Court File No. CL-26-00000372-0000

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 DE CLOET GREENHOUSE MFG. LTD.

APPLICATION OF DE CLOET GREENHOUSE MFG. LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

FACTUM OF THE APPLICANT
(Initial Recognition Order and Supplemental Order)

August 27, 2026

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J
Tel: 416.860.6465
rjacobs@cassels.com

Natalie Levine LSO #: 64908K
Tel: 416.860.6568
nlevine@cassels.com

Alec Hoy LSO#: 85489K
Tel: 416.860.2976
ahoy@cassels.com

Lawyers for the Foreign Representative

TO: SERVICE LIST

TABLE OF CONTENTS

PART I – NATURE OF THE APPLICATION

1. This factum is filed in support of the application by De Cloet Greenhouse Mfg. Ltd. (the "**Canadian Debtor**"), in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") of the Debtors[1], for an Initial Recognition Order and Supplemental Order, among other things, (i) recognizing the Chapter 11 Case of the Canadian Debtor as a foreign main proceeding; (ii) appointing the Information Officer; and (iii) recognizing and enforcing in Canada certain of the First Day Orders (each as defined below).

2. On August 18, 2026, the Debtors filed voluntary petitions for relief pursuant to the U.S. Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**") to commence the Chapter 11 Cases.[2] Beginning on the same day, the Debtors filed several first day motions, including a motion seeking an order authorizing the Canadian Debtor to act as Foreign Representative in respect of the Chapter 11 Cases (the "**Foreign Representative Order**").[3]

3. On August 19, 2026, on the application of the Canadian Debtor, as proposed Foreign Representative, this Court issued the Interim Stay Order, which, among other things, granted an interim stay of proceedings in respect of the Canadian Debtor and its directors and officers in Canada. The Interim Stay Order ensured that Canadian Debtor was protected by a stay of proceedings in Canada in the period prior to the formal appointment of the Foreign Representative and until the hearing in respect of the Initial Recognition Order. [4]

---

[1] The "**Debtors**" include BFG Supply Co., LLC; Bamboo Purchaser, Inc.; BFG Purchaser Parent, Inc.; BFG Supply Holdings, Inc.; BFG Holdings I, Inc.; BFG Supply Canada Holdings, Inc.; BFG Kalamazoo, LLC; BFG Logistics, LLC; L&L Nursery Supply, Inc.; Gard'N-Wise Distributors, Inc.; International Greenhouse Contractors, LLC; Greenhouse Solutions, LLC; Greenhouse Contracting Services, LLC; Green-Tek, LLC; GROSouth, Inc.; BFG VG Supply Acquisition, LLC; and De Cloet Greenhouse Mfg. Ltd.

[2] Terms not defined herein have the meanings set out in the Affidavit of Adam Zalev sworn August 19, 2026 (the "**Initial Zalev Affidavit**") or the Affidavit of Adam Zalev sworn August 21, 2026 (the "**Second Zalev Affidavit**"), as applicable.

[3] Second Zalev Affidavit at paras. 3 & 4 [*Second Zalev Affidavit*].

[4] Second Zalev Affidavit at paras. 5 & 6.

4. On August 20, 2026, the U.S. Bankruptcy Court entered the First Day Orders.[5]

5. The Foreign Representative now seeks the following orders pursuant to sections 46 to 49 of the *Companies' Creditors Arrangement Act* ("**CCAA**"):

(a) an order (the "**Initial Recognition Order**"), among other things:

(i) recognizing the Canadian Debtor as the foreign representative in respect of the Chapter 11 Cases;

(ii) finding that the centre of main interests for the Canadian Debtor is the United States; and

(iii) recognizing the Canadian Debtor's Chapter 11 Case as a "foreign main proceeding"; and

(b) an order (the "**Supplemental Order**"), among other things:

(i) granting a stay of proceedings in respect of the Canadian Debtor and its directors and officers;

(ii) recognizing certain of the First Day Orders;

(iii) appointing AlixPartners Restructuring Inc. ("**AlixPartners**") as information officer (in such capacity, the "**Information Officer**");

(iv) granting the Administration Charge, the D&O Charge and the DIP Lender's Charge (each as defined below); and

(v) sealing the Fee Letters (as defined below) until further order of this Court.

[5] Second Zalev Affidavit at para. 7.

6. This Court has jurisdiction to grant the proposed Initial Recognition Order and the Supplemental Order under Part IV of the CCAA. The requested relief is consistent with the principles of comity and cooperation that underlie Part IV of the CCAA.[6] This Canadian recognition proceeding (the "**Recognition Proceeding**" and together with the Chapter 11 Cases, the "**Restructuring Proceedings**") are necessary to implement a stay of proceedings in Canada while the Debtors advance steps to maximize value for their stakeholders.[7]

PART II – FACTS

7. The facts are set out in detail in the Initial Zalev Affidavit and the Second Zalev Affidavit.

A. Overview

8. The Debtors operate one of North America's leading wholesale distribution platforms serving the professional green industry. The business has evolved from a regional horticultural supplier into a diversified distributor of lawn and garden products, greenhouse supplies, nursery products, controlled-environment agriculture products, greenhouse structures, and related horticultural equipment. Through a combination of organic growth and strategic acquisitions, the Debtors have assembled an integrated business-to-business distribution platform that connects a highly fragmented supplier base with thousands of commercial customers throughout the United States and Canada.[8]

9. Through the Canadian Debtor, the Debtors provide made-to-order commercial greenhouse structures and systems. The Canadian Debtor is reliant on the Debtors for providing certain intercompany services necessary to operate and manage the Canadian operations, including shared financial planning, strategic decision-making, management of consumer-facing web portals, management of insurance policies, information technology services and sales and

[6] Second Zalev Affidavit at para. 13.
[7] Second Zalev Affidavit at para. 14.
[8] Initial Zalev Affidavit at para 10.

marketing through the Debtors' sales representatives to procure sales for the Canadian Debtor's products and services.[9]

10. The Debtors' financial difficulties have multiple interrelated and compounding causes. During fiscal year 2026, the Debtors experienced significant customer attrition, arising principally from turnover within the Debtors' sales team. Customer attrition resulted in a reduction in accounts receivable, in turn causing a tightening of credit availability under the Debtors' asset-backed credit facilities and vendor credit programs. The reduction in credit availability impeded the Debtors' ability to replenish inventory to meet customer demand, resulting in further customer attrition and reducing accounts receivable, triggering a liquidity spiral. In addition, the Debtors failed to achieve certain operating synergies as they struggled to fully integrate the businesses acquired between 2021 and 2024, leaving the Debtors with a higher-than-expected cost structure.[10]

11. Unable to obtain sufficient liquidity or consensual financing to support working capital requirements, the Debtors determined that the commencement of the Restructuring Proceedings was necessary to preserve value for stakeholders.[11]

12. The Debtors intend to use the Restructuring Proceedings to maximize value through three concurrent workstreams: (i) a court-supervised marketing and sale process for some or all of the Debtors' assets on a going-concern basis; (ii) an orderly monetization and liquidation of the Debtors' personal property; and (iii) a real estate disposition program with respect to the Debtors' owned real property and non-residential real property leases. The Interim Liquidation Procedures Order, granted at the First Day Hearing, is the first step in this process. An order in respect of

[9] Initial Zalev Affidavit at para 12.
[10] Initial Zalev Affidavit at paras 68-69.
[11] Initial Zalev Affidavit at paras 72-74.

bidding procedures for all or a portion of the Debtors' businesses is expected to be sought on September 16, 2026.[12]

13. In support of the Restructuring Proceedings, and in light of the Debtors' urgent need for cash, the Prepetition ABL Lenders (as defined in the Interim DIP Order) agreed to provide financing through a debtor-in-possession financing facility. The DIP Facility provides interim principal availability of USD$22 million, approximately USD$8 million of which will be new money financing. The Interim DIP Order provides for a "creeping rollup" pursuant to which all cash collateral is used to pay down the Revolving Credit Facility (which, as of the Petition Date, has approximately USD$43.1 million in principal indebtedness outstanding) and a corresponding amount is made available under the DIP Facility.[13] Upon entry of the Final DIP Order (as defined below) by the U.S. Bankruptcy Court, the size of the DIP Facility will be increased to USD$55 million.[14]

14. Pursuant to the Interim DIP Order, in the United States, the DIP Facility is secured by the DIP Liens (as defined in the Interim DIP Order), which are: (i) senior to the Prepetition Liens with respect to the Prepetition ABL Priority Collateral; and (ii) junior to the liens of the Prepetition Term Loan Agent with respect to the Prepetition Term Loan Priority Collateral, which collateral includes the Canadian Facility and the related lands. As of the Petition Date, the outstanding indebtedness under the Term Loan Facility was approximately USD$299.5 million, inclusive of accrued PIK interest.[15] At the First Day Hearing, there were no objections to the Interim DIP Order, including from the Prepetition Term Loan Secured Parties.[16] It is a requirement under the DIP Credit

[12] Initial Zalev Affidavit at paras 16, 43-50 & 83.
[13] Interim DIP Order at para (a)(i); Initial Zalev Affidavit at para. 46.
[14] Second Zalev Affidavit at para. 37. The hearing before the U.S. Bankruptcy Court in respect of the Final DIP Order is scheduled for September 16, 2026, and recognition of the Final DIP Order, if entered, would be subject to a separate motion in this Canadian Recognition Proceeding.
[15] Initial Zalev Affidavit at para. 49; Pre-Filing Report of the Proposed Information Officer dated August 26, 2026 at 5.4 [*Pre-Filing Report*].
[16] Initial Zalev Affidavit at paras 35-37; Pre-Filing Report at 5.4.

Agreement that the Debtors obtain an order granting the DIP Lender's Charge within 10 business days of the Petition Date.[17]

PART III – THE ISSUES

15. The issues to be determined on this application are:

(a) whether the Chapter 11 Cases are foreign main proceedings pursuant to Part IV of the CCAA; and

(b) if so, whether the Canadian Debtor is entitled to the relief sought in the Initial Recognition Order and the Supplemental Order, including:

(i) the stay of proceedings in respect of the Canadian Debtor and its directors and officers;

(ii) the recognition of certain of the First Day Orders;

(iii) the appointment of AlixPartners as Information Officer;

(iv) the granting of the Administration Charge, the D&O Charge and the DIP Lender's Charge; and

(v) the sealing of the Fee Letters.

16. The Foreign Representative submits that each of the questions above should be answered affirmatively and that it is appropriate to grant the requested relief for the reasons set forth herein.

[17] Second Zalev Affidavit at para. 28.

PART IV – THE LAW

A. The Canadian Debtor's Chapter 11 Case is a Foreign Main Proceeding

17. Part IV of the CCAA establishes the process for addressing the administration of cross-border insolvencies to promote cooperation and coordination with foreign courts.[18] Justice Hainey summarized the principles underlying such proceedings in *Hollander Sleep Products, LLC et al.*:[19]

> [41] The central principle governing Part IV of the CCAA is comity, which mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.
>
> [42] Canadian courts have emphasized the importance of comity and cooperation in cross-border insolvency proceedings to avoid multiple proceedings, inconsistent judgments and general uncertainty. Coordination of international insolvency proceedings is particularly critical in ensuring the equal and fair treatment of creditors regardless of their location.

18. The Foreign Representative submits that it is appropriate for this Court to recognize the Canadian Debtor's Chapter 11 Case as foreign main proceedings for the reasons set out below.

(a) The Statutory Requirements Have Been Satisfied

19. Pursuant to subsection 46(1) of the CCAA, a foreign representative may apply to the Court for recognition of a foreign proceeding in respect of which that person is a foreign representative.[20] A "foreign representative" is a person who is authorized to (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding.[21]

20. Subsection 46(2) of the CCAA provides that a recognition application must be accompanied by certified copies of the instruments that commenced the foreign proceeding and

---

[18] *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, s. 44 [*CCAA*].
[19] *Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238 at para. 41 [*Hollander*].
[20] CCAA, s. 46(1).
[21] CCAA, s. 45(1).

authorized the foreign representative to act in such capacity, as well as a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative. This requirement is fulfilled – certified copies of the Canadian Debtor's petition and the Foreign Representative Order have been provided to this Court.[22] Further, the Foreign Representative has confirmed that, other than the Chapter 11 Cases, no other foreign proceeding in respect of the Debtors has been commenced.[23]

21. Subsection 47(1) of the CCAA provides that the Court shall make an order recognizing a foreign insolvency proceeding if it is satisfied the following two requirements are met:

(a) the application for recognition of a foreign proceeding relates to a "foreign proceeding" within the meaning of the CCAA; and

(b) the applicant is a "foreign representative" within the meaning of the CCAA in respect of that foreign proceeding.[24]

22. Proceedings under the U.S. Bankruptcy Code are consistently recognized by Canadian courts to satisfy the definition of "foreign proceeding" under subsection 45(1) of the CCAA.[25]

23. The Foreign Representative has obtained the Foreign Representative Order, declaring the Canadian Debtor as the foreign representative.[26]

24. The statutory requirements for recognition of the Canadian Debtor's Chapter 11 Case as a "foreign proceeding" pursuant to section 47 of the CCAA has been satisfied and the Chapter 11 Case should be recognized as a foreign proceeding.

---

[22] Second Zalev Affidavit at Exhibits "A" and "B"
[23] Initial Zalev Affidavit at para. 17.
[24] CCAA, s. 47.
[25] CCAA, s. 45(1); *Hollander* at para. 27; *Payless Holdings LLC, (Re)*, 2017 ONSC 2242 at para. 22; *Zochem Inc. (Re)*, 2016 ONSC 958 at para. 20 [*Zochem*].
[26] Second Zalev Affidavit at paras. 7 & 32-33, Exhibit "B".

(b) The Canadian Debtor's Chapter 11 Case is a Foreign Main Proceeding

25. The Canadian Debtor's Chapter 11 Case is a foreign main proceeding because the Canadian Debtor's centre of main interest ("**COMI**") is in the United States.

26. Pursuant to subsection 47(2) of the CCAA, if the Court grants an order under subsection 47(1) it must specify whether the foreign proceeding is a "foreign main proceeding" or a "foreign non-main proceeding."[27] If the Court recognizes a foreign proceeding as a "foreign main proceeding", subsection 48(1) provides for an automatic stay against the debtor in Canada.[28]

27. Subsection 45(1) of the CCAA provides that a "foreign main proceeding" is a foreign proceeding in a jurisdiction where the debtor company has its COMI.[29] Subsection 45(2) provides that, absent evidence to the contrary, a debtor's COMI is deemed to be the location of its registered office.[30] However, this statutory presumption may be rebutted by evidence of the debtor's "operational realities" with the integration into a larger group being a "significant factor".[31]

28. Where it is necessary to go beyond the presumption under subsection 45(2), Courts have found COMI to be where (i) the location is readily ascertainable by creditors, (ii) the location of the debtor's principal assets or operations and (iii) the location where the management of the debtor takes place.[32]

29. In addition to those primary considerations, Canadian courts have also considered:

(a) the location where corporate decisions are made;

---

[27] CCAA, s. 47(2).
[28] CCAA, s. 48(1).
[29] CCAA, s. 45(1).
[30] CCAA, s. 45(2).
[31] *Hornblower Cruises and Events Canada Ltd.*, 2024 ONSC 1209 at para. 25; *CHC Group Ltd. (Re),* 2016 BCSC 2623 at para. 9; see also *Hollander* at para 34 ("where a Canadian debtor company is the only Canadian entity among a number of other Chapter 11 debtors that are all incorporated in the United States, the COMI for the Canadian debtor company is the United States.").
[32] *Zochem* at para. 22; *Lightsquared LP (Re)*, 2012 ONSC 2994 at para. 25; *Eddie Bauer LLC et al.* (February 18, 2026), ONSC (Commercial List), Court File No. CL-26-0000005-0000 (Endorsement) at para. 14 [*Eddie Bauer Endorsement*].

(b) the location of employee administrations, including human resource functions;

(c) the location of the company's marketing and communication functions;

(d) whether the enterprise is managed on a consolidated basis;

(e) the extent of integration of an enterprise's international operations;

(f) the centre of an enterprise's corporate, banking, strategic and management functions;

(g) the existence of shared management within entities and in an organization;

(h) the location where cash management and accounting functions are overseen;

(i) the location where pricing decisions and new business development initiatives are created; and

(j) the location of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.[33]

30. Notwithstanding that the Canadian Debtor's registered office is the Canadian Facility, the COMI for the Canadian Debtor is in the United States.[34] The Canadian Debtor is wholly owned by a Delaware corporation, and its sole director and the CRO, which have primary responsibility for corporate decision making, are located in the United States.[35] The Canadian Debtor operates as an integrated member of the Debtors' enterprise to service its shared customer base. The Canadian Debtor is reliant on the other Debtors for the provision of key management and operational services, including the marketing of the Canadian Debtor's services in the United States, which account for the majority of the Canadian Debtor's annual revenue.[36] Oversight of cash management and accounting functions, management of the Canadian Debtor's online commerce platform and strategic corporate development all take place in the United States.[37] In addition, the Canadian Debtor is reliant on the other Debtors for access to funding and is a borrower and/or a guarantor (as applicable) under the Prepetition Credit Facilities, which are

---

[33] *In The Matter of Voyager Digital Ltd.*, 2022 ONSC 4553 at para. 21; *Massachusetts Elephant & Castle Group, Inc. (Re)*, 2011 ONSC 4201 at paras. 26-31.
[34] Initial Zalev Affidavit at para. 26.
[35] Initial Zalev Affidavit at para. 65.
[36] Initial Zalev Affidavit at paras. 27-28 & 65-66.
[37] Initial Zalev Affidavit at paras. 27, 37 & 65-66.

governed by United States laws.[38] The Prepetition TL Agent's security under the Term Loan Facility includes a charge registered on the Canadian Facility and surrounding lands, which lists a notice address in the United States for the Canadian Debtor.[39]

31. The granting of an order recognizing the Chapter 11 Cases as a foreign main proceeding under subsection 47(2) of the CCAA is appropriate in the circumstances because (i) the lenders under the Prepetition Credit Facilities (the principal creditors of the Canadian Debtor and the other Debtors), are United States-based entities, (ii) the Canadian Debtor's operations are interconnected with, and dependent upon, the operations of the United States-based Debtors, (iii) the Canadian Debtor is governed from a strategic and management perspective out of the United States, and (iv) coordination of the insolvency proceedings in the United States and Canada supports the equal and fair treatment of stakeholders.[40]

B. The Initial Recognition Order and Supplemental Order Should be Granted

(a) The Initial Recognition Order is Appropriate in the Circumstances

32. Subsection 48(1) of the CCAA provides that on making an order recognizing a foreign proceeding specified by the court as a "foreign main proceeding", the Court is required to grant certain mandatory relief, including a limited stay of proceedings.[41]

33. The Initial Recognition Order sought by the Foreign Representative provides for all the relief required under section 48 and is consistent with the Court's Model CCAA Initial Recognition Order (Foreign Main Proceeding).[42]

---

[38] Initial Zalev Affidavit at paras. 46-47 & 65.
[39] Pre-Filing Report at Appendix "D".
[40] CCAA, s. 47(2); Initial Zalev Affidavit at paras. 27-28, 37, 46-47 & 65-66.
[41] CCAA, s. 48(1).
[42] Supplemental Application Record dated August 21, 2026 at Tab 4.

(b) The Supplemental Order is Appropriate in the Circumstances

34. Section 49 of the CCAA provides that, if an order recognizing a foreign proceeding is made, this Court has broad discretion to make any order it considers appropriate where it is satisfied that the order is necessary for the protection of the debtor company's property or the interests of creditors.[43] The Court may make such orders on any terms and conditions it considers appropriate in the circumstances.[44]

35. If an order recognizing a foreign proceeding is made, subsection 52(1) of the CCAA requires that the Court "*cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding*."[45]

36. Considering the circumstances facing the Canadian Debtor, the relief requested in the proposed Supplemental Order, including recognition of the First Day Orders and appointment of AlixPartners as Information Officer, is appropriate in the circumstances and consistent with orders granted in this jurisdiction.

(i) Recognition of the First Day Orders is Appropriate

37. The Foreign Representative is seeking an order recognizing and giving effect in Canada to the First Day Orders described in the Second Zalev Affidavit at paragraphs 31 to 82 and attached as Exhibits "B" to "L". The relief includes, among other things: (a) authorizing the Canadian Debtor in its capacity as Foreign Representative to seek recognition of the Canadian Debtor's Chapter 11 Case in Canada; (b) authorizing the Debtors to borrow under the DIP Facility (as defined and described in further detail below); (c) authorizing the Debtors to pay certain pre-filing amounts related to the Debtors' continuing business and operations; (d) authorizing the

[43] CCAA, s. 49(1).
[44] CCAA, s. 50.
[45] CCAA, s. 52(1).

Debtors to maintain and renew insurance policies, surety bonds and letters of credit; (e) authorizing the Debtors to pay pre-filing wages and similar obligations, and to continue administering their compensation and benefit programs; (f) authorizing the Debtors to commence a marketing and sale process for their inventory and assets on a liquidation basis, including disposing of assets free and clear of encumbrances; (g) authorizing the Debtors to continue their cash management arrangements; and (h) authorizing the Debtors to maintain their customer programs, including honouring pre-filing obligations owing to customers in connection with such customer programs. The relief granted in these orders is substantially similar to relief that would be sought upon the commencement of proceedings under Part I of the CCAA.

38. As described above, the principles of comity, cooperation and accommodation with foreign courts guide the CCAA court in the exercise of its discretion in cross-border insolvency cases.[46] Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided those other jurisdictions operate consistent with principles of order, predictability and fairness.[47]

39. Courts have held that "where a cross-border insolvency is most closely connected to one jurisdiction, it is appropriate for the court in that jurisdiction to exercise principal control over the insolvency process in light of the principles of comity and in order to avoid a multiplicity of proceedings."[48]

40. It is appropriate for this Court to grant an order recognizing and giving effect to the First Day Orders for the following reasons:

---

[46] CCAA s. 52(1).
[47] *Hollander* at para. 41.
[48] *Magna Entertainment Corp. (Re)*, 2009 CanLII 9757 (ONSC) at para. 9; see also *Mallinckrodt Canada ULC et al.* (October 16, 2020), ONSC (Commercial List), Court File No. CV-20-00649441-00CL (Endorsement) at paras. 1 & 4-6.

(a) comity will be furthered by this Court's recognition and support of the orders made by the U.S. Bankruptcy Court in the "foreign main proceeding" Chapter 11 Cases;

(b) coordination of proceedings in Canada and the United States will ensure equal and fair treatment of all stakeholders regardless of their location;

(c) given the Canadian Debtor's high degree of integration as a member of the Debtors' enterprise and reliance on key services from United States-based Debtors, it is reasonable and sensible for the U.S. Bankruptcy Court to have principal control over the Canadian Debtor's insolvency process;[49] and

(d) the First Day Orders are intended to minimize the adverse effects of the Chapter 11 Cases on the Debtors' businesses and preserve and maximize value of the Debtors' assets.[50]

41. Recognition of the First Day Orders is important to ensure equitable treatment of Canadian stakeholders, coordination with the Chapter 11 Cases, and avoid prejudice to Canadian creditors.

(ii) AlixPartners Should be Appointed Information Officer

42. Although not required by the CCAA, it has become common practice in proceedings under Part IV of the CCAA for the Court to appoint an information officer, pursuant to the Court's discretionary powers. The information officer's role is to help effect cooperation between the Canadian proceeding, the foreign representative and the foreign court, including to keep the Court apprised of the status of the foreign proceedings.[51]

---

[49] Initial Zalev Affidavit at paras. 27 & 65-66.
[50] Second Zalev Affidavit at paras. 41, 52, 55, 60, 69, 77 & 84.
[51] *YRC Freight Canada Company (Re)*, 2023 ONSC 4834 at para. 35.

43. AlixPartners is a licensed insolvency trustee well-known for its expertise in CCAA matters, including that its principals have acted as an information officer in several previous ancillary proceedings under Part IV of the CCAA.[52] Further, AlixPartners has consented to act as Information Officer and has advised that it is not conflicted from acting in such capacity.[53] If appointed, the Information Officer will update affected creditors, stakeholders and the Court on developments in the Chapter 11 Cases and will be a point of contact to respond to inquiries from interested parties in Canada.[54] The Information Officer will assist with publishing a notice of these proceedings and with other functions of a court officer such as determination of critical vendors and evaluating major business decisions.[55]

44. AlixPartners's proposed role as Information Officer is consistent with both the terms of the Court's Model CCAA Supplemental Recognition Order (Foreign Main Proceeding) and the terms of orders granted in other recent recognition proceedings in Ontario.[56]

(iii) The Administration Charge Should be Granted

45. The Foreign Representative is requesting that the Court grant to the proposed Information Officer, its legal counsel (Osler, Hoskin & Harcourt LLP), and the Foreign Representative and Canadian Debtor's legal counsel (Cassels Brock & Blackwell LLP), a first priority administration charge with respect to their fees and disbursements in the maximum amount of USD$450,000 (the "**Administration Charge**") on the Canadian Debtor's property in Canada.

---

[52] Pre-Filing Report at 2.0.
[53] Application Record dated August 19, 2026 at Tab 4; Pre-Filing Report at Appendix "C".
[54] Second Zalev Affidavit at paras. 17 & 19.
[55] Second Zalev Affidavit at para. 19; Pre-Filing Report at 8.0.
[56] *Eddie Bauer LLC et al.* (February 18, 2026), ONSC (Commercial List), Court File No. CL-26-0000005-0000 (Supplemental Order (Foreign Main Proceeding)) at paras. 5 and on [*Eddie Bauer Supplemental Order*]; *YRC Freight Canada Company et al.* (August 29, 2023), ONSC (Commercial List), Court File No. CV-23-00704038-00CL (Supplemental Order (Foreign Main Proceeding)) at paras. 5 and on [*YRC Supplemental Order*]; *CURO Canada Corp. and LendDirect Corp.* (March 26, 2024), ONSC (Commercial List), Court File No. CV-24-00717178-00CL (Supplemental Order (Foreign Main Proceeding)) at paras. 5 and on [*CURO Supplemental Order*]; *Knotel, Inc. and Knotel Canada, Inc.* (March 12, 2021), ONSC (Commercial List), Court File No. CV-21-00658434-00CL (Supplemental Order (Foreign Main Proceeding)) at paras. 5 and on [*Knotel Supplemental Order*].

46. While not directly applicable in the context of Part IV recognition proceedings, it is instructive that section 11.52 of the CCAA expressly provides that the Court has the jurisdiction to grant an administration charge and they have frequently been granted in such proceedings.[57]

47. In *Canwest Publishing*, the Court provided a non-exhaustive list of factors to be considered in approving an administration charge, including: (a) the size and complexity of the businesses being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.[58] In the context of Part IV proceedings, this Court commonly grants administration charges to secure obligations owing to the debtor's counsel and the information officer and its counsel.[59]

48. The Foreign Representative submits that the amount of the charge is reasonable in the circumstances, having regard to the size and complexity of the Recognition Proceeding, the roles that will be required of the professionals and the budget provided for under the DIP Facility. The DIP Lenders have consented to the proposed Administration Charge.[60]

49. The proposed Administration Charge will ensure that the Debtors have the benefit of the professional advice and expertise necessary for the success of these Restructuring Proceedings.

---

[57] See for e.g., *Hollander* at para. 56; *CURO Canada Corp. and LendDirect Corp.* (March 26, 2024), ONSC (Commercial List), Court File No. CV-24-00717178-00CL (Endorsement) at paras. 45-50; *Eddie Bauer Endorsement* at para. 26.
[58] *Canwest Publishing Inc*., 2010 ONSC 222 at para. 54.
[59] *Eddie Bauer Supplemental Order* at para. 19; *CURO Supplemental Order* at para. 19; *Jack Cooper Ventures Inc. et al.* (August 9, 2019), ONSC (Commercial List), Court File No. CV-19-625200-00CL (Supplemental Order (Foreign Main Proceeding)) at para. 20; *Knotel Supplemental Order* at para. 19; *YRC Supplemental Order* at para. 19.
[60] Second Zalev Affidavit at para. 21.

(iv) The D&O Charge Should be Granted

50. The proposed Supplemental Order also provides for the D&O Charge in a maximum aggregate amount of $210,000 on the Canadian Debtor's property in Canada as security for the indemnity obligations of the Canadian Debtor to its directors and officers in respect of obligations and liabilities that such directors and officers may incur in such capacity during these Restructuring Proceedings (the "**D&O Charge**"). The proposed amount of the D&O Charge was estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtor's payroll, vacation pay, and federal and provincial tax liability exposure.[61] The D&O Charge would be subordinate to the Administration Charge.

51. While not directly applicable in the context of Part IV recognition proceedings, it is instructive that section 11.51 of the CCAA expressly provides that the Court has the jurisdiction to grant a charge in favour of directors and officers. In deciding whether to grant a director's charge, the Court must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the debtor company could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or willful misconduct.[62] This Court has previously granted similar charges to protect directors and officers in recognition proceedings.[63]

52. The Foreign Representative submits that the amount of the D&O Charge is reasonable in the circumstances, taking into consideration that, among other things: (a) the Canadian Debtor requires the continued support of the directors and officers in connection with these Restructuring Proceedings; (b) the directors and officers liability insurance may not provide adequate coverage

---

[61] Second Zalev Affidavit at para. 26; Pre-Filing Report at 7.2.
[62] CCAA, ss. 11.51(3) & 11.51(4).
[63] *Eddie Bauer Supplemental Order* at para. 21; *YRC Supplemental Order* at para. 21; *WeWork Canada GP ULC et al.* (November 16, 2023), ONSC (Commercial List), Court File No. CV-23-00709258-00CL (Supplemental Order (Foreign Main Proceeding)) at para. 22.

against the potential liability the directors and officers could incur during these Restructuring Proceedings (the D&O Charge would only be relied on to the extent of any deficiencies of the D&O Insurance in covering any exposure or liabilities of the directors and officers of the Canadian Debtor that are incurred in these Restructuring Proceedings); (c) the quantum of the D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to the potential exposure; (d) the scope of the D&O Charge is reasonable; (e) the secured creditors impacted by the D&O Charge have been provided notice; and (f) the proposed Information Officer supports the proposed D&O Charge.[64]

(v) The DIP Lender's Charge Should be Granted

53. The proposed Supplemental Order also provides for the DIP Lender's Charge on the Canadian Debtor's property in Canada as security for the Canadian Debtor's obligations under the superpriority senior secured, asset-based debtor-in-possession revolving credit facility (the "**DIP Facility**" and such charge, the "**DIP Lender's Charge**"). On an interim basis, the maximum principal amount available under the DIP Facility will be USD$22 million, with such amount to be increased to USD$55 million upon issuance of the Final DIP Order (as defined below).[65]

54. The Debtors are seeking approval from the U.S. Bankruptcy Court in two stages. The Debtors have already obtained the interim order (the "**Interim DIP Order**") to approve certain emergency funding.[66] The Debtors will later seek a final order (the "**Final DIP Order**") to approve additional funding and certain protections for the applicable lenders.

55. The Interim DIP Order, granted on August 20, 2026, authorizes the Debtors to, among other things and subject to the terms thereof, (i) use cash collateral on hand to repay certain pre-filing obligations under the ABL and (ii) provide up to approximately USD$8 million in new money

[64] Second Zalev Affidavit at paras. 24 & 26; Pre-Filing Report at 7.2.
[65] Second Zalev Affidavit at paras. 28-29.
[66] Second Zalev Affidavit at para. 34.

financial support.[67] The Interim DIP Order provides superpriority liens and claims to the DIP Facility, subject to the lien priority annex set out in the Interim DIP Order. Importantly, the DIP Liens do not prime the Prepetition Term Loan Priority Collateral, consistent with the terms of the Intercreditor Agreement (as defined in the Interim DIP Order).[68]

56. The Debtors, having canvassed the market through their advisors, determined that there are no other lenders willing to extend the necessary postpetition financing.[69]

57. The Foreign Representative is seeking (i) recognition of the Interim DIP Order and (ii) the DIP Lender's Charge over the property of the Canadian Debtor in Canada.

58. This Court has, in numerous cases, granted approval of debtor-in-possession facilities containing rollup provisions in the context of foreign recognition proceedings.[70] In doing so, this Court has emphasized the importance of comity.[71] In *Xinergy*, Justice Newbould held that in recognizing a rollup approved in a foreign proceeding, the Court should consider "whether there would be any material adverse interest to any Canadian interests in recognizing the "rollup" features of the DIP facility."[72] Considering the security granted in favour of the secured lenders and the limited assets available in Canada in that case, Justice Newbould found that there was no material prejudice to Canadian creditors.

59. In these circumstances, the granting of the DIP Lender's Charge is consistent with the principles of comity and there would be no material prejudice to uniquely Canadian creditors given

---

[67] Second Zalev Affidavit at paras. 35 & 37.
[68] Second Zalev Affidavit at paras. 29 & 36.
[69] Declaration of Neil Gupta dated August 19, 2026 at para. 9.
[70] *Sungard Availability Services (Canada) Ltd./ Sungard, Services de Continuite des Affaires (Canada) Ltee* (May 16, 2022), ONSC (Commercial List), Court File No. CV-22-00679628-00CL (Order (Recognition of Foreign Orders)) at para. 3(a) (see also related Endorsement); *GNC Holdings, Inc. et al.* (June 29, 2020), ONSC (Commercial List), Court File No. CV-20-00642970-00CL (Endorsement) at paras. 20-22 [*GNC Holdings*]; *Hartford Computer Hardware, Inc. (Re)*, 2012 ONSC 964 at paras. 10-14 and 18-19 [*Hartford*].
[71] *Hollander* at paras 46-47; *Hartford* at paras. 10-14 and 18-19; *GNC Holdings* at paras 20-22.
[72] *Xinergy Ltd. (Re)*, 2015 ONSC 2692 at paras. 21-22.

the existing security granted in favour of the secured lenders.[73] More specifically: (i) as of the Petition Date, the assets of the Canadian Debtor were encumbered by liens in favour of the Prepetition Secured Parties in an aggregate principal amount of approximately USD$342.5 million; (ii) consistent with the Intercreditor Agreement, the DIP Lender's Charge preserves the Prepetition Term Loan Secured Parties priority to the Prepetition Term Loan Priority Collateral, which includes the Canadian Facility and the lands upon which it is located; and (iii) the DIP Lender's Charge does not prime the claims of either of Royal Bank of Canada or Toyota Industries Commercial Finance Canada, Inc. to their respective collateral, as described in section 6.02(mm) of the DIP Credit Agreement.[74] Accordingly, the DIP Lender's Charge does not prime any secured party's interest to property of the Canadian Debtor other than the Prepetition ABL Liens (as defined in the DIP Order). Further, a breach of the obligation under the DIP Credit Agreement to obtain an order granting the DIP Lender's Charge within 10 business days of the Petition Date would severely impair the Debtors' ability to operate going forward.[75]

60. The DIP Lender's Charge, giving effect to the security under the DIP Facility in Canada, is necessary for the protection of the Debtors' property and the interests of stakeholders to ensure that the Canadian Debtor has access to funding during these Restructuring Proceedings.

61. The proposed Information Officer has reviewed the DIP Lender's Charge and is of the view that it is appropriate in the circumstances.[76]

(vi) The Stay of Proceedings Should be Granted

62. The proposed Supplemental Order provides for a stay of proceedings in Canada in respect of the Canadian Debtor and its directors and officers. The Foreign Representative submits that the requested stay of proceedings is appropriate to give effect in Canada to the stay of

[73] Second Zalev Affidavit at paras. 39 & 41.
[74] Initial Zalev Affidavit at paras. 46, 49 & 62; Second Zalev Affidavit at paras. 29 & 36.
[75] Second Zalev Affidavit at para 29.
[76] Pre-Filing Report at 7.3.

proceedings pursuant to the Chapter 11 Cases and to preserve and protect the value of the Canadian Debtor's business. It is appropriate for the Foreign Representative to be protected pursuant to a Canadian court order from the exercise of rights or remedies to maintain stability and preserve the value of the Canadian Debtor's business while the Debtors explore a potential sale of their business, including a potential going concern transaction for the Canadian Debtor's business.[77]

63. Consistent with the Ontario model order and the Court's jurisdiction pursuant to subsection 49(1) of the CCAA to make any order that it considers appropriate, the proposed Supplemental Order provides for a more expansive stay of proceedings that goes beyond the more limited stay of proceedings provided for in subsection 48(1) of the CCAA. In that regard, the proposed Supplemental Order prohibits the exercise of rights or remedies against the Canadian Debtor or affecting its business or property in Canada, prohibits the discontinuance or termination of contracts with the Canadian Debtor, requires the continued supply of goods and/or services in Canada pursuant to existing agreements with the Canadian Debtor, and stays all proceedings in respect of the directors and officers of the Canadian Debtor. As the Canadian Debtor only has one director and no officers, the proposed stay of proceedings also extends to any party which may be deemed to be a director or officer of the Canadian Debtor.[78] This broad stay relief is frequently granted in cross-border restructuring proceedings and is consistent with the Model CCAA Supplemental Recognition Order (Foreign Main Proceeding) in this jurisdiction.[79]

(vii) The Fee Letters Should be Sealed

64. By way of the Supplemental Order, the Foreign Representative is seeking a sealing order in respect of the unredacted versions of the fee letters by and between the Debtors and the DIP

---

[77] Second Zalev Affidavit at paras. 11, 14 & 16.
[78] Second Zalev Affidavit at para. 26.
[79] *Eddie Bauer Supplemental Order* at para. 10; *CURO Supplemental Order* at para. 10; *YRC Supplemental Order* at para. 10.

Agent (as defined in the Interim DIP Order) (the "**Fee Letters**"), which set forth certain fees in connection with the DIP Facility. The Fee Letters are attached to the Pre-Filing Report of the Proposed Information Officer dated August 26, 2026 (the "**Pre-Filing Report**") as Confidential Appendix "A".[80] Copies of the redacted Fee Letters are attached to the Pre-Filing Report as Appendix "E".[81] The proposed sealing order would seal the unredacted Fee Letters until further order of this Court.

65. The Debtors have brought a motion in the Chapter 11 Cases for an order sealing the Fee Letters (the "**Sealing Order**"), which is scheduled to be heard before the U.S. Bankruptcy Court on September 16, 2026.[82]

66. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court of Canada held that a sealing order may be granted where: (a) the order is necessary to prevent a serious risk to an important interest, including a commercial interest; and (b) the salutary effects of the order outweigh its deleterious effects.[83] In *Sherman Estate v. Donovan*, the Supreme Court of Canada confirmed that a sealing order may be granted where: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary because reasonably available alternative measures will not prevent that risk; and (c) the benefits of the order outweigh its negative effects.[84]

67. The Fee Letters contain sensitive and confidential commercial information regarding the structure and amount of the fees relating to the DIP Facility, which could harm the Debtors and the DIP Credit Parties (as defined in the Interim DIP Order) if made publicly available.

[80] Pre-Filing Report at 5.2.
[81] Pre-Filing Report at 5.2 & Appendix "E".
[82] Pre-Filing Report at 5.2.
[83] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 53.
[84] *Sherman Estate v. Donovan*, 2021 SCC 25 at para 38.

68. The Foreign Representative submits that the limited sealing relief (both in scope and duration) sought is necessary and appropriate in the circumstances and that the Confidential Appendices should be sealed. The redactions to the Fee Letters solely relate to the fees payable to the DIP Agent in connection with the DIP Facility.[85] Granting a sealing order in Canada is consistent with the principles of comity and cooperation under Part IV of the CCAA.

PART V – RELIEF REQUESTED

69. The Foreign Representative requests that the Court grant the Initial Recognition Order and the Supplemental Order, substantially in the proposed forms.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of August, 2026.

Cassels Brock & Blackwell LLP

Cassels Brock & Blackwell LLP

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J
Tel: 416.860.6465
rjacobs@cassels.com

Natalie Levine LSO #: 64908K
Tel: 416.860.6568
nlevine@cassels.com

Alec Hoy LSO#: 85489K
Tel: 416.860.2976
ahoy@cassels.com

Lawyers for the Foreign Representative

---

[85] Pre-Filing Report at Appendix "E".

SCHEDULE A
LIST OF AUTHORITIES

1. *Canwest Publishing Inc.*, 2010 ONSC 222

2. *CHC Group Ltd. (Re)*, 2016 BCSC 2623

3. *CURO Canada Corp. and LendDirect Corp.* (March 26, 2024), ONSC (Commercial List), Court File No. CV-24-00717178-00CL (Endorsement)

4. *CURO Canada Corp. and LendDirect Corp.* (March 26, 2024), ONSC (Commercial List), Court File No. CV-24-00717178-00CL (Supplemental Order (Foreign Main Proceeding))

5. *Eddie Bauer LLC et al.* (February 18, 2026), ONSC (Commercial List), Court File No. CL-26-0000005-0000 (Endorsement)

6. *Eddie Bauer LLC et al.* (February 18, 2026), ONSC (Commercial List), Court File No. CL-26-0000005-0000 (Supplemental Order (Foreign Main Proceeding))

7. *GNC Holdings, Inc. et al.* (June 29, 2020), ONSC (Commercial List), Court File No. CV-20-00642970-00CL (Endorsement)

8. *Hartford Computer Hardware, Inc. (Re)*, 2012 ONSC 964

9. *Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238

10. *Hornblower Cruises and Events Canada Ltd.*, 2024 ONSC 1209

11. *In The Matter of Voyager Digital Ltd*., 2022 ONSC 4553

12. *Jack Cooper Ventures Inc. et al.* (August 9, 2019), ONSC (Commercial List), Court File No. CV-19-625200-00CL (Supplemental Order (Foreign Main Proceeding))

13. *Knotel, Inc. and Knotel Canada, Inc.* (March 12, 2021), ONSC (Commercial List), Court File No. CV-21-00658434-00CL (Supplemental Order (Foreign Main Proceeding))

14. *Lightsquared LP (Re)*, 2012 ONSC 2994

15. *Magna Entertainment Corp. (Re)*, 2009 CanLII 9757 (ONSC)

16. *Mallinckrodt Canada ULC et al.* (October 16, 2020), ONSC (Commercial List), Court File No. CV-20-00649441-00CL (Endorsement)

17. *Massachusetts Elephant & Castle Group, Inc. (Re)*, 2011 ONSC 4201

18. *Payless Holdings LLC, (Re)*, 2017 ONSC 2242

19. *Sherman Estate v. Donovan*, 2021 SCC 25

20. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41

21. *Sungard Availability Services (Canada) Ltd./ Sungard, Services de Continuite des Affaires (Canada) Ltee* (May 16, 2022), ONSC (Commercial List), Court File No. CV-22-00679628-00CL (Endorsement)

22. *Sungard Availability Services (Canada) Ltd./ Sungard, Services de Continuite des Affaires (Canada) Ltee* (May 16, 2022), ONSC (Commercial List), Court File No. CV-22-00679628-00CL (Order (Recognition of Foreign Orders))

23. *WeWork Canada GP ULC et al.* (November 16, 2023), ONSC (Commercial List), Court File No. CV-23-00709258-00CL (Supplemental Order (Foreign Main Proceeding))

24. *Xinergy Ltd. (Re)*, 2015 ONSC 2692

25. *YRC Freight Canada Company (Re)*, 2023 ONSC 4834

26. *YRC Freight Canada Company et al.* (August 29, 2023), ONSC (Commercial List), Court File No. CV-23-00704038-00CL (Supplemental Order (Foreign Main Proceeding))

27. *Zochem Inc. (Re)*, 2016 ONSC 958

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 August 27, 2026

Signature

SCHEDULE B
TEXT OF STATUTES, REGULATIONS & BY-LAWS

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

PART II – JURISDICTION OF COURTS

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.

Security or charge relating to director's indemnification

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

Priority

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

Restriction — indemnification insurance

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

Negligence, misconduct or fault

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

Court May Order Security or Charge to Cover Certain Costs

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

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

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

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

Priority

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

PART IV – CROSS-BORDER INSOLVENCIES

PURPOSE

Purpose

44 The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;

(b) greater legal certainty for trade and investment;

(c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;

(d) the protection and the maximization of the value of debtor company's property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

INTERPRETATION

Definitions

45 (1) The following definitions apply in this Part.

[...]

foreign main proceeding means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

[...]

foreign representative means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

(a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or

(b) act as a representative in respect of the foreign proceeding. (*représentant étranger*)

Centre of Debtor Company’s Main Interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company’s registered office is deemed to be the centre of its main interests.

RECOGNITION OF FOREIGN PROCEEDING

Application for Recognition of a Foreign Proceeding

46 (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must Accompany Application

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative’s authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents May Be Considered as Proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other Evidence

(4) In the absence of the documents referred to in paragraphs 2(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative’s authority that it considers appropriate.

[…]

Order Recognizing Foreign Proceeding

47 (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Nature of Foreign Proceeding to Be Specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

Order Relating to Recognition of a Foreign Main Proceeding

48 (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor 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 debtor company;

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

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

[…]

Other Orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and Other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the Winding-up and Restructuring Act in respect of the debtor company.

Terms and Conditions of Orders

50 An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

OBLIGATIONS

Cooperation — Court

52 (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Cooperation — Other Authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of Cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

(a) the appointment of a person to act at the direction of the court;

(b) the communication of information by any means considered appropriate by the court;

(c) the coordination of the administration and supervision of the debtor company's assets and affairs;

(d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and

(e) the coordination of concurrent proceedings regarding the same debtor company.

Obligations of foreign representative

53 If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

(a) without delay, inform the court of

(i) any substantial change in the status of the recognized foreign proceeding,

(ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and

(iii) any other foreign proceeding in respect of the same debtor company that becomes known to the foreign representa-tive; and

(b) 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.

Court File No. CL-26-00000372-0000

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

AND IN THE MATTER OF DE CLOET GREENHOUSE MFG. LTD.

APPLICATION OF DE CLOET GREENHOUSE MFG. LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FACTUM
(Initial Recognition Order and Supplemental Recognition Order)

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, Ontario M5H 0B4

Ryan Jacobs LSO#: 59510J
Tel: 416.860.6465
rjacobs@cassels.com

Natalie E. Levine LSO#: 64908K
Tel: 416.860.6568
nlevine@cassels.com

Alec Hoy LSO#: 85489K
Tel: 416.860.2976
ahoy@cassels.com

Lawyers for the Foreign Representative