

## JUDGMENT ON REQUEST FOR AN INITIAL ORDER

[1] The Applicants, Taiga Motors Corporation / Corporation Moteurs Taiga (“**Taiga Corp**”), Taiga Motors Inc. / Moteurs Taiga Inc. (“**Taiga Inc.**”), Taiga Motors America Inc. (“**Taiga America**”) and CGGZ Finance Corp. (“**CGGZ**”) (collectively, “**Taiga**”, or the “**Debtors**”) ask for the issuance of an initial order (the “**Initial Order**”) under the *Companies Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) which includes the following relief:

- 1.1. A stay of all proceedings in respect of the Debtors and their respective directors and officers for an initial period of ten days (the “**Stay Period**”);
- 1.2. The authorization for the Debtors to continue to conduct their business activities and operations in order to preserve their assets and to make payments related to the conduct of their business activities and operations;
- 1.3. The authorization to borrow from Export Development Canada (EDC), from time to time, an initial sum not exceeding \$1 000,000 (the “**Interim Advances**”) subject to a super-priority charge priming all rights, claims and security interests against the Debtors;
- 1.4. The appointment of Deloitte Restructuring Inc. (« **Deloitte** » or the “**Monitor**”) as the monitor of the Debtors in these proceedings;
- 1.5. The approval of a Key Employee Retention Plan (« **KERP**”) for certain key employees and executives;
- 1.6. The granting of an Administration Charge, a D&O Charge, an Interim Lender Charge and a KERP Charge in amounts sufficient to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period;
- 1.7. The administrative consolidation of the present CCAA proceedings with respect to the Debtors;
- 1.8. A declaration that Quebec is the “centre of main interest” of the Debtors and, accordingly, authorizing the Debtors or the Monitor to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of the CCAA Proceedings, including, without limitation, orders under Chapter 15 of the United States Bankruptcy Code 11 U.S.C. §§ 101-1532 (the “**U.S. Bankruptcy Code**”); and
- 1.9. A sealing order with regard to certain documents filed in support of this Application.

[2] Debtors also seek the issuance of a separate order approving the pursuit of the ongoing Sale and Investment Solicitation Process (the “SISP”) that the Monitor, with the support of the Debtors, commenced prior to filing this Application.

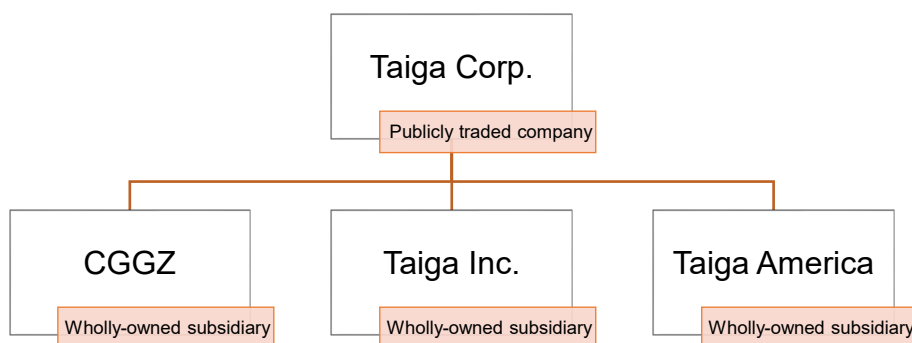
## **CONTEXT**

### **A. The Debtors**

[3] Taiga specializes in the conception, development, production and distribution of all electric powersports vehicles, namely snowmobiles and personal watercrafts.

[4] Taiga is now insolvent and seeks creditor protection under the CCAA in order to pursue the SISP for the benefit of the Debtors and their stakeholders.

[5] The corporate structure of the Debtors is as follows:



[6] Taiga Corp is a publicly traded corporation incorporated under the *Business Corporations Act (British Columbia)*, SBC 2002, c. 57. Its elected domicile and chief place of business is in Montréal<sup>1</sup>.

[7] Taiga Corp is the ultimate owner of the issued and outstanding shares of Taiga Inc., Taiga America, as well as of CGGZ.

[8] The common shares of Taiga Corp. are listed on the Toronto Stock Exchange (TSX) under the symbol “TAIG”. Warrants are also listed on TSX and trade under the symbol “TAIG.WT”.

[9] Taiga Inc. is the principal operating company of the Taiga group of companies. It is a wholly owned subsidiary of Taiga Corp. Its domicile and chief place of business is in Montréal<sup>2</sup>.

<sup>1</sup> Exhibit R-8.

<sup>2</sup> Exhibit R 9.

[10] Taiga America, a new wholly owned subsidiary of Taiga Corp., is based in the United States. Its operations include the sale and distribution of Taiga's products.

[11] Finally, CGGZ is a wholly owned subsidiary of Taiga Corp. incorporated under the *Business Corporations Act (Ontario)*. Its elected domicile is in Montréal<sup>3</sup>. CGGZ does not have any operations, activities or employees.

[12] Taiga has approximately 222 non-unionized employees. Of those 222 employees, 90 employees have been temporarily laid-off.

[13] As part of the proposed restructuring, Taiga proposes to temporarily lay off a substantial portion of its workforce during the implementation of the restructuring.

## **ANALYSIS**

[14] The purpose of the CCAA is to create "breathing room for an insolvent debtor to negotiate a way out of insolvency".<sup>4</sup> It is based on the premise that "debtor companies retain more value as going concerns than in liquidation scenarios".<sup>5</sup> As such, the act embraces "the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by the firm's financial distress [...] and enhancement of the credit system generally".<sup>6</sup>

[15] Through its initial order, the court "preserves the *status quo* by freezing claims against the debtor while allowing it to remain in possession of its assets in order to continue carrying on business".<sup>7</sup>

[16] The various criteria for the issuance of an initial order under the CCAA are met.

[17] The creditors likely to be affected by the application have been notified. Although, notice was sent at the last minute given that Taiga is a publicly listed company, no one has come forward to contest the application.

[18] The Debtors are debtor companies within the meaning of section 2 of the CCAA.

[19] The Debtors are insolvent because the value of their assets in a liquidation context would be insufficient to meet all their obligations to their creditors, and they are unable to meet their obligations as they become due.<sup>8</sup>

[20] The Debtors' total indebtedness exceeds the \$5,000,000 threshold required by the CCAA.

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<sup>3</sup> Exhibit R-10.

<sup>4</sup> *Canada v. Canada North Group Inc.*, 2021 SCC 30, para. 19.

<sup>5</sup> *Ibid*, para. 20; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, para. 18.

<sup>6</sup> *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10, at para. 42, quoting Janis Pearl Sarra, *Rescue! The Companies' Creditors Arrangement Act*, 2nd ed., Toronto, Carswell, 2013, p. 14.

<sup>7</sup> *Canada v. Canada North Group Inc.*, *supra*, note 4, para. 19.

<sup>8</sup> *Stelco Inc., Re*, 48 C.B.R. (4th) 299, par. 26 et 28.

[21] The clauses of the proposed orders are in line with the standard Draft Order as modernised by current practices subject to the following (the implementation of the SISP, the Administration Charge for the professionals of the Interim Lender and the implementation of the KERP) which will be discussed below.

[22] The text of the Initial Order was carefully negotiated between the major stakeholders.

### **A. Stay of Proceedings**

[23] The Debtors are in real danger of no longer being able to maintain their activities without the protection from their creditors afforded by the CCAA. The stay of proceedings for the initial Stay Period of 10 days, subject to extensions, is necessary to avoid a possible discount liquidation of the Debtors' assets in the context of multiple litigations and hypothecary recourses by the various creditors of the Debtors. An initial order may cover the officers and directors of the Debtor where required.<sup>9</sup>

[24] The Debtors wish to proceed with a restructuring, while ensuring the continuity of their activities in a viable manner. To this end, they require the CCAA Proceedings and the assistance of the Monitor to initiate and implement a court-supervised restructuring process, including the search for parties interested in investing in or acquiring their business and/or assets. The fact that the proposed process may possibly lead to the liquidation of assets is not an obstacle to the use of the CCAA.<sup>10</sup>

### **B. Monitor**

[25] The appointment of Deloitte, a licensed insolvency trustee, to act as Monitor under the provisions of the CCAA is appropriate given its familiarity with the assets and operations of the Debtors in the past few months. Deloitte is not subject to any of the restrictions set out in Subsection 11.7(2) of the CCAA. Mr. Nadon and Mr. Clouatre have undisputed expertise in this area.

### **C. Interim Financing**

[26] Temporary financing is essential to complete the CCAA proceedings and the contemplated SISP considering the current liquidity constraints of the Debtors.

[27] Initially, the Debtors propose a financing of \$ 1,000,000 until the comeback hearing. They intend to ask that the amount be increased to \$ 4,400,000 at the comeback hearing.

[28] The advance is required immediately to meet the obligations of the Debtors within the next weeks.

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<sup>9</sup> *Great Basin Gold Ltd. (Re)*, 2015 BCSC 1199, para. 32.

<sup>10</sup> *9354-9186 Québec Inc. c. Callidus* [2020] 1 S.C.R. 521, para. 42.

[29] EDC, the Debtors' main secured creditor, is prepared to make interim advances, in conformity with the term sheet<sup>11</sup>, which terms are standard given the circumstances.

[30] To secure the Interim Advances, EDC has insisted on a super-priority charge over the Debtors' property up to an initial amount of \$1,200,000 for the Initial Stay Period.

#### **D. CCAA Charges**

[31] An Administration Charge is required to guarantee the fees of the Monitor, its counsel and counsel for the Debtors. The initial aggregate amount of \$475,000 is reasonable to cover the work that was done in the context of the preparation of the present proceedings and the work required until the comeback hearing.

[32] Such charges "are required to derive the most value for the stakeholders". They are "beneficial to all creditors".<sup>12</sup>

[33] Here, the Debtor asks that the charge also cover counsel and financial advisor to the interim lender EDC. It alleges that these professionals are also essential to the restructuring efforts contemplated in these CCAA proceedings. The inclusion of the interim lenders' professionals is not uncommon and is authorised by the CCAA. Finally, the charge was a condition imposed by the Interim Lender.

[34] The continued active implication of the directors and officers of the Debtors is also essential to the restructuring efforts of the Debtors. A D&O Charge to guarantee the Debtors' indemnification obligations towards their directors and officers should be granted. Such charges are appropriate to alleviate the concern that directors and officers may have about the possibility of personal liability. Even when the directors may benefit from some insurance coverage, such coverage may prove insufficient or be subject to standard exclusions which could make it difficult to cover all potential liabilities that can arise in the context of an insolvency process. More often than not, the continued service and involvement of the director and officers in CCAA proceedings is conditional upon the granting of an Order which includes a directors and officers charge.<sup>13</sup>

[35] The amount of the D&O charge, \$510,000, is appropriate and is agreed to by EDC. It may be reduced at the comeback hearing.

[36] Finally, in order to facilitate the proposed restructuring and maximize the business' value as a going concern, the Debtors in collaboration with the Monitor have established a KERP, in order to ensure that key employees are retained through the restructuring process<sup>14</sup>. The number of people covered is limited. The founders have not asked to be covered by the KERP.

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<sup>11</sup> Exhibit R 16.

<sup>12</sup> *Canada v. Canada North Group Inc.*, *supra*, note 4, paras. 28 to 30; *Syndic de Chronométrique inc.*, 2023 QCCA 1295, para. 33.

<sup>13</sup> *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422, paras. 56 and 57.

<sup>14</sup> Exhibit R-17.

[37] A KERP Charge to secure the obligations towards the beneficiaries of the KERP is requested in the amount of \$40,000.

#### **E. The SISP Order**

[38] The Court may exercise its statutory discretion under s. 11 of the CCAA to approve a SISP that is fair and reasonable.

[39] Since its appointment in April 2024, the Monitor and the Debtor have cooperated to develop a SISP to maximize the value of the business as a going concern.

[40] The purpose of the SISP is to solicit interest to proceed with:

- 40.1. an investment, restructuring refinancing or other type of reorganisation; or
- 40.2. the sale or partial sale of the business or its components.

[41] A short timeline for the SISP has been established and is set out in the Monitor's report.

[42] EDC and the Monitor supports the SISP Order. There is no viable alternative.

[43] The SISP Order is appropriate in the circumstances.

#### **F. Declaration that the Province of Quebec is the Debtors' Centre of Main Interest**

[44] The Debtors seek a declaration that the province of Quebec is their "centre of main interest" in accordance with Subsection 45(2) of the CCAA given that:

- 44.1. Taiga's chief place of business is in Montreal;
- 44.2. almost all of Taiga's employees are working for Taiga Inc.;
- 44.3. all decisions are made mainly in Canada by senior management of Taiga located in Canada; and
- 44.4. Taiga's most important assets are located in Canada.

[45] Such recognition may be required if the Debtors eventually decide to seek recognition of these CCAA Proceedings by the United States Bankruptcy Court under Chapter 15 of the U.S. Bankruptcy Code.

#### **G. Sealing of Confidential Documents**

[46] Debtors ask that certain documents filed in support of their application be sealed as they contain commercially sensitive information related to the affairs of the Debtors.

[47] A sealing order is required to protect this interest. There are no reasonable alternatives to the sealing order. No stakeholders will be materially prejudiced by sealing

the information. The requested order is limited to Appendices A and B to the Monitor's Report.

[48] The benefits of the limited order outweigh its negative effects.

#### H. Execution Notwithstanding Appeal

[49] Article 661 of the *Civil Code of Procedure* allows the court, upon application, to order provisional execution for the whole or a part only of the judgment, "if bringing an appeal is likely to cause serious or irreparable prejudice to one of the parties".

[50] Given the urgency and severity of the circumstances confronting the Debtors, it is essential that the execution of the order sought herein be granted notwithstanding appeal. Without it, the restructuring efforts of the Debtors would be put in serious jeopardy.

#### **FOR THESE REASONS, THE COURT:**

[51] **GRANTS** the application for the issuance of a first day initial order and the SISP approval order;

[52] **SIGNS** the Initial Order and the SISP Approval Order submitted by the Debtors which are generally in conformity with the draft proposed orders filed as Exhibits R-1 and R-3;

[53] **ORDERS** that Appendices A and B to the Monitor's Report be filed under seal;

[54] **ORDERS** provisional execution of this order notwithstanding appeal.

[55] **THE WHOLE WITHOUT COSTS.**

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MARTIN F. SHEEHAN, J.S.C.