

**IN THE ROYAL COURT OF JERSEY
(SAMEDI DIVISION)**

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED

**AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR
COURT OF JUSTICE**

REPRESENTATION

The Representation of Lydian International Limited ("**Lydian International**") shows as follows THAT:

1. This is a Representation by Lydian International, pursuant to the principles of comity and reciprocity, for the recognition of Canadian insolvency proceedings to which it is subject.
2. By this Representation, Lydian International seeks orders that:
 - a. the appointment and powers of its Ontario Court (as defined below) appointed officer, the Monitor (as defined below) be recognised in Jersey;
 - b. The directions and orders of the Ontario Court that no proceeding or enforcement process in or out of any court or tribunal be commenced or continued against or in respect of Lydian International or the Monitor, except with the written consent of Lydian International and the Monitor, or with leave of the Ontario Court, be recognised;
 - c. The directions and orders of the Ontario Court that Lydian International shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey be recognised;

- d. The directions and orders of the Ontario Court that Lydian International shall continue to carry on business in a manner consistent with the preservation of its business and property, be recognised;
 - e. The directions and orders of the Ontario Court that Lydian International is authorised and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons, be recognised.
2. Lydian International is a corporation continued under the laws of Jersey from the Province of Alberta, Canada pursuant to the *Companies (Jersey) Law 1991* (Lydian International was originally incorporated under the *Business Corporations Act* (Alberta)). Lydian International's registered number is 99477 and its registered office is located at Bourne House 1st Floor, Francis Street, St Helier, Jersey.
3. By an order dated the 23 December 2019 ("**CCAA Order**") of the Ontario Superior Court of Justice ("**Ontario Court**") granted by Chief Justice of Ontario Geoffrey Morawetz, Lydian International, Lydian Canadian Ventures Corporation, and Lydian U.K Corporation Limited (collectively, the "**Debtors**") were granted protection from their creditors in Canada under the federal *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings¹ (together with the Debtors, the non-applicant entities are the "**Lydian Group**").
4. Alvarez & Marsal Canada Inc. was appointed by the Ontario Court as the monitor (the "**Monitor**"), an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA and to report to the Ontario Court from time to time.
5. The CCAA Order granted a "Stay Period" until 2 January 2020, whereby no creditor enforcement or other actions could be taken against the Debtors to alter the status quo. By a further order dated 2 January 2020, the Ontario Court extended the stay of proceedings until 23 January 2020, subject to further order of the Ontario Court. A further order was made by the Ontario Court at a return hearing on 23 January 2020, extending the stay of proceedings until 2 March 2020.

¹ Lydian Armenia CJSC, Lydian Resources Armenia Limited, Lydian International Holdings Limited and Lydian U.S. Corporation.

6. The CCAA Order provides, *inter alia*, that:-
 - a. The Debtors, including Lydian International, are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof "the **Property**" (paragraphs 2 and 3 of the CCAA Order) without interference by any person or party;
 - b. The Monitor has broad powers including full and complete access to the Debtor's Property including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors in order to assess the Debtor's business and financial affairs or to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order) and to report to the Ontario Court in respect thereof; and
 - c. Pursuant to paragraph 42, the Debtors and the Monitor are authorised to apply to the Royal Court of Jersey for recognition and assistance in carrying out the terms of the CCAA Order. The same paragraph provides that "*the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada*".
7. By the CCAA Order the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court issued a letter of request to the Royal Court of Jersey asking the Royal Court of Jersey to assist the Ontario Court.
8. At the return hearing on 23 January 2020 the Ontario Court, of its own volition, revised the letter of request by making certain minor amendments to it and issued a replacement version (the "**Letter of Request**"). The Letter of Request asks for the Royal Court to make orders in the following terms:-
 - a. By recognising the appointment of the Monitor by the Ontario Court with such appointment to be registered in the Rolls of the Royal Court of Jersey in respect of Lydian International;
 - b. By recognising the rights and powers of the Debtors and Monitor in respect of the Property and business of Lydian International;

- c. By declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court on notice to all affected parties, the Debtors and the Monitor, and subject to such terms as the Ontario Court may impose; and
 - d. By granting such further or other relief as it thinks fit and in aid of the Debtors and the Monitor and the reorganisation of Lydian International.
9. Pursuant to paragraph 7 of the Letter of Request, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court, has confirmed that, as a matter of international comity, the courts of Canada may give effect to orders made by the Royal Court of Jersey relating to the bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).
10. The Ontario Court has sought, by the Letter of Request, for the rights and powers of the Debtors and Monitor pursuant to the CCAA Order to be recognised in respect of Lydian International (see paragraph 7(b) above). However, the terms of the CCAA Order are wide-ranging and grant powers that are not immediately required in Jersey. Accordingly, the orders sought to be recognised by this Representation are necessarily narrower in scope than the terms of the Letter of Request; with liberty to apply to the Royal Court for further assistance in due course. The specific orders sought afford Lydian International protection from its creditors, recognise the appointment of the Monitor in Jersey, and specifically provide that its business and assets are to remain in its own possession (consistent with the wider CCAA reorganisation taking place in Canada).
11. The Lydian Group's loan agreements are governed primarily by the laws of the Province of Ontario. It is a holding company and carries out no substantive business activities. Its lenders and substantial creditors are all based in Canada. The nominal assets that it may own in Jersey are office effects and files at its offices. Mourant Ozannes is a creditor in Jersey, albeit its fees are being paid from time to time. Link Asset Services provides Lydian International with registered office services in Jersey and its fees are also being paid from time to time.
12. Lydian International has been advised that the Royal Court has power to give sanction to the Letter of Request and the contents of this Representation by exercise of its inherent jurisdiction in insolvency matters and having regard to the principles of comity.

WHEREFORE Lydian International prays that the Royal Court do make the following Orders and declarations:

13. That the substantive hearing of the Representation be listed for 2pm on 25 February 2020;
14. That Alvarez & Marsal Canada Inc., in its capacity as the Monitor of Lydian International, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited be convened to the hearing of this Representation and served with the Representation and Affidavits in support thereof;
15. That Lydian International provide notice of these proceedings to the creditors identified in the CCCA Order and that Lydian International shall further inform such creditors that if they wish to participate in the proceedings, they will be required to apply to the Royal Court for permission to do so on or before 18 February 2020;
16. That at the substantive hearing of the Representation, the Royal Court makes the following orders:
 - a. The appointment of Alvarez & Marsal Canada Inc. as the Monitor of Lydian International pursuant to the CCAA Order, as an officer of the Ontario Court, be recognised and the appointment of the Monitor be notified to the Jersey Financial Services Commission.
 - b. The directions and orders of the Ontario Court that Lydian International shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey be recognised.
 - c. The directions and orders of the Ontario Court that, subject to further Order of the Ontario Court, Lydian International shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property, be recognised.
 - d. The directions and orders of the Ontario Court that Lydian International is authorised and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable

in the ordinary course of business or for the carrying out of the terms of the CCAA Order, be recognised.

- e. The directions and orders of the Ontario Court that no proceeding or enforcement process in or out of any court or tribunal be commenced or continued against or in respect of Lydian International or the Monitor, or affecting the Business or the Property, except with the written consent of Lydian International and the Monitor, or with leave of the Ontario Court, be recognised.
- 17. Such further or other relief as the Royal Court thinks fit in aid of the Monitor and Lydian International Limited;
- 18. Lydian International and any party affected by this Representation shall have liberty to apply; and
- 19. Such orders as to costs as the Royal Court deems fit.

Dated this *31st* day of *January* 2020



Advocate Stephen Alexander
Advocate for Lydian International

Lydian International's address for service is:

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