.

15. In these proceedings, the Applicants include each Canadian GP or the corporations that are Canadian Tenant SPEs. The Canadian GPs' sole asset is their minor interest (typically, 0.00001%) in the respective Canadian Tenant LPs. As part of the application for relief under the CCAA, the Applicants are seeking to extend the stay protections granted by the Court to their respective Canadian Tenant LPs.

Feltman Affidavit at para. 14, Application Record at Tab 2.

16. Most of the Guaranteed Canadian Leases provide that the commencement of insolvency and/or bankruptcy proceedings by any indemnitor or guarantor under the Lease is an event of default. Subject to the particular terms of the Lease and provincial law, including the current eviction moratoriums in place in certain provinces, the Landlords' rights and

remedies in the case of an event of a default under their respective Guaranteed Canadian Lease may include (a) terminating the applicable Guaranteed Canadian Lease; or (b) “locking-out” the Canadian Tenant LPs and by extension the Occupants, and retaking possession of the Centres.

Feltman Affidavit at para. 44, Application Record at Tab 2.

17. The Applicants and the CCAA LPs are unique *vis-à-vis* the other Canadian Affiliates with Guaranteed Canadian Leases in that the Leases held by the Applicants and the CCAA LPs contain events of default related to the commencement of the Chapter 11 Cases by the Guarantor Debtors.

Feltman Affidavit at para. 18, Application Record at Tab 2.

### **PART III - ISSUES**

18. The issues before this Court, as addressed below, are whether:

- (a) the Applicant meets the criteria for, and should be granted, protection under the CCAA;
- (b) the stay of proceedings should be extended to the CCAA LPs; and
- (c) the proposed monitor, KSV Kofman Inc. (“**KSV**”), should be appointed as the monitor in these proceedings (in such capacity, the “**Monitor**”).

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

#### **A. This Court Should Grant Protection to the Applicants under the CCAA**

##### **1. The Applicants are “Debtor Companies” to which the CCAA Applies**

19. The CCAA applies to a “debtor company” whose liabilities exceed C\$5 million. A “debtor company” is defined, *inter alia*, as a “company” that is “insolvent” or that has

committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (the “**BIA**”).

CCAA at s. 2(1) “debtor company” and 3(1).

**(i) The Applicants are “Companies”**

20. The CCAA defines “company” to include, amongst other things, “any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province”.

CCAA s. 2(1), “company”.

21. Thirty-seven of the Applicants are corporations incorporated under the laws of the Province of Ontario. Two of the Applicants are corporations incorporated under the laws of the Province of British Columbia. As such, the Applicants meet the CCAA definition of “company” and are therefore eligible for CCAA protection.

**(ii) The Applicants are “Debtor Companies” pursuant to the CCAA**

22. The CCAA defines a “debtor company” as, *inter alia*, a company that is “insolvent”.

CCAA s. 2(1) “debtor company”, “company” and CCAA s. 3(1).

23. Although the CCAA does not define the term “insolvent”, it is well-established that in a CCAA application this term can be interpreted by reference to “insolvent person” in s. 2(1) of the *BIA*. The definition of “insolvent person” in the *BIA* is:

[...] a person who is not bankrupt and who resides, carries on business or has property in Canada, and whose liability 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.

*Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [**BIA**] at s. 2(1), “insolvent person”.

*Stelco Inc, Re*, 2004 CanLII 24933 (Ont. S.C.J. [Comm. List]) [**Stelco**], paras 21-22 ([CanLII](#)).

24. In *Stelco*, Justice Farley applied an expanded definition of insolvent in the CCAA context to reflect the “rescue” emphasis of the CCAA, modifying part (a) of the BIA’s definition of “insolvent person” to include a financially troubled corporation that is “reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring”.

*Stelco* at paras 25-26 ([CanLII](#)).

25. The tests for insolvency under the *BIA* and the expanded definition under *Stelco* are disjunctive, and the satisfaction of either will meet the definition of insolvency in the CCAA context.

*Stelco* at paras 26 and 28 ([CanLII](#)).

26. The Applicants are insolvent within the meaning of the expanded definition of insolvency as set out in *Stelco*. In particular, without the benefit of a stay of proceedings, the CCAA Debtors and CCAA LPs may be in default of their obligations under their respective Leases which could be terminated with no or limited notice. Certain Leases also require that the CCAA Debtors post additional security on an immediate basis—something that they are not in a position to do. As such, the Applicants are in a precarious position such that, since



the commencement of the Chapter 11 Cases, they do not have sufficient liquidity to meet their obligations under the Leases.

Feltman Affidavit at para 33, Application Record, Tab 2.

27. Further, absent a stay of proceedings, the Applicants may start to lose Centres due to “lock outs” by Landlords, which will have the effect of ending their business operations. If the Applicants cannot operate the Centres and their property was to be liquidated in an insolvency process, then there would not be sufficient realizations to pay all of their liabilities, including potential claims by Landlords and Occupants and debt owing to affiliates.

Feltman Affidavit at para 59, Application Record, Tab 2.

## **2. The Applicants have over C\$5 million in liabilities**

28. The Applicants’ debt exceeds the C\$5 million threshold for protection under the CCAA.

Feltman Affidavit at paras. 27-29, Application Record, Tab 2.

29. For all of the foregoing reasons, the Applicants are debtor companies to which the CCAA applies. The Applicants are therefore eligible for protection under the CCAA.

30. Section 11 of the CCAA permits this court to “make any order that it considers appropriate in the circumstances” with or without notice to any other person. Indeed, technically a CCAA application is an *ex parte* matter.

CCAA, s. 11.

Cadillac Fairview Inc., Re, 1995 CanLII 7363 (ON SC) at para 12 ([CanLII](#)).

31. The Applicants do not anticipate that this *ex parte* application will cause material prejudice to any creditors or stakeholders. The proposed stay of proceedings is limited to ten days. Prior to returning to this Court, the Applicants will publish the required notices and provide notice to all affected Landlords.

Feltman Affidavit at para 65, Application Record, Tab 2.

**3. An order granting a stay of proceedings is appropriate**

32. Pursuant to section 11.02(1) of the CCAA, a Court may make an order staying all proceedings in respect of a debtor company for a period of not more than ten days, provided that the Court is satisfied that circumstances exist to make the order appropriate.

CCAA s. 11.02.

33. Exercising discretionary authority to grant a stay pursuant to the CCAA must be informed by the purpose behind the CCAA, which should be broadly and liberally interpreted. The purpose of the CCAA is, amongst other things, to maintain the *status quo* for the debtor company for a period while it consults with its stakeholders with a view to continuing operations for the benefit of both the debtor company and its creditors. The exercise of that power is appropriate in the present case.

*Stelco* at paras 15- 17 ([CanLII](#)).

*Ted Leroy Trucking [Century Services] Ltd, Re*, 2010 SCC 60 at para 60 ([CanLII](#)).

*Canwest Global Communications Corp.*, 2011 ONSC 2215 at paras 22-25 ([CanLII](#)).

34. It is just and appropriate for this Court to grant a stay of proceedings in respect of the Applicants, who have acted with due diligence and in good faith. The Applicants require a stay of proceedings in order to have the breathing room they need to stabilize their relationship with their Landlords and facilitate the Chapter 11 Cases. In the absence of CCAA protection, the Applicants may face enforcement actions by the Landlords. It would be detrimental to the Applicants' business and the Chapter 11 Cases if any further proceedings were commenced or continued or rights and remedies were executed against the Applicants.

Feltman Affidavit at para. 19, Application Record, Tab 2.

**B. The Stay Should be Extended to the CCAA LPs**

35. The Applicants seek to extend the stay of proceedings to the CCAA LPs. The Court's authority to grant such an order is derived from the broad jurisdiction under s. 11 and 11.02(1) of the CCAA to make an initial order on "any terms that [the Court] may impose."

CCAA, s. 11 and 11.02(1).

36. CCAA courts have, on numerous occasions, extended the initial stay of proceedings to non-applicants. The Courts have, for example, found it just and reasonable to extend a stay of proceedings to:

- (a) non-applicants that were deeply integrated with the applicants' business operations; and
- (b) partnerships that were intertwined with the applicants on-going operations.

*Lydian International Limited (Re)*, 2019 ONSC 7473 at para 39 ([CanLII](#))

*Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC) at paras 28-29 ([CanLII](#)).

*Cinram International Inc. (Re)*, 2012 ONSC 3767 at paras 61-65 ([CanLII](#)).

37. The extension of the stay of proceedings to the CCAA LPs is just and reasonable in the circumstances for the following reasons:

- (a) the CCAA LPs are Lease Holders. The Leases the CCAA LPs hold are central to the Applicants' restructuring efforts, given that it is these Leases that allow the Applicants to conduct their business;
- (b) extending the stay of proceedings to the CCAA LPs will prevent uncoordinated realization and enforcement attempts from being made in various jurisdictions by the Landlords, thereby preventing immediate loss of value for the Applicants' stakeholders; and

- (c) the failure to extend the stay of proceedings over the CCAA LPs may result in the Applicants losing their Centres due to “lock outs” by Landlords, which will have the effect of ending their business at those Centres and impede their overall restructuring efforts.

Feltman Affidavit at paras. 12, 41, 47, 50, and 59, Application Record, Tab 2.

38. Given the aforementioned factors, the stay of proceedings should be extended to the CCAA LPs.

**C. KSV Should be Appointed as Monitor**

39. Upon the granting of an Initial Order, s. 11.7 of the CCAA requires that at the same time the Court appoint a person to monitor the business and financial affairs of the company.

CCAA at s. 11.7(1) and (2).

40. KSV is a trustee within the meaning of s. 2(1) of the *BIA* and is not subject to any of the restrictions as to who may be appointed as monitor per s. 11.7(2) of the CCAA. KSV has a significant amount of experience acting as a court-appointed Monitor in CCAA proceedings. KSV has consented to acting as the Monitor in these CCAA proceedings. As such, KSV should be appointed as Monitor of the Applicants.

CCAA at s. 11.7(1) and (2).

*BIA* at s. 2, “trustee”.

Feltman Affidavit at paras. 61-62, Application Record, Tab 2.

**D. The Relief Sought is Reasonably Necessary**

41. Pursuant to s. 11.001, the relief sought on an initial application is to be limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during the initial stay period.

CCAA, s. 11.001, 11.02(1) and (3).

42. The stated purpose of s. 11.001 is to “limit the decisions that can be taken at the outset of a CCAA proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players.”

Lydian International Limited (Re), 2019 ONSC 7473 at paras 22-26 ([CanLII](#)), citing Government of Canada (Press Release), “Insolvency reforms to come into force” (4 September 2019), online: <[perma.cc/8SLT-ZADL](http://perma.cc/8SLT-ZADL)>.

43. The Applicants have limited the relief sought on this initial application to only the relief that is reasonably necessary in the circumstances for the continued operation of its business. Indeed, the relief sought by the Applicants on this application is effectively limited to the stay of proceedings and the appointment of KSV as the Monitor. The Applicants intend to use the stay of proceedings to stabilize its business and will return to this Court on notice to other parties prior to the expiry of the stay of proceedings.

44. As such, the Applicant submits that the relief sought on this initial application is in accordance with s. 11.001 of the CCAA and should be granted.

#### **PART V - ORDER SOUGHT**

45. The Applicants respectfully request that this Court grant the requested Initial Order substantially in the form of the draft order attached at Tab 3 of the Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of August, 2020.



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**Stikeman Elliott LLP**  
Lawyers for the Foreign Representative

**SCHEDULE "A"**  
**ADDITIONAL APPLICANTS**

RGN Alberta IV GP Inc.  
RGN Alberta GP Inc.  
RGN Alberta X GP Inc.  
RGN Alberta XIII GP Inc.  
RGN Alberta XIV GP Inc.  
RGN Alberta XVII GP Inc.  
RGN British Columbia XX GP Inc.  
RGN British Columbia XVI GP Inc.  
RGN British Columbia XXV GP Inc.  
RGN British Columbia XXIV GP Inc.  
RGN Manitoba II GP Inc.  
RGN Ontario II GP Inc.  
RGN Ontario L GP Inc.  
RGN Ontario LV GP Inc.  
RGN Ontario LVI GP Inc.  
RGN Ontario LVIII GP Inc.  
RGN Ontario LXII GP Inc.  
RGN Ontario XI GP Inc.  
RGN Ontario XLI GP Inc.  
RGN Ontario XLII GP Inc.  
RGN Ontario XLV GP Inc.  
RGN Ontario XLVI GP Inc.  
RGN Ontario XLVII GP Inc.  
RGN Ontario XLVIII GP Inc.  
RGN Ontario XXI GP Inc.  
RGN Ontario XXIV GP Inc.  
RGN Ontario XXIX GP Inc.  
RGN Ontario XXV GP Inc.  
RGN Ontario XXVIII GP Inc.  
RGN Ontario XXXI GP Inc.  
RGN Ontario XXXII GP Inc.  
RGN Ontario XXXIII GP Inc.  
RGN Quebec V GP Inc.  
RGN Quebec VI GP Inc.  
RGN Quebec XIV GP Inc.  
RGN Quebec XVI GP Inc.  
RGN Services Limited

**SCHEDULE “B”  
LIST OF AUTHORITIES**

**Cases**

1. *Cadillac Fairview Inc., Re*, 1995 CanLII 7363 (ON SC) ([CanLII](#))
2. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC) ([CanLII](#))
3. *Canwest Global Communications Corp.*, 2011 ONSC 2215 ([CanLII](#))
4. *Cinram International Inc. (Re)*, 2012 ONSC 3767 ([CanLII](#))
5. *Lydian International Limited (Re)*, 2019 ONSC 7473 ([CanLII](#))
6. *Stelco Inc, Re*, 2004 CanLII 24933 (Ont. S.C.J. [Comm. List]) ([CanLII](#))
7. *Ted Leroy Trucking [Century Services] Ltd, Re*, 2010 SCC 60 ([CanLII](#))

**SCHEDULE “C”  
RELEVANT STATUTES**

***Companies’ Creditors Arrangement Act, RSC 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) [...]

**debtor company** means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (compagnie débitrice)

[...]

**Application**

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

[...]

**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.

[...]

**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.

**Relief reasonably necessary**

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

**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 — directors**

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

**Exception**

11.03 (2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

[...]

### **Persons obligated under letter of credit or guarantee**

11.04 No order made under section 11.02 has affect on any action, suit or proceeding against a person, other than the company in respect of whom the order is made, who is obligated under a letter of credit or guarantee in relation to the company.

[...]

### **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**

11.7 (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).

[...]

### **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.

### ***Bankruptcy and Insolvency Act, RSC 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)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C  
36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
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Court File No.: \_\_\_\_\_

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**FACTUM OF THE APPLICANTS**  
**(RETURNABLE AUGUST 31, 2020)**

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