

IN THE ROYAL COURT OF JERSEY
(SAMEDI DIVISION)

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED

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

AFFIDAVIT OF MAX GALT

I, **MAX GALT**, of Mourant Ozannes, 22 Grenville Street, St, Helier, Jersey, JE4 8PX, hereby make oath and say as follows:-

Introduction

1. I am a solicitor of the Senior Courts of England and Wales. I work at Mourant Ozannes as an Associate in the litigation team and assist Advocate Stephen Alexander in this matter. Mourant Ozannes are advocates for the representor, Lydian International Limited (**Lydian International**), and I make this affidavit in support of its Representation.
2. The purpose of this affidavit is to:-
 - (a) explain the steps taken to comply with the convening orders made by the Act of Court dated 5 February 2020 (the **Act of Court**) (**File 1, Tab 3**); and
 - (b) apprise the Court of correspondence and interactions from and between Mourant Ozannes and the Viscount in relation to the Representation.
3. The contents of this Affidavit are true to the best of my knowledge, information and belief, and are within my own knowledge except where I state otherwise. Where they are not within my own knowledge, I indicate their source.
4. There is now produced and shown to me a bundle of true copy documents marked **MG1** to which I shall refer.

Service on the Monitor and Creditors

5. By the Act of Court, the Royal Court ordered, *inter alia*, that:

- (a) The Representation and affidavit evidence in support be served by email to the following email address: rbengino@tgf.ca, of Alvarez & Marsal Canada Inc., in its capacity as the Monitor of Lydian International, Lydian Canada Ventures Corporation, and Lydian U.K Corporation Limited, such service to be effected by ordinary service; and
- (b) Notice of the proceedings be provided to the creditors by way of ordinary post or email to their respective addresses as last shown on the records of the Monitor within seven days of the date of the Act of Court (that is, by 12 February 2020).

Service on the Monitor

6. On 12 February 2020 Mourant Ozannes duly served the Monitor by email with a copy of the Representation, the affidavit of Alan Hutchens dated 30 January 2020, and the affidavit of Edward A. Sellers dated 30 January 2020. A copy of the email appears at **page 1**. The exhibits to the aforementioned affidavits were made available to the Monitor via email link granting access to a data room on 18 February 2020. A copy the email appears at **page 2**.
7. On 20 February 2020 Mourant Ozannes further served the Monitor by email with a copy of the Affidavit of Elizabeth Pillon dated 18 February 2020. A copy the email appears at **page 3**.

Notification of creditors

8. The secured and unsecured creditors of Lydian International were identified from a list prepared by Alvarez and Marsal Canada Inc., in its capacity as the Monitor for Lydian International, which was published on its website on 23 December 2019. A copy of that list appears at **page 4**.
9. Lydian has, in total, sixteen creditors that are listed by the Monitor in the above list. Six are secured creditors (two of which have had both secured and unsecured contracts with Lydian International) and ten are unsecured creditors. Mourant Ozannes and Stikeman Elliott LPP, both acting for Lydian International, are included in the list of unsecured creditors.
10. On 12 February 2020, Mourant Ozannes received the contact email addresses for all six of the secured creditors of Lydian International, and one of the unsecured creditors, from Stikeman Elliott, who had obtained the email addresses directly from the Monitor. Copies of the emails sent to creditors, along with the letters sent as attachments, appear at **pages 5 to 25**.
11. Email addresses for the remaining creditors were received from Stikeman Elliot on 13 February 2020. Those creditors were notified by both by post and by email on 13 February 2020 (with the exception of Mourant Ozannes, who it was plainly not necessary to serve).

Copies of the emails sent to creditors, along with the letters sent as attachments, appear at **pages 26 to 49**.

12. On 17 February 2020 Mourant Ozannes contacted all of the creditors to request that they acknowledge receipt of the aforementioned notice. As at the date of this affidavit being sworn all apart from 3 of the creditors have acknowledged receipt. A table is exhibited at **page 50** showing those creditors who have acknowledged receipt and copies of their emails appear at **pages 51 to 64**.
13. Caterpillar Financial Services (UK) Ltd (**Caterpillar**), a secured lender of Lydian Armenia CJSC in the sum of Swiss Franc 25,954,390, has written to Mourant Ozannes in response to its notification letter at **pages 65 to 66** and has confirmed, inter alia, that:
 - (a) Caterpillar has objected to the Ontario Court attempting to apply the Canadian stay of proceedings to collateral secured by its lending in Armenia;
 - (b) Caterpillar consider that any order by a Jersey court would not be effective against Lydian Armenia CJSC or the collateral; and
 - (c) Caterpillar would take appropriate steps to formalize its claim against Lydian International if recognition is granted.
14. Caterpillar's objections to the CCAA orders have been addressed by the Ontario Court in the context of the CCAA proceedings (**pages 67 to 68**) and the current position is as follows:
 - (a) Caterpillar agreed to stand down its objections at the previous hearing in Canada on 23 January 2020 until the next hearing before the Ontario Court on 2 March 2020;
 - (b) The Lydian Group would not be entitled to rely on the adjournment/standing down to make any allegations in response to Caterpillar's objection; and
 - (c) Caterpillar is entitled to challenge the Lydian Group's evidence, and to sever supplemental material for the 2 March 2020 hearing, if so required.

Engagement with the Viscount

15. We have liaised with the Viscount's department from outset on the form and content of the Representation and supporting evidence. Further to reviewing the evidence that was filed for the convening hearing, and following amendments being made in line with the Viscount's views, the Viscount relayed that she had no additional observations in relation to the application (**pages 69 to 71**).

