

**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**

AFFIDAVIT OF EDWARD A. SELLERS

I, Edward A. Sellers, of the Town of Rosseau, in the Province of Ontario, Canada hereby make oath and say as follows:-

Introduction

1. I am the Interim President and Chief Executive Officer of the Representor, Lydian International Limited ("**Lydian International**"). I have been the President and Chief Executive Officer of Lydian International since June 12, 2019. I have been on the Board of Directors of Lydian International since November 1, 2018, and was appointed to the Board of Directors of the other Debtors (as defined below) after June 12, 2019.
2. The contents of this affidavit are true to the best of my knowledge, information and belief and are, unless otherwise stated, within my personal knowledge. There is now produced and shown to me and marked "**ES1**" a paginated bundle of true copy documents (or extracts from true copy documents) to which I refer.
3. The purpose of this affidavit is to set out the factual matters relied upon by Lydian International in support of the orders sought in the Representation.

My background

4. I have extensive experience serving as a director, advisor and lawyer to large public and private enterprises, having done so for over 30 years. I currently serve as President and Managing Director of Black Swan Advisors Inc. ("**Black Swan**")

Advisors"), providing independent interim governance support and leadership to enterprises in transition, decline or distress. Prior to establishing Black Swan Advisors in 2016, I served as a partner and Chair of the national restructuring practice at a leading Canadian law firm.

5. I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Lydian International and have spoken with certain of the directors, officers and/or employees of the Debtors, as necessary. Where I have relied upon information from others, I believe the information to be true and I have stated the source of that information.

The Canadian proceedings

6. On 23 December 2019 Lydian International, Lydian Canadian Ventures Corporation ("**Lydian Canada**"), and Lydian U.K Corporation Limited ("**Lydian UK**") (collectively, the "**Debtors**") applied for protection from their creditors in Canada under the federal insolvency and restructuring statute *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts (the "**CCAA Application**"). Certain other non-applicant entities were also granted a stay of proceedings¹ (together with the Debtors, the non-applicant entities are the "**Lydian Group**").
7. Exhibited hereto are certain of the documents filed by the Debtors with the Ontario Court in support of the CCAA Application:-
 - (a) Notice of Application at **Tab 1**; and
 - (b) Affidavit of Edward A. Sellers sworn on 22 December 2019 along with its exhibits (the "**22 December Affidavit**") at **Tab 2**.
8. By an order dated the 23 December 2019 ("**CCAA Order**") of the Ontario Superior Court of Justice ("**Ontario Court**"), the Ontario Court granted the orders in substantially the form sought by the Debtors. A copy of the CCAA Order is exhibited hereto at **Tab 3**.

¹ Lydian Armenia CJSC, Lydian Resources Armenia Limited, Lydian International Holdings Limited and Lydian U.S. Corporation (together known as the "**Non-Applicant Stay Parties**").

9. The CCAA Order granted a stay of proceedings (the "**Stay Period**") in favour of the Debtors until 2 January 2020, whereby the Debtors including Lydian International were granted protection from their creditors.
10. On 26 December 2019 the Debtors applied for an extension of the Stay Period by an Amended Notice of Motion (exhibited hereto at **Tab 4**). By a further order dated 2 January 2020 (exhibited hereto at **Tab 5**) (the "**2 January CCAA Order**"), the Ontario Court extended the Stay Period until 23 January 2020, subject to further order of the Ontario Court.
11. On 23 January 2020 the Debtors applied for a further extension of the Stay Period by a Notice of Motion (exhibited hereto at **Tab 6**). Filed in support of the Notice of Motion was the Affidavit of Edward Sellers dated 22 January 2020 (exhibited hereto at **Tab 7**). Two further orders were made by the Ontario Court at the return hearing on 23 January 2020: (a) an order extending the stay of proceedings until 2 March 2020 (exhibited hereto at **Tab 8**) (together the "**23 January CCAA Order**"); and (b) an order amending and restating the terms of the CCAA Order (exhibited hereto at **Tab 9**).

Background

12. The facts and matters which have caused the Debtors to seek the assistance of the Ontario Court, and by this Representation the Royal Court of Jersey, are as set out in my 22 December Affidavit which, as previously mentioned, is exhibited at **Tab 2**. I summarise below certain key facts and matters from my 22 December Affidavit.
13. Capitalised terms used herein but not otherwise defined have the meanings ascribed to them in my 22 December Affidavit. The references in square brackets below are to the paragraphs of my 22 December 2019, where further details of the matters described below may be found.

The Lydian Group

14. The following is a brief overview of the Applicants and their corporate structure. A diagram of this structure is exhibited at **Tab 10**.

Lydian International

15. Lydian International is a corporation continued under the laws of the Jersey, from the Province of Alberta pursuant to the *Companies (Jersey) Law 1991*. Lydian International was originally incorporated under the *Business Corporations Act (Alberta)* on February 14, 2006 as "Dawson Creek Capital Corp.", which became Lydian International on December 12, 2007.
16. Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St. Helier, Jersey. On June 12, 2019, Lydian International's shareholders approved its continuance under the Canada Business Corporations Act, but the continuance back to Canada has not yet been implemented.
17. Lydian International has had two types of securities listed on the Toronto Stock Exchange ("**TSX**"): (i) ordinary shares trading under the symbol LYD, which are currently suspended from trading and subject to de-listing procedures by the TSX; and (ii) warrants that were, until their expiry in 2017, traded under the symbol LTD.WT.
18. Lydian International has no material assets or unsatisfied creditors situated in Jersey. It is a holding company and carries out no substantive business activities. The Lydian Group's loan agreements are governed primarily by the laws of the Province of Ontario. 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.

Lydian Canada

19. Lydian Canada is a direct, wholly owned subsidiary of Lydian International. Lydian Canada is incorporated under the Business Corporations Act (British Columbia) and has a registered head office at 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario. Its registered and records office is located at Park Place, 666 Burrard Street, Suite 1700, Vancouver, British Columbia.

Lydian UK

20. Lydian UK is a corporation incorporated in the United Kingdom under the laws of England and Wales. Lydian UK is a direct, wholly owned subsidiary of Lydian Canada, with its head office located at 11-12 St. James's Square, 3rd Floor, Suite 1, London, United Kingdom. Lydian UK has no material trading assets, commercial contracts or trade creditors in the UK.

The Lydian Group

21. The Debtors are part of the Lydian Group with a number of other subsidiaries ultimately owned by Lydian International. In addition to the Debtors, the Lydian Group includes the following entities:
- (a) Lydian U.S. Corporation ("**Lydian US**"): a corporation incorporated under the laws of the State of Colorado, United States, which is a direct, wholly owned subsidiary of Lydian International;
 - (b) Lydian International Holdings Limited ("**Lydian Holdings**"): a corporation incorporated under the laws of the British Virgin Islands, which is a direct, wholly owned subsidiary of Lydian UK;
 - (c) Lydian Resources Armenia Limited ("**Lydian Resources**"): a corporation incorporated under the laws of the British Virgin Islands, which is a direct, wholly owned subsidiary of Lydian Holdings; and
 - (d) Lydian Armenia CJSC ("**Lydian Armenia**"): a corporation incorporated under the laws of the Republic of Armenia, which is a direct, wholly owned subsidiary of Lydian Resources. Lydian Armenia owns and operates the Amulsar Project (defined below).

Integrated Nature of the Lydian Group

22. The Lydian Group is highly integrated, and its business and affairs are directed primarily out of Canada. Substantially all the strategic business affairs of the Lydian Group, including key decision making, are conducted through personnel who are located in Toronto and Vancouver.
23. Three of the six members of the Board of Directors of Lydian International are resident Canadians, two of whom are located in Toronto. Only resident Canadians

serve on the Special Committee assembled recently by the Board of Lydian International to direct the Lydian Group's restructuring efforts, two of whom are again located in Toronto.

24. All material entities within the Lydian Group are borrowers or guarantors of the Lydian Group's key secured indebtedness. The Lydian Group's loan agreements are governed primarily by the laws of the Province of Ontario. All of the Lydian Group's material professional advisory relationships (including its legal and audit firm engagement partners) are with professionals based in Toronto. The Lydian Group's primary insurance brokerage relationships are located in Toronto and Calgary.
25. Lydian International's shares are currently listed on the TSX and it is governed by the regulatory regime imposed on public companies by the Province of Ontario and enforced by the Ontario Securities Commission.
26. The Lydian Group's forbearance and restructuring efforts have been directed out of Toronto.

The Amulsar Gold Mine

27. The Lydian Group is focused on constructing its wholly owned development-stage gold mine in Armenia (the "**Amulsar Project**"). The Amulsar Project was funded by a combination of equity and debt capital, and financing arrangements particular to the mining industry known as "stream financing". The debt and stream financing arrangements are secured over substantially all the assets of Lydian Armenia and Lydian International and the shares of various entities of the Lydian Group.
28. Construction of the Amulsar Project began in October 2016 and was over 75% complete by June 2018. However, since June 2018 and continuing to the present time Lydian Armenia has been unable to access and complete construction at the Amulsar Project due to blockades and arbitrary actions by the Government of Armenia ("**GOA**"), as described in detail in my 22 December Affidavit starting at paragraph 43, and including:
 - (a) unlawful blockades at the Amulsar Project;
 - (b) improper, unsupported and retroactive challenges by GOA officials to previously granted mining rights, mining agreements and water permits held by Lydian Armenia; and

- (c) failure by the police and GOA to act in removing unlawful protestors and granting Lydian Armenia access to the Amulsar Project.
29. As a result of this hardship, the Lydian Group has taken various steps to maintain stability over its financial position and seek financial alternatives. These steps have included:
- (a) multiple attempts to resolve issues with the GOA and Armenian police, including taking action in the Armenian courts to seek re-entry to the Amulsar Project;
 - (b) negotiating several forbearance agreements with its lenders, the most recent of which expired on 20 December 2019;
 - (c) cost reduction efforts, including a reduction in the Lydian Group's workforce by over 90% (as of 20 December 2019, the Lydian Group employed a total of 63 full time and contract employees);
 - (d) considering numerous re-start options, including the development of a revised National Instrument 43-101 Technical Report to assess the impact of the blockade on construction, and the assessment of sale or refinancing options (National Instrument 43-101 is a national instrument for the Standards of Disclosure for Mineral Projects within Canada. The Instrument is a codified set of rules and guidelines for reporting and displaying information related to mineral properties owned by, or explored by, companies which report these results on stock exchanges within Canada);
 - (e) canvassing the market for refinancing or sale options;
 - (f) retaining various experts;
 - (g) preparing for the Treaty Arbitration (as described below) against the GOA; and
 - (h) commencing a solicitation process for parties interested in financing the Treaty Arbitration.

30. In total, the challenges at the Amulsar Project have generated dislocation costs of approximately \$101 million. Further dislocation expenses are expected to be incurred.
31. The Lydian Group is considering commencing international investment arbitration proceedings against the GOA pursuant to bilateral investment treaties, on the basis that the GOA's actions and inactions have seriously undermined the value of the Lydian Group's investment in the Amulsar Project (the "**Treaty Arbitration**").

Creditor interests

32. The Debtors brought the CCAA Application to obtain the breathing room necessary to maximise value for all stakeholders and creditors. The CCAA Application was made to allow the Debtors to:-
 - (a) continue discussions with the GOA to ensure an end to the actions which have resulted in Lydian Armenia's inability to access the Amulsar Project;
 - (b) continue negotiations with existing lenders on a consensual path forward;
 - (c) complete negotiations on a potential sale and/or refinancing of Lydian Armenia;
 - (d) consider the appropriate corporate vehicle structure to implement a refinancing and/or sale; and
 - (e) finalise financing discussions and potential commencement of the Treaty Arbitration.

2 January CCAA Order and 23 January CCAA Order

33. Pursuant to paragraph 2 and 3 of the CCAA Order, 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**") and the business undertaken by the Debtors (the "**Business**").

34. Pursuant to paragraphs 10 to 14 of the CCAA Order, the Debtors including Lydian International are afforded wide ranging protection from their creditors, such that no proceedings can be continued or commenced against them or the Monitor, or affecting the Business or Property, until 2 January 2020 (extended to 2 March 2020 by the 2 January CCAA Order as set out below), all being subject to further orders that may be made by the Ontario Court.
35. Pursuant to paragraph 21 of the CCAA Order, 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 the CCAA Order, and to report to the Ontario Court.
36. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Property (as defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to assess the Debtors' Business and financial affairs and to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).
37. Pursuant to paragraphs 10 to 17 of the CCAA Order, the Ontario Court made wide-ranging orders preventing proceedings being brought against the Debtors or specified members of the Lydian Group and related orders.
38. Pursuant to paragraph 42 of the CCAA Order, the Debtors and Monitor were authorized "to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the CCAA Order] and for assistance in carrying out the terms of [the CCAA Order]". The same paragraph further 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."
39. Pursuant to paragraph 1 of the 2 January CCAA Order, the Stay Period was extended until 23 January 2020. By the 23 January CCAA Order, the Stay Period was extended until 2 March 2020.

Issuance of Letter of Request by Ontario Court

40. The Lydian Group determined to include Lydian International as an applicant in the CCAA proceedings to ensure that a holistic and flexible restructuring regime was

available to preserve optionality and potential value for all stakeholders and creditors, particularly if a restructuring outcome or the Treaty Arbitration yields value to the Lydian Group's public shareholders.

41. I and the Lydian Group's Canadian legal counsel have been advised by Jersey counsel that the Jersey courts have jurisdiction to recognise and enforce foreign insolvency processes, even when such processes have no equivalent under Jersey domestic law.
42. By the CCAA Order, the Honourable Geoffrey B. Morawetz, Chief Justice of the Ontario Court issued a letter of request asking the Royal Court of Jersey to assist the Ontario Court. By the 23 January CCAA Order 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**). A copy of the Letter of Request is exhibited hereto at **Tab 11**. The Letter of Request asks for the Royal Court to make orders in the following terms:-
 - a. By recognising the appointment of the Monitor;
 - 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 of Lydian International.
43. Pursuant to paragraph 7 of the Letter of Request, 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).

Orders sought in the Representation

44. The orders sought to be recognised by the Representation are slightly narrower in scope than the terms of the Letter of Request, to reflect the specific needs of Lydian at this juncture, 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).

45. For the reasons set out above, Lydian International seeks the orders and declarations set out at the prayer for relief in the Representation.

SIGNED and **SWORN** by the said)

EDWARD A. SELLERS)

At *Toronto, Ontario*)

This *30th* day of *January* 2020)



BEFORE ME

Nicholas Auis
.....
Nicholas Auis

Commissioner for Oaths/Practising Solicitor
Associate, Stikeman Elliott LLP
Barristers & Solicitors
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Canada

1. Representor
2. Edward Sellers
3. First Affidavit
4. Sworn on

COURT FILE NO.[]

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

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

EXHIBIT "ES1"

This is the exhibit marked "ES1" referred to in the First Affidavit of Edward A. Sellers.

BEFORE ME

.....*Nicholas Avis*.....
Nicholas Avis
Commissioner for Oaths/Practising Solicitor