

statement, made in the claim, on that no Police officer visited the site and/or called within a 3 hours' period, is not true and does not meet the reality.

It was determined by the visit that a group of Jermuk city residents had been keeping the site-leading roads blocked since June 22, 2018 by holding a peaceful campaign against Amulsar gold project. No measures were taken to remove the persons from the area that day and no supplementary checks and investigations were made by the Police officer as there was no representative of the legal possessor of the land area present at the site to identify the problem and no detailed plans of the land area were attached to the real property certificates, attached to the police report, to see the factual boundaries of the Company-owned territory. Thus, on August 14, 2018 the Police department chief sent a letter No 84/1367 requiring from the Claimant copies of the plans for the real property units, specified in the above-mentioned certificates, to form a clear idea of the boundaries of the Company-owned land areas. The same day, an information request was made to the Jermuk office of the Real Property Cadaster Committee, by the Police Chief's letter No 84/1368. On August 15, 2018, an electronic version of the plan-map, prepared by the Company experts, was received from Kh.Nasibyan, who said that this was the only boundary map that they could provide. The layout map did not reflect the boundaries of the real property by meters either. The plans, received on August 16, 2018 from the Jermuk office of the Real property cadaster, were better-defined but lacked the metering details again. According to the Claimant, the plans-submission demand is not justified as no such requirement is prescribed by RA Government's relevant resolution. But it should be mentioned that the Resolution is not as much applicable to land areas as it is to apartments and enclosed structures. That is why the police department had to make supplementary checks and surveys, which are not prohibited for the purpose of providing comprehensive and complete materials. The Police department's demand for written explanation (which was found pointless by the Company's counsel) was made to the Complainant for the same reason, that is to get complete information.

According to the Department-collected materials, no elements of trespassing as prescribed by RA Civil code article 203.2 are found in the actions of the group of persons protesting at the entrance of the real property area, and the notion of "a group of persons" is a relative concept. The problem here does not apply to the specified territory but it occurs because of a group of Jermuk residents, who keep the Company sites-leading roads blocked at various localities of the Jermuk community in protest at the Amulsar gold project. When making the protests, the protestors do not necessarily stay within the Company-owned areas all day long, there may be one or two persons staying within the areas at a time, which means that the group of persons stayed both within, and out of, the Company-owned area entrance during the protesting campaign.

Thus, even if the group of persons had continued its protests out of the Company property area due to the Police department's awareness work, the Claimant's problem would not have been solved completely. The Claimant did not use the whole of territory before the start of the protesting campaign, and it was the presence of a group of people who regulated the entry to, and the exit from, the territory. Besides, the community-owned water lines and high-voltage electric lines are still crossing the area. As to "the voice statements and demands", made by the Company after the start of the protests, then they were not perceived by the Department as voice messages as those were not addressed to indefinite circle, the area was open to everyone, considering the regular presence of people there (like in the cases of car breakdown, and etc.). Anyhow, the Department finds that a group of persons may hold a protest campaign at the place and for the purposes not contradicting the requirements of the RA law on "Freedom of assemblies".

On August 22, 2018, the second report was filed by the Company in relation to the same problem and supplemented by the fact that a trailer was installed by the group of persons at the same place. Immediately after receipt of the report, the Police department officers visited the site and drew up a similar report. Once again, no Company representatives participated in the process as they did not visit the site. Based on the report, drawn up with the involvement of the Chief architect of the Jermuk municipality Arsen Garnikyan on August 23, 2018, the above-mentioned installed trailer was not located at the territory owned by the Company.

4. Material facts

Below is the evidence material to the case:

- 1) The Company counsel's letter, addressed to the Police department chief on August 13, 2018 and requesting to take measures aimed at removing trespassing within the period specified by RA Government's resolution No 797-N (Annex, clauses 1, 3 and 4) and considering the fact that the Company-owned area (with coordinates of 39.740911 and 45.609243) was trespassed by a group of persons with no legal basis or authorization of legal holder;
- 2) Police department chief's letter No 1394 addressed to the Company counsel and stating that based on checks and surveys it was determined that a group of persons were participating in peaceful anti-Amulsar demonstration, at the beginning of the road leading to land areas 11, 9, 25, 29 and 30 located on street 30 of Gndevaz village, Jermuk community, at "Renko" called section, a few meters left from the road. The analysis of factual circumstances proved that there were no constituent elements of trespassing in this case, and that's why no measures were taken to remove the persons, temporarily present at the area.
- 3) The Company director's letter addressed to the Police department chief on August 22, 2018 and asking to remove trespassing and to relocate the unlawfully-installed trailer within the prescribed period of time, considering the fact that a group of persons trespassed to the real property area (coordinates of 39.740911, 45.609243) and installed a trailer therein, having no legal basis or authorization of legal owner, and refused to leave the area and relocate the trailer irrespective of numerous warnings and demands made by the Company.
- 4) The Police department chief's letter No 1427 addressed to the Company director and stating that as determined by the Department there were no elements of trespassing by the group of persons, present at the above-mentioned site, as defined by RA Civil code article 203.2, and that the trailer, installed by the group of persons, was located out of the site owned by the Company, according to the metering, made by the involvement of the Jermuk municipality chief architect;
- 5) Company Security deputy chief's letter addressed to the Police department chief on October 22, 2018 and notifying that a trailer was unlawfully installed at the Company-owned area, namely the Site 28 road, on October 21 by the group of persons keeping the Amulsar roads blocked by disregarding the warnings and objections of the Company security staff. In this regard, it was asked to remove the trespassing and to relocate the trailer.
- 6) Letter addressed by the Company's Security deputy chief to the Police department chief on October 24, 2018 and notifying that the trailer, unlawfully installed at the Company-

owned area on October 21, was not removed yet. In this regard, it was asked to remove the trespassing and to relocate the trailer.

- 7) Letter No 1848 addressed by the Police department acting chief to the Company's Managing Director on Oct. 26, 2018 and notifying that a number of measures had been taken by the Police Department staff, namely negotiations held with the trailer-installing persons and a crane delivered, and etc., to remove the trailer from the Company-owned Site 28, installed by a group of Jermuk residents protesting against the Amulsar gold project. But the measures failed and the trailer remained unmoved.
- 8) Note No 04.33 dated Feb.22, 2019 provided by Geocard SNGO of the Geodesy and Cartography SNCO, State committee of real property cadaster, used as a basis for surveying the location of the metal trailer installed by activists at the Company-owned land areas next to Gndevaz village of Jermuk community. Based on the metering of the trailer's points, made on Feb.15, 2019 by the Geodesy and Cartography SNCO's surveying and metering department employees by means of GS-10/GS-15 GPS station, it was determined that
 1. The metal trailer, installed to the right of the big turning point on the 7th km of the road connecting Jermuk with the Yerevan-Meghri highway, is located within the land area, encoded as 0224-0096 and owned by the Company, namely with the turning points of 103, 104, 105 and 106 and surface are of 26sq.m covered;
 2. The metal trailer, installed on the 8th km of the road connecting Jermuk with the Yerevan-Meghri highway, is located within the land area, encoded as 0222-0057, 0022-61, 0022-0063 and owned by the Company, namely with the turning points of 56, 57, 58 and 59 and surface are of 31sq.m covered.
 - The surface area of 10.6 sq.m is located within the land area encoded as 0222-0057 leased by the Company;
 - The surface area of 6.6 sq.m is located within the land area encoded as 0222-0061 and owned by the Company;
 - The surface area of 13.8 sq.m is located within the land area encoded as 0222-0063 and owned by the Company.
- 9) - Certificate on State registration of real property rights No 18082016-10-0013 stating that the land area No 25, located at street 30, Gndevaz community, Vayots Dzor province, with total surface of 0,5461 ha and designated with 10-016-0222-0061 cadastral code, is owned by the Company.
 - Certificate on State registration of real property rights No 19042017-10-0011 stating that the land area, located in Gndevaz community, Jermiuk community, Vayots Dzor province, with total surface of 0,2014 ha and designated with 10-016-0222-0057 cadastral code, is leased by the Company.
 - Certificate on State registration of real property rights No 18082016-10-0069 stating that the land area No 29, located on street 30, Gndevaz community, Vayots Dzor province, with total surface of 0,19416 ha and designated with 10-016-0222-0063 cadastral code, is owned by the Company.
 - Certificate on State registration of real property rights No 18082016-10-0107 stating that the land area No 9, located on street 27 of Gndevaz community, Vayots Dzor province, with total surface of 1,3 ha and designated as 10-016-0224-0096 cadastral code, is owned by the Company.

5. Court's Reasoning and Conclusions

After comprehensive, complete and fact-based examination and analysis of the case materials and evidence, and according to inner conviction, the Court has determined to uphold the claims, based on the below-mentioned grounds.

RA Constitution article 8 states that *"All forms of ownership shall be recognized and equally protected in the Republic of Armenia."*

RA Constitution article 31 states that *"Everyone shall have the right to possess, use and dispose of legally acquired property at his or her discretion."*

RA Constitution article 29 states that *"Everyone shall have the right to freely participate and organize peaceful, unarmed assemblies."*

European convention on human rights, article 11.1, states that *"Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."*

Article 11.2 of the same Convention that *"No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others..."*

RA Civil code, article 163.1, states that *"The right of ownership is the right of a subject, recognized and protected by law and other legal acts, to possess, use, and dispose of property belonging to it at its discretion."*

RA Civil code, article 202.1, states that *"Territorial boundaries of a land parcel shall be determined, as prescribed by law, by the State authorized body, based on the documents issued to the owner."*

Section 2 of the same article states that *"The right of ownership to land parcel shall extend to terrestrial and underground territory within the boundaries thereof, except for the cases provided for by law."*

Section 3 of the same article states that *"Owner of the land parcel shall have the right to use everything situated on and under the surface of his or her land parcel, unless otherwise provided for by law and unless it violated the rights of other persons."*

RA Civil Code article 203.1 states that *"Each person shall have the right to prevent others from entering the land parcel, building, structure and the territory of other immovable property under his or her legal possession."*

No one shall have the right to enter a land parcel, building, structure or the territory of other immovable property (hereinafter referred to as "intrusion") without the grounds established by law or permission of legal possessor.

The following shall also be considered as intrusion: 1) failure to comply with the demand of the legal possessor to leave the land parcel, building or structure or the territory of other immovable property by a person who has entered the land parcel, building or structure or the territory of other immovable property upon the permission of the legal possessor; 2) failure to comply with the

demand of the legal possessor to leave the land parcel, building or structure or the territory of other immovable property by a person who has entered the land parcel, building or structure or the territory of other immovable property on the grounds established by law, following the termination of those grounds or after performance of the relevant actions provided for by law."

According to section 2 of the same article, *"It shall not be deemed to be intrusion where the land parcel is not fenced or walled in, or there is no written or voice message or image sign prohibiting the entrance into the land parcel, and the entry into the land parcel will not cause damage to the land parcel."*

According to section 4 of the same article, *"Legal possessor shall have the right to undertake reasonable measures of defense in order to prevent or eliminate the intrusion, including the use of force proportionate to the consequence of intrusion, when non-forcible measures may not prevent or eliminate the intrusion. Legal possessor shall have the right to remove the property of another person illegally situated in his or her land parcel, building or structure or the territory of immovable property. Damage caused to the person, who has made the intrusion, as a result of measures undertaken for the purpose of prevention or elimination of the intrusion under the conditions provided for by this part, shall not be subject to compensation."*

According to section 5 of the same article, *"Legal possessor of a land parcel, building or structure or the territory of other immovable property shall have the right to authorize the police to carry out actions on behalf of him or her, aimed at prevention or elimination of intrusion. Procedure for and conditions of authorizing the police by a legal possessor shall be established by the Government."*

RA law on "Freedom of assemblies" article 2.1 states that *"for the purpose of the law, an assembly shall be peaceful and no-weapon meetings of two or more persons in a place for the purpose of forming or expressing opinions on issues of public interest..."*

Article 2.4 of the same law states that *"Place of general use shall be an open space of State or municipal property (street, sidewalk, square, park, garden, land plot, and etc.) ..."*

RA law on "Freedom of assemblies" article 14.3 states that *"In case if the place of assembly is a State- or community-owned open-space property, which is leased, and/or is a privately-owned open-space area or structure, then the assembly notification shall be accompanied with a written authorization of the leaser and/or owner. No authorization shall be required for the assembly if everyone has a free access to the area."*

According to the RA Government's Resolution No 797-N of May 10, 2007 determining the "Procedure and Conditions of Police Authorization by Legal Possessor of Real Property for the purpose of Preventing and/or Removing Trespassing", annex p. 1, *"a legal possessor of a land plot, structure or building (hereinafter referred to as the Real property) shall have a right to authorize Police to act on his and/or her behalf for the purpose of preventing and/or removing trespassers who have entered the real property without the grounds established by law or permission of legal possessor (hereinafter trespassing)."*

Section 2 of the same Annex states that a legal possessor of the real property is the person who holds a right to possess, own, use or dispose of the property on the grounds established by law or relevant contract, that includes but is not limited to owners, possessors (leaser, beneficiary, developer) or administrator (trust manager) and authorized representatives thereof. The right of

real property legal possession shall be certified by real property rights certificate and/or other equivalent certificates issued by State committee of real property cadaster, RA government.

According to section 3 of the Annex, for the purpose of preventing and/or removing trespassing, legal possessor of real property may apply to Police by phone or other communication means or by personal appearance to the police station to invite police officers to the real property.

According to section 4 of the Annex, Police shall visit the site of the real property within a 3 hours' period upon receipt of the legal possessor's application (police report), unless other time periods are provided for by the legal possessor in the application/report.

According to section 5 of the Annex, upon arrival at the real property site Police shall identify the person who had filed the report, shall check the documents certifying the legal possessor's rights to the real property, shall identify the trespassers and/or persons attempting to trespass, as well as shall determine the legal bases or reasons of his/her presence at the real property area.

According to section 11 of the Annex, in cases when it is determined by Police officer that a person is not authorized to be at the site and/or if the person refuses to identify himself and/or herself or provide documents certifying the validity of his being at the site, and/or the dispute between the parties is based on invalid agreement, then the Police officer shall make an oral warning not to enter the site and/or to leave the site of the real property within a reasonable period of time.

According to section 14 of the Annex, after being authorized by legal possessor of the real property the Police officer will make another demand to leave the site or to abstain from trespassing to the site by warning that failure to comply with his instructions will be deemed as public disobedience with all the implications prescribed by law. Should the trespasser refuse to comply with the police officer's instructions once again, the latter will have a right to apply force or special means prescribed by law for the purpose of preventing and/or eliminating trespassing.

The analysis of the above-mentioned legal norms proves that the RA Constitution guarantees a right of ownership, at this everyone shall have the right to possess, use and dispose of the right at his/her discretion. The ownership right to land parcel shall cover both aboveground and underground areas thereof, except for the cases prescribed by the law, with the boundaries determined by authorized State body based on documents issued to the owner. One of the warranties of the real property right is the right prescribed by the RA Civil Code for everyone to prevent other persons' intrusion, in this case trespassing, to the real property legally possessed by him/her. At this, the intrusion means an entering a land parcel, building, structure or the territory of other immovable property without the grounds established by law or permission of legal possessor. Besides, for the purpose of removing trespassing a legal possessor shall have a right to take reasonable protection measures, including the removal of property unlawfully installed at the real property area. It is worth mentioning that there are no elements of intrusion in the cases when the land parcel is not fenced and/or walled, and/or there is no written or voice message or visual sign prohibiting the entrance into the land parcel, and/or the entry into the land parcel will not cause any damage to the land parcel. Real property legal possessor shall have a right to authorize police to act on his/or her behalf for the purpose of removing trespassing, with the conditions and procedure of the authorization prescribed by the RA government. For the purpose of preventing/removing trespassing, prescribed by the RA government's resolution, real property's legal possessor shall have a right to authorize police, as prescribed by respective resolution, to take measures aimed to remove the trespassing on the basis not prescribed by the law and/or not authorized by legal possessor. The real property legal possessor shall be the

person who is entitled to possess, own and use real property based on agreement or law, including but not limited to the real property owner. The right of legal possession of real property shall be certified by entitlement certificates to be issued by State committee of real property cadaster. For the purpose of preventing and/or removing trespassing, legal possessor of real property may apply to Police by phone or other communication means and/or by personal appearance to the police station to invite police officers to the real property. Police officer shall visit the site of the real property within a 3 hours' period upon receipt of the legal possessor's application (police report), unless other time periods are provided for by the legal possessor in the application. After being authorized by legal possessor of the real property the Police officer will make another demand to leave the site or to abstain from trespassing to the site by warning that failure to comply with his instructions will be deemed as public disobedience with all the implications prescribed by law. Should the trespasser refuse to comply with the police officer's instructions once again, the latter will have a right to apply force or special means prescribed by law for the purpose of preventing and/or eliminating trespassing.

RA legislation guarantees the right for peaceful unarmed assemblies, with no restrictions placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. At this, an assembly is a peaceful and armed temporary presence of two and more persons at a place for the purpose of forming and expressing an opinion on any issue of public interest. And the place of assembly is a State- and/or community and/or privately-owned open-space area or structure, accessible to everyone. Moreover, for the above cases the law requires a written permission to be issued by the property owner or possessor for holding the assembly. No permission will be required in the cases when the place of holding the assembly is accessible to everyone.

Under this case, the Claimant asks the Court to instruct Police to remove trespassing of the Company-owned real property units with coordinates of 39.740911, 45.609243 and 39.734013, 45.608475. The claim is based on the facts that a group of persons have trespassed the Claimant-possessed land area, without the Claimant's authorization/permission, have installed a trailer there and refuse to leave the territory, which implies a violation of the Claimant's right of possession prescribed by the RA legislation.

In response, the Respondent, namely the Police, notifies by letters dated August 20, 2018 and August 23, 2018, that there are no elements of trespassing (in one case it is deemed to be an assembly and in the other case the trailer is not located at the territory owned/possessed by the Company) and by letter of October 26, 2018 they informed that the measures taken by the Police department staff for the purpose of relocating the trailer have failed.

Meanwhile the Court has determined, based on the analysis of legal norms and case evidence, that according to Note No 04.33 dated Feb.22, 2019 provided by Geocard, SNGO of the Geodesy and Cartography SNCO of the RA government's committee for real property rights, the land plots encoded as 0224-0096, 0222-0057, 0022-0061, 0022-0063, trespassed by the above persons and used for installation of the trailer, are legally possessed (owned and/or leased) by the Company. Which means that the Company, as a legal possessor of the land plots, was and is authorized and entitled to take reasonable measures for the purpose of protecting its rights. Namely, to authorize the Police to remove trespassing from the Company's legally-possessed land area and to relocate the trailer unlawfully installed therein. At this, the Court has determined

that the Police were charged by law to take measures to remove trespassers, up to the applying force or other measures prescribed by the law.

Court has determined that a group of persons has trespassed to the Company-possessed land area and installed a trailer with no authorization of the Company, which is a legal possessor thereof, with no legal authorization thereof and by violating the Company's right of inviolability of ownership and the right of unhindered use of property.

Court has determined that the fact of availability or absence of the fences and/or walls, as well as the entrance-prohibiting written or voice messages or image signs on the disputed land area shall not be qualified as an absence of elements of trespassing as there is a photo in the case evidence showing the Company-installed written sign strictly prohibiting unauthorized entry to the site. Besides, the actions taken by the legal possessor of the land area to remove trespassing testify to the presence of the elements of trespassing, which means that the unauthorized entry to the land area by the group of persons was unlawful and should be deemed as trespassing.

As to the Respondent's arguments stating that the entry to the land plot by the group of persons should be deemed as the exercise of the persons' right for freedom of assembly, the Court has determined that the refusal to leave the Company-possessed land area should not be regarded lawful, as it implies the violation of the Company's right of inviolability of property and the right of unhindered possession thereof.

Thus, the Court has determined that the right for freedom of assembly shall not be deemed as an absolute right and shall not be interpreted that broadly based on the limitations prescribed by national and international laws applied for protection of third persons' rights and freedoms. The purpose of the Court is to provide for balance between the two rights guaranteed by the RA Constitution, as the Court finds that none of the Constitutional rights shall be exercised through restriction of other rights. Moreover, a place of mass gathering shall be deemed as a place of assembly only if it is accessible to everyone and provided that the owner and/or possessor of the land area has authorized in writing the holding of the assembly at the area, and there is no need for the authorization if everyone has access to the area.

This is the legal position expressed by the European court on human rights when determining that "The right for freedom of assembly is one of the public society bases and shall not be interpreted restrictively (see G.v. The Federal Republic of Germany, No 13079/87, Dec. 6.3.89, D.R. 60 p. 256, at p.263). This right is applicable to private assemblies and public rallies (see Rassemblement Jurassien and Unite Jurassienne v.Switzerland, No.8191/78 Dec. 10.10.79, D.R. 17 p. 119), demonstrations (see Christian against fascism an racism v. The United Kingdom, No. 8440/78 Dec. 16.7.80, D.R. 21 p. 148) and sit-in strikes. Nevertheless, *the Court-voiced positions contain no statement that the right for freedom of assemblies is aimed to guarantee the right of assemblies for public or social purposes in any place (see Anderson and nine others v. The United Kingdom, No. 33689/96, 27.10.97, 25 EHRR CD 172)*".

This means that the exercise of the right of assemblies is not absolute and may not be exercised everywhere, in this case in the privately-owned area with no authorization by the legal possessor thereof. The unavailability of the authorization for holding the assembly at the area by the Company, which is a legal possessor of the land plot, implies that there is no opportunity to access the mentioned area for peaceful assemblies as well. Moreover, according to the Court the Police have not provided an evidence of that the protesters were deprived of the opportunity to hold the assembly at any other area, not possessed by the Company.

Based on the above-mentioned the Court concludes that the presence of the group of persons at the area lawfully possessed by the Company shall be deemed as trespassing, which means that the Company's claim may and shall be upheld to instruct Police to remove trespassing from the Company-owned real property units with coordinates of 39.740911, 45.609243 and 39.734013, 45.608475.

As to the court expenses under the case, the RA Administrative procedure code's article 60.1 states that it is the aggrieved party that shall pay the costs incurred by the RA Court Department in relation to experts and witnesses, as well as the other party's costs incurred for proper exercise of the right of court defense. The Court hereby finds that the Respondent, represented by the Police, shall pay the State duty amount previously paid by Claimant.

Based on the above-mentioned and in accordance with the RA Administrative Procedure Code, articles 60, 1240127 and 132, the Court has determined

1. To uphold the claim brought by Lydian Armenia, CJSC versus Police (represented by Jermuk Police department, Vayots Dzor province division, RA Police);

To instruct the Police to remove trespassing from the Company-owned real property units with coordinates of 39.740911, 45.609243 and 39.734013, 45.608475.

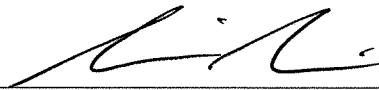
2. To collect the State duty amount of AMD 4000 from the Police in favor of Lydian Armenia, CJSC.
3. This Ruling shall come into force within a month after publishing thereof and may be appealed to the RA Court of Appeal within the prescribed period.
4. The Ruling will be enforced by the Court decision enforcement bodies if not execute voluntarily.

Judge,

Artur Avagyan

TAB I

This is
EXHIBIT "I"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020

A handwritten signature in black ink, appearing to be 'E. A. Sellers', written over a horizontal line.

A Commissioner etc.

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 ARRANGMENT OF
LYDIAN INTERNATIONAL LIMITED, LYDIAN CANADA VENTURES
CORPORATION AND LYDIAN U.K. CORPORATION LIMITED

Applicants

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *E. Pillon, S. Sopic and N. Avis*, for the Applicants Lydian

D. Bish, for ORION Resources

V. Gauthier, OSISKO Bermuda Limited

D.J. Miller, for Alvarez & Marsal Canada Inc., Monitor

P. Huff and P. Rubin, for Resource Capital Fund VI L.P.

H. Meredith, for Capital Financial Services (UK) Limited

B. Darlington, for ING Bank N.V./ABS Svensk Exportkredit (publ)

HEARD: January 23, 2020

RELEASED: January 23, 2020

ENDORSEMENT

[1] The parties have engaged in discussions with the result that the amended relief sought today was not opposed.

[2] Issues relating to the increase in the Administration Fee and the Transaction Fee, relating to the involvement of BMO Nesbitt Burns, are deferred to be addressed at a future hearing.

[3] The issues raised in the motion brought by Caterpillar are adjourned on terms set out in the Endorsement on the Caterpillar Motion Record.

[4] The relief sought by the Monitor and the Applicants concerning the role of the Monitor is granted and is reflected in the Amended and Restated Order.

[5] The activities of the Monitor set out in the First Report are approved on the terms set out in the Order Extending the Stay.

[6] The Applicants have requested that the unredacted BMO Engagement Letter (as defined in the Sellers Comeback Affidavit) and the affidavit of Mr. Sellers sworn January 21, 2020, which addresses issues relating to the BMO Engagement Letter, be sealed pending further order. Having reviewed these documents and having considered the *Sierra Club* principles, I am satisfied that these two documents contain sensitive commercial information, the disclosure of which could be harmful to the stakeholders and as such these documents are to be sealed pending further order.

[7] The Applicants, and indeed all parties appearing today, appear to be acting in good faith and with due diligence such that an extension of the Stay Period to Monday, March 2, 2020 is appropriate and is granted.

[8] An Amended and Restated Initial Order, dated January 23, 2020, which reflects an Initial Filing Date of December 23, 2019, and an Order Extending the Stay of Proceedings and Sealing have been signed in the form presented.

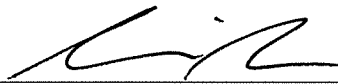


Chief Justice Geoffrey B. Morawetz

Date: January 23, 2020

TAB J

This is
EXHIBIT "J"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020

A handwritten signature in black ink, appearing to read 'E. A. Sellers', is written over a horizontal line.

A Commissioner etc.

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

Applicants

**FIRST REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

JANUARY 21, 2020

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1.0 INTRODUCTION

1.1 On December 23, 2019, Lydian International Limited (“**Lydian International**”), Lydian Canada Ventures Corporation (“**Lydian Canada**”) and Lydian U.K. Corporation Limited (“**Lydian U.K.**”) (collectively, the “**Applicants**”) applied for and were granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an order of the Court dated December 23, 2019 (the “**Initial Order**”), Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed Monitor (in such capacity, the “**Monitor**”) of the Applicants in the CCAA proceedings (the “**CCAA Proceedings**”). Any capitalized terms not otherwise defined herein have the meanings attributed to them in the Initial Order. A copy of the Initial Order is attached hereto as **Appendix “A”**.

1.2 The Initial Order, among other things:

- a) granted a stay of proceedings until January 2, 2020 (the “**Stay Period**”) as against the Applicants;
- b) provided that during the Stay Period, no proceedings may be commenced or continued against or in respect of Lydian Armenia CJSC (“**Lydian Armenia**”), Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (collectively, the “**Non-Applicant Stay Parties**”);
- c) authorized the Applicants to continue to utilize the Cash Management System of the Applicants and Non-Applicant Stay Parties;

- d) authorized the Applicants to pay all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable incurred in the ordinary course of business and consistent with existing compensation policies or arrangements, as well as the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these CCAA Proceedings, at their standard rates and charges whether incurred prior to or after the Initial Order;
- e) granted a first ranking charge (the “**Administration Charge**”) for the benefit of the Monitor, its counsel, and the Applicants’ counsel in the amount of CAD\$460,740 (being US\$350,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for their professional fees and disbursements;
- f) granted a second ranking charge (the “**Directors Charge**”), ranking behind only the Administration Charge, for the benefit of the Applicants’ directors and officers in an amount not to exceed CAD\$263,280 (being US\$200,000 as per the Bank of Canada’s published exchange rate on December 20, 2019) as security for the indemnity by the Applicants in favour of the directors and officers for any obligations or liabilities incurred after the commencement of the CCAA Proceedings, subject to the exceptions set out in the Initial Order; and
- g) authorized the Applicants to continue negotiations with stakeholders in an effort to pursue restructuring options, including refinancing the Business or Property, subject to approval of the Court prior to any material refinancing.

- 1.3 On December 23, 2019, the Applicants sought and obtained a Letter of Request from the Court seeking the assistance of the Royal Court of Jersey (the “**Royal Court**”) to assist the Applicants and the Monitor in advancing these CCAA Proceedings. The Applicants have since been working with the Applicants’ legal counsel in the Bailiwick of Jersey to prepare materials seeking recognition of the CCAA Proceedings by the Royal Court (the “**Jersey Recognition Proceedings**”). A hearing in respect of same is in the process of being scheduled before the Royal Court on or about January 24, 2020. Each of Edward Sellers and the Monitor are filing affidavits with the Royal Court in support of the Jersey Recognition Proceedings.
- 1.4 On January 2, 2020, the Court issued an order (the “**Stay Extension Order**”) extending the Stay in favour of the Applicants and the Non-Applicant Stay Parties to January 23, 2020.
- 1.5 Further information regarding these CCAA Proceedings, including the application record, the Initial Order, Stay Extension Order, affidavits, reports of the Monitor, and all other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at <http://www.alvarezandmarsal.com/lydian> (the “**Monitor’s Website**”).
- 1.6 The purpose of this first report to the Court (“**First Report**”) is to:
- a) provide the Court with information regarding:
 - i. A&M’s qualifications to act as Monitor, since a pre-filing report of the proposed Monitor was not previously filed;

- ii. background information in respect of the Applicants, the Non-Applicant Stay Parties and the CCAA Proceedings;
- iii. cash flow results for the 3-week period ended January 10, 2020;
- iv. the Applicants' updated cash flow forecast for the 13-week period ending April 10, 2020; and
- v. the additional charge and other amendments sought by the Applicants in the proposed Amended and Restated Initial Order (the "**Amended and Restated Initial Order**"), to the extent such information is available to the Monitor as it relates to the requested Transaction Charge (as defined below) at the time this First Report is finalized, including the results of discussions with the lenders and any other party;

b) support the Applicants' request for:

- i. an order extending the Stay Period to February 25, 2020 and certain ancillary relief (the "**Second Stay Extension Order**");
- ii. the Amended and Restated Initial Order, subject to ongoing discussions and consideration as it relates specifically to the BMO Engagement Letter and Transaction Charge (as each term is defined below) as security for the fees that may become payable to the Applicants' financial advisor. The Amended and Restated Initial Order amends the Initial Order to, among other things: (i) expand the Applicants' restructuring capabilities within the CCAA Proceedings, (ii) expand the Monitor's authority within the CCAA Proceedings, including its interactions with the Non-Applicant Stay Parties in

- specified circumstances, (iii) increase the Administration Charge; and (iv) approve the BMO Engagement Letter and add a Transaction Charge in favour of Applicants' financial advisor;
- iii. a sealing order in respect of the unredacted version of the BMO Engagement Letter; and
 - iv. approval of the Monitor's First Report and activities as set out therein; and
- c) provide the Court with the Monitor's recommendations in respect of the foregoing, as applicable.

2.0 TERMS OF REFERENCE AND DISCLAIMER

- 2.1 In preparing this First Report, the Monitor has been provided with and has relied upon, unaudited financial information; books, records and financial information prepared by certain senior management of the Applicants ("**Senior Management**"); and discussions with Senior Management (collectively, the "**Information**").
- 2.2 With respect to any of the Applicants' cash flow forecasts and projections:
- a) the Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has neither audited nor otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and

b) any examination or review of such financial forecasts and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.

2.3 Future oriented financial information referred to in this First Report was prepared based on management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.

2.4 This First Report should be read in conjunction with the affidavits of Edward A. Sellers sworn: (i) December 22, 2019 (the "**Sellers Initial Affidavit**") in support of the Applicants' application for relief under the CCAA, and (ii) January 20, 2020 (the "**Sellers Comeback Affidavit**") in support of the Applicants' motion returnable on January 23, 2020 (the "**Comeback Motion**") for the Amended and Restated Initial Order and the Second Stay Extension Order. Both the Sellers Initial Affidavit and Sellers Comeback Affidavit can be found on the Monitor's Website. Edward A. Sellers is the Interim President and Chief Executive Officer of Lydian International and a director of the other Applicants in these CCAA Proceedings.

2.5 Unless otherwise stated, all monetary amounts contained in this First Report are expressed in U.S. dollars.

3.0 A&M'S QUALIFICATION TO ACT AS MONITOR

3.1 A&M is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act (Canada)*. The CCAA provides certain restrictions on who may be

appointed as monitor, which are set out in section 11.7(2) of the CCAA and include (i) if the trustee was or related to a director, officer or employee of the debtor company, within the two preceding years; (ii) if the trustee was the auditor, accountant or legal counsel, or a partner or employee of the auditor, accountant or legal counsel of the debtor company within the two preceding years; or (iii) was the trustee under a trust indenture issued by the company or any person related to the company or related to the trustee. None of these restrictions apply to A&M.

- 3.2 The senior A&M professional personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Accountants, and/or Chartered Insolvency and Restructuring Professionals and licensed Trustees in Bankruptcy (Canada), all of whom have acted in CCAA matters of a similar nature and scale in Canada.
- 3.3 On September 17, 2018, A&M was engaged by the Applicant to provide consulting services in connection with its restructuring efforts, including providing assistance to the Applicant in preparing for formal restructuring proceedings, should such a filing become necessary, and assessing potential restructuring options.
- 3.4 The Monitor has retained Thornton Grout Finnigan LLP to act as its legal counsel.
- 3.5 A&M has consented to act as Monitor.

4.0 BACKGROUND INFORMATION

Lydian Group

- 4.1 The Applicants' business consists of the exploration and development of a gold mine in south-central Armenia (the "**Amulsar Project**"). Lydian International is a corporation continued under the laws of Jersey, Channel Islands from Alberta. On June 12, 2019, Lydian International's shareholders approved its continuance under the *Canada Business Corporations Act*. The continuance has not yet been implemented, but the Monitor understands that it may be contemplated as part of a sale or recapitalization transaction.
- 4.2 Lydian International is a publicly traded company and its shares trade on the Toronto Stock Exchange. As of December 20, 2019, Lydian International's largest individual shareholders were two of its senior lenders, Resource Capital Fund VI L.P. ("**RCF**") and Orion Co IV (ED) Limited, a division of Orion Capital Management ("**Orion**"), who respectively hold 32% and 11.7% of Lydian International's shareholdings.
- 4.3 The Applicants are part of a corporate group that includes the Non-Applicant Stay Parties and a number of other subsidiaries, all ultimately owned by Lydian International (collectively, the "**Lydian Group**"). The corporate structure of the Lydian Group is attached hereto as **Appendix "B"**.
- 4.4 The Lydian Group is highly integrated, as illustrated by the following:
- i. Substantially all of the strategic business affairs of the Lydian Group, including key decision making, are conducted through personnel who are located in Toronto and Vancouver;

- ii. senior financial personnel of the Lydian Group, including the Chief Financial Officer and Financial Controller, are employed by Lydian U.S. Corporation, a Non-Applicant Stay Party, which is based out of its head office in Greenwood Village, Colorado (the “**Greenwood Office**”) and the majority of the financial records of the Lydian Group are maintained in the Greenwood Office;
- iii. Lydian U.S. Corporation provides certain administrative and technical services to Lydian Armenia pursuant to the Administrative and Technical Services Agreement among the two companies dated January 1, 2015; and
- iv. Lydian International has made intercompany advances to Lydian Armenia, a Non-Applicant Stay Party, on an as-needed basis pursuant to a loan agreement dated January 5, 2008. The operations of Lydian International have been, and continue to be, funded in part by repayments of those advances by Lydian Armenia on an as-needed basis. As described in paragraph 7.5 of this First Report, such funding is contemplated to continue up to the date of the proposed extension of the Stay Period.

Amulsar Project

- 4.5 The Lydian Group obtained an exploration license for the Amulsar Project in 2006 and has since invested more than \$400 million in the project. Lydian Armenia is the principal operating subsidiary in the Lydian Group. By October 2016, Lydian Armenia obtained approval of all environmental assessments required by the Government of the Republic of Armenia (the “**GOA**”) and had commenced construction activities at the Amulsar Project.

- 4.6 After a change in government took place in Armenia on May 8, 2018, demonstrations and road blockades occurred throughout Armenia, including at the Amulsar Project. As a result of the ongoing blockades, Lydian Armenia has been unable to access and complete construction at the Amulsar Project since that time. Further, despite court orders requiring the removal of blockaders, police forces in Armenia have failed to act in accordance with such court orders.
- 4.7 In addition, and as described in more detail in the Sellers Initial Affidavit, the GOA has retroactively altered the requirements by which permits and licenses had been issued to Lydian Armenia, requiring duplicative environmental audits and investigations. Despite the successful results of the additional audits and investigations imposed by the GOA, it has failed to take active steps to remove the blockaders and restore access to the Amulsar Project site.
- 4.8 Further, without prior notice or discussion, the GOA has taken steps to terminate a material water supply previously available to Lydian Armenia. This has left that company without access to its primary operating water source and has added to the inability of the Applicants to commence operations at the site.
- 4.9 The Lydian Group has been working with counsel in Armenia to pursue all available options to resolve the ongoing issues it is facing, which has included the commencement of several local proceedings, reviews and appeals.
- 4.10 As a result of the above factors and actions/inactions by the GOA and the ongoing illegal blockades, Lydian Armenia has been unable to carry out any development or construction work at the Amulsar Project. This has led to (i) extensive delays in the Amulsar Project's

development schedule, (ii) the dismissal of more than 90% of Lydian Armenia's workforce; and (iii) numerous defaults on substantially all of the obligations owing by the Lydian Group to its lenders.

- 4.11 As at December 20, 2019, the Lydian Group employed 63 employees, of which 58 were employed in Armenia. As stated in the Sellers Initial Affidavit, the Lydian Group expects further reductions to its work force as a result of its ongoing financial distress.

Capital Structure

- 4.12 As described in the Sellers Initial Affidavit, the Lydian Group financed the development of the Amulsar Project from a combination of equity funding, debt and a streaming arrangement, which are secured over substantially all of the assets of Lydian Armenia, Lydian International and the shares of various entities of the Lydian Group. The Lydian Group's various loan agreements are as follows:

- a) Credit Agreement between Lydian Armenia, as borrower, and Orion, RCF and Osisko Bermuda Limited ("**Osisko**"), as lenders (collectively, the "**Lenders**"), dated November 30, 2015, as amended, pursuant to which such lenders extended a \$160 million term loan to Lydian Armenia;
- b) Purchase and Sale Agreement between Lydian Armenia, as seller, and Lydian International dated November 30, 2015, as amended, to sell specified quantities of gold and silver mined at the Amulsar Project to Osisko and RCF; and

- c) Separate secured equipment credit facilities with each of Ameriabank Closed Joint Stock Company, Caterpillar Financial Services (UK) Limited and ING Bank N.V. (collectively, the “**Equipment Lenders**”).

4.13 A summary of Lydian Group’s total indebtedness, which exceeds \$360 million, is set out in the Sellers Initial Affidavit.

4.14 As a result of the financial and operational difficulties resulting from the blockades at the mine, the Lydian Group entered into a series of forbearance agreements with its Lenders, commencing in October 2018. The most recent forbearance agreement expired on December 20, 2019, and, despite extensive negotiations, the Lenders did not all agree to extend. This led to the Applicants’ commencement of the CCAA Proceedings.

Treaty Arbitration

4.15 In March 2019, Lydian U.K. and Lydian Canada delivered letters to the GOA, which triggered their ability to commence arbitration (the “**Treaty Arbitration**”) pursuant to the Agreement between the Government of the United Kingdom and the GOA for the Promotion and Protection of Investments and the Agreement between the Government of Canada and the GOA for the Promotion and Protection of Investments, respectively.

Sale/Refinancing Efforts

4.16 With the assistance of BMO Nesbitt Burns Inc. (“**BMO**”) in 2018, the Lydian Group carried out a strategic process to canvass potential refinancing or sale options with respect to Lydian Armenia (the “**SISP**”). Although the SISP generated potential interest

from several parties, the continuing illegal blockades and conduct of the GOA prevented any meaningful offers that could be executed upon.

4.17 In October of 2019, BMO re-commenced the SISP, which has resulted in ongoing discussions with an interested party. The discussions are expected to continue throughout the period of the requested extended Stay Period.

4.18 Further, with the assistance of BMO, the Lydian Group is conducting a process to solicit offers to finance the costs involved in pursuing the Treaty Arbitration, and such process also remains ongoing.

5.0 MONITOR'S ACTIVITIES TO DATE

Creditor Notifications

5.1 Pursuant to the Initial order, the Monitor was required to: (i) without delay, publish in *The Globe and Mail* (National Edition), a notice containing the information prescribed under the CCAA; and (ii) within five days after the date of the Initial Order, (a) make the Initial Order publicly available in the manner prescribed under the CCAA; (b) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000; and (c) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations thereunder.

5.2 A notice containing the information prescribed under the CCAA was published in *The Globe and Mail* (National Edition) on December 30, 2019 and January 6, 2020.

5.3 On the date the Initial Order was granted, the Monitor activated the Monitor's Website and thereupon posted a copy of the Initial Order. On December 27, 2019, the Monitor prepared and posted to the Monitor's Website a list showing the names and addresses of every known creditor of the Applicants with a claim of more than \$1,000, excluding the claims, names and addresses of individuals who are creditors. Also on December 27, 2019, a notice was mailed by the Monitor to every known creditor with a claim against the Applicants of more than \$1,000.

Other Activities of the Monitor

5.4 In addition to those described above, the activities of the Monitor since the date of the Initial Order have included the following:

- a) assisting the Applicants with communications to employees and other parties;
- b) engaging in discussions with the Applicants, their respective legal counsel and other advisors, and the Non-Applicant Stay Parties and their advisors regarding the CCAA Proceedings and matters related to the Treaty Arbitration, financing in respect of same and the SISF;
- c) responding to enquiries from stakeholders;
- d) monitoring receipts, disbursements and commitments of the Applicants and assisting the Applicants to review receipts, disbursements and commitments of Lydian Armenia, which is the Applicants' source of funding up to the proposed extension of the Stay Period;

- e) attending the offices of Lydian Armenia together with the President and Interim CEO of Lydian International to meet with employees of Lydian Armenia in order to understand the cash position and near term forecast cash flows of Lydian Armenia and its ability to fund the Applicants through repayments against its outstanding obligations to Lydian International. This has included assisting management of the Applicants to gain an understanding of, and to quantify potential funding requirements directly associated with Lydian Armenia in the event of the Treaty Arbitration;
- f) engaging in discussions with BMO and the management and advisors of the Applicants in respect of the SISP;
- g) engaging in discussions with management in respect of the potential extension of insurance coverage for the Applicants' directors and officers beyond January 31, 2020, and, together with the interim president and CEO of Lydian International, attending a meeting with the Applicants' insurance broker and underwriters in the U.K. in respect of same;
- h) engaging in consultations with management in respect of the extension of coverage for Cost of Construction insurance, including coverage for on-site equipment until March 31, 2020;
- i) posting non-confidential materials filed with this Court to the Monitor's Website;
and
- j) completing:

- i. the general noticing required under the CCAA as described above; and
- ii. the statutory filings pursuant to Section 23 of the CCAA, including filing the requisite forms with the Office of the Superintendent of Bankruptcy (Canada).

5.5 Further, since the Initial Order was granted by the Court, the Monitor has assisted the Applicants with their diligent efforts to maintain the stability of their operations. This has included, among other things, continued discussions between the Applicants' and their lenders and other stakeholders, issuing follow up requests to the GOA, and advancing the discussions regarding a potential sale or a financing of the Treaty Arbitration.

6.0 CASH FLOW RESULTS RELATIVE TO FORECAST

6.1 Actual receipts and disbursements for the three-week period from December 21, 2019 to January 10, 2020 (the "**Reporting Period**"), as compared to the Cash Flow Forecast attached as Exhibit "M" to the Sellers Initial Affidavit, are summarized in the following table:

Lydian International Limited., et. al. Schedule of Actual Receipts and Disbursements Compared to the Cash Flow Forecast For the Three-Week Period Ended January 10, 2020 (\$ USD)			
	Actual	Forecast	Variance
Cash Receipts			
Miscellaneous receipts	909	-	909
Total Cash Receipts	909	-	909
Cash Disbursements			
Salaries & Benefits	-	-	-
Insurance	-	-	-
Board of Directors	-	-	-
Office, IT & Bank	(1,427)	(2,120)	693
Travel	(12,251)	(19,500)	7,249
Miscellaneous	(558)	(1,625)	1,067
Professional Fees	(600,876)	(796,800)	195,924
Contingency	-	(10,000)	10,000
Total Cash Disbursements	(615,112)	(830,045)	214,933
Net Cash Flow, Before Debt Service	(614,203)	(830,045)	215,842
Beginning Cash Balance	1,060,198	1,060,198	-
Net operating cash flow	(614,203)	(830,045)	215,842
Net drawdown/(repayment)	-	-	-
Ending Cash Balance	445,995	230,153	215,842

6.2 During the Reporting Period:

- a) total receipts were forecast to be nil as, for the reasons described above, the Amulsar Project is not yet in production. The minimal receipts are from the sale of certain chemicals by Lydian Armenia included in its supplies, which were otherwise expiring in the near term; and
- b) total disbursements were approximately \$215,000 less than forecast, largely due to the timing of invoicing by professionals.

- 6.3 Overall, during the Reporting Period, the Applicants experienced a positive net cash flow variance of approximately \$216,000. It is anticipated that this positive variance will decline as timing differences reverse in the near term.
- 6.4 The reports of Management and A&M, prior to its appointment as Monitor, with respect to the Cash Flow Forecast, each dated December 22, 2019, (which was not previously made available to the Court given that this is the Monitor's first report to the Court) are attached hereto as **Appendix "C"**.

7.0 UPDATED CASH FLOW FORECAST

- 7.1 The Applicants, with the assistance of the Monitor, have prepared an updated cash flow forecast (the "**Updated Cash Flow Forecast**") for the 13-week period January 11, 2020 to April 10, 2020 (the "**Cash Flow Period**"). A copy of the Updated Cash Flow Forecast, together with the accompanying notes and management report, is attached to this Report as **Appendix "D"**. A summary of the Cash Flow Forecast is set out in the following table.

Lydian International Limited., et. al. Schedule of Forecast Receipts and Disbursements For the 13-Week Period Ending April 10, 2020 (SUSD)			
	Jan 11 to Feb 28	Feb 29 to Apr 10	
	2020	2020	Total
Cash Receipts			
Miscellaneous receipts	-	-	-
Total Cash Receipts	-	-	-
Cash Disbursements			
Salaries & Benefits	(150,306)	(121,000)	(271,306)
Insurance	(91,694)	(168,847)	(260,541)
Board of Directors	(60,000)	(93,250)	(153,250)
Office, IT & Bank	(8,271)	(4,470)	(12,741)
Travel	(78,056)	(60,000)	(138,056)
Miscellaneous	(4,608)	(3,500)	(8,108)
Professional Fees	(1,002,861)	(1,030,880)	(2,033,741)
Contingency	(30,000)	(30,000)	(60,000)
Total Cash Disbursements	(1,425,797)	(1,511,947)	(2,937,744)
Net Cash Flow, Before Debt Service	(1,425,797)	(1,511,947)	(2,937,744)
Beginning Cash Balance	445,995	199	445,995
Net operating cash flow	(1,425,797)	(1,511,947)	(2,937,744)
Intercompany transfers	980,000	-	980,000
Ending Cash Balance	199	(1,511,748)	(1,511,748)

7.2 Disbursements include payments in the ordinary course, on normal trade terms, including the payment of certain pre-filing amounts, as authorized by the Initial Order.

7.3 During the Cash Flow Period, net cash outflows are forecast to be approximately \$2.9 million. Net of intercompany transfers, net cash outflows during the Cash Flow Period are projected to be approximately \$1.5 million.

7.4 The Applicants are requesting an extension of the Stay Period to February 25, 2020. As illustrated in the table above, net cash outflows during the period up to the date of the

requested stay extension are forecast to be funded by transfers to the Applicants from Lydian Armenia and, in the event of any shortfall, from Lydian U.S. Corporation.

7.5 The Initial Order authorized the Applicants to continue to use the centralized Cash Management System previously in place, which provided for funds to be transferred to Lydian International from Lydian Armenia on an as-needed basis as repayments under a loan agreement dated January 5, 2008 between Lydian International and Lydian Armenia. The funds transferred to Lydian International (Applicant) by Lydian Armenia (Non-Applicant Stay Party) during the Cash Flow Period up to the date of the requested extension of the Stay Period are forecast to leave Lydian Armenia with a minimal cash balance at the end of February 2020, absent the receipt of a VAT refund that it has recently applied for that has not yet been reviewed nor approved by the GOA. Accordingly, while there is sufficient cash to fund the Applicants and the Non-Applicant Stay Parties utilizing the same Cash Management System up to the requested Stay Period extension date, the Applicants and Lydian Armenia are forecast to have insufficient funding beyond that date without some form of interim financing being made available. During the period of the proposed extension to the Stay Period, the Applicants must locate a source or sources of additional funding if they are to continue to pursue their restructuring objectives beyond the end of February 2020. The Monitor understands that the Applicants have commenced these discussions with their existing lenders.

7.6 Depending on the direction taken by the Applicants during the period of any further extension of the Stay Period, in consultation with their lenders and with oversight by the Monitor, the Applicants will further assess their funding requirements beyond February 25, 2020.

8.0 PROPOSED AMENDMENTS TO THE INITIAL ORDER

Proposed Amendments

8.1 The proposed Amended and Restated Initial Order requested by the Applicants provides for certain amendments to the Initial Order, as follows:

- a) more expansive restructuring provisions to enable the Applicants to take certain steps during the course of the CCAA Proceedings as necessary;
- b) more expansive abilities of the Monitor, as contemplated in the Commercial List Users Committee Model Initial Order, such as advising the Applicants in the development of a Plan of Compromise or Arrangement, holding and administering meetings, as needed, for voting purposes;
- c) expanding the authority of the Monitor to have discussions with the Non-Applicant Stay Parties in respect of certain matters, including for the following purposes:
 - i. monitoring the Non-Applicant Stay Parties' receipts and disbursements to the extent any such party utilizes the Cash Management System, in order to review and consider the cash requirements and reasonableness of the Cash Flow Forecast;
 - ii. having full and complete access to the books, records, data and other financial documents of the Non-Applicant Stay Parties to the extent necessary to adequately assess the Applicants' business and financial affairs and prospects for a restructuring or transaction of any kind,

report on the cash flow forecasts as prepared by the Applicants, or to perform its duties under any Order of the Court; and

iii. requiring the Non-Applicant Stay Parties, to the extent possible and for so long as the stay of proceedings remains in place in favour of such parties, to fully cooperate with the Monitor in respect of the duties describe above;

d) to add protective language in favour of the Monitor, as contemplated in the Model Initial Order;

e) to increase the Administration Charge to \$500,000 and expand it to include BMO's monthly work fee, for its services pursuant to an engagement letter between BMO and the Applicants most recently amended on October 1, 2019 (the "**BMO Engagement Letter**");

f) to add a charge in an amount to be confirmed prior to the return date of the Comeback Motion (the "**Transaction Charge**") to secure BMO's potential transaction fee payable pursuant to the BMO Engagement Letter if a successful transaction is implemented. The Transaction Charge shall rank behind the Administration Charge and Directors' Charge; and

g) to seal the BMO Engagement Letter.

BMO Engagement Letter and Transaction Charge

8.2 With respect to the Applicants' request for approval of the BMO Engagement Letter, the increased Administration Charge and the Transaction Charge, the Monitor understands

that details relating to an indicative calculation of any future transaction fees that may become payable thereunder has very recently been provided to the Lenders and Equipment Lenders. The unredacted BMO Engagement Letter has been provided to the Lenders and Equipment Lenders, each of whom have agreed to maintain the confidentiality of such terms.

- 8.3 The Monitor has not yet had an opportunity to discuss this requested relief with the Lenders and Equipment Lenders. The Monitor intends to do so in advance of the upcoming Comeback Motion in order to assess the positions of the Lenders and Equipment Lenders and whether they have had sufficient time to consider the proposed relief. If concerns exist with the relief being sought that cannot be resolved through discussions among the Applicants, BMO or the Monitor, additional time may be warranted for discussions among such parties to determine whether the concerns can be satisfied or if the additional priority charge will be opposed.
- 8.4 The Monitor has also considered the proposed increase to the Administration Charge (to the amended amount of \$500,000) to cover a monthly work fee set out in the BMO Engagement Letter. The Monitor is supportive of this request since BMO is continuing to assist the Applicants in considering their restructuring options, including a sale transaction and litigation financing options on a month-to-month basis.
- 8.5 The Monitor understands that the BMO Engagement Letter contains commercially sensitive terms which could potentially prejudice BMO in other mandates if the terms were not sealed from public view. Therefore, the Monitor supports the Applicants' request to seal the unredacted BMO Engagement Letter.

Monitor's Recommendations on Amended and Restated Initial Order

8.6 Other than as already discussed above, the Monitor supports the proposed amendments to the Initial Order (subject to reserving its view on the Transaction Charge at this time, which requires further consideration and discussion with affected secured parties) for the following reasons:

- i. the Monitor is of the view that the proposed amendments are necessary to give the Applicants the flexibility required in order to have the best possible chance to implement a successful restructuring;
- ii. given, in particular, the complex integration of the Lydian Group parties as described above and the geographic issues, the Monitor will require the more expansive powers and protections requested in order to carry out its contemplated oversight role in respect of the SISP and/or the potential Treaty Arbitration and financing in respect of same, as well as in the general administration of the CCAA Proceedings;
- iii. with respect to the increase to the Administration Charge, BMO has been working extensively and diligently with Lydian International since its initial engagement and BMO's continued involvement will be important for the successful completion of a transaction; and
- iv. as indicated above, the Applicants have acted in good faith and with due diligence in these CCAA Proceedings since the date of the Initial Order.

8.7 The Monitor will advise the Court further with respect to the Transaction Charge at the return of the Comeback Motion, and may file a supplemental report in that regard.

9.0 EXTENSION OF STAY

9.1 Pursuant to the Stay Extension Order, the Stay Period will expire on January 23, 2020. The Applicants are seeking an extension of the Stay Period to February 25, 2020 in respect of both the Applicants and the Non-Applicant Stay Parties, and certain relief pursuant to the Second Stay Extension Order.

9.2 The Monitor supports extending the Stay Period to February 25, 2020 and the ancillary relief sought in the Second Stay Extension Order for the following reasons:

- a) during the proposed extension of the Stay Period, the Applicants will have an opportunity to:
 - i. attempt to continue discussions with the GOA in an effort to gain access to the Amulsar Project;
 - ii. with the assistance of BMO and the oversight of the Monitor, engage in discussions with a view to negotiating a transaction with a potential purchaser through the SISP;
 - iii. with the assistance of BMO and the oversight of the Monitor, continue to canvass financing options for the Treaty Arbitration; and
 - iv. consider whether, and if so, when to take any steps to advance the Treaty Arbitration.

- b) the Applicants are forecast to have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period;
- c) no creditor of the Applicants would be materially prejudiced by the extension of the Stay Period and the ancillary relief sought by the Applicants; and
- d) the Applicants have acted in good faith and with due diligence in these CCAA Proceedings since the date of the Initial Order.

10.0 MONITOR'S RECOMMENDATION

- 10.1 For the reasons set out in this First Report, and subject to its reserved view at this time as it relates to the Transaction Charge (so no recommendation is included in this First Report with respect to that particular relief), the Monitor is of the view that the relief requested by the Applicants is reasonable and respectfully recommends that this Court grant the relief sought by the Applicants.

All of which is respectfully submitted to this Court this 21st day of January 2020.

**Alvarez & Marsal Canada Inc., in its capacity
as Monitor of Lydian International Limited,
Lydian Canada Ventures Corporation and
Lydian U.K. Corporation Limited
and in no other capacity**



Per: Alan J. Hutchens
Senior Vice President

Appendix A

Initial Order dated December 23, 2019



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
CHIEF JUSTICE MORAWETZ

)
)
)

MONDAY, THE 23rd
DAY OF DECEMBER, 2019

**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**

Applicants

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the affidavit of Edward A. Sellers sworn December 22, 2019 (the "Sellers Affidavit") and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants and counsel for the Monitor, no one appearing for any other party although duly served as appears from the affidavit of service of Sanja Sopic sworn December 23, 2019 and on reading the consent of Alvarez & Marsal Canada Inc. to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation (the “**Non-Applicant Stay Parties**”) shall enjoy certain of the benefits and the protections provided herein and as subject to the restrictions as hereinafter set out.

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to use the central cash management system currently in place as described in the Sellers Affidavit (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

7. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected

after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

9. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to continue negotiations with stakeholders in an effort to pursue restructuring options for the Applicants including without limitation all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing.

PROCEEDINGS AGAINST THE APPLICANTS, THE NON-APPLICANT STAY PARTIES OR THE PROPERTY

10. **THIS COURT ORDERS** that until and including January 2, 2020, or such later date as this Court may subsequently order (the “**Stay Period**”), no proceeding or enforcement process in or out of any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court.

11. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of the Non-Applicant Stay Parties, or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Non-Applicants’ Property**”, and together with the Non-Applicants’ businesses, the “**Non-Applicants’ Property and Business**”) including, without limitation, terminating, making any demand, accelerating, amending or declaring in default or taking any enforcement steps under any agreement or agreements with respect to which any of the Applicants are a party, borrower, principal obligor or guarantor.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

13. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Non-Applicant Stay Parties, or affecting the Non-Applicants’ Property and Business, as a result of a Non-Applicants’ Default Event, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Non-Applicant Stay Parties to carry on any business which the Non-Applicant Stay Parties are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicants or the Non-Applicant Stay Parties (as a result of a Non-Applicants' Default Event) except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

15. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any

of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

18. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

19. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$263,280 (being US\$200,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for the indemnity provided in paragraph 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 29 and 31 herein.

20. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

APPOINTMENT OF MONITOR

21. **THIS COURT ORDERS** that Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order,

and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

22. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Applicants in its preparation of the Applicants' cash flow statements;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (e) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (f) perform such other duties as are required by this Order or by this Court from time to time.

23. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

24. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of any of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant

to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

25. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, Canadian counsel to the Applicants and the Applicants' counsel in connection with their recognition proceedings in the United Kingdom and the Bailiwick of Jersey shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants.

27. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

28. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$460,740 (being US\$350,000 as per the Bank of Canada's published exchange rate on December 20, 2019), as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 29 and 31 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

29. **THIS COURT ORDERS** that the priorities of the Directors' Charge and the Administration Charge as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$460,740);

Second – Directors’ Charge (to the maximum amount of \$263,280).

30. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors’ Charge or the Administration Charge (collectively, the “Charges”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

31. **THIS COURT ORDERS** that each of the Directors’ Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person.

32. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge and the Administration Charge, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Directors’ Charge and the Administration Charge, or further Order of this Court.

33. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

SERVICE AND NOTICE

34. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe & Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

35. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <<http://www.alvarezandmarsal.com/Lyidian>>.

36. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

37. **THIS COURT ORDERS** that the Applicants and the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

38. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

39. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

40. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, Armenia, the Bailiwick of Jersey, the United Kingdom, or the United States to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

41. **THIS COURT DECLARES** that it shall issue a letter substantially in the form of the letter attached hereto as Schedule "A" to request the assistance of the Royal Court of Jersey in these proceedings.

42. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

43. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

44. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 8:30 a.m. Eastern Standard/Daylight Time on the date of this Order.


C B PRAWETZ

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 24 2019

PER / PAR:

AC

SCHEDULE "A"
(Letter of Request for the Royal Court of Jersey)



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 ("**CCAA Order**"), Lydian International Limited ("**Lydian International**"), Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited (collectively, the "**Debtors**") 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 (the non-applicant entities together with the Debtors are the "**Lydian Group**"). A copy of the CCAA Order is attached hereto as Schedule "A".

¹ Lydian Armenia CJSC, Lydian International Holdings Limited, Lydian Resources Armenia Limited and Lydian U.S. Corporation.

2. The Lydian Group is connected to Jersey by means of Lydian International, a corporation continued under the laws of Jersey from the Province of Alberta, Canada, 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. Pursuant to paragraphs 2 and 3 of the CCAA Order, the Debtors, including Lydian International, are companies to which the CCAA applies, shall enjoy certain of the benefits and the protections provided for in the CCAA Order, and shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**").

4. Pursuant to paragraph 21 of the CCAA Order, Alvarez & Marsal Canada Inc. was appointed as the monitor (the "**Monitor**"), an officer of the Ontario Court, to monitor the business and financial affairs of the Debtors pursuant to the CCAA.

5. Pursuant to the CCAA and the CCAA Order, the Monitor has broad powers including the authorization to have full and complete access to the Debtor's Property (as the term "Property" is defined in the CCAA Order), including the premises, books, records, data (including in electronic form) and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under the CCAA Order (see e.g. paragraph 22(d) of the CCAA Order).

6. Pursuant to paragraph 42 of the CCAA Order, the Debtors and the Monitor were authorized "to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of [the CCAA Order] and for assistance in carrying out the terms of [the CCAA Order]". The same paragraph further provides that "the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada."

NOW:

7. I, the Honourable Geoffrey B. Morawetz, Chief Justice 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 and to assist the Debtors and the Monitor with the carrying out of the terms of the CCAA Order, and assist the Monitor in the performance of its duties, pursuant to the CCAA Order of the Ontario Court, I hereby request the assistance of the Royal Court of Jersey, pursuant to its inherent jurisdiction, to act in aid of the Debtors and the Monitor in the conduct of the reorganization of the Debtors and in particular (without prejudice to the generality of the foregoing):

- (a) by recognising the appointment of the Monitor with such appointment to be registered in the Rolls of the Royal Court of Jersey in respect of Lydian International;
- (b) by recognising the rights and powers of the Debtors and Monitor in respect of the Property of Lydian International;
- (c) by declaring that no action shall be taken or proceeded with against Lydian International except by leave of the Ontario Court and subject to such terms as the Ontario Court may impose; and
- (d) by granting such further or other relief as it thinks fit in aid of the Debtors and the Monitor and the reorganization of Lydian International.

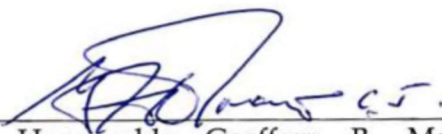
Dated: 23 December 2019

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 24 2019

PER / PAR:

AC


The Honourable Geoffrey B. Morawetz,
Chief Justice of the Ontario Superior Court of
Justice

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

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

ONTARIO

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

Proceeding commenced at Toronto

INITIAL ORDER

Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Elizabeth Pillon LSO#: 35638M
Tel: (416) 869-5623
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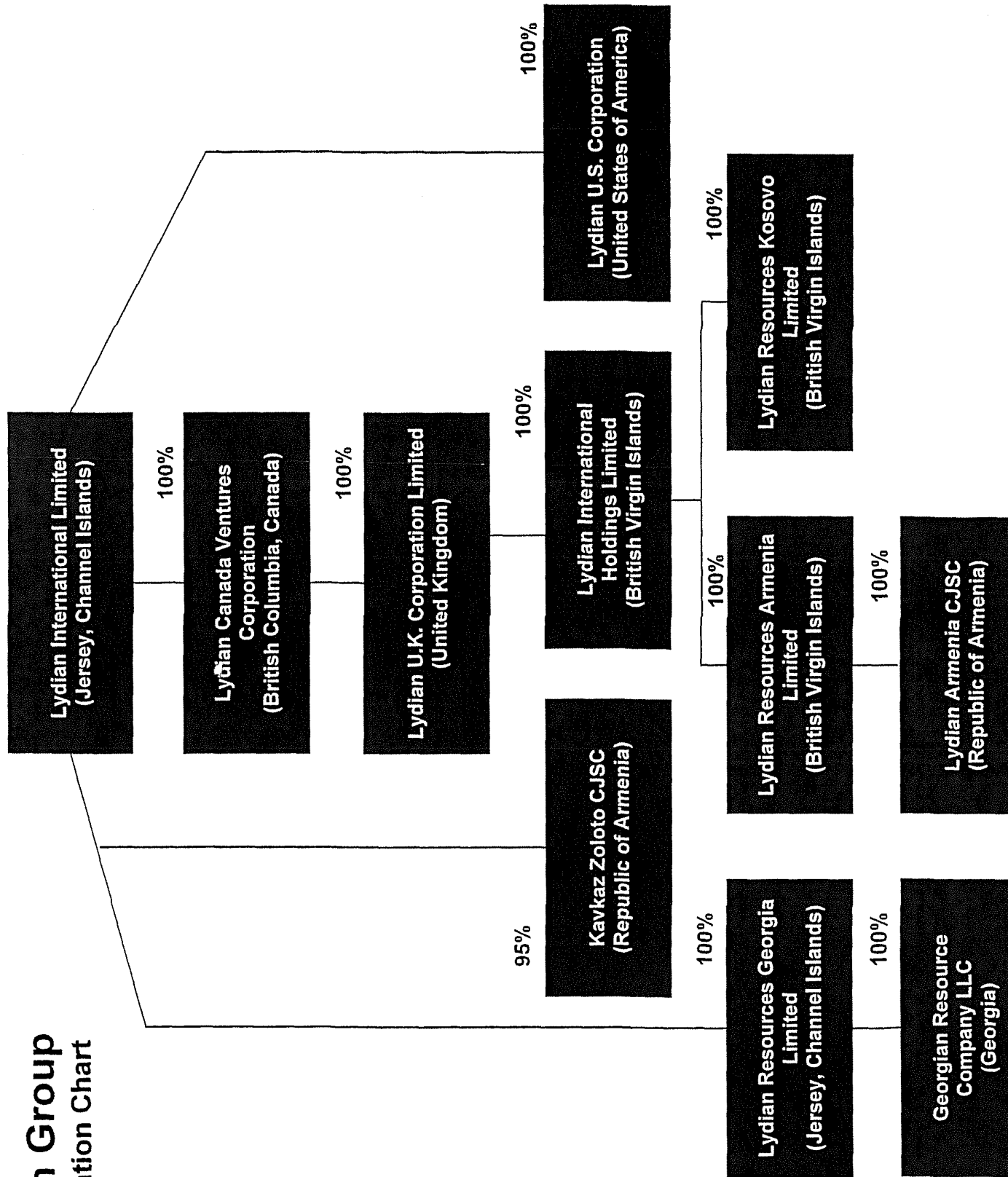
Nicholas Avis LSO#: 76781Q
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Lawyers for the Applicants

Appendix B

Lydian Group Corporate Structure

Lydian Group Organization Chart



Appendix C

Reports with respect to the Cash Flow Forecast dated December 22, 2019

December 22, 2019

Alvarez & Marsal Canada Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900
Toronto, ON M5J 2J1

Attention: Alan Hutchens

Re: Proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") Lydian International Limited, Lydian Canada Ventures Corporation, and Lydian U.K. Corporation Limited (collectively, the "Applicants" or "Lydian") – Responsibilities / Obligations and Disclosure with Respect to Cash-flow Projections

In connection with the application by Applicants for the commencement of proceedings under the CCAA, the management of Lydian, management of the Applicants ("**Management**") has prepared, the attached cash-flow statement and the assumptions on which the cash-flow statement is based.

The Applicants confirm that:

1. The cash-flow statement and the underlying assumptions are the responsibility of Applicants;
2. All material information relevant to the cash-flow statement and to the underlying assumptions has been made available to A&M in its capacity as Monitor; and
3. Management has taken all actions that it considers necessary to ensure:
 - a. That the individual assumptions underlying the cash-flow statement are appropriate in the circumstances; and
 - b. That the assumptions underlying the cash-flow statement, taken as a whole, are appropriate in the circumstances.
 - c. That all relevant assumptions have been properly presented in the cash-flow statement or in the notes accompanying the cash-flow statement.
4. Management understands and agrees that the determination of what constitutes a material adverse change in the projected cash flow or financial circumstances, for the purposes of our monitoring the on-going activities of the Applicants, is ultimately at your sole discretion, notwithstanding that Management may disagree with such determination.
5. Management understands its duties and obligations under the CCAA and that a breach of these duties and obligations could make Management liable to fines and imprisonment in certain circumstances.
6. The cash-flow statement and assumptions have been reviewed and approved by the Applicants' board of directors or management has been duly authorized by the Applicants' board of directors to prepare and approve the cash-flow assumptions.



Lydian International Limited

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

Yours truly,

Name	Bill Dean
Title	Chief Financial Officer

PROPOSED MONITOR'S CONCLUSION ON THE CASH FLOW STATEMENT

1. The proposed Monitor's conclusions from its review of the attached statement of projected cash flow (the "**Cash Flow Statement**") of the Applicants pursuant to Section 23(1)(b) of the CCAA are as follows:
 - a) The Cash Flow Statement attached to this report has been prepared by the Applicants for the purpose described in the notes to the Cash Flow Statement (the "**Notes**") using Probable and Hypothetical Assumptions set out in the Notes.
 - b) The Proposed Monitor's review of the Cash Flow Statement consisted of inquiries, analytical procedures and discussion related to information supplied to the Proposed Monitor by certain of the management and employees of the Applicants, as applicable. Since Hypothetical Assumptions need not be supported, the procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Statement. We have also reviewed the support provided by management of the Applicants, as applicable, for the Probable Assumptions, and the preparation and presentation of the Cash Flow Statement.
 - c) Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:
 - i. the Hypothetical Assumptions are not consistent with the purpose of the Cash Flow Statement;
 - ii. as at the date of this report, the Probable Assumptions developed by management are not Suitably Supported and consistent with the plans of the

Applicants or do not provide a reasonable basis for the Cash Flow Statement, given the Hypothetical Assumptions; or

iii. the Cash Flow Statement does not reflect the Probable and Hypothetical Assumptions.

2. Since the Cash Flow Statement is based on Assumptions regarding future events, actual results will vary from the information presented even if the Hypothetical Assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow Statement will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, of relied upon by us in preparing this report.
3. The Cash Flow Statement has been prepared solely for the purpose described in the Notes on the face of the Cash Flow Statement, and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto, this 22nd day of December 2019.

Alvarez & Marsal Canada Inc.

in its capacity as Proposed Monitor of Lydian International Limited,
Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited



Per: Alan J. Hutchens
Senior Vice-President

Appendix D

Updated Cash Flow Forecast for the 13-Week Period Ending April 10, 202

Lydian International Limited., et. al.

13 Week Cash Flow Forecast For the Period Ending April 10, 2020

Amounts in USD

Week Ending (Friday) Forecast Week	Notes	17-Jan-20 Wk-1	24-Jan-20 Wk-2	31-Jan-20 Wk-3	7-Feb-20 Wk-4	14-Feb-20 Wk-5	21-Feb-20 Wk-6	28-Feb-20 Wk-7	6-Mar-20 Wk-8	13-Mar-20 Wk-9	20-Mar-20 Wk-10	27-Mar-20 Wk-11	3-Apr-20 Wk-12	10-Apr-20 Wk-13	13 Week Total
Receipts	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
DISBURSEMENTS															
Salaries & Benefits	2	(306)	-	(61,000)	-	(28,000)	-	(61,000)	(30,000)	-	-	(30,000)	(61,000)	-	(271,306)
Insurance	3	-	(4,847)	(82,000)	-	-	(4,847)	-	(82,000)	-	(4,847)	-	(82,000)	-	(260,541)
Board of Directors	4	-	-	(30,000)	-	-	-	(30,000)	-	-	-	-	(93,250)	-	(153,250)
Office, IT & Bank		(152)	(160)	(5,909)	(700)	(200)	(200)	(950)	(1,500)	(200)	(200)	(200)	(1,410)	(960)	(12,741)
Travel	5	(23,056)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(5,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(10,000)	(138,056)
Miscellaneous		(1,108)	(500)	(500)	(625)	(625)	(625)	(625)	(625)	(625)	(625)	(625)	(500)	(500)	(8,108)
Professional Fees	6	(98,074)	(101,000)	(286,141)	(272,057)	(28,590)	(172,000)	(45,000)	(112,700)	(334,590)	(37,000)	(20,000)	(252,000)	(229,590)	(1,988,741)
Contingency		-	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(60,000)
Net Cash Inflows / (Outflows)		(122,696)	(121,507)	(480,550)	(288,382)	(72,415)	(192,672)	(147,575)	(241,825)	(350,415)	(57,672)	(65,825)	(505,160)	(246,050)	(2,892,744)
CASH															
Available Cash (excludes DSR)															
Beginning Available Balance		445,995	323,300	701,793	221,242	412,861	340,446	147,774	199	(241,626)	(592,041)	(649,713)	(715,538)	(1,220,698)	445,995
Net Cash Inflows / (Outflows)		(122,696)	(121,507)	(480,550)	(288,382)	(72,415)	(192,672)	(147,575)	(241,825)	(350,415)	(57,672)	(65,825)	(505,160)	(246,050)	(2,892,744)
Inter-company transfer	7	-	500,000	-	480,000	-	-	-	-	-	-	-	-	-	980,000
Ending Available Balance		323,300	701,793	221,242	412,861	340,446	147,774	199	(241,626)	(592,041)	(649,713)	(715,538)	(1,220,698)	(1,466,748)	(1,466,748)

NOTES:

Disclaimer:

This cash flow forecast ("Forecast") is based on assumptions about future events and conditions that are not ascertainable. Actual results during the Forecast period will vary from the Forecast, even if the assumptions materialize, and such variations may be material. There is no representation, warranty or other assurance that any of the estimates, forecasts or projections will be realized.

1. The Company's practice is to only forecast VAT receipts where the VAT return has been approved and funds have been deposited for the benefit of the Company. The Company has recently filed a VAT return however it has not yet been reviewed by the Armenian government.
2. Includes payroll and taxes for certain senior management.
3. Amount is comprised of political violence insurance and director and officer liability insurance payable monthly.
4. Amount is comprised of political violence insurance and director and officer liability insurance ("D&O Insurance"). The insurer has confirmed a one month extension of the D&O Insurance for the month of February. For the purposes of this forecast, further monthly extensions beyond February have been assumed.
5. Travel costs to and within Armenia to oversee activities related to the mine site owned by the Company's Armenian subsidiary
6. Includes payments to the Companies' restructuring advisors, legal counsel, proposed CCAA Monitor, CCAA Monitor's legal counsel and other professionals, including those involved with the Company's public company reporting obligations.
7. As provided for in the Initial Order, the Company has continued to use its existing Cash Management process which provides that the Company may transfer cash in increments from Lydian Armenia, a non-Applicant Stay party to LIL on an as needed basis. These funds have been transferred in accordance with that practice and will erduce an existing intercompany loan from LIL to Lydian Armenia.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

**MONITOR'S
FIRST REPORT**

THORNTON GROUT FINNIGAN LLP
Barristers & Solicitors
Toronto Dominion Centre
100 Wellington Street W., Suite 3200
Toronto, Canada M5K 1K7

D. J. Miller LSO#344393P
djmillier@tgf.ca

Rachel Bengino LSO#68348V
rbengino@tgf.ca

Tel: 416.304.1616
Fax: 416.304.1313

Lawyers for the Monitor

TAB K

This is
CONFIDENTIAL EXHIBIT "K"
referred to in the Affidavit of
EDWARD A. SELLERS
sworn March 10, 2020

A handwritten signature in black ink, appearing to read 'E. Sellers', written over a horizontal line.

A Commissioner etc.

SIXTEENTH AMENDING AGREEMENT

Sixteenth Amending Agreement dated March ____, 2020 (this “**Sixteenth Amending Agreement**”) by and among Lydian Armenia CJSC (the “**Borrower**”), Lydian International Limited (“**Lydian**”), the other Guarantors party hereto, Orion Co IV (ED) Limited (“**Orion**”), Resource Capital Fund VI L.P. (“**RCF**”) and Osisko Bermuda Limited (“**Osisko**”), in their capacity as lenders (the “**Lenders**”), and Orion, as administrative agent for and on behalf of the Lenders (in such capacity, the “**Administrative Agent**”).

WHEREAS:

- (a) Reference is made to a credit agreement dated November 30, 2015, between the Borrower, Lydian, the lenders party thereto, and the Administrative Agent, as amended by an amending agreement dated March 11, 2016, a second amending agreement dated September 30, 2016, a third amending agreement dated October 14, 2016, a fourth amending agreement dated October 21, 2016, a fifth amending agreement dated June 30, 2017, a sixth amending agreement dated April 19, 2018, a seventh amending agreement dated June 29, 2018, an eighth amending agreement dated July 31, 2018, a ninth amending agreement dated August 15, 2018, a tenth amending agreement dated August 31, 2018, an eleventh amending agreement dated September 28, 2018, a twelfth amending agreement dated November 2, 2018, a thirteenth amending agreement dated January 15, 2019, a fourteenth amending agreement dated July 1, 2019 and a fifteenth amending agreement dated October 1, 2019 (collectively, the “**Existing Credit Agreement**” and as amended by this Sixteenth Amending Agreement, the “**Credit Agreement**”).
- (b) The parties entered into the fourth amended and restated forbearance agreement dated as of October 14, 2019 between, *inter alia*, the Borrower, Lydian, the Lenders, the Stream Purchasers, ING Bank N.V., AB Svensk Exportkredit (publ), Caterpillar Financial Services (UK) Limited and Ameriabank Closed Joint-Stock Company (the “**Forbearance Agreement**”).
- (c) The forbearance period under the Forbearance Agreement ended as of December 20, 2019 and Lydian, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited initiated proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act* before the Superior Court of Justice (Commercial List).
- (d) Notwithstanding the expiration of the Term Facility B Availability Period on December 20, 2019, the Term Facility B Lenders have agreed to provide funding to the Borrower, by way of new post-filing Advances under the Term Facility B up to the Maximum DIP Amount, to fund certain obligations of the Lydian Group Members in connection with the CCAA Proceedings.
- (e) The parties hereto wish to amend the Existing Credit Agreement to extend the availability period and the maturity date applicable to the Term Facility B and to provide for additional terms and conditions upon which advances of DIP Loans will be made available to the Borrower for the benefit of the Lydian Group Members.

- (f) Unless otherwise indicated, capitalized terms used in this Sixteenth Amending Agreement that are not otherwise defined herein have the meanings given to them in the Existing Credit Agreement.

In consideration of the above and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the signatories hereto agree as follows:

ARTICLE 1 CREDIT AGREEMENT AMENDMENTS

- 1.1 The Existing Credit Agreement is hereby amended as follows to be effective as of the Effective Date:

- (a) The definition of “Agreement” in Section 1.1 (*Definitions*) of the Existing Credit Agreement is deleted in its entirety and replaced with the following:

“**Agreement**” means this credit agreement and all Schedules attached hereto, as amended by the Amending Agreement, the Second Amending Agreement, the Third Amending Agreement, the Fourth Amending Agreement, the Fifth Amending Agreement, the Sixth Amending Agreement, the Seventh Amending Agreement, the Eighth Amending Agreement, the Ninth Amending Agreement, the Tenth Amending Agreement, the Eleventh Amending Agreement, the Twelfth Amending Agreement, the Thirteenth Amending Agreement, the Fourteenth Amending Agreement, the Fifteenth Amending Agreement and the Sixteenth Amending Agreement.”

- (b) The definition of “Cash Flow Forecast” in Section 1.1 (*Definitions*) of the Existing Credit Agreement is deleted in its entirety and replaced with the following:

“**Cash Flow Forecast**” means the detailed cash flow forecast attached as Exhibit “1” to the Sixteenth Amending Agreement, which is in form and substance satisfactory to the DIP Lenders and the Monitor, reflecting the projected cash requirements and anticipated obligations to be incurred by the Lydian Group Members from the week ending March 7, 2020 [REDACTED] calculated on a weekly basis.”

- (c) The definition of “Event of Default” in Section 1.1 (*Definitions*) of the Existing Credit Agreement is deleted in its entirety and replaced with the following:

“**Event of Default**” means, collectively, those events listed in Sections 3.5.6 and 9.1.”

- (d) The definition of “Term Facility B Maturity Date” in Section 1.1 (*Definitions*) of the Existing Credit Agreement is deleted in its entirety and replaced with the following:

“**Term Facility B Maturity Date**” means the earlier of (i) the occurrence of any Additional Event of Default, (ii) [REDACTED] and (iii) the date of a Change of Control.”

- (e) The following is added to Section 1.1 (*Definitions*) of the Existing Credit Agreement in its proper alphabetic order:

[REDACTED]

[REDACTED]

“**Additional Event of Default**” has the meaning ascribed to it in Section 3.5.6.

“**CCAA Applicants**” means, collectively, Lydian, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited.

“**CCAA Proceedings**” means the proceedings initiated by the CCAA Applicants under the *Companies’ Creditors Arrangement Act* (Canada).

“**Court**” means the Ontario Superior Court of Justice (Commercial List).

“**DIP Charge**” means a super priority Court-ordered charge on the assets, undertakings and properties of the CCAA Applicants in respect of the guarantees given by each of the CCAA Applicants in favor of the DIP Lenders, up to the aggregate amount of the DIP Loans, which charge shall be in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise, but shall be subordinate to the Administration Charge, the Directors’ Charge (as each term is defined in the Initial Order) and the Transaction Charge (as defined in the DIP Order). For greater certainty, the DIP Charge shall not charge any assets, undertakings and properties that are subject to the liens pursuant to the Equipment Financing facilities.

“**DIP Lenders**” means those Term Facility B Lenders providing DIP Loans pursuant to the Sixteenth Amending Agreement. In each instance where the term “Term Facility B Lenders” appears in the Credit Agreement, such reference shall, solely as it relates to DIP Loans, be taken to mean DIP Lenders.

“**DIP Loans**” means, collectively, all Term Facility B Loans advanced to the Borrower on or after the effective date of the Sixteenth Amending Agreement, plus the Additional Arbitration Funding Amount, and “**DIP Loan**” means any one of them.

“Initial Order” means the initial order dated December 23, 2019 granted by the Court in connection with the CCAA Proceedings, as amended and restated on January 23, 2020 and as may be further amended and restated.

“Majority DIP Lenders” means at any time one or more DIP Lenders holding greater than 66 2/3% of the DIP Loans.

“Maximum DIP Amount” means [REDACTED], plus any Additional Arbitration Funding Amount that may be provided by RCF, if and when advanced, [REDACTED]

[REDACTED] provided that: (i) [REDACTED] in the aggregate on account of reasonable additional costs incurred by the Borrower in accordance with the terms of this Agreement and relating to the period from and after the date hereof and prior to the Term Facility B Maturity Date but not payable until after the Term Facility B Maturity Date; and (ii) the parties hereto shall determine the quantum of such reasonable additional costs by not later than [REDACTED]

“Monitor” means Alvarez & Marsal Inc., the Court-appointed monitor in connection with the CCAA Proceedings, appointed pursuant to the Initial Order.

“Orion” means Orion Co IV (ED) Limited.

“Osisko” means Osisko Bermuda Limited.

[REDACTED]
“RCF” means Resource Capital Fund VI L.P.

“Sixteenth Amending Agreement” means the sixteenth amending agreement dated March ____, 2020 entered into by and among, *inter alia*, the Borrower, the CCAA Applicants, the Lenders and the Administrative Agent.”

- (f) Article 3 of the Existing Credit Agreement is amended by adding the following as a new Section 3.5:

“Section 3.5 Provisions Applicable to DIP Loans

3.5.1 Term Facility B Loans. All DIP Loans provided pursuant to the Credit Agreement constitute Term Facility B Loans and except as otherwise provided in this Section 3.5, the provisions applicable to Term Facility B Loans shall apply to all DIP Loans.

3.5.2 Availment. Notwithstanding Section 3.2 of the Credit Agreement, Advances for DIP Loans will be available to the Borrower on a bi-weekly basis and shall be