



No. S245481  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*, S.B.C. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES  
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

**NOTICE OF APPLICATION**

**Name of applicant:** Alvarez & Marsal Canada Inc., in its capacity as court-appointed Monitor of the Petitioners (the "**Monitor**").

To: The Service List, a copy of which is attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the applicant before the Honourable Madam Justice Gropper in person at 800 Smithe Street, Vancouver BC on January 31, 2025 at 9:00 a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take 1 hour.

This matter is not within the jurisdiction of an associate judge. Madam Justice Gropper is seized of these proceedings. The date and time of this application has been set by Scheduling.

**Part 1 ORDERS SOUGHT**

1. An order substantially in the form attached hereto as **Schedule "B"**, which includes the following relief:

- (a) approving interim financing to be provided by Pillar Capital Corp. (“**Pillar**”) up to the principal amount of \$5,000,000 (the “**Pillar Facility**”), on the terms and conditions set out in the interim financing sheet dated January 21, 2025 (the “**Term Sheet**”) attached as Appendix “B” to the ninth report of the Monitor (the “**Ninth Report**”);
  - (b) approving a charge (the “**Interim Lender’s Charge**”) over the petitioners’ property in favour of Pillar securing the amounts outstanding and owing to Pillar under the Pillar Facility;
  - (c) extending the stay of proceedings (the “**Stay**”) granted in favour of the petitioners to August 29, 2025; and
  - (d) extending the time for BC Tree Fruits Cooperative (“**BCTFC**”) to call an annual general meeting (“**AGM**”) of its members until November 28, 2025, unless further extended by further order of this Court.
2. Such further and other relief as this Honourable Court may deem just.

## **Part 2 FACTUAL BASIS**

3. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Ninth Report.

### Background

4. On August 26, 2024, this court granted an amended and restated initial order, among other things (the “**ARIO**”):
- (a) appointing A&M as monitor of the petitioners with enhanced powers, including the power to manage, operate and carry on the business of the petitioners;
  - (b) authorizing and empowering the petitioners to obtain and borrow under a credit facility from Canadian Imperial Bank of Commerce (“**CIBC**”), up to \$4,050,000 (the “**CIBC Interim Financing**”), and approving a charge over the petitioners’ property in favor of CIBC to secure such facility; and

- (c) extending the Stay up to and including November 3, 2024.
5. This court has further extended the Stay, including by order made December 10, 2024, which granted an extension of the Stay through to February 14, 2025.

Interim Financing

6. The CIBC Interim Financing is repayable on February 16, 2025. CIBC has not granted an extension of the time for repayment of the CIBC Interim Financing and seeks to be paid out, in full, on or before the maturity date.
7. The petitioners require additional capital to continue to advance these CCAA proceedings. The fourth cash flow forecast attached as Appendix “A” to the Ninth Report (the “**Cash Flow Forecast**”), forecasts the petitioners incurring significant costs for the period January 20 to August 31, 2025. In particular:
- (a) total operating disbursements are forecast to be \$3.7 million, consisting of payroll for the reduced workforce, payments to the directors, utilities, rent for leased premises, costs associated with the liquidation of equipment, and government remittances;
- (b) insurance and property taxes are forecast to be \$980,000; and
- (c) professional fees are forecast to be approximately \$1.6 million and include currently outstanding and future professional fees for the petitioners’ counsel, the Monitor and its counsel, and CIBC’s counsel and financial advisor.
8. On January 24, 2025, the petitioners, the Monitor and Pillar executed the Term Sheet, which includes the following material terms:

Pillar Term Sheet - Summary of Key Terms	
Interim Lender	Pillar Capital Corp.
Borrowers	BC Tree Fruits Cooperative, BC Tree Fruits Industries Limited and Growers Supply Company Limited
Maximum Principal Amount	\$5 million

<b>Pillar Term Sheet - Summary of Key Terms</b>	
Interest Rate	14.25% per annum compounded monthly
Facility Fee	3% to be deducted from each advance and a monthly monitoring fee of \$500.00
Due Diligence Fee	\$5,000 – non-refundable and paid upon accepted of the Term Sheet
Term	12 months open facility
Interim Lender's Charge	The petitioners must seek and obtain a court order in form and content satisfactory to the Pillar and Pillar's Counsel, (i) authorizing the borrowing under the Pillar Term Sheet, and (ii) granting a first ranking charge in favour of Pillar, over all existing and after acquired property of the petitioners, as security for repayment of the Pillar Facility, and all interest, fees, expenses and other amounts payable by the petitioners, subject to the Administration Charge, satisfactory to Pillar.
Reporting requirements	<ul style="list-style-type: none"><li>- monthly cash flow statements from the Borrowers as reviewed by the Monitor; and</li><li>- evidence of payment of all government priority payables within 15 days of their respective due dates.</li></ul>

9. The Monitor is of the view that the Term Sheet reflects market terms and is necessary to provide the petitioners with the requisite financing to pay out all amounts remaining owing to CIBC, including under the CIBC Interim Financing, and ensure the petitioners have sufficient funds to continue to advance these CCAA proceedings.
10. The Monitor supports the order approving the Interim Lender's Charge to Pillar for the following reasons:
  - (a) the CIBC Interim Financing is expiring;
  - (b) based on the Cash Flow Forecast, the proposed Pillar Facility (supported by the proposed Interim Lenders' Charge) will provide the petitioners with the funds required to advance monetization strategies for the petitioners' remaining assets; and

- (c) the Term Sheet is an open facility with no penalties if the Pillar Facility is repaid prior to term maturity. The Monitor is of the view that an open facility is beneficial to the petitioners as it provides the petitioners with the flexibility and option to repay the Pillar Facility in full if circumstances allow.

#### Annual General Meeting

11. Prior to the commencement of the within proceedings, BCTFC had scheduled an AGM to be held on November 21, 2024.
12. In its second report to the court dated September 27, 2024, the Monitor reported that holding an AGM was “not necessary and should be postponed until a date no later than April 30, 2025, subject to further extension by the Court” as:
  - (a) holding the AGM would incur substantial costs, including over \$10,000 for voting equipment, refreshments, security and member notifications;
  - (b) the Monitor’s expanded powers granted under the ARIO allows it to manage and operate the petitioners’ business, so the board of directors are not involved in BCTFC’s decision-making process;
  - (c) information about the developments in these CCAA proceedings are regularly communicated to the board members and are otherwise available on the Monitor’s website; and
  - (d) dedicating time and resources to the AGM would be prejudicial and distract management and the monitor from advancing the ongoing sales processes at the time.
13. Accordingly, on October 4, 2024, this court granted an order, among other things, extending the time for BCTFC to call an annual general meeting of its members until a date not later than April 30, 2025, unless further extended by further order of this court.
14. The Monitor now seeks a further extension of the time for BCTFC to call an annual general meeting of its members for similar reasons. In particular, an AGM would provide little benefit as the board continues to have no involvement in the decision making of BCTFC

and the relevant parties are kept apprised of the developments in these CCAA proceedings through the Monitor's continuous reporting. The Monitor and the petitioners are working with the petitioners' external auditor to explore the possibility of completing the 2024 audited statements.

15. Based on the foregoing, the Monitor seeks to postpone the AGM to November 28, 2025, or by further order of this court.

#### Stay Extension

16. The Monitor seeks an extension of the Stay through to August 29, 2025.
17. As set out at section 10 of the Ninth Report, the Monitor supports the proposed extension for the following reasons:
  - (a) during the proposed extension of the Stay, the petitioners will have an opportunity to continue to advance the sale of the remaining BCTFC assets, the sale of the brokerage-listed property, and other assets with a view to maximizing value for stakeholders in the most expedient manner possible;
  - (b) the petitioners are forecast to have sufficient liquidity to continue operating during the extended Stay and operate within the limits of the Pillar Facility of \$5 million;
  - (c) no creditor of the petitioners would be materially prejudiced by the extension of the Stay; and
  - (d) the petitioners have acted in good faith and with due diligence in these CCAA proceedings since the date of the Initial Order.

#### **Part 3 LEGAL BASIS**

18. The Monitor relies on:
  - (a) the CCAA;
  - (b) Cooperative Association Act, SBC 1999, c 28 (the "*Co-op Act*");
  - (c) Supreme Court Civil Rules;
  - (d) the inherent and equitable jurisdiction of this Court; and



- (e) such further and other legal bases and authorities as counsel may advise and this Court may permit.

The Term Sheet and Interim Lender's Charge should be approved

- 19. Pillar has agreed to provide the petitioners with Pillar Facility to continue their operations during these CCAA proceedings and to finance the cost of the restructuring.
- 20. This Court has jurisdiction to approve interim financing and grant associated charges on notice to the affected secured creditors, pursuant to section 11.2 the CCAA.

CCAA, s. 11.2  
*U.S. Steel Canada Inc. (Re)*, 2014 ONSC 6145 at para. 11

- 21. The purpose of such financing, among other things, is to enhance the prospects of a viable compromise or arrangement and ensure the necessary stability during the CCAA process to the benefit of all stakeholders.

*Canwest Publishing Inc.*, 2010 ONSC 222, at paras. 43-44.

- 22. In deciding whether to make an order approving interim financing, the Court is to consider, among other things:
  - (a) the period during which the debtor company is expected to be subject to proceedings under the CCAA;
  - (b) how the debtor company's business and financial affairs are to be managed during the proceedings;
  - (c) whether the debtor company's management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the debtor company;
  - (e) the nature and value of the debtor company's property;
  - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and

- (g) the monitor's report, if any.

CCAA, s. 11.2(4)

- 23. No one factor is determinative. Rather, courts are to balance the interests of the debtor and its stakeholders with a view to ensuring that the financing "will assist the debtor company to obtain the 'breathing room' said to be needed to hopefully achieve a restructuring acceptable to the creditors and the court".

*1057863 B.C. Ltd (Re)*, 2020 BCSC 1359 at para 35.

- 24. In addition to the statutory factors set out above, the courts have determined that several additional factors are relevant to an application under section 11.2. These include whether:
  - (a) The petitioner would be forced to stop operating without interim financing and whether bankruptcy would be in the interest of the petitioners' stakeholders;
  - (b) the proposed interim financing will support the petitioner's restructuring plans, including implementation of a sales process; and
  - (c) the proposed facility has been approved by the petitioner's management.

*North American Tungsten Corp. (Re)*, 2015 BCSC 1376 at paras. 33-35 [*North American Tungsten*].

- 25. Having regard to the factors enumerated in subsection 11.2(4) of the CCAA and additional fact the Pillar Facility sought is necessary and appropriate since, among other things:
  - (a) CIBC Interim Financing is set to expire on February 16, 2025. CIBC has expressed its preference not to extend the current interim financing for the petitioners beyond February 16, 2025, and requested to be paid out in full on or before the maturity date;
  - (b) pursuant to the Term Sheet, the petitioners are permitted to borrow up to the maximum principal amount of \$5 million during these CCAA proceedings. Based on the Cash Flow Forecast, the proposed Pillar Financing (supported by the proposed Interim Lenders' Charge) will provide the petitioners with the funds



required to advance monetization strategies for the BCTFC Group's remaining assets; and

- (c) the Pillar Term Sheet is an open facility with no penalties if the Pillar Facility is repaid prior to term maturity. The Monitor is of the view that an open facility is beneficial to the BCTFC Group as it provides the petitioners with the flexibility and option to repay the Pillar Facility in full if circumstances allow.

The AGM should be deferred

- 26. The *Co-op Act* requires every association to hold a general meeting at least once in every calendar year. It does not provide express authority to extend the time for calling an annual meeting. In seeking to adjourn the AGM to a later date, BCTFC relies on the Court's statutory jurisdiction under section 11 of the CCAA.

*Co-op Act*, s. 143

- 27. The broad scope of powers provided under section 11 of the CCAA allow the Court to make "any order that it considers appropriate in the circumstances".

CCAA, s. 11

- 28. In *Ted Leroy Trucking Ltd., Re*, the Supreme Court addressed circumstances in which an order may be "appropriate" under section 11, and stated that the test is whether the order advances the policy objectives of the CCAA. Namely, whether the order will assist in avoiding the social and economic losses which typically result from the liquidation of an insolvent company.

*Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, at para. 70 [*Century Services*].

- 29. In reaching its conclusion, the Supreme Court further had regard to the role of the CCAA as, "creating conditions for preserving the status quo in restructuring proceedings".

*Century Services*, at para. 77.

30. An order extending the timeline for the calling of the AGM under the Co-op Act is justified, including because it preserves the status quo and protects BCTFC's restructuring efforts, in line with the remedial purposes of the CCAA.
31. Canadian courts have relied on their broad jurisdiction under section 11 of the CCAA to grant similar relief. See, for example, *Re CannTrust Holdings Inc.* (unreported), court file no. CV-00638930-00CL, order dated September 16, 2020, and *1077 Holdings Co-Operative (Re)*, 2021 BCSC 42, at paras. 93-95, 100-101.
32. In the case at hand, there is no prejudice in postponing the AGM, including because the Monitor appointed to monitor the business and affairs of BCTFC reports to the Court and stakeholders regularly on the business of BCTFC and the progress of these CCAA proceedings, including providing cashflow forecasts. There is no need for a vote on the board members; the Monitor is expressly empowered to make all necessary decisions for the petitioners to the exclusion of, among others, the directors (see para. 29 of the ARIO).
33. Conversely, requiring BCTFC to hold an AGM at this time would cause BCTFC to incur significant expense and distract the Monitor and management from the ongoing restructuring efforts, including the sales processes, to the detriment of BCTFC and its stakeholders.
34. The Monitor submits that extending the time for BCTFC to call its AGM is appropriate in the circumstances.

The Stay should be extended to August 29, 2025

35. The current Stay expires on February 14, 2025.
36. Pursuant to section 11.02(2) of the CCAA, the Court may extend this period for any period that the Court considers necessary provided that (a) the extension sought is appropriate in the circumstances; and (b) the applicant has acted and are acting in good faith and with due

diligence. In determining whether it is appropriate to extend a stay of proceedings, courts consider whether doing so will advance the remedial purpose of the CCAA.

*North American Tungsten, at paras. 25 to 29.*

37. Since the commencement of these CCAA proceedings, the petitioners and the Monitor have acted and continue to act and operate in good faith and with due diligence.
38. The Monitor seeks an extension of the Stay to August 29, 2025 to continue to advance these CCAA proceedings, including to seek approval of and advance a claims process.
39. The proposed extension corresponds to the Cash Flow and, accordingly, the Monitor submits that the proposed extension is reasonable and appropriate in the circumstances.

#### **Part 4 MATERIAL TO BE RELIED ON**

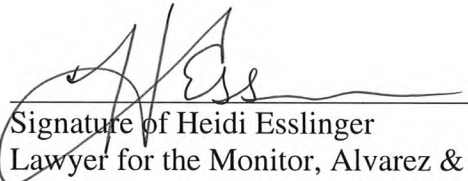
40. Ninth Report of the Monitor, dated January 29, 2025.
41. Such further and other materials as counsel may advise and this Court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed Application Response;

- (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 29-Jan-2025

  
Signature of Heidi Esslinger  
Lawyer for the Monitor, Alvarez & Marsal  
Canada Inc.

***To be completed by the court only:***

Order made

☐ in the terms requested in paragraphs ..... of Part 1 of  
this Notice of Application

☐ with the following variations and additional terms:  
.....  
.....  
.....

Date:

.....  
Signature of ☐ Judge ☐ Associate  
Judge

The Solicitors for the Monitor are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232 E-mail: kjackson@fasken.com (Reference: Kibben Jackson/285937.00020)

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

**SCHEDULE "A"**

**SERVICE LIST**

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AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES  
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

**CCAA SERVICE LIST**

As at December 16, 2024

<p>Fasken Martineau DuMoulin LLP</p> <p>Attention: <b>Kibben Jackson</b></p> <p><b>Mishaal Gill</b></p> <p><b>Heidi Esslinger</b></p> <p><b>Suzanne Volkow</b></p> <p>Email: <a href="mailto:kjackson@fasken.com">kjackson@fasken.com</a></p> <p><a href="mailto:mgill@fasken.com">mgill@fasken.com</a></p> <p><a href="mailto:hesslinger@fasken.com">hesslinger@fasken.com</a></p> <p><a href="mailto:svolkow@fasken.com">svolkow@fasken.com</a></p> <p><a href="mailto:jbeaulieu@fasken.com">jbeaulieu@fasken.com</a></p> <p><a href="mailto:richeung@fasken.com">richeung@fasken.com</a></p> <p><i>Counsel for the Monitor, Alvarez &amp; Marsal Canada Inc.</i></p>	<p>Norton Rose Fulbright Canada LLP</p> <p>Attention: <b>Howard Gorman, K.C.</b> <b>Nathan Jones</b></p> <p>Email: <a href="mailto:howard.gorman@nortonrosefulbright.com">howard.gorman@nortonrosefulbright.com</a> <a href="mailto:Nathan.Jones@nortonrosefulbright.com">Nathan.Jones@nortonrosefulbright.com</a></p> <p><i>Counsel for the Petitioners</i></p>
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<p>Alvarez &amp; Marsal Canada Inc.</p> <p>Attention: <b>Todd Martin</b> <b>Anthony Tillman</b> <b>Pinky Law</b> <b>Monica Cheung</b></p> <p>Email: <a href="mailto:tmartin@alvarezandmarsal.com">tmartin@alvarezandmarsal.com</a> <a href="mailto:atillman@alvarezandmarsal.com">atillman@alvarezandmarsal.com</a> <a href="mailto:pinky.law@alvarezandmarsal.com">pinky.law@alvarezandmarsal.com</a> <a href="mailto:monicacheung@alvarezandmarsal.com">monicacheung@alvarezandmarsal.com</a></p> <p><i>Court Appointed Monitor</i></p>	<p>Blake Cassels &amp; Graydon LLP</p> <p>Attention: <b>Peter Rubin</b> <b>Peter Bychawski</b></p> <p>Email: <a href="mailto:peter.rubin@blakes.com">peter.rubin@blakes.com</a> <a href="mailto:peter.bychawski@blakes.com">peter.bychawski@blakes.com</a> <a href="mailto:jennifer.alambre@blakes.com">jennifer.alambre@blakes.com</a></p> <p><i>Counsel for Canadian Imperial Bank of Commerce</i></p>
<p>PricewaterhouseCoopers Inc.</p> <p>Attention: <b>Michelle Grant</b> <b>Michelle Pickett</b></p> <p>Email: <a href="mailto:michelle.grant@pwc.com">michelle.grant@pwc.com</a> <a href="mailto:michelle.pickett@pwc.com">michelle.pickett@pwc.com</a></p>	<p>Koskie Glavin Gordon</p> <p>Attention: <b>Anthony Glavin</b> <b>Dawid Cieloszczyk</b></p> <p>Email: <a href="mailto:glavin@koskieglavin.com">glavin@koskieglavin.com</a> <a href="mailto:dcieloszczyk@koskieglavin.com">dcieloszczyk@koskieglavin.com</a></p> <p><i>Counsel for UFCW Local 247</i></p>
<p>Osler LLP</p> <p>Attention: <b>Mary Buttery, K.C.</b> <b>Emma Newbery</b> <b>Christian Garton</b></p> <p>Email: <a href="mailto:mattery@osler.com">mattery@osler.com</a> <a href="mailto:enewbery@osler.com">enewbery@osler.com</a> <a href="mailto:cgarton@osler.com">cgarton@osler.com</a></p> <p><i>Counsel for BC Tree Fruits members</i></p>	<p>Province of British Columbia</p> <p>Attention: <b>Aaron Welch</b></p> <p>Email: <a href="mailto:aaron.welch@gov.bc.ca">aaron.welch@gov.bc.ca</a> <a href="mailto:AGLSBRevTaxInsolvency@gov.bc.ca">AGLSBRevTaxInsolvency@gov.bc.ca</a></p>

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<p>Lax O'Sullivan Lisus Gottlieb LLP</p> <p>Attention: <b>Rahool Agarwal</b> <b>Annecy Pang</b></p> <p>Email: <a href="mailto:ragarwal@lolg.ca">ragarwal@lolg.ca</a> <a href="mailto:apang@lolg.ca">apang@lolg.ca</a></p> <p><i>Counsel for Mangal Capital Inc.</i></p>	<p>Dentons Canada LLP</p> <p>Attention: <b>Eamonn Watson</b> <b>Afshan Naveed</b></p> <p>Email: <a href="mailto:Eamonn.watson@dentons.com">Eamonn.watson@dentons.com</a> <a href="mailto:Afshan.naveed@dentons.com">Afshan.naveed@dentons.com</a></p> <p><i>Counsel for BC Investment Agriculture Foundation</i></p>
<p>Mission Bottle Washing Co. Ltd.</p> <p>Attention: <b>Maged Said</b></p> <p>Email: <a href="mailto:msaid@mbwco.ca">msaid@mbwco.ca</a></p>	<p>Vernon Law</p> <p>Attention: <b>Steven Dvorak</b></p> <p>Email: <a href="mailto:sdd@vernonlaw.ca">sdd@vernonlaw.ca</a></p> <p>Counsel for N.M. Bartlett Inc.</p>

**E-Service List**

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[michelle.pickett@pwc.com](mailto:michelle.pickett@pwc.com); [glavin@koskieglavin.com](mailto:glavin@koskieglavin.com); [dcieloszczyk@koskieglavin.com](mailto:dcieloszczyk@koskieglavin.com);  
[muttery@osler.com](mailto:muttery@osler.com); [enewbery@osler.com](mailto:enewbery@osler.com); [cgarton@osler.com](mailto:cgarton@osler.com); [aaron.welch@gov.bc.ca](mailto:aaron.welch@gov.bc.ca);  
[AGLSBRevTaxInsolvency@gov.bc.ca](mailto:AGLSBRevTaxInsolvency@gov.bc.ca); [Jordan.schultz@dentons.com](mailto:Jordan.schultz@dentons.com);  
[cassandra.federico@dentons.com](mailto:cassandra.federico@dentons.com); [chelsea.denton@dentons.com](mailto:chelsea.denton@dentons.com); [cwilliams@fhplawyers.com](mailto:cwilliams@fhplawyers.com);  
[wadvocaat@fhplawyers.com](mailto:wadvocaat@fhplawyers.com); [wcheung@fhplawyers.com](mailto:wcheung@fhplawyers.com); [lridgedale@mltaikins.com](mailto:lridgedale@mltaikins.com);  
[mwarnick@mltaikins.com](mailto:mwarnick@mltaikins.com); [mmcgarry@mltaikins.com](mailto:mmcgarry@mltaikins.com); [Aminollah.Sabzevari@justice.gc.ca](mailto:Aminollah.Sabzevari@justice.gc.ca);  
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**SCHEDULE "B"**

**DRAFT ORDER**



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *COOPERATIVE ASSOCIATION ACT*, S.B.C. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS COOPERATIVE, BC TREE FRUITS INDUSTRIES  
LIMITED and GROWERS SUPPLY COMPANY LIMITED

PETITIONERS

**ORDER MADE AFTER APPLICATION**

**(Approval of Interim Financing and Charge, AGM Extension, and Stay Extension)**

BEFORE THE HONOURABLE )  
JUSTICE GROPPER ) January 31, 2025

ON THE APPLICATION OF Alvarez & Marsal Canada Inc. in its capacity as monitor of the Petitioners (in such capacity, the “**Monitor**”) coming on for hearing at Vancouver, British Columbia on this date; AND ON HEARING those counsel listed in Schedule “A” attached hereto; AND UPON READING the material filed, including the Ninth Report of the Monitor dated January 29, 2025; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), the British Columbia Supreme Court Civil Rules, and the inherent jurisdiction of this Court;

**THIS COURT ORDERS AND DECLARES THAT:**

1. The time for service of this notice of application and supporting materials is hereby abridged such that the notice of application is properly returnable today.
2. Capitalized terms used but not otherwise defined in this Order shall have the meanings given to them in the Amended and Restated Initial Order granted herein on August 26, 2024 (the “**ARIO**”).

## INTERIM FINANCING

3. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility from Pillar Capital Corp (the “**New Interim Lender**”) provided that borrowings under such credit facility (the “**Interim Lending Facility**”) shall not exceed \$5,000,000 unless permitted by further Order of this Court.
4. The Interim Lending Facility shall be on the terms and subject to the conditions set forth in the term sheet made as between the Petitioners and the New Interim Lender dated as of January 21, 2024, a copy of which attached as Appendix “B” to the Ninth Report of the Monitor dated January 29, 2025 (the “**Interim Financing Term Sheet**”).
5. The Petitioners are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by the New Interim Lender pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the New Interim Lender under and pursuant to the Interim Financing Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
6. The New Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the “**New Interim Lender’s Charge**”) on the Property. The New Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The New Interim Lender’s Charge shall have the priority set out in paragraphs 9 and 10 hereof.
7. Notwithstanding any other provision of this Order:
  - (a) the New Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the New Interim Lender’s Charge or any of the Definitive Documents;
  - (b) upon the occurrence of an event of default under any of the Definitive Documents or the New Interim Lender’s Charge, the New Interim Lender, upon five days’



notice to the Petitioners and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents and the New Interim Lender's Charge, including without limitation, to cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the New Interim Lender to the Petitioners against the obligations of the Petitioners to the New Interim Lender under the Commitment Letter, the Definitive Documents or the New Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

- (c) the foregoing rights and remedies of the New Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

- 8. The New Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

- 9. The priorities of the Charges, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – ranking *pari passu*, the Interim Lender's Charge and the New Interim Lender's Charge;

Third – the CIBC Indebtedness;

Fourth – Director's Charge (to the maximum amount of \$350,000); and

Fifth – Representative Counsel Charge (as defined in the Order Made After Application (Representative Order), granted August 26, 2024, as amended, restated, or supplemented from time to time).

10. The New Interim Lender's Charge shall have, *mutatis mutandis*, the same protections and restrictions under the ARIO as the other Charges, including those set out in paragraphs 53 – 57 of the ARIO.

#### **AGM EXTENSION**

11. The time for BC Tree Fruits Cooperative to call an annual general meeting of its members as prescribed by the *Cooperative Association Act*, SBC 1999, c 28, is hereby extended until a date no later than November 28, 2025, unless further extend by further Order of this Court.

#### **STAY EXTENSION**

12. The Stay Period provided for in the ARIO is hereby extended to and including August 29, 2025.
13. Endorsement of this order by counsel appearing on this application, other than counsel for the Monitor, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Kibben Jackson  
Lawyer for the Monitor, Alvarez & Marsal  
Canada Inc.

BY THE COURT

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REGISTRAR

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**SCHEDULE “A”**

**COUNSEL APPEARING**

<b>Name of Party</b>	<b>Counsel Name</b>
Alvarez & Marsal Canada Inc. in its capacity as monitor of the Petitioners	Kibben Jackson/Heidi Esslinger

No. S245481  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE *COOPERATIVE*  
*ASSOCIATION ACT*, S.B.C. 1999, c. 28

AND

IN THE MATTER OF BC TREE FRUITS  
COOPERATIVE, BC TREE FRUITS INDUSTRIES  
LIMITED and GROWERS SUPPLY COMPANY  
LIMITED

PETITIONERS

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**ORDER MADE AFTER APPLICATION**

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