

Court File No. CV-19-00633392-00CL

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

**LETTER OF REQUEST
(COMITY APPLICATION)**

To: The Bailiff of the Royal Court of Jersey
Royal Court Building, Royal Square
St Helier, Jersey
JE1 1JG

The Superior Court of Justice (Province of Ontario, Canada) ("**Ontario Court**"), respectfully requests the assistance of the Royal Court of Jersey to provide assistance to the Ontario Court as set out below and assures the Royal Court of Jersey reciprocal assistance in appropriate circumstances.

WHEREAS:

1. By an order dated the 23 December 2019 of the Canadian Court, as amended and restated on 23 January 2020 (collectively, the "**CCAA Orders**"), Lydian International Limited, Lydian Canada Ventures Corporation And Lydian U.K. Corporation Limited (the "**Original Applicants**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (Canada) ("**CCAA**") on the grounds that they were unable to pay their debts. Certain other non-applicant entities were also granted a stay of proceedings¹ (together with the Applicants (as defined below), the Non-Applicant Stay Parties are the "**Lydian Group**"). Copies of the CCAA Orders are attached hereto as Schedule "A".

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

2. The Lydian Group is connected to Jersey by means of Lydian International Limited ("**Lydian International**"), a corporation continued under the laws of Jersey from the Province of Alberta pursuant to the *Companies (Jersey) Law 1991* (Lydian International was originally incorporated under the *Business Corporations Act* (Alberta)). Lydian International's registered office is located at Bourne House 1st Floor, Francis Street, St Helier, Jersey.

3. By a previous letter of request to the Bailiff of Jersey dated 23 December 2019, issued under an Order of the Ontario Court dated 23 December 2019, the assistance of the Royal Court of Jersey was requested to, *inter alia*, recognise (i) the appointment of Alvarez & Marsal Canada Inc. ("the **Monitor**") in Jersey, and (ii) the stay of proceedings imposed by the CCAA proceedings in Jersey. A copy of the 23 December 2019 letter of request is attached hereto as Schedule "B".

4. By an Act of Court dated 25 February 2020, Robert James Macrae, the Deputy Bailiff of Jersey, made orders in Jersey, recognising the CCAA Orders that:-

- (a) The Monitor was appointed as the monitor of Lydian International with such appointment registered in the rolls of the Royal Court and the appointment of the Monitor notified to the Jersey Financial Services Commission;
- (b) Lydian International remained in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever in Jersey and, subject to further order of the Ontario Court, Lydian International would continue to carry on business in a manner consistent with the preservation of its business and property;
- (c) No proceeding or enforcement process in or out of any court or tribunal was to be commenced or continued against or in respect of Lydian International, or affecting its business or its property, except with the written consent of Lydian International, or with leave of the Ontario Court; and
- (d) Lydian International and any party affected by the Representation issued by the Royal Court, including the creditors of Lydian International, had liberty to apply.

A copy of the 25 February 2020 Act of Court is attached hereto at schedule "C".

5. A plan of arrangement of the Applicants has been filed under the CCAA and *Business Corporations Act* (British Columbia) (the “**BCBCA**”) dated June 30, 2020 (the “**Plan**”) with the Ontario Court. 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 implementation of the Plan 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 (“**SL Newco**”) owned and controlled by the Applicants’ secured lenders (the “**Senior Lenders**”) through an amalgamation of Lydian Canada Ventures Corporation with SL Newco resulting in a new entity (“**Restructured Lydian**”);
- (d) Wind-up Lydian International in Jersey on just and equitable grounds pursuant to the laws of Jersey, and effect an orderly disposition and winding up of certain other subsidiaries of the Lydian Group;
- (e) Provide a release of all of the existing indebtedness and obligations owing by Lydian International to the Senior Lenders; and
- (f) Permit the Applicants to exit the CCAA Proceedings.

The Plan will result in the privatization of the Lydian Group, to continue as Restructured Lydian.

6. The Plan has been approved by the Ontario Court, the Ontario Court finding that the relevant statutory requirements set out in the CCAA have been met and that it is an appropriate exercise of its discretion, bearing in mind the insolvency of the Applicants and the wishes of the Senior Lenders.

NOW:

7. I, Honourable Geoffrey B. Morawetz of the Ontario Court, confirm that, as a matter of international comity, the courts of the provinces and territories of Canada will consider giving

effect to orders made by the Royal Court of Jersey relating to the bankruptcy of an individual or company (save for the purpose of enforcing the fiscal laws of Jersey).

8. It having been shown to the satisfaction of the Ontario Court that it is necessary for the purposes of justice to assist with implementation of the Plan, I hereby request, in deference to the jurisdiction and discretion of the Royal Court of Jersey in such matters, the assistance of the Royal Court of Jersey, pursuant to its inherent jurisdiction, to assist in the implementation of the Plan of the Applicants and in particular (without prejudice to the generality of the foregoing) to consider the application to wind up Lydian International on just and equitable grounds pursuant to the laws of Jersey, by granting such further or other relief as it thinks fit in aid of the winding up of Lydian International Limited. For the avoidance of any doubt, this appeal for assistance is not intended to fetter or in any way impinge on the discretion of the Royal Court of Jersey to make orders regarding the winding up of Lydian International. On the contrary, it is an appeal to the Royal Court of Jersey for it to consider the application of Lydian International in full context of the CCAA proceedings.

Dated: July 10, 2020



The Honourable Geoffrey B. Morawetz,
Superior Court of Justice (Ontario)