

COURT REF NO. 2020/130

IN THE ROYAL COURT OF THE ISLAND OF JERSEY**(Samedi Division)****IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED****AND IN THE MATTER OF THE COMPANIES (JERSEY) LAW 1991****AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR COURT OF JUSTICE**

EXHIBIT MG1 INDEX

Document	Page(s)
Act of Court dated 14 August 2020, issued 17 August 2020	1 - 2
Email correspondence between Mourant Ozannes and the Royal Court, dated 14 August 2020	3 - 6
Draft notification letters sent to the Court on 14 August 2020	7 - 12
Draft Act of Court sent to the Royal Court on 14 August 2020	13 - 14
Email correspondence between Mourant Ozannes and the Royal Court, dated 17 August 2020	15
Computershare Shareholder register dated 31 October 2019	16
Email correspondence between Mourant Ozannes and the Royal Court, dated 20 - 21 August 2020	17 - 18
Service List dated 29 June 2020	19 - 29
Judgment of the Canadian Court dated 29 June 2020	30 - 47
Issued notification letters and emails dated 19 August 2020	48 - 74

Lydian International press release published 17 August 2020	75 - 76
Email correspondence with shareholder dated 23 – 25 August 2020	77
Lydian International pre and post restructure organisational charts	78 - 80
Letter from ING Bank N.V. dated 19 August 2020	81 - 82
List of creditors of Lydian International as at 6 July 2020	83

In the Royal Court of Jersey

Samedi Division

2020/130

In the year two thousand and twenty, the fourteenth day of August.

Before the Deputy Bailiff of Jersey.

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED
AND IN THE MATTER OF THE COMPANIES (JERSEY) LAW 1991
AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR COURT OF JUSTICE

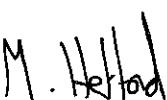
Upon reading the Representation of Lydian International Limited (“the Representor”), and upon hearing the advocate on behalf of the Representor, the Court:

1. adjourned the substantive hearing of the Representation until the 11th September, 2020, at 10.00 a.m.;
2. ordered that the Representor shall within seven days of the date of these convening orders and directions being made:
 - a. provide the creditors and the shareholders of the Representor with a copy of this Representation and the Affidavit evidence filed in support of these proceedings; and
 - b. inform such creditors and shareholders that if they wish to be heard at the hearing on the 11th September, 2020, they may appear in person or by Jersey counsel or may write to the Royal Court via the Representor (stephen.alexander@mourant.com and max.galt@mourant.com) on or before 5.00 p.m. on the 9th September, 2020. The Representor will provide the Court with all correspondence received so that the Court may take it into account;
3. ordered that for the purposes of communicating the information required by the orders contained in paragraph 2. above, publication on the website of the Monitor at the following link will be sufficient:

<https://www.alvarezandmarsal.com/content/lydian-jersery-motion-materials>,

save that in relation to the Senior Lenders as defined in the Representation, the Equipment Financiers as defined in the Representation, and the shareholders in the Representor, they shall be provided with a letter by counsel for the Representor in a form approved by the Court informing them of the nature and purpose of the hearing on the 11th September, 2020, the terms of the order made by the Court on the 14th August, 2020, and providing the link to the Monitor's website which contains the affidavit and other supporting material; and

4. ordered that the Representor shall issue a press release confirming the hearing fixed for the 11th September, 2020, and providing a link to the Monitor's website: <https://www.alvarezandmarsal.com/content/lydian-jersery-motion-materials>.


Greffier Substitute

MO (SJA)

Chazha Hick

From: Chazha Hick
Sent: 14 August 2020 14:04
To: Melvin Hefford
Cc: Stephen Alexander; Max Galt
Subject: RE: Representation of Lydian International Limited [MO-LIVE.FID47974144]
Attachments: DRAFT ACT - 20-08-14 Rep. of Lydian International Ltd. (convening Act).DOC; 2020.08.14 Draft Notification Letter to Shareholders.DOCX; 2020.08.14 Draft Notification Letter to Equipment Financiers.DOCX; 2020.08.14 Draft Notification Letter to Senior Lenders.DOCX

Dear Mel

Further to the below email, we attach the draft Act of Court with suggested changes in redline.

Please also find attached the draft letters to the shareholders, Equipment Financiers and Senior Lenders of Lydian International.

Please note that in respect of the shareholders, we are confirming with Canadian counsel whether all of the shareholders' email or postal addresses are available. If they are not available, this may present a difficulty in sending the shareholder letter to the shareholders directly. If this is the case, we will consider what other options are available and provide an update to the Court.

As regards the Deputy Bailiff's request for further details of the Restructured Lydian entity (including the assets which it now holds) we will revert in due course and prepare a further structure chart in advance of the 11 September hearing.

Please be aware that Stephen will be out of the office next week. Please do get in touch with Max and I directly if we can be of any further assistance.

Many thanks.

Kind regards

Chazha

From: Stephen Alexander
Sent: 14 August 2020 11:57
To: Melvin Hefford
Cc: Chazha Hick
Subject: RE: Representation of Lydian International Limited

Dear Mel

Many thanks – I confirm safe receipt.

Regards

Stephen

Stephen Alexander

Partner & Advocate
Mourant Ozannes

mourant.com

From: Melvin Hefford <M.Hefford@gov.je>
Sent: 14 August 2020 11:50
To: Stephen Alexander <Stephen.Alexander@mourant.com>
Cc: Chazha Hick <Chazha.Hick@mourant.com>
Subject: RE: Representation of Lydian International Limited

CAUTION: This email originated from outside of Mourant.

Dear Stephen

Please find attached.

Kind regards

Mel

Melvin Hefford
Proceedings Officer



Judicial Greffe | Royal Court Building | Royal Square
St Helier | Jersey | JE1 1JG
☎ +44(0)1534 441315 | E-Mail: m.hefford@gov.je

From: Stephen Alexander [<mailto:Stephen.Alexander@mourant.com>]
Sent: 14 August 2020 11:32
To: Melvin Hefford <M.Hefford@gov.je>
Cc: Chazha Hick <Chazha.Hick@mourant.com>
Subject: RE: Representation of Lydian International Limited

Dear Mel

This is very helpful. Thank you. We have started work on the draft letter. We will complete the draft Act of Court with the press release wording as soon as we receive your draft.

Kind regards

Stephen

Stephen Alexander

Partner & Advocate
Mourant Ozannes

mourant.com

From: Melvin Hefford <M.Hefford@gov.je>
Sent: 14 August 2020 11:30
To: Stephen Alexander <Stephen.Alexander@mourant.com>
Subject: Representation of Lydian International Limited

CAUTION: This email originated from outside of Mourant.

Dear Stephen

I have listened back to the recording now. The points raised by the DB are as follows:

1. 14 days changed to 7 days in paragraph 2.
2. Paragraph 2b., this is what the DB said: “...if they wish to be heard at the hearing on the 11th September, 2020, they may appear in person or by Jersey counsel or may write to the Royal Court via the Representor (insert email) no less than two days before the hearing. The Representor will provide the Court with all correspondence received so that the Court may take it into account”.
3. Paragraph 3 this is what the DB said: “**3. will read something along the lines of *for the purposes of communicating the information required by the orders contained in paragraph 2., publication on the website of the Monitor at the following link will be sufficient, delete no other form of notice shall be required, then give the link, save that in relation to the Senior Lenders as defined in the Representation, if they are defined there, the Equipment Financiers as defined in the Representation, if they are defined there, if not then cross refer to the affidavit, and the shareholders in the company, they shall be provided with a letter by counsel for the Representor in a form approved by the Court informing them of the nature and purpose of the hearing on the 11th September, 2020, the terms of the order made by the Court on the 14th August, 2020, and providing the link to the Monitor’s website which contains the affidavit and other supporting material.***”
4. Insert order 4 about a press release.

I hope this helps with the amended draft order. I’ll make a start on the Act of Court.

Kind regards

Mel

Melvin Hefford
Proceedings Officer



Judicial Greffe | Royal Court Building | Royal Square
St Helier | Jersey | JE1 1JG
☎ +44(0)1534 441315 | E-Mail: m.hefford@gov.je

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Please see the Mourant [Privacy Notice](#) which contains details on how we process data, and the rights individuals have in respect of their data.

Caterpillar Financial SARL
Muhlebachstrasse 43
Zurich
Switzerland
8008

Date | [xx] August 2020

Our ref | 8044526/78719621/1

Dear Sirs

**In the matter of the Representation of Lydian International Limited
And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

1. We act as Jersey counsel for Lydian International Limited (**Lydian International**) and write to you in your capacity as an equipment financier of Lydian International.
2. The purpose of this letter is to notify you of proceedings taking place in the Royal Court of Jersey (the **Jersey Court**), Channel Islands, which concern Lydian International (an entity incorporated and registered in Jersey, Channel Islands), and your right to participate in those proceedings.
3. By way of background, by a letter from Alvarez & Marsal Canada dated 27 December 2019, which was published on its website at <https://www.alvarezandmarsal.com/content/lydian-notice-creditors-and-list-creditors>, notice was given that Lydian International Limited, Lydian Canada Ventures Corporation and Lydian U.K Corporation Limited (the **Lydian Group**) were granted an order (the **Initial Order**) in Canada by the Ontario Superior Court of Justice (the **Ontario Court**) under the Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36, as amended (the **CCAA**) on 23 December 2019.
4. By the Initial Order, the Ontario Court ordered, amongst other things, a stay of proceedings against Lydian International in Canada until 2 January 2020 and the appointment of Alvarez & Marsal Canada Inc. as monitor (the **Monitor**), to monitor the business and financial affairs of Lydian International during this stay period.
5. Following issuance of a letter of request from the Ontario Court to the Jersey Court on 23 December 2019, we notified you by a letter dated 12 February 2020, of proceedings in Jersey and your entitlement to participate in the proceedings. On 25 February 2020 the Jersey Court made orders granting recognition of the CCAA proceedings, the appointment of the Monitor and the stay in proceedings against or in respect of Lydian International.
6. The stay period was extended at subsequent hearings by the Ontario Court, most recently on 29 June 2020, until the earlier of (a) issuance of the CCAA Termination Certificate (as defined in the Plan of Arrangement mentioned below), or (b) 21 December 2020.
7. By an order of the Ontario Order dated 29 June 2020 the Ontario Court approved and sanctioned a Plan of Arrangement (the **Plan**) filed by the Lydian Group, which will implement a corporate and financial restructuring of the Lydian Group and provides for the full and final release of all claims against Lydian International and its directors and officers. Information

about the Plan and the related CCAA proceedings, including court orders and the Monitor's reports, is available at <https://www.alvarezandmarsal.com/content/lydian-plan-arrangement>.

8. Lydian International has now brought proceedings before the Jersey Court seeking certain orders to facilitate implementation of the Plan as sanctioned by the Ontario Court, *inter alia*, that:-
 - (a) Lydian International shall be wound up pursuant to Article 155 of the Companies (Jersey) Law 1991;
 - (b) Joint Liquidators shall be appointed and the Jersey Court shall prescribe to the Joint Liquidators such powers as are set out in Part 21 of the 1991 Law and/or as the Jersey Court shall deem necessary for Lydian International's beneficial winding up; and
 - (c) Article 159(4) of the 1991 Law shall be applied, which confirms that on the commencement of the winding up no action shall be taken or proceeded with or against Lydian International except by leave of the Jersey Court and upon such terms as the Jersey Court may impose.
9. At a directions hearing at the Jersey Court on 14 August 2020, the Deputy Bailiff made orders that counsel to Lydian International is to notify, amongst other groups, the equipment financiers of Lydian International of these proceedings and their entitlement to participate, and direct them to the Representation documentation and Affidavit evidence filed with the Jersey Court in support of the application. This letter constitutes that notification. A copy of the Act of Court dated xx August 2020 by which these orders were made is enclosed herewith.
10. The Jersey Court will consider whether to grant the substantive relief sought (set out at paragraph 8 above) at a hearing listed before the Royal Court in Jersey on 11 September 2020 at 10.00 am.
11. Further information about the relief sought in the abovementioned proceedings is available in the Representation and accompanying Affidavit evidence which has been filed with the Jersey Court, and is published on the Monitor's website at [www.alvarezandmarsal.com/content/lydian\[xxxx\]](http://www.alvarezandmarsal.com/content/lydian[xxxx]).
12. As an equipment financier of Lydian International you are entitled, if you wish, to participate in the Jersey Court proceedings, including to make submissions and appear at the hearing either in person or by Jersey counsel. In order to participate you will need to write to the Jersey Court via this firm, acting as Jersey counsel for Lydian International (email: stephen.alexander@mourant.com and max.galt@mourant.com) on or before 5pm UK time on 9 September 2020.
13. If you have any questions pertaining to the Jersey proceedings in respect of Lydian International please contact either myself or Max Galt (max.galt@mourant.com; +44 (0) 1534 676310).

Yours faithfully

Stephen Alexander
Partner & Advocate
D. +44 (0)1534 676 172
E. stephen.alexander@mourant.com

Osisko Bermuda Limited
Cumberland House
1 Victoria Street
Hamilton HM 11
Bermuda

Date | [xx] August 2020

Our ref | 8044526/78719621/1

Dear Sirs

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And in the matter of the Companies (Jersey) Law 1991
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 - (c) Article 159(4) of the 1991 Law shall be applied, which confirms that on the commencement of the winding up no action shall be taken or proceeded with or against Lydian International except by leave of the Jersey Court and upon such terms as the Jersey Court may impose.
9. At a directions hearing at the Jersey Court on 14 August 2020, the Deputy Bailiff made orders that counsel to Lydian International is to notify, amongst other groups, senior lenders of Lydian International of these proceedings and their entitlement to participate, and direct them to the Representation documentation and Affidavit evidence filed with the Jersey Court in support of the application. This letter constitutes that notification. A copy of the Act of Court dated xx August 2020 by which these orders were made is enclosed herewith.
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12. As a senior lender of Lydian International you are entitled, if you wish, to participate in the Jersey Court proceedings, including to make submissions and appear at the hearing either in person or by Jersey counsel. In order to participate you will need to write to the Jersey Court via this firm, acting as Jersey counsel for Lydian International (email: stephen.alexander@mourant.com and max.galt@mourant.com) on or before 5pm UK time on 9 September 2020.
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Yours faithfully

Stephen Alexander
 Partner & Advocate
 D. +44 (0)1534 676 172
 E. stephen.alexander@mourant.com

[Insert address]

Date | [xx] August 2020

Our ref | 8044526/78719621/1

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Mourant Ozannes is a Jersey partnership
A list of the partners is available at mourant.com

release of all claims against Lydian International and its directors and officers. Information about the Plan and the related CCAA proceedings, including court orders and the Monitor's reports, is available at <https://www.alvarezandmarsal.com/content/lydian-plan-arrangement>.

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9. At a directions hearing at the Jersey Court on 14 August 2020, the Deputy Bailiff made orders that counsel to Lydian International is to notify, amongst other groups, shareholders of Lydian International of these proceedings and their entitlement to participate, and direct them to the Representation documentation and Affidavit evidence filed with the Jersey Court in support of the application. This letter constitutes that notification. A copy of the Act of Court dated xx August 2020 by which these orders were made is enclosed herewith.
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12. As a shareholder of Lydian International you are entitled, if you wish, to participate in the Jersey Court proceedings, including to make submissions and appear at the hearing either in person or by Jersey counsel. In order to participate you will need to write to the Jersey Court via this firm, acting as Jersey counsel for Lydian International (email: stephen.alexander@mourant.com and max.galt@mourant.com) on or before 5pm UK time on 9 September 2020.
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Yours faithfully

Stephen Alexander
Partner & Advocate
D. +44 (0)1534 676 172
E. stephen.alexander@mourant.com

In the Royal Court of Jersey

Samedi Division

2020/130

In the year two thousand and twenty, the fourteenth day of August.

Before the Deputy Bailiff of Jersey.

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED
AND IN THE MATTER OF THE COMPANIES (JERSEY) LAW 1991
AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR COURT OF JUSTICE

Upon reading the Representation of Lydian International Limited (“the Representor”), and upon hearing the advocate on behalf of the Representor, the Court:

1. adjourned the substantive hearing of the Representation until the 11th September, 2020, at 10.00 a.m.;
2. ordered that the Representor shall within seven days of the date of these convening orders and directions being made:
 - a. provide the creditors and the shareholders of the Representor with a copy of this Representation and the Affidavit evidence filed in support of these proceedings; and
 - b. inform such creditors and shareholders that if they wish to be heard at the hearing on the 11th September, 2020, they may appear in person or by Jersey counsel or may write to the Royal Court via the Representor (stephen.alexander@mourant.com and max.galt@mourant.com) ~~no less than two days before the hearing~~ or before 5.00 p.m. on ^{9th} September 2020. The Representor will provide the Court with all correspondence received so that the Court may take it into account;
3. ordered that for the purposes of communicating the information required by the orders contained in paragraph 2. above, publication on the website of the Monitor at the following link will be sufficient:

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<https://www.alvarezandmarsal.com/content/lydian-jersery-motion-materials>, save that in relation to the Senior Lenders as defined in the Representation ~~(if they are defined there)~~, the Equipment Financiers as defined in the Representation ~~(if they are defined there, if not then cross refer to the affidavit)~~, and the shareholders in the Representor, they shall be provided with a letter by counsel for the Representor in a form approved by the Court informing them of the nature and purpose of the hearing on the 11th September, 2020, the terms of the order made by the Court on the 14th August, 2020, and providing the link to the Monitor's website which contains the affidavit and other supporting material; and

4. ~~(press release order.)~~ ordered that the Monitor issue a press release confirming the hearing fixed for 11th September 2020 and providing a link to the Monitor's website: <https://www.alvarezandmarsal.com/content/lydian-jersery-motion-materials>

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Greffier Substitute

MO (SJA)

Chazha Hick

From: Chazha Hick
Sent: 17 August 2020 16:20
To: 'Melvin Hefford'
Cc: Stephen Alexander; Max Galt
Subject: RE: Representation of Lydian International Limited [MO-LIVE.FID47974144]

Dear Mel

Many thanks for your email. We acknowledge receipt of the issued Act of Court and will incorporate the Deputy Bailiff's amendments in the notification letters to the shareholders, Equipment Financiers and Senior Lenders.

Please note that we will revert in short course on the issue of the method by which we will notify the shareholders, as raised in our email of Friday last week, below.

Kind regards

Chazha

From: Melvin Hefford
Sent: 17 August 2020 16:01
To: Chazha Hick
Cc: Stephen Alexander ; Max Galt
Subject: RE: Representation of Lydian International Limited [MO-LIVE.FID47974144]

CAUTION: This email originated from outside of Mourant.

Dear Chazha

Further to your email below, the Deputy Bailiff has now come back to me with changes to the Act of Court and draft letters.

The Act of Court is unchanged, save that the word "Monitor" in paragraph 4. is changed to "Representor". The Act of Court has been issued, and I attach a PDF version for your information.

In respect of the draft letters to the shareholders, Equipment Financiers and Senior Lenders of Lydian International, the changes are as follows:

Paragraph 9 – in the first line it should read "Deputy Bailiff of Jersey".

Paragraph 12 – should read:

"As a [senior lender/equipment financier/shareholder] of Lydian International you are entitled, if you wish, to participate in the Jersey Court proceedings, including to make submissions and to appear at the hearing either in person or by Jersey counsel. Or you may write to the Jersey Court via this firm, acting as Jersey counsel for Lydian International (email: stephen.alexander@mourant.com and max.galt@mourant.com) on or before 5pm UK time on 9 September 2020, and he will provide your correspondence to the Royal Court so that the Court may take it into account."

Kind regards

Mel



LYDIAN INTERNATIONAL LIMITED

ORDINARY SHARES (TOTAL) As of 31 Oct 2019

Top Holders Snapshot - Ungrouped

Composition : C01, CR1

Rank	Name	Address	Units	% of Units
1.	CDS & CO	NCI ACCOUNT, 100 ADELAIDE ST W, SUITE 300, TORONTO ON, M5H 1S3	492,824,611.000000	64.84
2.	RESOURCE CAPITAL FUND VI LP <A/C 6L9 07332>	1400 SIXTEENTH STREET, SUITE 200, DENVER CO, 80202	239,983,333.000000	31.58
NAMES AND ADDRESSES OF INDIVIDUAL SHAREHOLDERS HAVE BEEN REDACTED				
3.			21,375,000.000000	2.81
4.			1,361,862.000000	0.18
5.			489,511.000000	0.06
6.			393,750.000000	0.05
7.			369,936.000000	0.05
8.			352,286.000000	0.05
9.			297,933.000000	0.04
10.			271,070.000000	0.04
11.			227,069.000000	0.03
12.			223,594.000000	0.03
13.			170,000.000000	0.02
14.			163,264.000000	0.02
15.			141,074.000000	0.02
16.			128,609.000000	0.02
17.			125,000.000000	0.02
18.			119,101.000000	0.02
19.			111,089.000000	0.01
20.			107,278.000000	0.01
21.			107,278.000000	0.01
22.			96,507.000000	0.01
23.			83,333.000000	0.01
24.			72,640.000000	0.01
25.			65,039.000000	0.01
26.			60,481.000000	0.01
27.			52,954.000000	0.01
28.			34,987.000000	0.00
29.			32,791.000000	0.00
30.			25,952.000000	0.00
Total Top Holders Balance			759,867,332.000000	99.98
Total Remaining Holders Balance			149,689.000000	0.02

Lydian International Limited is a publicly traded entity on the Toronto Stock Exchange, and as such, the Company does not have visibility as to the residence of every shareholder, and the register may change in consequence of trading.

The majority of shares are held by the Canadian Depository for Securities (CDS) and as such, the Company has no visibility to the ultimate beneficial owner unless they are registered.

Resource Capital Funds is a mining-focused private equity firm.

Chazha Hick

From: Chazha Hick
Sent: 21 August 2020 14:36
To: 'Melvin Hefford'
Cc: Stephen Alexander; Max Galt
Subject: RE: Representation of Lydian International Limited [MO-LIVE.FID47974144]
Attachments: service_list_june_29_2020.pdf; re_lydian_international_limited_-_endorsement_10_july_20.pdf

Dear Melvin

My apologies, please see attached the Service List and Endorsement referred to, and please do include these when forwarding the email to the Deputy Bailiff.

Many thanks.

Kind regards

Chazha

From: Melvin Hefford
Sent: 21 August 2020 14:31
To: Stephen Alexander
Cc: Chazha Hick ; Max Galt
Subject: RE: Representation of Lydian International Limited [MO-LIVE.FID47974144]

CAUTION: This email originated from outside of Mourant.

Dear Stephen

Thank you for your email.

You mention that the Service List and Endorsement are attached, but my email did not have any attachments.

Do you need to send me these before I pass on your comments to the Deputy Bailiff?

Many thanks

Mel

Melvin Hefford
Proceedings Officer



Judicial Greffe | Royal Court Building | Royal Square
St Helier | Jersey | JE1 1JG
☎ +44(0)1534 441315 | E-Mail: m.hefford@gov.je

From: Kelly Goncalves [<mailto:Kelly.Goncalves@mourant.com>] **On Behalf Of** Stephen Alexander
Sent: 20 August 2020 16:18
To: Melvin Hefford <M.Hefford@gov.je>
Cc: Chazha Hick <Chazha.Hick@mourant.com>; Max Galt <Max.Galt@mourant.com>
Subject: FW: Representation of Lydian International Limited [MO-LIVE.FID47974144]

Dear Mel

Paragraph 3 of the Act of Court requires that we provide each shareholder of the Representor with a notification letter regarding the proceedings. We set out below the manner by which we propose to provide that letter to the shareholders.

1. Sending the letter directly by email to the shareholders whose name and email address appears on the "Service List";
2. Publication of the letter on the website of the Monitor; and
3. Issuance of a press release by Lydian International (published at: <https://www.globenewswire.com/news-release/2020/08/17/2079367/0/en/Lydian-Announces-Commencement-of-Just-and-Equitable-Wind-Up-Proceedings-Under-Jersey-Law.html>) particularising the hearing date and directing shareholders to the website of the Monitor which hosts a copy of the notification letter (along with the Act of Court, Representation and Affidavit evidence).

The above-mentioned service methods are in my view reasonable and proportionate means by which to bring the proceedings to the attention of the shareholders. The Canadian proceedings were well publicised via press releases and publications on the website of the Monitor. In the Canadian proceedings, certain shareholders took the opportunity to make representations to the Canadian Court. Each shareholder who submitted a notice to make representations to the Canadian Court was added to the "Service List". The Service List is attached and comprises the list of addresses for parties that were served with documents in the Canadian proceedings.

Lydian International has a large number of shareholders, it being a former listed public company, and it is not therefore practically possible to write to them all individually. We would note that, in his reasons in connection with the Sanction and Implementation Order, Chief Justice Morawetz noted that he believed Lydian International's "stakeholders" (including shareholders) received adequate notice of the motion to sanction the CCAA Plan by virtue of equivalent service methods to those set out above, per paragraph 60 of his attached Endorsement.

I trust the above-mentioned service methods are satisfactory, but please do let me know if the Judge Deputy Bailiff has any further observations on our proposed approach. We have in the meantime, in the interests of seeking to not delay notification, proceeded to take all of the above steps to notify the shareholders. In addition, we have also notified the Equipment Financiers and Senior Lenders by a letter of yesterday's date which was sent to the email addresses of each of their counsel as they appear on the Service List.

Kind regards

Stephen

Stephen Alexander

Partner & Advocate
Mourant Ozannes

D +44 1534 676 172 | M +44 7797 729229
BVI | CAYMAN ISLANDS | GUERNSEY | HONG KONG | **JERSEY** | LONDON

mourant.com

From: Chazha Hick <Chazha.Hick@mourant.com>

Sent: 17 August 2020 16:20

To: 'Melvin Hefford' <M.Hefford@gov.je>

Cc: Stephen Alexander <Stephen.Alexander@mourant.com>; Max Galt <Max.Galt@mourant.com>

Subject: RE: Representation of Lydian International Limited [MO-LIVE.FID47974144]

Dear Mel

**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 THE PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED**

Applicants

**SERVICE LIST
June 29, 2020**

<p>STIKEMAN ELLIOTT LLP Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto ON M5L 1B9</p> <p>Tel: (416) 869-5500 Fax: (416) 947-0866</p> <p>Lawyers for the Applicants</p>	<p>Elizabeth Pillon lpillon@stikeman.com Tel: (416) 869-5623</p> <p>Maria Konyukhova mkonyukhova@stikeman.com Tel: (416) 869-5230</p> <p>Sanja Sopic ssopic@stikeman.com Tel: (416) 869-6825</p> <p>Nick Avis navis@stikeman.com Tel: (416) 869-5504</p>
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CITATION: Lydian International Limited (Re), 2020 ONSC 4006
COURT FILE NO.: CV-19-00633392-00CL
DATE: 2020-07-10

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED**

BEFORE: Chief Justice G.B. Morawetz

COUNSEL: *Elizabeth Pillon, Maria Konyukhova, Sanja Sopic, and Nicholas Avis*, for the Applicants

D. J. Miller and Rachel Bergino, for Alvarez & Marsal Inc.

Robert Mason and Virginie Gauthier, for Osisko Bermuda Limited

Pamela Huff and Chris Burr, for Resource Capital Fund VI L.P.

David Bish and Michael Pickersgill, for Orion Capital Management

Alexander Steele, for Caterpillar Financial Services (UK) Limited

Bruce Darlington, for ING Bank N.V./Abs Svensk Exportkredit (publ)

John LeRoux, Hasan Ciftehan, Mehmet Ali Ekingen and Atilla Bozkay, each in their capacity as a Shareholders of Lydian International Limited

**HEARD by ZOOM Hearing
and DECIDED:**

June 29, 2020

REASONS RELEASED:

July 10, 2020

ENDORSEMENT

[1] Lydian International Limited, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (the “Applicants”) bring this motion for an order (the “Sanction and Implementation Order”), among other things:

- a) declaring that the Meeting of Affected Creditors held on June 19, 2020 was duly convened and held, all in accordance with the Meeting Order;
- b) sanctioning and approving the Applicants' Plan of Arrangement (the "Plan") as approved by a requisite majority of Affected Creditors at the Meeting, in accordance with the Plan Meeting Order (each as defined below), a copy of which is attached as Schedule "A" to the draft Sanction and Implementation Order; and
- c) granting various other related relief (as more particularly outlined below).

[2] The Applicants submit that the Plan represents the culmination of the Applicants' restructuring efforts and allows for the resolution of these CCAA Proceedings. The Monitor and the majority of the Affected Creditors are supportive of the Plan and if sanctioned and implemented, the Plan will provide a path forward for Lydian Canada and Lydian UK as part of a privatized Restructured Lydian Group (as defined in the Plan) and ultimately lead to the termination of these CCAA Proceedings.

[3] Shortly after the conclusion of the hearing on June 29, 2020, which was conducted by Zoom, I granted the motion with reasons to follow.

[4] The facts with respect to this motion are more fully set out in the Affidavit of Edward A. Sellers sworn June 24, 2020 (the "Sellers Sanction Affidavit"), the Affidavit of Edward A. Sellers sworn June 15, 2020 (the "Sellers Meeting Affidavit") and the Affidavit of Mark Caiger sworn June 11, 2020 (the "BMO Affidavit"). Mr. Sellers and Mr. Caiger were not cross-examined. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Sellers Sanction Affidavit, the Sellers Meeting Affidavit, and the Plan. All references to currency in this factum are references to United States dollars, unless otherwise indicated.

Background

[5] The Applicants are three entities at the top of the Lydian Group. The Lydian Group owns a development-stage gold mine in south-central Armenia through its wholly owned non-applicant operating subsidiary Lydian Armenia. The Applicants contend that they have been unable to access their main operating asset, the Amulsar mine, since June 2018 due to blockades and the associated actions and inactions of the Government of Armenia ("GOA"), and as a result, this has prevented the Applicants from completing construction of the mine and generating revenue in the ordinary course.

[6] The Applicants further contend that the effects of the blockades, amongst other factors, caused the Applicants to seek protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"). An Initial Order was granted on December 23, 2019. Alvarez & Marsal Canada Inc. was appointed as Monitor.

[7] In the two years since the blockades began, the Applicants contend that they have used their best efforts to resolve the factors that led to their insolvency, including engaging in negotiations with the GOA, defending their commercial rights and commencing legal proceedings in Armenia to attempt to remove the blockades but these efforts have yet to result in the Applicants re-gaining access to the Amulsar site.

[8] In early 2018, the Applicants retained BMO to canvass the market for potential refinancing or sale options. BMO has conducted multiple rounds of a sales process to market the Lydian Group's mining assets. BMO also ran a process to solicit interest in financing the Applicants' potential Treaty Arbitration. These efforts have not yet resulted in a transaction capable of satisfying the claims of the Applicants' secured lenders.

[9] Since the blockades began, the Senior Lenders have been funding the Applicants' efforts to find a solution to the situation caused by the blockades. The Senior Lenders provided additional financial support to the Lydian Group totalling in excess of \$43 million.

[10] As of March 31, 2020, the Lydian Group owed its secured lenders more than \$406.8 million.

[11] According to the Applicants, the secured lenders are no longer willing to support the Applicants' efforts to monetize their assets. The Equipment Financiers CAT and ING have taken enforcement steps and Ameriabank has issued preliminary notice of enforcement.

[12] Further, the Applicants point out that the liquidity made available to the Applicants since April 30, 2020 has been conditioned on the Applicants: (i) proposing a restructuring that would be equivalent to the Senior Lenders enforcing their security over the shares of Lydian Canada; and (ii) meeting a deadline to exit the CCAA Proceedings imposed by a majority of the Applicants' Senior Lenders, or further enforcement steps would be taken.

[13] The Applicants submit that the Plan represents the most efficient mechanism to effect an orderly transition of the Lydian Group's affairs. The Applicants contend that the Plan minimizes adverse collateral impacts on Lydian Armenia, provides for winding down the proceedings before this court and the Jersey Court and avoids uncoordinated enforcement steps being taken on the Lydian Group's property to the detriment of the Lydian Group's stakeholders generally.

The Plan

[14] The Plan recognizes and continues the priority position of the Senior Lenders in the Restructured Lydian Group. The Senior Lenders make up the only class eligible to vote on the Plan and receive a distribution thereunder.

[15] According to the Applicants, secured creditors and unsecured creditors with claims at or below Restructured Lydian will continue to maintain their claims in the Restructured Lydian Group, including Lydian Armenia, with the same priority as they previously had, ranking behind the Senior Lenders. Stakeholders with claims at the Lydian International level will continue to have their claims on the Plan Implementation Date, which are intended to be addressed through

the proposed J&E Process in Jersey. Equity claims and unsecured claims against Lydian International will not be assumed by Restructured Lydian as part of the Plan.

[16] The purpose of the Plan is to (a) implement a corporate and financial restructuring of the Applicants, (b) provide for the assignment or settlement of all intercompany debts owing to the Applicants prior to the Effective Time to, among other things, minimize adverse tax consequences to Lydian Armenia and its stakeholders, (c) provide for the equivalent of an assignment of substantially all of the assets of Lydian International to an entity owned and controlled by the Senior Lenders (“SL Newco”), through an amalgamation of Lydian Canada with SL Newco resulting in a new entity (“Restructured Lydian”), and (d) provide a release of all of the existing indebtedness and obligations owing by Lydian International to the Senior Lenders. The Plan will result in the privatization of the Lydian Group to continue as the Restructured Lydian Group.

[17] The steps involved in the Plan’s execution are described in detailed in paragraphs 71 to 74 of the Sellers Meeting Affidavit.

[18] The Plan provides for certain releases. The releases are more fully described in the Sellers Meeting Affidavit at paragraph 83.

[19] Mr. Sellers in the Sellers Sanction Affidavit at para. 16 states that the releases were critical components of the negotiations and decision-making process for the D&Os and Senior Lenders in obtaining support for the Plan and resolving these CCAA Proceedings for the benefit of the Restructured Lydian Group, including Lydian Armenia, and all of its stakeholders.

[20] Mr. Sellers further states that the Released Parties made significant contributions to the Applicants’ restructuring, both prior to and throughout these CCAA Proceedings, which resulted directly in the preservation of the Lydian Group’s business, provided numerous opportunities for the Applicants to seek to monetize their assets for the benefit of stakeholders generally and led to the successful negotiation of the Plan for the benefit of the Restructured Lydian Group.

[21] The Plan provides for a Plan Implementation Date on or prior to June 30, 2020. The majority of the Applicants’ Senior Lenders have agreed to fund the costs associated with implementing the Plan and termination of the CCAA Proceedings and the J&E Process in Jersey, through the DIP Exit Facility Amendment, which will make a DIP Exit Credit Facility available to the Applicants totalling an estimated additional \$1.866 million.

[22] The test that a debtor company must satisfy in seeking the Court’s approval for a plan of compromise or arrangement under the CCAA is well established:

- a) there must be strict compliance with all statutory requirements;
- b) all materials filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA and prior Orders of the Court in the CCAA proceedings; and

- c) the plan must be fair and reasonable.

Issues

[23] The issues for determination on this motion are whether:

- a) the Plan is fair and reasonable and should be sanctioned;
- b) the releases contemplated by the Plan are appropriate;
- c) the increase to the DIP Charge to capture the amounts to be advanced under the DIP Exit Credit Facilities is appropriate;
- d) the Stay Period should be extended;
- e) the unredacted Sellers Sanction Affidavit should be sealed; and
- f) the Monitor's activities, as detailed in the Fifth Report, Sixth Report and Seventh Report, should be approved and the fees of Monitor and its counsel through to June 23, 2020 should be approved.

LAW AND ANALYSIS

Approval of the Plan

[24] To determine whether there has been strict compliance with all statutory requirements, the court considers factors such as whether: (a) the applicant meets the definition of a "debtor company" under section 2 of the CCAA; (b) the applicant has total claims against it in excess of C\$5 million; (c) the notice calling the creditors' meeting was sent in accordance with the order of the court; (d) the creditors were properly classified; (e) the meeting of creditors was properly constituted; (f) the voting was properly carried out; and (g) the plan was approved by the requisite majority.

[25] The Applicants submit that they have complied with the procedural requirements of the CCAA, the Initial Order, the Amended and Restated Initial Order, the Meeting Order and all other Orders granted by this Court during these CCAA Proceedings. In particular:

- a) at the time the Initial Order was granted, the Applicants were found to be "debtor companies" to which the CCAA applied and that the Applicants' liabilities exceeded the C\$5 million threshold amount under the CCAA;
- b) the classification of the Applicants' Senior Lenders into one voting class (namely, the Affected Creditors class) was approved pursuant to the Meeting Order. This classification was not opposed at the hearing to approve the Meeting, nor was the Meeting Order appealed; the Applicants properly effected notice in accordance with the Meeting Order prior to the

Meeting. In addition, the Applicants issued a press release on June 15, 2020 announcing their intention to seek an Order of the Court to file the Plan and call, hold and conduct a meeting of the Senior Lenders;

- c) the Meeting was properly constituted and the voting on the Plan was carried out in accordance with the Meeting Order; and
- d) the Plan was approved by the Required Majority.

[26] Sections 6(3), 6(5) and 6(6) of the CCAA provide that the Court may not sanction a plan unless the plan contains certain specified provisions concerning Crown claims, employee claims and pension claims. The Applicants' submit that these provisions of the CCAA are satisfied by the Plan. Crown claims and employee claims are treated by the Plan as Unaffected Claims, meaning that such claims, if any, are not compromised or otherwise affected. The Applicants do not maintain any pension plans, and thus section 6(6) of the CCAA does not apply. In compliance with s. 6(8) of the CCAA, the Plan does not provide for any recovery to equity holders.

[27] I accept the foregoing submissions. I am satisfied that the statutory prerequisites to approval of the Plan have been satisfied, and that there has been strict compliance with all statutory requirements.

[28] The Applicants submit that no unauthorized steps have been taken in these CCAA Proceedings and throughout the entirety of these CCAA Proceedings, they have kept this Court and Monitor apprised of all material aspects of the Applicants' conduct, activities, and key issues they have worked to resolve. I accept this submission.

[29] The Applicants' submit that when considering whether a plan of compromise and arrangement is fair and reasonable, the court should consider the relative degree of prejudice that would flow from granting or refusing to grant the relief sought. Courts should also consider whether the proposed plan represents a reasonable and fair balancing of interests, in light of the other commercial alternatives available (see: *Re Canadian Airlines Corp*, 2000 ABQB 442 at paras. 3, 94, 96, and 137 – 138; and *Re Canwest Global Communications Corp*, 2010 ONSC 4209).

[30] The CCAA permits the filing of a Plan by an Applicant to its secured creditors. The Applicants' submit the fact that unsecured creditors may receive no recovery under a proposed plan of arrangement does not, of itself, negate the fairness and reasonableness of a plan of arrangement (*Anvil Range Mining Corp. (Re)*, 2002 CanLII 42003 (ONCA); and *1078385 Ontario Ltd., (Re)*, 2004 CanLII 55041 (ONCA) at paras 30-31 ([CanLII](#)), affirming 2004 CanLII 66329 (ONSC)).

[31] The Plan was presented to the Senior Lenders, who are the Applicants' only secured creditors and they voted on the Plan as a single class. The Senior Lenders voted in favour of the Plan by the Required Majority. The value of the claims of Orion and Osisko, who voted in

favour of the Plan comprise 77.8% of the total value of the Affected Creditors who were present and voting.

[32] RCF, a secured lender and 32% shareholder, did not vote in favour of the Plan. RCF has advised that it “does not intend at this time to propose or fund an alternative to the Plan, and in the absence of such an alternative we expect that the Court will have no choice but to issue the Sanction and Implementation Order.”

[33] I have been advised that an issue as between the Senior Lenders and ING has been resolved and for greater certainty this Plan does not compromise any claim that ING may have in respect of proceeds from a successfully-asserted arbitration claim. In addition, the Senior Lenders have agreed that, after payment of all claims of the Senior Lenders to proceeds from a successfully-asserted arbitration claim whether on account of: (i) claims of the Senior Lenders prior to the Plan Implementation Date; or (ii) further advances made by the Senior Lenders (or their affiliates) after the Plan Implementation Date, (whether such further advances are made as equity, secured debt or unsecured debt), the proceeds will be paid to Lydian Armenia in an amount sufficient and to be used to pay ING’s claims against Lydian Armenia prior to any further monies being returned to equity holders.

[34] The Applicants submit that the structure and the nature of the releases in the Plan recognizes and continues the priority position of the Senior Lenders. Secured creditors and unsecured creditors with claims at or below Restructured Lydian will continue to maintain their claims in the Restructured Lydian Group, including Lydian Armenia, with the same priority as they previously had, ranking behind the Senior Lenders.

[35] The Applicants state that they have considered and believe the Plan is the best available outcome for the Applicants, and the interests of the stakeholders generally in the Lydian Group.

[36] As noted in the BMO Affidavit, despite multiple rounds of the SISP and the Treaty Arbitration financing solicitation process, the Applicants submit that no transaction which would satisfy the Lydian Group’s secured obligations is currently available to the Applicants.

[37] The Applicants submit that the monetization of Treaty Arbitration is also not open to the Applicants at this time, and if initiated would require an extended period to litigate and significant additional financial resources.

[38] The Applicants submit that for the purposes of valuing an estate at a plan sanction hearing, the “value has to be determined on a current basis. [...] It is inappropriate to value the assets on a speculative or (remote) possibility basis.” A relevant consideration in this analysis is the scope and extent of previous sale or capital raising efforts undertaken by the company and any financial advisors. In support of this submission, the Applicants reference: *Anvil Range Mining Corp. (Re)*, 2002 CanLII 42003 (ONCA), para 36 ([CanLII](#)); *Philip Services Corp., Re*, 1999 CanLII 15012 (ONSC) at para 9 ([CanLII](#)) *1078385 Ontario Ltd., (Re)*, 2004 CanLII 55041 (ONCA) at paras 30-31 ([CanLII](#)), affirming *1078385 Ontario Ltd. (Re)*, 2004 CanLII 66329 (ONSC) ([CanLII](#)).

[39] The Applicants submit that the outcome of the Plan, that being the distribution of the Applicants' estates to the Senior Lenders, is essentially identical to what would be achieved with any other options available in the circumstances. Without the Plan, the Senior Lenders could (a) privatize the Applicants' assets through the enforcement of share pledges and other security, or (b) could credit bid their debt to acquire the shares or assets; or (c) enforce their secured positions following the Applicants filing for bankruptcy, administration, or liquidation proceedings across multiple jurisdictions. In each scenario (as with the Plan), the Applicants' assets are transitioned to the Senior Lenders.

[40] The foregoing submissions were not challenged.

[41] The Monitor supports the Plan. As noted in the Monitor's Seventh Report, "it is the Monitor's view that the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable."

[42] I am aware that concerns with respect to the fairness of the Plan have been raised by numerous shareholders of Lydian International and oral submissions were made by John LeRoux, Hasan Ciftchan, Mehmet Ali Ekingen and Atilla Bozkay.

[43] In addition, a number of emails were sent directly to the court, which were forwarded to counsel to the Monitor. In addition, certain emails were sent to the Monitor. None of the emails were in a proper evidentiary form.

[44] The concerns of the shareholders included criminal complaints of activities in Armenia, the content of certain press releases and the impact of the COVID-19 pandemic. Some shareholders requested a delay of three months in these proceedings.

[45] As previously noted, equity claims and unsecured claims against Lydian International will not be assumed by Restructured Lydian as part of the Plan. Simply put, the shareholders of Lydian International will not receive any compensation for their shareholdings. This is a reflection of the insolvency of the Applicants and the priority position afforded to shareholders by the CCAA.

[46] I recognize that the shareholders' monetary loss will be crystalized if the Plan is sanctioned. However, a monetary loss resulting from the ownership, purchase or sale of their equity interest is an "equity claim" as defined in s. 2(1) of the CCAA. This definition is significant as s. 6(8) of the CCAA provides:

6(8) Payment – equity claims – No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

[47] The Plan does not provide for payment in full of claims that are not equity claims. Consequently, equity claimants are not in the position to receive any compensation.

[48] The economic reality facing the shareholders existed prior to the COVID-19 pandemic. The Applicants were insolvent when they filed these proceedings on December 23, 2019. The financial situation facing the Applicants has not improved since the filing. In fact, it has declined. The mine is not operating with the obvious result that it is not generating revenues and interest continues to accrue on the secured debt. The fact that shareholders will receive no compensation is unfortunate but is a reflection of reality which does not preclude a finding that the Plan is fair and reasonable for the purposes of this motion.

[49] The Senior Lenders have voted in sufficient numbers in favour of the Plan. I am satisfied that there are no viable alternatives, and, in my view, it is not feasible to further delay these proceedings.

[50] Section 6.6 of the Plan provides for full and final releases in favour of the Released Parties, who consist of (a) the Applicants, their employees, agents and advisors (including counsel) and each of the members of the Existing Lydian Group's current and former directors and officers; (b) the Monitor and its counsel; and (c) the Senior Lenders and each of their respective affiliates, affiliated funds, their directors, officers, employees, agents and advisors (including counsel) (collectively, the "Ancillary Releases"). A chart setting out the impact of the releases is attached as Schedule "A" to these reasons.

[51] The Applicants submit that the releases apply to the extent permitted by law and expressly do not apply to, among other things:

- a) Lydian Canada's, Lydian UK's or the Senior Lenders' obligations under the Plan or incorporated into the Plan;
- b) obligations of any Existing Lydian Group member other than Lydian International under the Credit Agreement and Stream Agreement, and any agreements entered into relating to the foregoing, from and after the Plan Implementation Date;
- c) any claims arising from the willful misconduct or gross negligence of any applicable Released Party; and
- d) any Director from any Director Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA.

[52] Unsecured creditors' claims, other than the Ancillary Releases in favour of the Directors, are not compromised or released and remain in the Restructured Lydian Group.

[53] The Applicants submit that it is accepted that there is jurisdiction to sanction plans containing releases if the release was negotiated in favour of a third party as part of the "compromise" or "arrangement" where the release reasonably relates to the proposed restructuring and is not overly broad. There must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan (see: *Re Canadian Airlines Corp*, 2000 ABQB 442

at para 92 (CanLII) CCAA at s. 5(1); *Re Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at paras 61 and 70 (CanLII); *Re Canwest Global Communications Corp*, 2010 ONSC 4209 at para 28-30 (CanLII); and *Re Kitchener Frame Ltd*, 2012 ONSC 234 at paras 85-88 (CanLII).

[54] The Applicants submit that in considering whether to approve releases in favour of third parties, courts will consider the particular circumstances of the case and the objectives of the CCAA. While no single factor will be determinative, the courts have considered the following factors:

- a) Whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;
- b) Whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- c) Whether the plan could succeed without the releases;
- d) Whether the parties being released were contributing to the plan; and
- e) Whether the release benefitted the debtors as well as the creditors generally.

[55] The Applicants submit that the releases were critical components of the decision-making process for the Applicants' directors and officers and Senior Lenders' participation in these CCAA Proceedings in proposing the Plan and the Applicants submit that they would not have brought forward the Plan absent the inclusion of the releases.

[56] The Applicants also submit that the support of the Senior Lenders is essential to the Plan's viability. Without such support, which is conditional on the releases, the Plan would not succeed.

[57] The Applicants submit that the Released Parties made significant contributions to the Applicants' restructuring, both prior to and throughout these CCAA Proceedings. The extensive efforts of the Applicants' directors and officers and the Senior Lenders and Monitor resulted in the negotiation of the Plan, which forms the foundation for the completion of these CCAA Proceedings. The Senior Lenders financial contributions through forbearances, additional advances and DIP and Exit Financing were instrumental.

[58] The Applicants also submit that the releases are an integral part of the CCAA Plan which provides an orderly and effective alternative to uncoordinated and disruptive secured lender enforcement proceedings. The Plan permits unsecured creditors future potential recovery in the Restructured Lydian Group, which may not exist in bankruptcy (*Re Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at paras 71 (CanLII); and *Re Kitchener Frame Ltd*, 2012 ONSC 234 at paras 80-82 (CanLII).

[59] The Applicants submit that this Court has exercised its authority to grant similar releases, including in circumstances where the released claims included claims of parties who did not vote on the plan and were not eligible to receive distributions (*Target Canada Co. et al.* (2 June 2016), Toronto CV-15-10832-00CL (Ont. Sup. Ct. [Comm. List]) Sanction and Vesting Order at Schedule “B” art. 7 ([Monitor’s website](#)); *Rubicon Minerals Corporation et al.* (8 December 2016), Toronto CV-16-11566-00CL (Ont. Sup. Ct. [Comm. List]) Sanction Order at Schedule “A” art. 7 ([Monitor’s website](#)); and *Nortel Networks Corporation et al.* (30 November 2016), Toronto 09-CL-7950 (Ont. Sup. Ct. [Comm. List]) Plan of Compromise and Arrangement at art. 7 ([Monitor’s website](#))).

[60] Full disclosure of the releases was made in (a) the draft Plan that was circulated to the Service List and filed with this Court as part of the Applicants’ Motion Record (returnable June 18, 2020); and (b) the Plan attached to the Meeting Order. The Applicants also issued the Press Releases. This notification process ensured that the Applicants’ stakeholders had notice of the nature and effect of the Plan and releases.

[61] The foregoing submissions with respect to the releases were not challenged.

[62] In my view, each of the Released Parties has made a contribution to the development of the Plan. In arriving at this determination, I have taken into account the activities of the Released Parties as described in the Reports of the court-appointed Monitor. I am satisfied that it is appropriate for the Plan to include the releases in favour of the Released Parties.

[63] The development of this Plan has been challenging and as the Monitor has stated, “the Plan represents a better path forward than any other alternative that is available to the Applicants and is fair and reasonable”.

[64] I accept this assessment and find that the Plan is fair and reasonable in the circumstances.

DIP Charge

[65] The terms of the DIP Exit Facility Amendment are described in the Sellers Sanction Affidavit. The DIP Exit Facility Amendment provides for exit financing totalling \$1.866 million to assist in implementing the Plan and taking the necessary ancillary steps to terminate the CCAA Proceedings and support the J&E Process.

[66] This Court has the jurisdiction to authorize funding in the context of a CCAA restructuring pursuant to s. 11.2(1) and 11.2(2) of the CCAA. In considering whether to approve DIP financing, the Court is to consider the non-exhaustive list of factors set out in s. 11.2(4) of the CCAA. These same provisions of the CCAA provide this Court with the authority to approve amendments to a DIP agreement and secure all obligations arising from the amended DIP loans with an increased DIP charge.

[67] The Applicants submit that, based on the following, the DIP Amendment should be approved and the increase to the DIP Facility should be secured by the DIP Charge:

- a) the DIP Exit Credit Facility is necessary to enable the Applicants to implement the Plan;
- b) the Monitor is supportive of the DIP Exit Facility Amendment;
- c) the DIP Exit Facility Amendment is not anticipated to give rise to any material financial prejudice; and
- d) the DIP Lenders are the majority of Senior Lenders.

[68] I am satisfied that the requested relief in respect to the DIP Amendment is reasonably necessary and appropriate in the circumstances.

Sealing Request

[69] The Applicants seek to seal the unredacted Sellers Sanction Affidavit on the basis that the redacted portions of the Sellers Sanction Affidavit contain commercially sensitive information, the disclosure of which could be harmful to stakeholders.

[70] The redactions currently being sought are consistent with previous Orders in these CCAA Proceedings. In my view, the documents in question contain sensitive commercial information. Having considered the principles set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 Sec. 41 at para. 53 I am satisfied that the request for a sealing order is appropriate and is granted.

Stay Period

[71] On the Plan Implementation Date, the CCAA Proceedings with respect to Lydian UK and Lydian Canada will be terminated, such that Lydian International will be the only remaining Applicant in the CCAA Proceedings. The Applicants are requesting an extension of the Stay Period for Lydian International until and including the earlier of (i) the issuance of the Monitor's CCAA Termination Certificate and (ii) December 21, 2020 to enable the remaining Applicant and the Monitor to take the steps necessary to implement the Plan and terminate the CCAA Proceedings and initiate the J&E Process. The Applicants are also requesting an extension of the Stay Period for the Non-Applicant Stay Parties (other than Lydian US) until and including the earlier of the issuance of the Monitor's Plan Implementation Certificate.

[72] I am satisfied that the Applicants in requesting the extension of the Stay Period have demonstrated that circumstances exist that make the order appropriate; and that they have acted and are acting in good faith and with due diligence such that the request is appropriate.

Approval of Monitor's Activities

[73] The Applicants are seeking an order approving the Monitor's activities to date, as detailed in the Fifth Report, Sixth Report and the Seventh Report (collectively, the "Reports").

This Court has already approved the activities of the Monitor that were detailed in its previous reports. There was no opposition to the request.

[74] I am satisfied that the Reports and the activities described therein should be approved. The Reports were prepared in a manner consistent with the Monitor's duties and the provisions of the CCAA and in compliance with the Initial Order. The Reports are approved in accordance with the language provided in the draft order.

Approval of Monitor's Fees

[75] The Applicants further seek approval of the fees and disbursements of (i) the Monitor for the period April 14, 2020 to June 23, 2020, inclusive, and (ii) counsel to the Monitor for the period April 16, 2020 to June 23, 2020. The Applicants have reviewed the fees of the Monitor and its counsel and support the payment of the same.

[76] I am satisfied that the fee requests are appropriate in the circumstances and they are approved.

DISPOSITION

[77] The Applicants' motion is granted. The Plan is sanctioned and approved. The ancillary relief referenced in the motion is also granted and an Order reflecting the foregoing has been signed.



Chief Justice Geoffrey B. Morawetz

Date: July 10, 2020

SCHEDULE “A”

Lydian International Limited et al.

Impact of the Releases Described in s. 6.6 of the Plan

Lydian Jersey		
Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Released	Section 6.3(n)
Unsecured Guarantee of Equipment Lessors ING, CAT, Ameriabank	Not Released. Addressed in the J&E Process in Jersey	Section 6.6 (carve-out (E))
Other Unsecured Claims Includes Maverix Metals claim against Lydian Jersey	Not Released. Addressed in the J&E Process in Jersey.	Section 6.6 (carve-out (E))
Equity Claims Held by RCF, Orion, and public Shareholders	Not Released. Addressed in the J&E Process in Jersey.	Section 3.5
D&O Claims Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Monitor Claims against the Monitor, and Monitor’s legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Intercompany Claims Claims by Lydian Jersey against Lydian Canada and other subsidiaries	Assigned to Lydian Canada	Section 6.3(h)
Priority Claims Admin Charge, DIP Lender’s Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date Admin Charge and DIP Lender’s Charge to be terminated on CCAA Termination Date	Section 5.2(i)

Lydian Canada		
Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Unsecured Claims of Equipment Lessors¹ ING, CAT, Ameriabank	Not Released	Section 6.6 (carve-out (E))
Other Unsecured Claims	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings of Lydian Jersey in Lydian Canada	Not Released (but subject to amalgamation with SL Newco)	Section 3.5
D&O Claims Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

¹ This includes contractual rights as outlined in the Waiver and Consent Agreement between Lydian Jersey, Lydian Canada, Lydian UK and Lydian Armenia dated November 26, 2018 (the “**Waiver**”).

Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Priority Claims Admin Charge, DIP Lender's Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date Admin Charge and DIP Lender's Charge to be terminated on CCAA Termination Date	Section 5.2(i)

Lydian UK		
Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Unsecured Claims of Equipment Lessors ING, CAT, Ameriabank ²	Not Released	Section 6.6 (carve-out (E))
Other Unsecured Claims	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings of Lydian Canada in Lydian UK	Not Released	Section 3.5
D&O Claims Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Priority Claims Admin Charge, DIP Lender's Charge, Transaction Charge, D&O Charge	Transaction Charge and D&O Charge to be terminated on Plan Implementation Date Admin Charge and DIP Lender's Charge to be terminated on CCAA Termination Date	Section 5.2(i)

²This includes the contractual rights outlined in the Waiver.

11910728 Canada Inc. ("DirectorCo")		
Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Unsecured Claims	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings of Lydian Canada in DirectorCo	Not Released	Section 3.5
D&O Claims Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii) of the Plan
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Lydian International Holdings Limited, Lydian Resources Armenia Limited, and Lydian Resources Kosovo Limited		
Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Other Secured Claims Includes claim of Maverix Metals in shares of Lydian Resources Armenia Limited, which is subordinated to claims of Senior Lenders	Not Released	Section 6.6
Unsecured Claims Includes Maverix Metals claim against Lydian International Holdings Limited	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings of Lydian UK in Lydian International Holdings Limited, and shareholdings of Lydian International Holdings Limited in Lydian Resources Armenia ("BVI") and Lydian Resources Kosovo Limited Includes Maverix Metals' share pledge in BVI	Not Released	Section 6.6 (carve-out (E))
D&O Claims Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii) of the Plan
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Lydian Armenia		
Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Not Released	Section 6.6
Equipment Lessor Secured Claims ING, CAT and Ameriabank (to the extent secured by their collateral)	Not Released	Section 6.6 (carve-out (E))
Equipment Lessor Unsecured Claims ING, CAT and Ameriabank (unsecured deficiency claims)	Not Released	Section 6.6 (carve-out (E))
Other Unsecured Claims e.g. Trade creditors	Not Released	Section 6.6 (carve-out (E))
Equity Claims Shareholdings held by BVI / DirectorCo (as sole shareholder representative of BVI)	Not Released	Section 3.5
D&O Claims Claims against the Directors	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6 (i) and (ii)
Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
Claims against Senior Lenders Claims against the Senior Lenders and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Lydian US Lydian Zoloto, Lydian Resources Georgia Limited ("Lydian Georgia") and Georgian Resource Company LLC ("Lydian GRC", and collectively with Lydian US, Lydian Zoloto and Lydian Georgia, the "Released Guarantors" under the Plan)		
Type of Claim	Treatment	Plan Reference
Senior Lender Claims Held by RCF, Orion and Osisko	Released	Section 6.3(n)
Unsecured Claims	Not Released	Section 6.6
Equity Claims (a) Shareholdings of Lydian Jersey in Lydian US, Lydian Georgia and Lydian Zoloto; and (b) Shareholdings of Lydian Georgia in Lydian GRC	(a) Not Released. Per s. 6.4 of the Plan, Lydian US and Lydian Zoloto to be wound-up and dissolved pursuant to the laws of Colorado and Armenia, respectively. (b) Lydian Georgia shares held by Lydian Jersey to be transferred to Lydian Georgia Purchaser on Plan Implementation Date. (b) Shares of Lydian GRC held by Lydian Georgia not released. See note re: Lydian Georgia above.	Section 3.5 and section 6.4
D&O Claims, Claims against the Directors and their legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)

Claims against Monitor Claims against the Monitor, and Monitor's legal counsel	Released (subject to s. 5.1(2) of the CCAA)	Section 6.6(i) and (ii)
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Chazha Hick

From: Chazha Hick
Sent: 19 August 2020 15:24
To: 'robert.mason@nortonrosefulbright.com'; 'alan.merskey@nortonrosefulbright.com'; 'virginie.gauthier@nortonrosefulbright.com'; 'evan.cobb@nortonrosefulbright.com'
Cc: Stephen Alexander; Max Galt
Subject: Lydian International Limited - Notice of proceedings in Jersey [MO-LIVE.FID47974144]
Attachments: 19.08.2020 Letter from Mourant to Osisko Bermuda Limited (Toronto lawyers).PDF; 20-08-14 (issued 17-08-20) Rep. of Lydian International Ltd. (convening Act).pdf

Dear Sirs

**In the matter of the Representation of Lydian International Limited
And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

We attach a letter and its enclosure for your attention.

Kind regards

Chazha

Osisko Bermuda Limited
C/O Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Date | 19 August 2020

Our ref | 8044526/78719621/1

By email only

Dear Sirs

In the matter of the Representation of Lydian International Limited And in the matter of the Companies (Jersey) Law 1991 And in the matter of the Letter of Request from the Ontario Superior Court of Justice

1. We act as Jersey counsel for Lydian International Limited (**Lydian International**) and write to you in your capacity as a senior lender of Lydian International.
2. The purpose of this letter is to notify you of proceedings taking place in the Royal Court of Jersey (the **Jersey Court**), Channel Islands, which concern Lydian International (an entity incorporated and registered in Jersey, Channel Islands), and your right to participate in those proceedings.
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Yours faithfully



Stephen Alexander

Partner & Advocate

D. +44 (0)1534 676 172

E. stephen.alexander@mourant.com

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Attachments: 19.08.2020 Letter from Mourant to Osisko Bermuda Limited (Montreal lawyers).PDF; 20-08-14 (issued 17-08-20) Rep. of Lydian International Ltd. (convening Act).pdf

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Osisko Bermuda Limited
C/O Norton Rose Fulbright Canada LLP
1 Place Ville Marie, Suite 2500
Montreal Quebec H3B 1R1

Date | 19 August 2020

Our ref | 8044526/78719621/1

By email only

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Yours faithfully



Stephen Alexander

Partner & Advocate

D. +44 (0)1534 676 172

E. stephen.alexander@mourant.com

Chazha Hick

From: Chazha Hick
Sent: 19 August 2020 15:23
To: 'dbish@torys.com'; 'mpickersgill@torys.com'; 'yolusoga@torys.com'
Cc: Stephen Alexander; Max Galt
Subject: Lydian International Limited - Notice of proceedings in Jersey [MO-LIVE.FID47974144]
Attachments: 19.08.2020 Letter from Mourant to Orion Capital Management.PDF; 20-08-14 (issued 17-08-20) Rep. of Lydian International Ltd. (convening Act).pdf

Dear Sirs

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And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

We attach a letter and its enclosure for your attention.

Kind regards

Chazha

Orion Capital Management
C/O Torys LLP
79 Wellington Street West
30th Floor (Deliveries)
Box 270, TD South Tower
Toronto ON M5K 1N2

Date | 19 August 2020

Our ref | 8044526/78719621/1

By email only

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 Partner & Advocate
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 E. stephen.alexander@mourant.com

Chazha Hick

From: Chazha Hick
Sent: 19 August 2020 15:23
To: 'trisha.robertson@blakes.com'; 'samantha.rossman@blakes.com';
'bob.wooder@blakes.com'; 'peter.rubin@blakes.com'; 'jacob.switzer@blakes.com'
Cc: Stephen Alexander; Max Galt
Subject: Lydian International Limited - Notice of proceedings in Jersey [MO-LIVE.FID47974144]
Attachments: 19.08.2020 Letter from Mourant to Resource Capital Fund VI L.P (Vancouver lawyers).PDF; 20-08-14 (issued 17-08-20) Rep. of Lydian International Ltd. (convening Act).pdf

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Resource Capital Fund VI L.P
C/O Blakes, Cassels & Graydon LLP
595 Burrard Street
P. O. Box 49314
Suite 2600, Three Bentall Centre
Vancouver BC V7X 1L3

Date | 19 August 2020

Our ref | 8044526/78719621/1

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Sent: 19 August 2020 15:22
To: 'pamela.huff@blakes.com'; 'Chris.burr@blakes.com'
Cc: Stephen Alexander; Max Galt
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199 Bay Street, Suite 4000 Commerce
Court West Toronto ON M5L 1A9

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9. At a directions hearing at the Jersey Court on 14 August 2020, the Deputy Bailiff of Jersey made orders that counsel to Lydian International is to notify, amongst other groups, senior lenders of Lydian International of these proceedings and their entitlement to participate, and direct them to the Representation documentation and Affidavit evidence filed with the Jersey Court in support of the application. This letter constitutes that notification. A copy of the Act of Court dated 14 August 2020 by which these orders were made is enclosed herewith.
10. The Jersey Court will consider whether to grant the substantive relief sought (set out at paragraph 8 above) at a hearing listed before the Royal Court in Jersey on 11 September 2020 at 10.00 am.
11. Further information about the relief sought in the abovementioned proceedings is available in the Representation and accompanying Affidavit evidence which has been filed with the Jersey Court, and is published on the Monitor's website at www.alvarezandmarsal.com/content/lydian-jersery-motion-materials.
12. As a senior lender of Lydian International you are entitled, if you wish, to participate in the Jersey Court proceedings, including to make submissions and appear at the hearing either in person or by Jersey counsel. Or you may write to the Jersey Court via this firm, acting as Jersey counsel for Lydian International (email: stephen.alexander@mourant.com and max.galt@mourant.com) on or before 5pm UK time on 9 September 2020, and he will provide your correspondence to the Royal Court so that the Court may take it into account.
13. If you have any questions pertaining to the Jersey proceedings in respect of Lydian International please contact either myself or Max Galt (max.galt@mourant.com; +44 (0) 1534 676310).

Yours faithfully



Stephen Alexander
 Partner & Advocate
 D. +44 (0)1534 676 172
 E. stephen.alexander@mourant.com

Chazha Hick

From: Chazha Hick
Sent: 19 August 2020 15:22
To: 'a.papayan@ameriabank.am'; 'g.sahakyan@ameriabank.am'
Cc: Stephen Alexander; Max Galt
Subject: Lydian International Limited - Notice of proceedings in Jersey [MO-LIVE.FID47974144]
Attachments: 19.08.2020 Letter from Mourant to Ameriabank Closed Joint Stock Company.PDF; 20-08-14 (issued 17-08-20) Rep. of Lydian International Ltd. (convening Act).pdf

Dear Sirs

**In the matter of the Representation of Lydian International Limited
And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

We attach a letter and its enclosure for your attention.

Kind regards

Chazha

Ameriabank Closed Joint Stock Company
Vazgen Sargsyan Street, Yerevan 0010, RA

Date | 19 August 2020

Our ref | 8044526/78719621/1

By email only

Dear Sirs

**In the matter of the Representation of Lydian International Limited
And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

1. We act as Jersey counsel for Lydian International Limited (**Lydian International**) and write to you in your capacity as an equipment financier of Lydian International.
2. The purpose of this letter is to notify you of proceedings taking place in the Royal Court of Jersey (the **Jersey Court**), Channel Islands, which concern Lydian International (an entity incorporated and registered in Jersey, Channel Islands), and your right to participate in those proceedings.
3. By way of background, by a letter from Alvarez & Marsal Canada dated 27 December 2019, which was published on its website at <https://www.alvarezandmarsal.com/content/lydian-notice-creditors-and-list-creditors>, notice was given that Lydian International Limited, Lydian Canada Ventures Corporation and Lydian U.K Corporation Limited (the **Lydian Group**) were granted an order (the **Initial Order**) in Canada by the Ontario Superior Court of Justice (the **Ontario Court**) under the Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36, as amended (the **CCAA**) on 23 December 2019.
4. By the Initial Order, the Ontario Court ordered, amongst other things, a stay of proceedings against Lydian International in Canada until 2 January 2020 and the appointment of Alvarez & Marsal Canada Inc. as monitor (the **Monitor**), to monitor the business and financial affairs of Lydian International during this stay period.
5. Following issuance of a letter of request from the Ontario Court to the Jersey Court on 23 December 2019, we notified you by a letter dated 12 February 2020, of proceedings in Jersey and your entitlement to participate in the proceedings. On 25 February 2020 the Jersey Court made orders granting recognition of the CCAA proceedings, the appointment of the Monitor and the stay in proceedings against or in respect of Lydian International.
6. The stay period was extended at subsequent hearings by the Ontario Court, most recently on 29 June 2020, until the earlier of (a) issuance of the CCAA Termination Certificate (as defined in the Plan of Arrangement mentioned below), or (b) 21 December 2020.
7. By an order of the Ontario Court dated 29 June 2020 the Ontario Court approved and sanctioned a Plan of Arrangement (the **Plan**) filed by the Lydian Group, which will implement a corporate and financial restructuring of the Lydian Group and provides for the full and final release of all claims against Lydian International and its directors and officers. Information about the Plan and the related CCAA proceedings, including court orders and the Monitor's

reports, is available at <https://www.alvarezandmarsal.com/content/lydian-plan-arrangement>.

8. Lydian International has now brought proceedings before the Jersey Court seeking certain orders to facilitate implementation of the Plan as sanctioned by the Ontario Court, *inter alia*, that:-
 - (a) Lydian International shall be wound up pursuant to Article 155 of the Companies (Jersey) Law 1991;
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12. As an equipment financier of Lydian International you are entitled, if you wish, to participate in the Jersey Court proceedings, including to make submissions and appear at the hearing either in person or by Jersey counsel. Or you may write to the Jersey Court via this firm, acting as Jersey counsel for Lydian International (email: stephen.alexander@mourant.com and max.galt@mourant.com) on or before 5pm UK time on 9 September 2020, and he will provide your correspondence to the Royal Court so that the Court may take it into account.
13. If you have any questions pertaining to the Jersey proceedings in respect of Lydian International please contact either myself or Max Galt (max.galt@mourant.com; +44 (0) 1534 676310).

Yours faithfully



Stephen Alexander
Partner & Advocate
D. +44 (0)1534 676 172
E. stephen.alexander@mourant.com

Chazha Hick

From: Chazha Hick
Sent: 19 August 2020 15:21
To: 'bruce.darlington@dlapiper.com'; 'danny.numes@dlapiper.com'
Cc: Stephen Alexander; Max Galt
Subject: Lydian International Limited - Notice of proceedings in Jersey [MO-LIVE.FID47974144]
Attachments: 19.08.2020 Letter from Mourant to ING Bank N.V.PDF; 20-08-14 (issued 17-08-20) Rep. of Lydian International Ltd. (convening Act).pdf

Dear Sirs

**In the matter of the Representation of Lydian International Limited
And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

We attach a letter and its enclosure for your attention.

Kind regards

Chazha

ING Bank N.V
C/O DLA Piper
First Canadian Place
100 King Street West Suite 6000
Toronto ON M5X 1E2

Date | 19 August 2020

Our ref | 8044526/78719621/1

By email only

Dear Sirs

In the matter of the Representation of Lydian International Limited And in the matter of the Companies (Jersey) Law 1991 And in the matter of the Letter of Request from the Ontario Superior Court of Justice

1. We act as Jersey counsel for Lydian International Limited (**Lydian International**) and write to you in your capacity as an equipment financier of Lydian International.
2. The purpose of this letter is to notify you of proceedings taking place in the Royal Court of Jersey (the **Jersey Court**), Channel Islands, which concern Lydian International (an entity incorporated and registered in Jersey, Channel Islands), and your right to participate in those proceedings.
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7. By an order of the Ontario Order dated 29 June 2020 the Ontario Court approved and sanctioned a Plan of Arrangement (the **Plan**) filed by the Lydian Group, which will implement a corporate and financial restructuring of the Lydian Group and provides for the full and final

release of all claims against Lydian International and its directors and officers. Information about the Plan and the related CCAA proceedings, including court orders and the Monitor's reports, is available at <https://www.alvarezandmarsal.com/content/lydian-plan-arrangement>.

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Yours faithfully



Stephen Alexander
 Partner & Advocate
 D. +44 (0)1534 676 172
 E. stephen.alexander@mourant.com

Chazha Hick

From: Chazha Hick
Sent: 19 August 2020 15:21
To: 'clangdon@mccarthy.ca'; 'czawadzki@mccarthy.ca'; 'hmeredith@mccarthy.ca'; 'tcourtis@mccarthy.ca'; 'asteele@mccarthy.ca'
Cc: Stephen Alexander; Max Galt
Subject: Lydian International Limited - Notice of proceedings in Jersey [MO-LIVE.FID47974144]
Attachments: 19.08.2020 Letter from Mourant to Caterpillar Financial Services (UK) Limited.PDF; 20-08-14 (issued 17-08-20) Rep. of Lydian International Ltd. (convening Act).pdf

Dear Sirs

**In the matter of the Representation of Lydian International Limited
And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

We attach a letter and its enclosure for your attention.

Kind regards

Chazha

Caterpillar Financial Services (UK) Limited
C/O McCarthy Tetrault LLP
66 Wellington Street West
Suite 5300, TD Bank Tower, Box 48
Toronto ON M5K 1E6

Date | 19 August 2020

Our ref | 8044526/78719621/1

By email only

Dear Sirs

In the matter of the Representation of Lydian International Limited And in the matter of the Companies (Jersey) Law 1991 And in the matter of the Letter of Request from the Ontario Superior Court of Justice

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Yours faithfully



Stephen Alexander
 Partner & Advocate
 D. +44 (0)1534 676 172
 E. stephen.alexander@mourant.com

Chazha Hick

From: Chazha Hick
Sent: 19 August 2020 15:25
To: Chazha Hick
Cc: Stephen Alexander; Max Galt
Subject: Lydian International Limited - Notice of proceedings in Jersey [MO-LIVE.FID47974144]
Attachments: 19.08.2020 Letter to shareholders of Lydian International.PDF; 20-08-14 (issued 17-08-20) Rep. of Lydian International Ltd. (convening Act).pdf

Dear Sirs

**In the matter of the Representation of Lydian International Limited
And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

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Kind regards

Chazha

BY EMAIL

Date | 19 August 2020

Our ref | 8044526/78719621/1

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And in the matter of the Companies (Jersey) Law 1991
And in the matter of the Letter of Request from the Ontario Superior Court of Justice**

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Yours faithfully



Stephen Alexander

Partner & Advocate

D. +44 (0)1534 676 172

E. stephen.alexander@mourant.com



Lydian Announces Commencement of Just and Equitable Wind-Up Proceedings Under Jersey Law

[f](#) [t](#) [in](#) [G+](#) [p](#) | [@](#) Email | [Print Friendly](#) | [Share](#)

August 17, 2020 10:46 ET | Source: Lydian International Ltd.

TORONTO, Aug. 17, 2020 (GLOBE NEWSWIRE) – Lydian International Limited (“**Lydian**” or the “**Company**”) announced today that the Company has applied to the Royal Court of Jersey (the “**Royal Court**”) to be wound up pursuant to Article 155 of the *Companies (Jersey) Law 1991* on a just and equitable basis (the “**Just and Equitable Wind-Up**”). The Just and Equitable Wind-Up is one of the final steps of the Company’s plan of arrangement with its secured creditors under the *Companies’ Creditors Arrangement Act* that was approved by the Ontario Superior Court of Justice (Commercial List) and became effective as of July 6, 2020. In connection with the Just and Equitable Wind-Up, there is a hearing scheduled before the Royal Court on September 11,

Profile

Lydian International Ltd.

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creditors under the *Companies' Creditors Arrangement Act* that was approved by the Ontario Superior Court of Justice (Commercial List) and became effective as of July 6, 2020. In connection with the Just and Equitable Wind-Up, there is a hearing scheduled before the Royal Court on September 11, 2020.

All inquiries regarding the Just and Equitable Wind-Up proceedings before the Royal Court should be directed to the court-appointed Monitor, Alvarez & Marsal Canada Inc. (email: lydian@alvarezandmarsal.com or telephone: +1 416-847-5158). Information about the Company's Just and Equitable Wind-Up proceedings, including all court orders made, are available on the Monitor's website, at: <http://www.alvarezandmarsal.com/Lydian>.

Caution regarding forward-looking information

Certain information contained in this news release is "forward looking". All statements in this news release, other than statements of historical fact, that address events, results, outcomes or developments that the Company expects to occur are "forward-looking statements". Forward-looking statements are statements that are not historical facts and are generally, but not always, identified by the use of forward-looking terminology such as "plans", "expects", "is expected", "intends", "anticipates" or variations of such words and phrases or statements that certain actions, events or results "may", "could", "will", "would", "should", or "occur" or the negative or other variations of such terms. Forward-looking statements in this news release include, among others, statements with respect to: the Jersey court proceedings and the just and equitable winding-up process, including the proposed outcome of such process and its implementation and the effects of the implementation thereof.

Forward-looking statements are necessarily based on estimates and assumptions that are inherently subject to known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from those expressed or implied by such forward-looking statements. Such risks, uncertainties and factors include, without limitation: risks associated with in the Just and Equitable Wind-Up; risks associated with implementing the Just and Equitable Wind-Up; the effects that the implementation of the Just and Equitable Wind-Up, on the terms described herein or otherwise; as well as "Risk Factors" included in the disclosure documents filed on and available at www.sedar.com. Forward-looking statements are not guarantees of future performance, and actual results and future events could materially differ from those anticipated in such statements. Accordingly, readers should not place undue reliance on forward-looking statements. All of the forward-looking statements contained in this news release are qualified by these cautionary statements. The Company expressly disclaims any intention or obligation to update or revise any forward-looking statements whether as a result of new information, events or otherwise, except in accordance with applicable securities laws.

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76

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 <http://www.lydianresources.com/>

Media Files



 Lydian International - Logo.jpg

LOGO URL | Copy the link below

<http://www.globenew>

Chazha Hick

From: Max Galt
Sent: 25 August 2020 09:40
To: Atilla BOZKAYA
Cc: Stephen Alexander; Chazha Hick
Subject: RE: Lydian International Limited [MO-LIVE.FID47974144]
Attachments: Lydian International Limited - Mem and Arts (2).pdf

Dear Atilla

Thank you for your email.

I attach the articles of association of Lydian International Limited.

In the event that you do decide to attend the hearing on 11 September in person, please would you let us know exactly how many individuals will appear? We will need to let the Court know so that it can make the appropriate logistical arrangements. It would also be helpful to understand whether you intend to instruct Jersey advocates to advise you (which we would strongly recommend that you do).

Kind regards,
Max

Max Galt

Associate
Mourant Ozannes

D +44 1534 676 310 | M +44 7797 710 161
BVI | CAYMAN ISLANDS | GUERNSEY | HONG KONG | **JERSEY** | LONDON

mourant.com

From: Atilla BOZKAYA
Sent: 23 August 2020 22:58
To: Max Galt
Subject: Lydian International Limited

CAUTION: This email originated from outside of Mourant.

Dear Max

Myself and several other shareholders plan to attend the court hearing on 11th September, 2020, I will send a list of all the attendees soon.

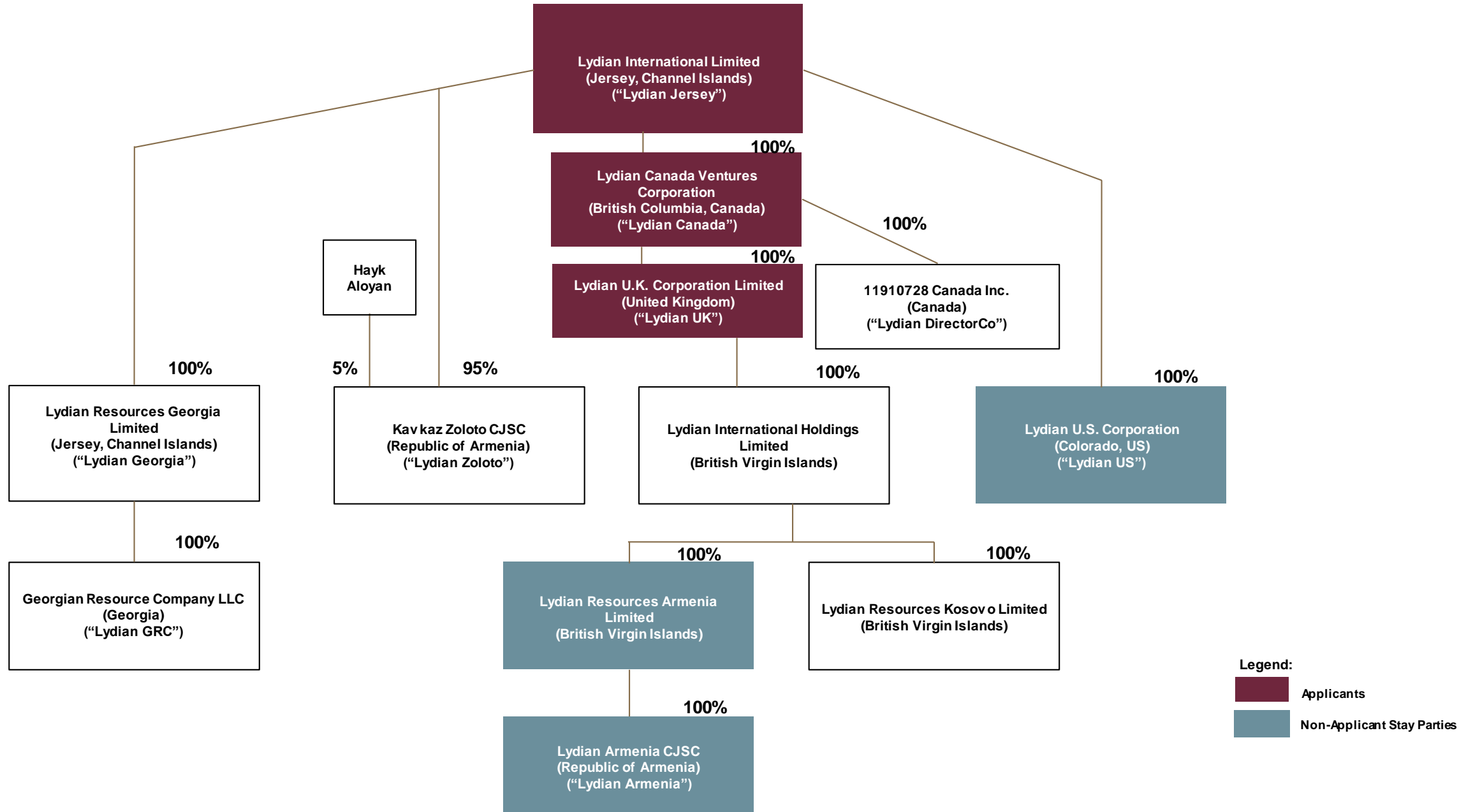
We are currently finalising our documents in order to oppose. but we are still awaiting a copy of the 'Articles of Association' for Lydian International Limited'. As you are representing Lydian International I thought that it might be quicker to ask yourselves for a copy of the AOA as it should be one of the documents required by the court as well or can you please direct me to the best person in order to obtain these or maybe I can directly ask the court. Additionally, we are awaiting some official statements from our colleagues in Armenia which also clarify our claims.

We have commenced a completely different legal case and claim in Canada which we will also share with you as the court will need to be aware of the underhanded procedures that have been carried out in order to rush through the transaction during Covid times.

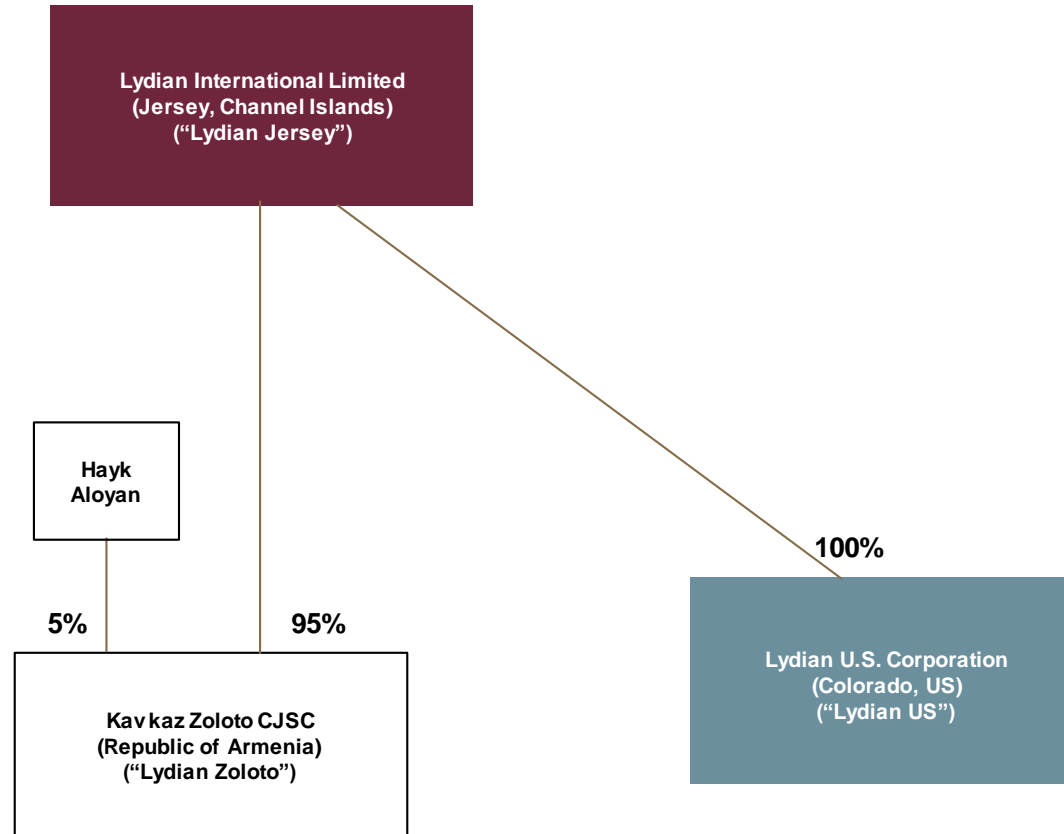
If you could please assist, I would be most grateful.

Yours sincerely

Pre-CCAA Organizational Chart

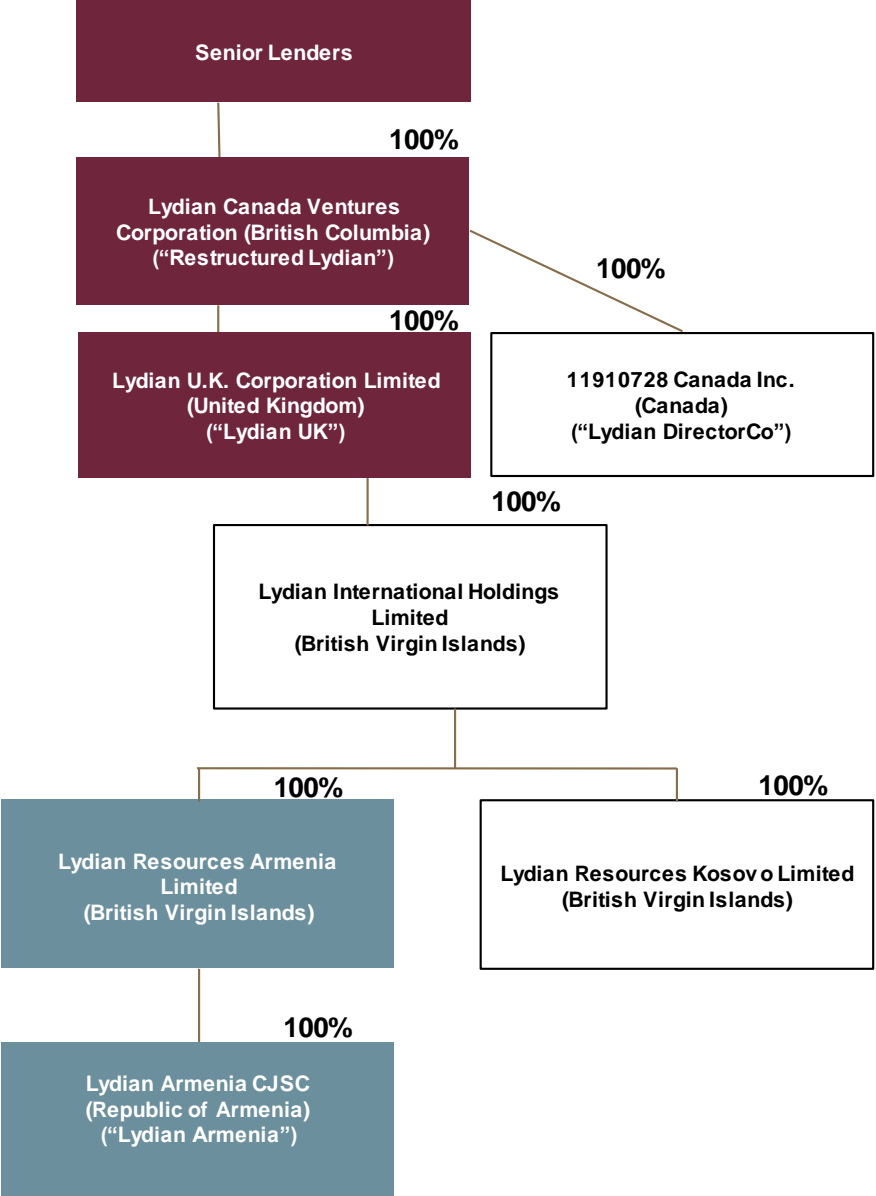


Post-CCAA Lydian Jersey Organizational Chart



Legend:
■ Applicants
■ Non-Applicant Stay Parties

Post-CCAA Restructured Lydian Organizational Chart



Legend:
 Applicant
 Non-Applicant



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August 19, 2020

DELIVERED BY FACSIMILE AND REGULAR MAIL

Lydian Armenia CJSC
7 Floor, 26/1 Vazgen Sargsyan Street
Yerevan, 0010 Armenia

Fax no: +3 741 054 6037

Lydian International Limited
Bourne House 1st Floor, Francis Street
St. Helier, Jersey JE2 4QE
Channel Islands

Fax no: +44 1534 758 708

Dear Sirs/Mesdames:

Re: Facility Agreement, dated February 8, 2017, between Lydian Armenia CJSC as borrower (the “Borrower”), Lydian International Limited as guarantor (the “Guarantor”), ING Bank N.V. as arranger, ING Bank N.V. as original lender (the “Original Lender”), ING Bank N.V. as agent (the “Agent”), ING Bank N.V. as security agent (the “Security Agent”) (as amended or amended and restated from time to time, the “Facility Agreement”)

The Original Lender assigned and transferred all of its rights and obligations as Original Lender under the Facility Agreement to AB Svensk Exportkredit (“**SEK**”). Pursuant, and subject, to the EKN Documents, Exportkreditnamnden (“**EKN**”) EKN has issued the EKN Guarantees in favour of the Lenders.

All capitalized terms used, but not defined herein, shall have the meanings given thereto in the Facility Agreement.

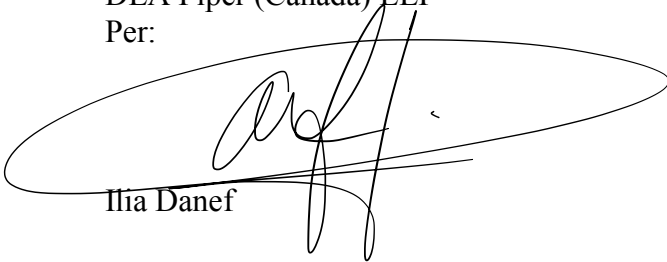
We are the solicitors for the Agent and, on behalf of the Agent, we hereby issue formal demand for immediate payment and repayment of the indebtedness of each of the Borrower and the Guarantor to the Finance Parties. As at August 17, 2020, such indebtedness is in a total amount of US\$55,036,381.31 consisting of the following:

1. as to US\$47,958,115.35, on account of the principal amount owing under the Facility Agreement;
2. as to US\$6,971,762.74, on account of interest owing under the Facility Agreement; and
3. as to US\$106,503.22, on account of costs and expenses owing to the Finance Parties.

Interest and costs will continue to accrue until all amounts demanded hereunder are repaid in full.

Please contact the undersigned at the above-noted number if you require any further information or have any questions with respect to the above. This demand is made with respect to the indebtedness described herein and does not prejudice the rights of any of the Finance Parties in respect of any other debts, liabilities or obligations you may have incurred to any of the Finance Parties, wheresoever or howsoever incurred.

Yours truly,
DLA Piper (Canada) LLP
Per:



Ilia Danef

Lydian International Limited (the "Company")**List of Creditors****As at July 6, 2020, just prior to Plan implementation****Please note the following:**

1. This list of creditors has been prepared from information contained in the books and records of the Company
2. The amounts included in this list of creditors do not take into consideration any un-invoiced amounts, nor have the amounts been adjusted for any amounts that may also be receivable from
3. This list of creditors has been prepared without admission as to the liability for, or quantum of, any of the amounts shown.
4. Amounts owing to various government agencies, if any, are unknown at this time.

CREDITOR NAME	ADDRESS	CITY	PROVINCE / STATE	POSTAL / ZIP	COUNTRY	CURRENCY	AMOUNT (\$)
Unsecured Creditors							
Stikeman Elliott LLP	5300 Commerce Court West 199 Bay Street	Toronto	Ontario	M5L 1B9	Canada	Canadian Dollar	218,706.59
Alvarez & Marsal Canada Inc.	200 Bay Street, Suite 2900	Toronto	Ontario	M5J 2J1	Canada	Canadian Dollar	68,897.50
Thornton Grout & Finnigan LLP	Toronto Dominion Centre, 100 Wellington St. W., Suite 3200	Toronto	Ontario	M5K 1K7	Canada	Canadian Dollar	50,081.60
Black Swan Advisors Inc.	155 Wellington St. W., Suite 4000	Toronto	Ontario	M5V 3J7	Canada	United States Dollar	400,000.00
BMO Nesbitt Burns Inc.	100 King St. W., 4th Floor	Toronto	Ontario	M5X 1H3	Canada	United States Dollar	500,000.00
Le Gallais Self Storage	37 Hilgrove St.,	St Helier		JE2 4SL	Jersey	British Pound	221.48
Dorsey and Whitney LLP	PO Box 1680	Minneapolis	Minnesota	55480-1680	United States	United States Dollar	4,871.50
Mourant Ozannes	22 Grenville Street	St Helier		JE4 8PX	Jersey	British Pound	32,151.76
Caterpillar Financial SARL	Muhlebachstrasse 43	Zurich		8008	Switzerland	Swiss Franc	*
ING Wholesale Banking	PO Box 1800	Amsterdam Zuid-Oost		1000 BV	Netherlands	EURO	*
Ameriabank CJSC	2, V. Sargsyan Street	Yerevan		0015	Armenia	DRAM	*
Maverix Metals Inc.	575 - 510 Burrard Street	Vancouver	British Columbia	V6C 3A8	Canada	United States Dollar	**
Intrado Digital Media UK Limited	Unit 1 Sawmills End	Barnwood	Gloucester	GL4 3DL	United Kingdom	British Pound	1,960.00
Freshfields Bruckhaus	2 rue Paul Cezanne	Paris		75008	France	Euro	5,467.00

company.

** This creditor has an unsecured claim in respect of a quarterly payment option that arose as a result of a default in a royalty agreement entered into by the Company with the prior counterparty to the agreement whose position this creditor now holds the rights to. The Company, as well as certain of its subsidiaries were "grantors" under the referenced royalty agreement and one of those subsidiaries granted a pledge of all of its shares in Lydian Armenia to secure the obligations under the royalty agreement. The counterparty to the royalty agreement also entered into a subordination agreement whereby its rights to the shares are postponed in favour of the Secured Lenders and also agreed to convert its royalty entitlement under the royalty agreement into a future payment obligation in the form of a quarterly payment option. The payment obligation of the Company in respect of this arrangement is joint and several with certain of its subsidiaries. Pursuant to the Plan of Arrangement approved by the Canadian Court and implemented in the CCAA proceedings (the "Plan"), any claim this creditor may be entitled to against the Company is not be extinguished by the Plan and remains in its subordinated priority. Any claim this creditor has against the referenced subsidiaries (which were amalgamated with and form "Restructured Lydian" pursuant to the Plan) remain structurally, and continue to rank behind the Secured Lenders following the implementation of the Plan.