

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**(IN BANKRUPTCY AND INSOLVENCY)**

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A**  
**PROPOSAL OF VIAFOURA INC., OF THE CITY OF TORONTO IN THE**  
**PROVINCE OF ONTARIO**

**NOTICE OF MOTION**

**VIAFOURA INC.** (the “**Company**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on Tuesday, December 3, 2019 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario, for an Order, *inter alia*, pursuant to Sections 50.4(9), 50.6 and 64.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order substantially in the form attached at Tab 3 of the Motion Record, among other things:
  - (a) validating and abridging the time and manner of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;

- (b) approving the interim financing revolving credit facility term sheet (the “**DIP Term Sheet**”) between the Company and InterCap Equity Inc. (“**InterCap**”) and granting a charge over all of the Company’s assets, properties and undertakings (the “**Property**”) in favour of InterCap ranking ahead of all other security interests and charges other than the Administration Charge (as defined below) (the “**DIP Charge**”) and the security securing and enabling the continued use of the Company’s corporate VISA cards (the “**TD VISA Security**”);
  - (c) granting a priority charge in the amount of \$200,000 in favour of KSV Kofman Inc. (“**KSV**”), in its capacity as the Company’s proposal trustee (the “**Proposal Trustee**”), counsel to the Proposal Trustee and counsel to the Company, over all of the Company’s Property (the “**Administration Charge**”);
  - (d) extending the time within which the Company is to file a proposal with the Official Receiver under section 62(1) of the BIA to February 13, 2020; and
2. such other and further relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- 3. the Company was incorporated under the Canada *Business Corporations Act* in 2009 and is a software developer focused on helping media, broadcast and entertainment brands better build, manage and monetize their content, audience and data in real time;
- 4. the Company operates from leased premises located in downtown Toronto and presently has 58 full time employees;
- 5. the Company has been experiencing an acute liquidity crisis and recently failed to fund its payroll on November 29, 2019. Without an immediate injection of further funding, the Company will cease operations;
- 6. the Company’s only secured creditors, National Bank of Canada and Espresso Capital, advised that they were not prepared to advance additional funding to the Company and, as such, the Company filed a Notice of Intention to Make a Proposal (the “**NOI**”) on

December 1, 2019 pursuant to Section 50.4(1) of the BIA and entered into the DIP Term Sheet with Intercap;

7. the principal purpose of the NOI proceeding is to create a stabilized environment to allow the Company to complete a restructuring of its balance sheet and to provide the Company with fresh capital to support its business so that it may continue operations on a going concern basis;
8. Intercap, a preferred shareholder of the Company, is prepared to provide up to \$1.0 million in funding to assist the Company with the NOI proceeding and its restructuring;
9. in addition to failing to fund its most recent payroll, the Company is in arrears to certain critical vendors. If the Company is unable to secure immediate funding, its operations will cease and the Company will have no prospect of making a viable proposal or restructuring its business. Furthermore, given the nature of its business, any realization from the sale of the Company's assets in a liquidation would be fairly minimal;
10. it is imperative that the Company secure immediate funding to restore confidence in its business, particularly the confidence of its employees as the failure to do so may result in the departure of certain key employees without whom the Company's future business prospects would be irreparably impaired;
11. it is a condition of the DIP Term Sheet that the Court grant the DIP Charge, subordinate only to the Administration Charge and the TD VISA Security;
12. the granting of the DIP Charge is reasonable in the circumstances to secure the funding necessary for the Company to continue its restructuring efforts;
13. further in that regard, the granting of the Administration Charge is reasonable as the Company will require the participation of its legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel to assist in the NOI proceedings and it proposes that the Administration Charge be granted by the Court in their favour;
14. at all material times since the filing of the NOI, the Company has acted, and continues to act, in good faith and with due diligence;

15. the current deadline by which the Company must file a proposal with the Official Receiver under the BIA is December 31, 2019;
16. the Company is seeking an extension of the deadline for it to file a proposal with the Official Receiver to February 13, 2020;
17. the Company would likely be able to make a viable proposal if the extension is granted;
18. none of the Company's creditors will be materially prejudiced if the extension is granted;
19. such further and other grounds as set out in the First Report of the Proposal Trustee to be filed (the "**First Report**"); and
20. Rules 1.04, 1.05, 2.01, 2.03, 16 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

**AND FURTHER TAKE NOTICE** that the following materials will be filed in support of the Company's motion, namely:

- (a) the First Report; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

December 2, 2019

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, ON M5X 1E2

**Edmond F.B. Lamek (LSO No. 33338U)**  
Tel: 416.365.3444  
Email: edmond.lamek@dlapiper.com

**Danny M. Nunes (LSO No. 53802D)**  
Tel: 416.365.3421  
Email: danny.nunes@dlapiper.com

**Lawyers for Viafoura Inc. and InterCap  
Equity Inc.**

**TO: BORDEN LADNER GERVAIS LLP**

World Exchange Plaza,  
100 Queen St., Suite 1300,  
Ottawa, ON, Canada K1P 1J9  
Attention: Karen Perron  
kperron@blg.com  
613 369.4795

Hugo Babos Marchand  
hbabosmarchand@blg.com  
514.954.2556

**Counsel to National Bank of Canada**

**AND TO: ESPRESSO CAPITAL LTD**

545 King Street West, Suite 300  
Toronto, Ontario  
M5V 1M1  
Attention: Alkarim Jivraj, CEO  
alkarim@espressocapital.com  
647.288.3006

**AND TO: TORONTO-DOMINION BANK**

Jeffrey Swan TD Commercial Banking  
TD Bank Tower, 66 Wellington Street West  
Toronto Ontario M5K 1E9  
Attention Jeffrey Swan  
Director, Financial Restructuring Group  
jeff.swan@td.com  
416.308.9215

**AND TO: CHAITONS LLP**

5000 Yonge Street, 10th Floor  
Toronto, ON M2N 7E9  
Attention: George Benchetrit  
george@chaitons.com  
416.218.1141

**Counsel to KSV Kofman Inc.,  
Proposal Trustee**

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

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF VIAFOURA INC., OF  
THE CITY OF TORONTO IN THE PROVINCE OF ONTARIO**

---

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(IN BANKRUPTCY AND INSOLVENCY)**  
**[COMMERCIAL LIST]**

**Proceedings commenced in Toronto**

---

**NOTICE OF MOTION**

---

**DLA PIPER (CANADA) LLP**  
1 First Canadian Place, Suite 6000  
100 King Street West  
Toronto, ON M5X 1E2

**Edmond F.B. Lamek (LSO No. 33338U)**  
Tel: 416.365.3444  
Email: edmond.lamек@dlapiper.com

**Danny M. Nunes (LSO No. 53802D)**  
Tel: 416.365.3421  
Email: danny.nunes@dlapiper.com

**Lawyers for Viafoura Inc. and Intercap Equity Inc.**