**MODEL CCAA INITIAL RECOGNITION ORDER (FOREIGN MAIN PROCEEDING)[[1]](#footnote-1)**

*[Current to August 1, 2015]*

No.

Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,

R.S.C. 1985, c. C 36, AS AMENDED

AND

AND IN THE MATTER OF [LIST DEBTOR NAMES]

**ORDER MADE AFTER APPLICATION**

**(FOREIGN MAIN PROCEEDING - INITIAL RECOGNITION)**

|  |  |  |
| --- | --- | --- |
| BEFORE THE HONOURABLE  \_\_\_\_\_\_\_ JUSTICE \_\_\_\_\_\_\_\_\_\_\_\_\_\_ | )  ) | \_\_\_\_\_\_\_ DAY, THE \_\_\_\_ DAY  OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20\_\_. |

THE PETITION of [NAME OF FOREIGN REPRESENTATIVE], in its capacity as the foreign representative (the "**Foreign Representative**") of [LIST DEBTOR NAMES] (the “**Debtors**”), pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**")[[2]](#footnote-2), coming on for hearing at Vancouver, British Columbia, on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 201\_\_\_, and on hearing \_\_\_\_\_\_\_\_\_\_\_, counsel for the Foreign Representative and those other counsel listed on Schedule “A” hereto; AND UPON READING the material filed, including the affidavit of [NAME] sworn [DATE], the preliminary report of [NAME OF PROPOSED INFORMATION OFFICER], in its capacity as proposed information officer (the "**Proposed Information Officer**")[[3]](#footnote-3), dated [DATE], each filed, and upon being provided with copies of the documents required by s.46 of the CCAA;

AND UPON HEARING the submissions of counsel for the Foreign Representative, [counsel for the Proposed Information Officer,] and counsel for [OTHER PARTIES], and upon being advised that no other persons were served with the Petition;

THIS COURT ORDERS AND DECLARES that:

SERVICE[[4]](#footnote-4)

1. [ABRIDGING TIME FOR SERVICE.][[5]](#footnote-5)

FOREIGN REPRESENTATIVE

1. The Foreign Representative is the "foreign representative" of the Debtors, as defined in subsection 45(1) of the CCAA, in respect of [DESCRIBE FOREIGN PROCEEDING] (the "**Foreign Proceeding**").

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

1. The centre of main interests of each of the Debtors is [FILING JURISDICTION FOR FOREIGN PROCEEDING],[[6]](#footnote-6) and the Foreign Proceeding is hereby recognized as a "foreign main proceeding", as defined subsection 45(1) of the CCAA[[7]](#footnote-7).

STAY OF PROCEEDINGS[[8]](#footnote-8)

1. Until otherwise ordered by this Court:
   1. all proceedings taken or that might be taken against any of the Debtors under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are hereby stayed;
   2. further proceedings in any action, suit or proceeding against any of the Debtors are hereby restrained; and
   3. the commencement of any action, suit or proceeding against any of the Debtors is hereby prohibited.

NO SALE OF PROPERTY[[9]](#footnote-9)

1. Except with leave of this Court, each of the Debtors is hereby prohibited from selling or otherwise disposing of:
   1. outside the ordinary course of its business, any of its property in Canada that relates to the business; and
   2. any of its other property in Canada.

GENERAL

1. As soon as practicable,[[10]](#footnote-10) the Foreign Representative shall cause a notice substantially in the form attached to this Order as Schedule <@>[[11]](#footnote-11) to be published once a week for two consecutive weeks in [NAME OF NEWSPAPER(S)].
2. This Order shall be effective as of [TIME][[12]](#footnote-12) on the date of this Order.
3. Any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days’ notice to the Debtors and the Foreign Representative and their respective counsel, and 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.
4. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtors and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

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

|  |
| --- |
|  |
| Signature of  🞎 Party 🗹 Lawyer for the Foreign Representative |
|  |
| *<Print Name>* |
|  |
| Signature of 🞎 Party 🞎 Lawyer for <name of party(ies)> |
|  |
| *<Print Name>* |
|  | BY THE COURT |
|  | REGISTRAR |

**[ATTACH APPROPRIATE SCHEDULE(S)]**

1. This model Order is not in any way determinative of the applicant’s entitlement to the relief provided for in this model Order. It is the responsibility of counsel to ensure that the form of Order they propose is appropriate in the circumstances of the case and to justify the relief they are seeking, including by providing the necessary evidentiary support and judicial authority. [↑](#footnote-ref-1)
2. Part IV of the CCAA governs cross-border insolvencies. [↑](#footnote-ref-2)
3. There is no express contemplation under the CCAA that an information officer be appointed. Counsel should in every case consider whether the appointment of an information officer is warranted having regard to, among other things, the assets of the Debtors in the jurisdiction, the extent of the Debtors’ operations in the jurisdiction, the number and amount of creditors’ claims in the jurisdiction and whether the Debtors have employees in the jurisdiction. Similarly, even if it is the Applicant’s intention to seek the appointment of an information officer, it is not always necessary or appropriate for the proposed information officer to file a preliminary report and counsel should consider the advisability of doing so bearing in mind any extraordinary relief being sought and the costs of preparation of a preliminary report. [↑](#footnote-ref-3)
4. In all instances, counsel should address the manner of service with the Court, including advising as to how service was or is proposed to be effected. [↑](#footnote-ref-4)
5. It is presumed that the applicant will serve materials in accordance with all relevant deadlines, however, if that is not possible, counsel may consider including the following language in the Order:

   “The time for service of the Petition, supporting affidavit and all other materials is hereby abridged so that this application is properly returnable today.” [↑](#footnote-ref-5)
6. A "foreign main proceeding" is defined in subsection 45(1) of the CCAA as "a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests". The Court must make this determination if it is to conclude that the proceeding being recognized is a foreign main proceeding. This determination should be made for each individual Debtor. Subsection 45(2) of the CCAA provides that in the absence of proof to the contrary, a debtor company’s registered office is deemed to be the centre of its main interests. [↑](#footnote-ref-6)
7. Under section 47 of the CCAA, the Canadian Court must be satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding. The Court must then determine if the foreign proceeding is a foreign "main" or "non-main" proceeding with reference to the debtors’ centre of main interest. If the Canadian Court recognizes a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of this model Order reflect only the mandatory relief set out in section 48 of the CCAA with respect to a foreign main proceeding. As noted below, supplemental and other relief is included in the model Supplemental Order (Foreign Main Proceeding). [↑](#footnote-ref-7)
8. The provisions of this paragraph 4 are based on subsections 48(1)(a) through (c) of the CCAA. More comprehensive stay provisions are found in the model Supplemental Order (Foreign Main Proceeding). [↑](#footnote-ref-8)
9. The provisions of this paragraph 5 are based on subsection 48(1)(d) of the CCAA. [↑](#footnote-ref-9)
10. Subsection 53(b) of the CCAA provides that unless the Court otherwise directs, publication must be made "without delay after the order is made". [↑](#footnote-ref-10)
11. The notice must contain information prescribed under the CCAA (see subsection 53(b) and Regulation 14) and *Companies’ Creditors Arrangement Regulations,* SOR/2009-219, s. 14. [↑](#footnote-ref-11)
12. This time should be after the effective time that the Foreign Representative was appointed in the Foreign Proceeding. [↑](#footnote-ref-12)