

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

DEC 03 2021



No. S2110503  
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  
AND  
IN THE MATTER OF OTSO GOLD CORP., OTSO GOLD OY, OTSO GOLD AB, and  
2273265 ALBERTA LTD.

PETITIONERS

PETITION TO THE COURT

This proceeding is brought by the Petitioners for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioners
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:	800 Smithe Street, Vancouver
(2) The ADDRESS FOR SERVICE of the petitioners is:	c/o Farris LLP
Fax number address for service (if any) of the petitioners	N/A
E-mail address for service (if any) of the petitioners:	<u>rmorse@farris.com</u> , <u>mpierce@farris.com</u> , <u>tlouman-gardiner@farris.com</u>
(3) The name and office address of the petitioners' lawyer is:	Farris LLP Barristers & Solicitors 2500 - 700 West Georgia Street Vancouver, British Columbia V7Y 1B3 Attention: Rebecca Morse, Matthew Pierce, Tim Louman-Gardiner
Fax number address for service of the petitioners' lawyer is:	604-661-9349
E-mail address for service (if any) of the petitioners:	<u>rmorse@farris.com</u> , <u>mpierce@farris.com</u> , <u>tlouman-gardiner@farris.com</u>

### CLAIM OF THE PETITIONERS

#### Part 1: ORDERS SOUGHT

1. The Petitioners apply for an order in the form attached hereto as Schedule "A" for certain relief pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985, c. C-36 (the "CCAA"), including, among others, the following:
  - (a) A declaration that the CCAA applies to the Petitioners;
  - (b) A stay of all proceedings and remedies taken, or that might be taken in respect of the Petitioners or any of their property, except as otherwise set out in the order;
  - (c) Authorizing the Petitioners to carry on business in a manner consistent with the preservation of their property and business and to make certain payments in connection with their business;

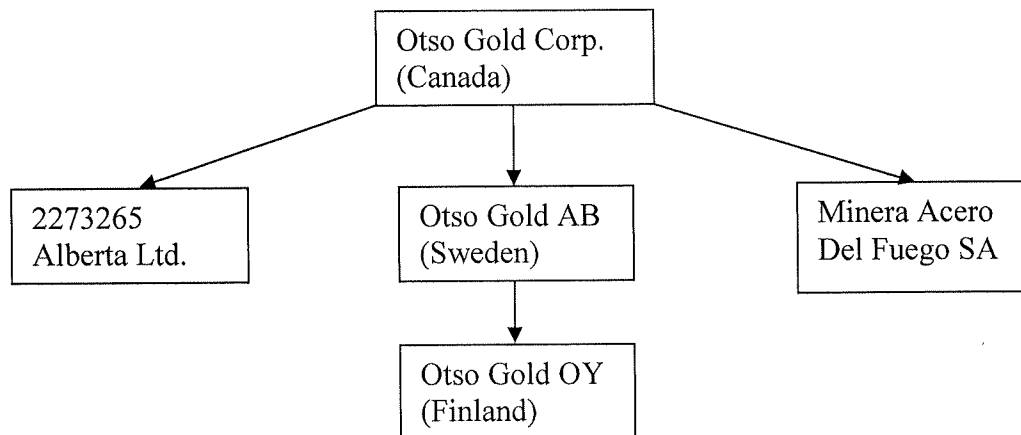
- (d) Appointing Deloitte Restructuring Inc. (“Deloitte”) as monitor in these proceedings; and
- (e) Authorizing the Petitioners to file with the Court a plan or plans of compromise and arrangement.

## **Part 2: FACTUAL BASIS**

### **The Petitioners**

1. The Petitioners are engaged in mineral exploration and development, focused on acquiring and developing prime resource assets, such as gold and copper, in safe harbour jurisdictions. As discussed below, their primary business pertains to the development of the Laiva Gold Project in Northern Ostrobothnia, Finland (the “**Otso Gold Mine**”). Otso Gold Corp. (“**Otso**”) is also involved in also owns a 49 per cent interest in a Copper Creek porphyry copper gold exploration project situated in the golden triangle in British Columbia.
2. Otso is incorporated pursuant to the laws of Alberta. It was formerly known as 510483 Alberta Ltd., Firesteel Resources Inc., Nordic Gold Corp., and Nordic Gold Inc. It is also extra-provincially registered in British Columbia, with an attorney’s address of Suite 950 – Scotia Tower, 650 West Georgia Street, Vancouver.
3. Otso is a reporting issuer listed on the TSX Venture Exchange. Its principal securities regulator is the British Columbia Securities Commission, and it is a reporting issuer in both British Columbia and Alberta.
4. Otso has two wholly-owned subsidiaries that are also Petitioners in this proceeding:
  - (a) Otso Gold AB (“**Otso AB**”), incorporated pursuant to the laws of Sweden;
  - (b) 2273265 Alberta Ltd. (“**2273265**”), incorporated pursuant to the laws of Alberta.(collectively, the “**Subsidiaries**”).

5. Otso AB has one wholly-owned subsidiary, Otso Gold OY (“**Otso OY**”, known collectively with Otso and Otso AB, the “**Otso Group**”), incorporated pursuant to the laws of Finland.
6. Otso Gold is the parent of the corporate group. It manages the operations of the Otso Gold Mine through a services agreement dated July 2, 2019 (the “**Services Agreement**”) among Otso, Lionsbridge, and Westech (and both of those terms are defined below).
7. Otso AB is a holding company and its only asset is the shares of Otso OY.
8. Otso OY is the operational company operating the Otso Gold Mine in Finland, described further below.
9. The Otso Group prepare their financial statements on a consolidated basis. Their auditor is PricewaterhouseCoopers Inc. in Vancouver.
10. Otso also owns 100% of the issued and outstanding shares of Minera Acero Del Fuego SA (“**Minera Acero**”), incorporated pursuant to the laws of Mexico. Minera Acero has no assets and is not liable for the debts of any of the Petitioners (and is not, therefore, a petitioner in this proceeding).
11. 2273265 was incorporated for tax purposes and has bank accounts in Canada. Given its assets are within the Otso Group, it is a Petitioner in this proceeding as well.
12. The organizational chart of the companies owned by the Petitioner Otso is as follows:



### The Otso Gold Mine

13. Development at the Otso Gold Mine has been ongoing since exploration in 1984. Otso's involvement in the Otso Gold Mine began in 2017, with its acquisition of the shares in Otso AB (and thereby an interest in the Otso Gold Mine) and that purchase completed in 2018. This transaction was financed by money borrowed from Pandion Mine Finance, through its subsidiary PFL Raahe Holdings LP ("**Pandion**").
14. Management of Otso at the time attempted to restart production at the Otso Gold Mine in about November 2018; however, the Otso Gold Mine was put into care and maintenance from pre-commercial production effective April 1, 2019.
15. From 2019 through 2021, Otso sought re-financing and to secure management expertise in order to resume production. With respect to management, Otso ultimately reached agreement with Lionsbridge Capital Pty Ltd ("**Lionsbridge**") and its subsidiary, Westech International Pty Ltd ("**Westech**"), and Lionsbridge and Westech agreed to provide management and technical services to Otso pursuant to the Services Agreement.
16. With respect to securing financing to allow the Petitioners to continue efforts to restart production in order to service their debts through operational cash flows, Otso raised money through a subscription agreement with Brunswick Gold Ltd. ("**Brunswick**"), pursuant to which Brunswick made an equity investment (through the purchase of shares and warrants) in Otso in or about December 2020. As discussed further below, there is now an issue as to whether proper disclosure was made to Brunswick in connection with the above-mentioned subscription agreement.
17. The Petitioners anticipated that this funding would be used to organize drilling at the Otso Gold Mine and to commission a bankable feasibility study, which was to be used to secure the necessary bank financing to fund commercial production. In May and June 2021, Lionsbridge issued press releases that indicated that: a technical report on drilling was expected to be released in June 2021; a feasibility study, progressing in parallel with a return to production, is expected in August 2021; and the restart of production was expected to take place in the third quarter of 2021. However, and as a result of the

management issues discussed below, the feasibility study was not produced in June 2021 as anticipated, thereby causing delays in the return to production and further strains one Otso Gold's finances.

18. The Otso Gold Mine ultimately resumed production of gold in November 2021. The Petitioners anticipate that it will generate a positive cash flow by the second or third month of production (i.e. in January or February 2022). It is also anticipated that the Otso Gold Mine will produce thereafter between 7,500 and 7,800 troy ounces of gold dore bars per month, with projected net smelter returns of approximately \$13 million USD per month.
19. The long-term financial modelling prepared by Lionsbridge in the summer of 2021, based on monthly production as described in the previous paragraph, projects after-tax positive cash flows of between \$46 million USD and \$56 million USD per annum in each year from 2022 to 2030, based on the assumptions set out therein.
20. Operations at the Otso Gold Mine involve approximately 132 staff, consisting of a variety of personnel in the safety, environmental, mining, process, tech services, finance, commercial and human resources departments. The majority of the staff at the Otso Gold Mine are employed by Otso OY; there are also certain high-level technical and managerial staff employed by Otso (and through Westech pursuant to the Services Agreement). The high-level Westech staff have the operational knowledge required to operate the Otso Gold Mine, and its continued operation depends on those staff remaining in place.

### **Management Issues**

21. Until November 2021, the Otso Group was controlled by Lionsbridge and its nominees, and the majority of the directors on Otso's board of directors were Lionsbridge representatives and all of Otso's officers were also Lionsbridge nominees. Lionsbridge also owns Westech, which provides the operational management for the Otso Gold Mine and the Otso Group.

22. As mentioned above, in or about the spring of 2019 the Otso Gold Mine was put into care and maintenance. In the fall 2020 and winter of 2020/21 (and after Brunswick invested in the Otso Group), there were significant efforts made by Brunswick to recapitalize the Otso Group and re-finance its debt, including to Pandion, which debt is secured.
23. As mentioned above, the initial purpose of Brunswick's equity injection was to provide the Otso Group with funding to commission a bankable feasibility study; however, it was later learned from Lionsbridge that:
  - (a) the feasibility study and a restart of production would not in fact be able to take place without a further equity injection from Brunswick; and
  - (b) Pandion would oppose and block any further equity injection by Brunswick.
24. Thereafter, Brunswick learned that Otso Group was in default of the Pandion Loan, as there was unpaid interest, and that the Otso Group was prohibited under the terms of the Pandion Agreement (as defined below) from incurring further debt to repay the Pandion Loan.
25. Regardless, as the Otso Group required immediate cash from Brunswick to continue operations, Brunswick, Lionsbridge, and Pandion negotiated terms on which Brunswick would advance further financing and as set out in a signed letter agreement in July, 2021 (the "**Letter Agreement**") pursuant to which the parties agreed, *inter alia*:
  - (a) Brunswick would convert its warrant and provide a further \$11 million of cash to the Otso Group, increasing its shareholdings to its present value;
  - (b) The Otso Group would be permitted to borrow for the purposes of repaying the Pandion Loan, which would not constitute an event of default; and
  - (c) To formalize the terms of the Letter Agreement in further documentation.
26. The next day, Brunswick circulated a draft of an agreement formalizing amendments to the material agreements with Pandion pursuant to the Letter Agreement. Many of the subsequent negotiations were conducted through Lionsgate (and to the exclusion of the

Brunswick's board representatives). Pandion was slow in providing comments and ultimately insisted on terms outside scope of the Letter Agreement (which were not agreeable). Otso Gold then considered further financing options.

27. Brunswick did invest the \$5 million USD contemplated by the 2021 Subscription Agreement, on or about October 19, 2021; however, even then, the feasibility study was still not finalized, causing further delays in restarting production at the Otso Gold Mine and further strains on the Petitioners' finances.
28. Because there was no feasibility study in place by October 2021, Otso Gold struggled to secure debt financing from banks. Otso Gold entered into negotiations with a Swiss branch of Sberbank and another Russian bank, VTB; however, the discussions were hindered in part by Lionsbridge's repeated failure or refusal to attend conference calls with Sberbank and CSA representatives and financing could not be obtained prior to the due date of Pandion's loans.
29. By this time, there were various questions and concerns regarding Lionsbridge's management. As a result, Oso Gold approved the appointment of A&M to provide restructuring services to the Petitioners on November 24, 2021.
30. Shortly after A&M was appointed and on November 30, 2021, Lionsbridge's principals, Brian Wesson and Clyde Wesson, resigned as officers and directors of Otso Gold, and purported to terminate the Services Agreement.
31. Further and additionally, on or about the same day, the Petitioners learned that:
  - (a) the Lionsbridge office at the Otso Gold Mine had been completely emptied and Otso Gold's computers and files had been removed;
  - (b) a review of Otso Gold's credit card accounts to which the Wessons had access revealed unexplained and unaccounted for charges;
  - (c) Otso OY's creditor accounts payable had increased from approximately €2 million in July 2021 to approximately €9 million in November 2021; and



- (d) Otso OY had sold gold to MKS (a global trader in precious metals markets) at a purchase price of \$741,000 USD, which MKS paid for by wire transfer, but which funds are missing from Otso Gold's bank accounts and are otherwise unaccounted for.
32. Based on the above, Juha Tiainen, Otso OY's Executive for Relationships and Business Development, made contact with Finnish border control services to report possible criminal activity on the part of the Wessons; and
33. Shortly thereafter, Finnish authorities apprehended Brian Wesson at the Helsinki-Vantaa international airport and placed him into custody.
34. The Petitioners have since learned that Otso OY has a significant shortage in critical spare parts. This is a critical issue as the Otso Gold Mine could go into an extended production stoppage in the event of equipment failure if the spare part inventory is not on hand.
35. The Otso Gold board is currently investigating potential improprieties committed by Lionsbridge and their potential impacts upon the finances of Otso Gold and Otso OY.

#### **Assets and Liabilities**

36. As a result of the above-mentioned issues with management and Lionsbridge, the Petitioners are not certain that they presently have access to accurate, complete, and reliable financial information.
37. According to Otso's most recent audited consolidated financial statements, for the year ending January 31, 2021, the Petitioners' property, plant and equipment assets are valued in the aggregate at \$52,651,492, consisting of \$2,684,836 in land, \$2,321,768 in connection fees, \$5,336,289 in buildings, and \$42,308,599 in mineral properties and machinery equipment. These values are based upon cost less accumulated depreciation and impairment charges (with land not being depreciated).
38. According to Otso's interim consolidated financial statements for the six months ending July 31, 2021, the Petitioners' property, plant and equipment assets are valued in the

aggregate at \$55,853,164, consisting of \$2,569,569 in land, \$2,222,089 in connection fees, \$4,576,143 in buildings, \$46,482,194 in mineral properties and machinery equipment, and \$3,169 in computer equipment.

39. The Petitioners' largest creditor is Pandion. Based upon available financial records, Pandion loaned a total principal amount of \$32,600,000 USD to Otso (collectively, the "**Pandion Loans**"), pursuant to various agreements between 2017 and 2020. The amount owing to Pandion in respect of the Pandion Loans, inclusive of principal and interest as of December 7, 2021 will be \$25,875,000 USD (being \$23,000,000 in principal plus \$2,875,000 in accrued interest), with interest accruing thereon at 15 per cent per annum. The full principal and interest owing in respect of the Pandion Loans is due on December 7, 2021 and this debt is secured by way of a various security agreements and share pledge agreements granted by Otso, Otso AB and Otso OY.
40. Pandion has asserted that, if the amounts owing in respect of the Pandion Loans is not paid when due on December 7, 2021 that Pandion will be entitled to claim repayment of an additional amount although the quantum of that additional amount and the Petitioners have been told various amounts ranging from \$33 million USD to \$100 million USD.
41. Otso also owes Ab Tallqvist Infra Oy ("**Tallqvist**") approximately \$6.135 million USD (including accrued interest), which is also due on December 7, 2021 and Convertible debenture holders, who in the aggregate hold approximately \$3.75 million USD in convertible debt.
42. Further, the Petitioners also have trade creditors totalling approximately €5.7 million. It is believed that these amounts relate generally to suppliers and service providers at the Otso Gold Mine over the past four months. However, in investigating Otso's finances following the resignations of Brian Wesson and Clyde Wesson (as discussed further above), there has been a significant increase in trade creditor accounts payable in the last few months, which the Otso board is continuing to investigate.
43. Finally, Brunswick has asserted a potential claim against Otso Gold in respect of alleged contractual misrepresentations. The quantum of that potential liability is uncertain, as

would be the ability of Otso Gold to claim contribution and indemnity from third parties in the event it were found to be liable to Brunswick.

44. Its liabilities in the financial statements also include:

- (a) \$419,378 in convertible (unsecured) debentures. Those matured on December 30, 2020 and the Otso Group paid the current amounts in April, 2021. As of January 31, 2021 the Otso Group also held \$4,079,092 in non-current convertible debentures;
- (b) A \$1,000,000 loan from Amalgam Rain Management Ltd. that was repaid in February, 2021;
- (c) A decommissioning and rehabilitation provision of \$11,966,577, which is an accounting provision for the estimated costs expected to be incurred in connection with future remediation and closure activities at the end of the life of the Otso Gold Mine; and
- (d) The Pandion Agreement, as defined and discussed further below.

45. Since 2018, the Otso Group has had two major sources of financing:

- (a) A debt investment from Pandion; and
- (b) An equity investment from Brunswick.

46. As discussed above, Pandion advanced a loan in 2018, and this loan was made pursuant to a Pre-Paid Forward Gold Purchase Agreement (the “**Pandion Agreement**”). Under the Pandion Agreement:

- (a) PFL advanced funds to Otso. Management estimates the PFL advanced approximately US\$33 million to Otso, though that amount is uncertain; and
- (b) The Otso Group agreed that PFL could purchase 67,155 ounces of gold production from the Otso Group at market prices less a fixed discount of US\$500/oz.

47. In 2019:
- (a) PFL subsequently advanced a further \$9,180,300 CAD to Otso on the same terms as the Pandion Agreement in 2019; and
  - (b) Pandion also agreed to advance a revolving facility to Otso OY, to be drawn up to €350,000 per month, repayable on demand.
48. In 2020, the Otso Group and Pandion re-characterized and consolidated the terms of the amounts advanced by Pandion in 2018 and 2019, converting the entire balance to a single facility repayable December 7, 2021 (the “**Pandion Loan**”). The consolidated indebtedness was US\$23 million. Pandion has asserted that if the full amount of \$25 million is not repaid on December 7, 2021, the amount of the indebtedness increases to a higher amount, and has communicated different amounts to the Petitioners between \$44 million and \$100 million USD.
49. The Pandion Loan is secured against all the assets of the entities within the Otso Group. Both Otso and Otso OY are liable for the Pandion Loan, and it is uncertain at this point whether Otso AB is likewise liable for it, but it may be.
50. Otso also completed a financing with Brunswick in 2021 subsequent to the production of its financial statements. Brunswick made a US\$11,000,000 equity investment in Otso, which was used to retire its then liabilities (apart from the Pandion Loan and its accounts payable) and to provide working capital for Otso. As a consequence of its equity investments, Brunswick became the largest shareholder of Otso, holding 67% of the outstanding common shares of the Company.
51. Finally, there is a potential liability of Otso in respect of a potential claim by Brunswick in relation to alleged misrepresentations made in respect of its subscription. Otso may also have a likewise potential claim for contribution and indemnity from third parties in the event it is liable to Brunswick.

### **Current Liquidity Issues**

52. The Otso Group will not have the ability to pay either the Pandion Loan or the amount owing to Tallqvist on December 7, 2021 (and when these loans come due).
53. The Otso Group also has significant payables, including to trade creditors as discussed above.
54. The Otso Group will also need significant cash to stabilize its operations and to fund essential expenses. It intends to revise its cash flow forecast after an initial order is granted, and may seek further relief at a comeback hearing.

### **Venue**

55. Otso:
  - (a) Is extra-provincially registered in British Columbia, with an attorney office in British Columbia;
  - (b) Is a reporting issuer in British Columbia and its principal regulator is the BC Securities Commission;
  - (c) The transfer agent for its shares is located in British Columbia;
  - (d) The Services Agreement is governed by the law of British Columbia;
  - (e) Its bank accounts are located in British Columbia;
  - (f) Until November 27, 2021 it has a director located in British Columbia (and Yvette Harrison, a Lionsbridge representative, resigned on that date); and
  - (g) Its auditor is located in British Columbia.

### **Restructuring**

56. The Petitioners have filed contemporaneous restructuring proceedings in Finland and Sweden. The Petitioners intend to seek interjurisdictional relief at the comeback hearing or a later date.

57. The Petitioners also intend to seek a restructuring of their debt, either by way of re-financing or re-capitalization, with the support of its main shareholders. Its largest shareholder Brunswick is considering the terms on which it will re-capitalize the Otso Group, but it needs time and stability to do so. The Otso Group is currently anticipating that it will be able to pay provable claims owing to creditors subject to creditors proving their claims if necessary. However, the Petitioners need some time to:
- (a) Stabilize management and operations of the Otso Gold Mine;
  - (b) Investigate its financial position;
  - (c) Fund the next few months of operations in order to get the Otso Gold Mine to a cash flow positive position; and
  - (d) Consider the possible exit strategies, including a re-capitalization, a re-financing, or a sale of the assets as a going concern.

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

1. The Petitioners rely on:
  - (a) the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("CCAA");
  - (b) the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 ("BIA");
  - (c) the *Supreme Court Civil Rules*, B.C. Reg 168/2009;
  - (d) the inherent and equitable jurisdiction of this Court; and
  - (e) such further and other legal basis as counsel may advise and this Court may allow.
2. The CCAA applies in respect of a "debtor company," when the total amount of claims against a company or group of affiliated debtor companies exceeds \$5,000,000.

CCAA, ss. 2 and 3

3. A “debtor company” includes any company that is insolvent. Insolvency is defined in the BIA, which provides that an insolvent person (i) is for any reason unable to meet their obligations as they generally become due; or (ii) has ceased paying their current obligations in the ordinary course of business as they become due; or (iii) the aggregate of whose property is not, at fair valuation, sufficient, or, if disposed of at a fairly-conducted sale under legal process, would not be sufficient to enable payment of all their obligations, due and accruing due.

BIA, s. 2

4. In the context of the CCAA, the definition of “insolvent person” includes a company that is “reasonably expected to run out of liquidity within a reasonable proximity of time as compared with the time reasonably required to implement a restructuring.”

*Re Stelco Inc.*, 2004 CarswellOnt 1211 (Sup. Ct. J. (Commercial List)) at para. 26, leave to appeal to C.A. ref’d 2004 CarswellOnt 2936, leave to appeal to S.C.C. ref’d, CarswellOnt 5200

5. The Otso Group are affiliated companies, with total claims against them more than \$5,000,000.

*Re Prizm Income Fund* (Sup Ct. J. (Commercial List)), 2011 CarswellOnt 2258, 75 C.B.R. (5<sup>th</sup>) 213

6. The Otso Group has debts in excess of \$5 million. It is also insolvent, in that it cannot pay its debts as they become due.
7. Its largest (and controlling) shareholder, Brunswick, is committed to stabilizing the management of the Otso Group, resolving the governance issues, and ensuring the Services Agreement can continue, in order to preserve the Mine as a going concern. Brunswick is also consider a further investment into the Otso Group.

### **Venue**

8. British Columbia is the appropriate Canadian jurisdiction to hear this application. The Otso Group will need stays of proceedings in Canada, Finland, and Sweden, and may seek a recognition order. While there may eventually be a jurisdictional question to be resolved between Canada and Finland (or Sweden), there will need to be a proceeding in Canada and, in the circumstances, there is a stronger nexus to British Columbia than to any other Canadian province.

*Lydian International Limited (Re)*, 2019 ONSC 7473, para. 41

9. The only connection to Alberta is the incorporation of Otso, and the only connection to Ontario is a nominal head office. There are no operations in Ontario. By contrast, its bank accounts are located in British Columbia, British Columbia is its principal regulator for securities purposes, and its auditor is located in British Columbia.
10. The Petitioners will seek interjurisdictional relief at the comeback hearing if this initial order is granted.

### **Urgency and Notice**

11. The Petitioner will give short notice of this application to its secured lenders with personal property security, but no notice to unsecured creditors or other parties.
12. Section 11 of the CCAA provides that the Court may make orders thereunder on notice or without notice, as the Court may see fit.
13. The Petitioner requires urgent relief to address its liquidity challenges and to prevent enforcement steps from being taken in respect of secured debt, to prevent a rush to judgment by unsecured creditors, and to preserve the opportunity to restructure its business, in order to preserve enterprise value.
14. The Otso Gold Mine is of importance to its stakeholders, and all stakeholders benefit from its continued operation as a going concern, particularly since it has just started production.



15. It is not required at the stage of an initial order that there be a fully-formed plan or arrangement. However, there is more than a “germ” of a plan at this point. Brunswick has demonstrated a desire to re-finance the Pandion Loan, it requires time to do so in a manner that preserves the Services Agreement and stabilizes the governance of the Otso Group.

### **A Stay is Appropriate**

16. Section 11.02 of the CCAA authorizes the court to order a temporary stay of proceedings against the debtor. The purpose of the stay is to assist the debtor in maintaining the status quo while working to stabilize its affairs and negotiate a plan of arrangement with creditors, thus benefitting both the debtor and its creditors.
17. The power to grant a stay of proceedings should be construed broadly to facilitate the CCAA’s legislative purpose. A stay, the primary policy instrument available under the CCAA, helps to facilitate compromises and arrangements between companies and their creditors. It provides a necessary reprieve from litigation, allowing a debtor company to instead focus on negotiating with creditors.

*Campeau v. Olympia & York Developments Ltd.*, 1992 CarswellOnt 185 (Ct. J. (Gen. Div.)) at para. 17

18. The stay facilitates the ongoing operations of the debtor’s business, preserves the value of the operations, and provides the debtor with the necessary time, flexibility, and “breathing room” to carry out a court-supervised restructuring or sales process.

*Re Lehndorff General Partners Ltd.*, 1993 CarswellOnt 183 (Ct. J. (Gen. Div.)) at paras. 5-7

19. On the hearing of an application for an initial order, the Court may make an initial order with the accompanying stay when it is appropriate and necessary to preserve the Petitioners’ assets, having regard to the purpose of the CCAA, which is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors so as to enable the company to continue to exist.

*Re: Purcell Basin, 2018 BCSC 949*

20. In this proceeding, without a stay of proceedings:
  - (a) Otso will remain in a state of governance uncertainty; and
  - (b) Its secured creditor will be in a position to take enforcement steps.
21. The Petitioners thus require a stay of proceedings to enable it to reopen and operate its business, explore restructuring alternatives.

### **Monitor**

22. Section 11.7 of the CCAA provides that the court shall appoint a person to monitor the business and affairs of a debtor company granted relief under the CCAA.
23. The Petitioner seeks to have Deloitte appointed as Monitor in these proceedings.
24. EY has not acted as auditor to the Petitioners. It is therefore not restricted from acting as Monitor by section 11.7(2) of the CCAA.

### **The Granting of a Charge is Appropriate**

#### **Administration Charge**

25. The Petitioner seeks an Administration Charge in the amount of \$300,000 to secure the collective fees and disbursements incurred by the proposed Monitor and legal counsel to the proposed Monitor.
26. Section 11.52 of the CCAA provides that the court may grant a priority charge in respect of certain professional fees and expenses in proceedings under the CCAA.
27. Without this priority afforded to professional advisor fees, the objectives of the CCAA would be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically, a failure to provide protection for professional fees will “result in the overwhelming likelihood that the

CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings.”

*Re Timminco Ltd.*, 2012 ONSC 506 at para. 66

28. Factors the court will consider in granting a charge under s. 11.52 include: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of secured creditors likely to be affected by the charge, and the views of the monitor.

*Re Canwest Publishing Inc.*, 2010 ONSC 222 at para. 64

29. The Petitioner’s business requires the expertise, knowledge, and continuing participation of the proposed beneficiaries of the administration charge in order to carry out a restructuring. The Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.
30. The quantum of the proposed Administration Charge was determined in consultation with the proposed Monitor and is fair and reasonable in light of the significant size and complexity of the business and the scope of the proposed restructuring. It is not expected that there will be duplication of the role of the beneficiaries of the administrative charge.

### **Directors’ and Officers Charge**

31. The Petitioners are not seeking a Directors’ and Officers Charge (“D&O Charge”) at this point, but may do so at a further stage, on notice to secured creditors, subject to the Petitioners confirming the status of any director and officer insurance for the Otso Group.

### **Debtor-in-Possession Financing**

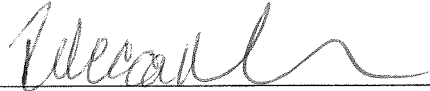
32. The Petitioners are not seeking any relief with respect to debtor-in-possession financing at this point, but may do so at a further stage, including at the comeback hearing on notice to secured creditors. The Petitioners will rely on equity injections from its controlling shareholder to finance any costs payable before any comeback hearing.

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

1. Affidavit #1 of Victor Koshkin, sworn December 3, 2021;
2. Affidavit #2 of Victor Koshkin, sworn December 3, 2021; and
3. Such further and other material as counsel may advise and this Honourable Court may allow.

The petitioners estimate that the hearing of the petition will take 90 minutes.

Dated: December 3, 2021



Signature

Lawyer for petitioner(s)

**Rebecca Morse/Tim Louman-Gardiner**

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

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application

with the following variations and additional terms:

Date: \_\_\_\_\_

Signature of

Judge  Master

**SCHEDULE "A"**  
**DRAFT ORDER**



## **SUBSEQUENT HEARING DATE**

2. The hearing of the Petitioners' application for an extension of the Stay Period (as defined in paragraph [15] of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at 10:00 a.m. on Monday, the 13th day of December, 2021 or such other date as this Court may order.

## **PLAN OF ARRANGEMENT**

3. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. Subject to this Order and any further Order of this Court, the Petitioners 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**"), and continue to carry on its business (the "**Business**") in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be 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 it, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. The Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the

ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “Wages”); and

- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners’ restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioner, whenever and wherever incurred, in respect of:
  - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioner or any subsidiaries or affiliated companies of the Petitioner are domiciled;
  - (ii) any litigation in which the Petitioner is named as a party or is otherwise involved, whether commenced before or after the Order Date; and
  - (iii) any related corporate matters.

6. Except as otherwise provided herein, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are 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, provided that any capital expenditure exceeding \$1,000,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners’ obligations incurred prior to the Order Date); and



- (c) fees and disbursements of the kind referred to in paragraph 5(b) which may be incurred after the Order Date.
7. The Petitioners are authorized to 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 Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
  - (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; 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 property taxes, municipal business taxes 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.
8. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioner and the landlord from time to time (“**Rent**”), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not

in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

9. Except as specifically permitted herein, the Petitioners 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 Petitioner to any of its creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

## **RESTRUCTURING**

10. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of its Business or operations and commence marketing efforts in respect of any of its

redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$200,000 in any one transaction or \$500,000 in the aggregate;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing for its Business or Property, in whole or part;

all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

11. The Petitioners shall provide each of the relevant landlords with notice of the Petitioner's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioner's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioner, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If a Petitioner disclaims any lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioner's claim to the fixtures in dispute.

12. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioner and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against such Petitioner, or any other rights the

landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

13. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the “**Relevant Enactment**”), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, “**Third Parties**”), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioner or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

#### **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

14. Until and including December 13, 2021 or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”)

against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

15. 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 Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

16. Nothing in this Order, including paragraphs 14 and 15 shall: (i) empower the Petitioners to carry on any business which the Petitioner is 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 mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

#### **NO INTERFERENCE WITH RIGHTS**

17. 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, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioners and the Monitor or leave of this Court.

## **CONTINUATION OF SERVICES**

18. During the Stay Period, all Persons having oral or written agreements with any or all of Petitioners or mandates under an enactment 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 Petitioner, 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 such Petitioner or Petitioners, and that the Petitioner or Petitioners 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 Order Date are paid by such Petitioner or Petitioners in accordance with normal payment practices of such Petitioner or such other practices as may be agreed upon by the supplier or service provider and such Petitioner and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

19. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

20. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners 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 Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

### **DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE**

21. The Petitioner shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioner after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

### **APPOINTMENT OF MONITOR**

22. Deloitte Restructuring 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 Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners 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.

23. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioners' 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) assist the Petitioners, to the extent required by the Petitioners, in their dissemination, to the Interim Lender (as hereinafter defined) and its counsel on a periodic basis of financial and other information as agreed to between the Petitioner and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (d) advise the Petitioners in their preparation of the Petitioners' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel on a periodic basis, but not less than monthly, or as otherwise agreed to by the Interim Lender;
- (e) advise the Petitioners in their development of the Plan and any amendments to the Plan;
- (f) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) 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 Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (h) 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



- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. 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, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

25. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**") provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. The Monitor shall provide any creditor of the Petitioners and the Interim Lender with information provided by the Petitioners 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 Petitioners 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 Petitioners may agree.

27. 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 rights and protections afforded the Monitor by the CCAA or any applicable legislation.

28. Any party with knowledge of this order with any books, records, data, including data in electronic form, or other documents that are property of the Petitioners (the "Petitioners' Records"), including any such Property created by parties engaged in management of the Petitioners, shall take steps to preserve such Petitioners' Records and make any such Petitioners' Records available to the Petitioners or the Monitor.

#### **ADMINISTRATION CHARGE**

29. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioner, retainers in any amount requested by any of them to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. 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 British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

31. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioners 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 \$300,000, as security for their respective 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 which are related to the Petitioner’s restructuring. The Administration Charge shall have the priority set out in paragraph 33 hereof.

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

32. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge shall not be required, and the Administration Charge shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Administration Charge coming into existence, notwithstanding any failure to file, register or perfect any such Administration Charge.

33. The Administration Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

34. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Administration Charge, unless the Petitioners obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge.

35. The Administration Charge, and remedies of the chargees entitled to the benefit of the Administration Charge (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the

general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Petitioner; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioner entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

37. The Monitor shall (i) without delay, publish in The Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (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 Petitioner of more than

\$1000, 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.

38. The Petitioners and the Monitor are at liberty to serve 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 electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioner and that any such service or notice by courier, personal delivery or electronic 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.

39. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: [www.insolvencies.deloitte.ca/en-ca/otsogoldcorp](http://www.insolvencies.deloitte.ca/en-ca/otsogoldcorp)

40. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: [www.insolvencies.deloitte.ca/en-ca/otsogoldcorp](http://www.insolvencies.deloitte.ca/en-ca/otsogoldcorp)

41. Notwithstanding paragraphs 38 and 40 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

## **GENERAL**

42. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

43. 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 Petitioners, the Business or the Property.

44. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including but not limited to the District Court of Stockholm or any other District Court in any other judicial district in Sweden, as well as the District Court of Ouluto or any competent Court in Finland, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners 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 Petitioner and the Monitor and their respective agents in carrying out the terms of this Order.

45. Each of the Petitioners 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 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, including acting as a foreign representative of the Petitioners to apply for relief pursuant to any applicable local statutes or regulations.

46. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioner determines that such a filing is appropriate.

47. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

48. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

49. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List 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.

50. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

51. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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 Petitioners  
 Rebecca Morse

BY THE COURT

\_\_\_\_\_  
 REGISTRAR