

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-11-045763-139

SUPERIOR COURT
(Commercial Division):

**IN THE MATTER OF THE NOTICE OF
INTENTION AND RECEIVERSHIP OF:**

IHG HARILELA HOTELS LTD., a corporation
duly constituted having its principal place of
business at 7880 Chemin de la Côte-de-Liesse, in
the city and district of Montreal, Province of
Québec, H4T 1E7.

Debtor/Respondent

- and -

**COMPUTERSHARE TRUST COMPANY OF
CANADA**, a trust corporation incorporated
under the laws of Canada, having a place of
business at 1500 University Street, Suite 700,
Montreal, Province of Québec, H3A 3S8.

Principal Secured Creditor/Petitioner

- and -

**SAMSON BÉLAIR/DELOITTE & TOUCHE
INC.**, a corporation duly constituted having a
place of business at 1, Place Ville-Marie, in the
City and District of Montréal, Province of
Québec, H3B 4T9.

Proposed Receiver

MOTION TO APPOINT A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT
(COMMERCIAL DIVISION), DISTRICT OF MONTREAL, OR TO A REGISTRAR
THEREOF, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:**

I. PARTIES

1. IHG Harilela Hotels Ltd. (the "Debtor") is a privately owned corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c. C-44 (the "CBCA") and domiciled at 7880, Chemin de la Côte-de-Liesse, in Montréal, Québec, as appears from an extract of the *Registraire des entreprises* communicated as Exhibit P-1.
2. The Debtor operates a HILTON hotel located at 7880, Chemin de la Côte-de-Liesse, in Montréal, Québec (the "Hotel").
3. Computershare Trust Company of Canada (the "Lender") is a trust company incorporated under the *Trust and Loan Companies Act* (S.C. 1991, c. 45), with a place of business at 1500 University Street, Suite 700, in Montréal, Québec, as appears from an extract of the *Registraire des entreprises* communicated as Exhibit P-2.
4. The Lender acting as custodian, agent, bailee and fondé de pouvoir for and on behalf of 9303-7026 Quebec inc., is the principal secured creditor of the Debtor and holds a first-ranking hypothec on the Hotel.
5. The proposed receiver, Samson Bélair/Deloitte & Touche Inc. ("Deloitte"), a licensed trustee, provides services in bankruptcy, insolvency and restructuring and has a place of business at 1, Place Ville-Marie, in Montréal, Québec.
6. Mr. Benoît Clouâtre, CPA, CA, CIRP, from Deloitte, already acts as trustee to the Proposal of the Debtor, the latter having filed a notice of intention to make a proposal to its creditors under the *Bankruptcy and Insolvency Act* (the "BIA") on November 29, 2013, as well as a proposal on May 27, 2014, the whole, as further detailed below.

II. ORDERS SOUGHT

7. The Lender seeks an order appointing Deloitte as receiver to the assets of the Debtor, the whole, in accordance with the draft order communicated as Exhibit P-3.

III. FACTUAL BACKGROUND

(A) Initial Agreements

(i) *The Franchise Agreement*

8. The Debtor is party to a *Franchise License Agreement* entered into on September 7, 2001 by a predecessor of the Debtor, (as amended, assumed and assigned from time to time, the "Franchise Agreement") with HLT Existing Franchise Holding LLC, as successor licensor to Hilton Inns, Inc. under the Franchise Agreement ("Hilton"), a Delaware limited liability company with a registered office in

McLean, Virginia, in the United States. A copy of the Franchise Agreement is communicated, under confidential seal, as **Exhibit P-4**.

9. Pursuant to the Franchise Agreement, the Debtor was granted the right to operate the Hotel under the Hilton banner until September 6, 2023.

(ii) *The Loan and Security Agreements*

10. The Hotel is financed by a secured loan in the original principal amount of twelve million dollars (\$12,000,000) (the "Loan") advanced to the Debtor by Merrill Lynch Capital Canada Inc. (the "Original Lender") pursuant to a *Commitment Letter* dated as of September 19, 2005 (the "Commitment Letter"). A copy of the Commitment Letter is communicated as **Exhibit P-5**.
11. Through a series of transactions, the rights, title and interest of the Original Lender in and to the Loan and the loan documents were transferred to the Lender, in its capacity as lender, custodian, agent, bailee and *fondé de pouvoir* for and on behalf of the registered holders of Merrill Lynch Financial Assets Inc., Commercial Mortgage Pass-Through Certificates, Series 2005 - Canada 17.
12. On September 21, 2005, the Lender and the Debtor entered into a *Loan Agreement* (the "Loan Agreement") in respect of the Loan. A copy of the Loan Agreement is communicated as **Exhibit P-6**.
13. In order to secure its obligations under the Loan Agreement, the Debtor issued in favour of the Lender, on September 21, 2005, a 25% Collateral Mortgage Bond in the principal sum of fifteen million dollars (\$15,000,000) (the "Mortgage Bond"), payable on demand provided that a default of the Debtor under the Loan Agreement shall have occurred. A copy of the Mortgage Bond is communicated as **Exhibit P-7**.
14. The obligations of the Debtor under the Mortgage Bond are secured by a first ranking *Deed of Hypothec to Secure Payment of Titles of Indebtedness* (the "Hypothec") granted by the Debtor in favour of the Lender on September 21, 2005, charging the Debtor's movable and immovable property, corporeal and incorporeal, present and future, directly or indirectly held or enjoyed by the Debtor in connection with the Hotel, including its rights under the Franchise Agreement. A copy of the Hypothec is communicated as **Exhibit P-8**.
15. The Lender is the principal senior secured creditor of the Debtor. The only other party holding security over any of the Debtor's assets is HSBC Bank Canada, which has a movable hypothec in an amount of \$17,410 over a specific bank account bearing account number 10001-096575-005 opened in the Debtor's name (the "HSBC Bank Account").
16. On June 4, 2014, the rights, title and interest of the Lender as custodian, agent, bailee and *fondé de pouvoir* for and on behalf of the registered holders of Merrill Lynch Financial Assets Inc., Commercial Mortgage Pass-Through Certificates,

Series 2005 - Canada 17, in and to the Loan Agreement and the loan documents, were sold and assigned to the Lender, as custodian, agent, bailee and *fondé de pouvoir* for and on behalf of 9303-7026 Quebec Inc.

(iii) *The Comfort Letter*

17. The continued association of the Hilton brand with the Hotel was and remains an essential condition of the disbursement of the Loan, as appears from the terms and conditions of the Loan Agreement and of the Commitment Letter.
18. On September 21, 2005, concurrently with the execution of the Loan Agreement, the Lender, Hilton and the Debtor executed a letter agreement (the "Comfort Letter") a copy of which is communicated herewith, under confidential seal, as Exhibit P-9.
19. The Comfort Letter provides to the Lender a right, to be exercised within a limited period of time, to cure any monetary or non-monetary default on the part of the Debtor under the Franchise Agreement, the whole, with a view to maintaining the value of the assets over which the Lender holds security by preserving the association of the Hilton banner with the Hotel.
20. In this regard, the Comfort Letter specifically provides for the repossession, by the Lender, of the Debtor's property through a court-appointed receiver, so as to cure any outstanding defaults under the Franchise Agreement, assume the rights and obligations of the Debtor under the Franchise Agreement and sell, assign or transfer such rights, along with the Hotel, to a third party with Hilton's consent.
21. This arrangement reflects the fact that the Loan is a non-recourse loan and the preservation of the Hilton banner, given its impact on the value of the Hotel which secures the Loan, has always been of utmost importance for the Lender.

(B) Events Leading to the Debtor's Insolvency

(i) *Termination of the Franchise Agreement*

22. On November 14, 2013, Hilton issued a Notice of Default and Termination (the "Hilton Notice") in which it advised the Debtor that it was terminating the Franchise Agreement, effective as of January 1, 2014. A copy of the Hilton Notice is communicated herewith as Exhibit P-10.
23. As appears from the Hilton Notice, several events of defaults under the Franchise Agreement were alleged by Hilton to have occurred in the past years, including the Debtor's failure to meet Hilton's quality standards with regards to the Hotel and the Debtor's failure to pay royalties and other fees due under the Franchise Agreement.
24. On May 2, 2014, after the Debtor had filed its notice of intention under the BIA, Hilton issued a second Notice of Default and Termination (the "Second Hilton

Notice") in which it advised the Debtor that it was terminating the Franchise Agreement, effective as of July 1, 2014. A copy of the Second Hilton Notice is communicated herewith as Exhibit P-11.

25. The reason invoked in the Second Hilton Notice for the issuance of the Second Hilton Notice appears to be divestment by one of the Debtor's shareholders, without prior authorization from Hilton, on or around April 23, 2014, of its interest in the Debtor to another shareholder, who became the sole controlling shareholder of the Debtor.

(ii) *Cross-defaults under the Loan Agreement*

26. The Lender was copied on the Hilton Notice issued on November 14, 2013. The defaults alleged thereunder constituted immediate "Events of Default" under the Loan Agreement pursuant to its Article 10.12(8).
27. Under the terms of the Comfort Letter, the Lender, upon being notified of the Debtor's default under the Franchise Agreement, benefitted from a limited period of time to intervene to cure said default.
28. The Lender was therefore left with no other choice than to issue to the Debtor, on November 19, 2013, a notice of default under the Loan Agreement (the "Notice of Default") advising it that the Lender was exercising its rights under the Loan Agreement by immediately accelerating the Loan Indebtedness (as defined in the Loan Agreement) and demanding the immediate payment thereof. A copy of the Notice of Default is communicated herewith as Exhibit P-12.
29. In addition to the Notice of Default, the Lender also issued to the Debtor a *Notice of intention to enforce security* (the "244 Notice") pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the "BIA") as well as a *Prior Notice of the Exercise of a Hypothecary Right - Sale by Judicial Authority* (the "Prior Notice of Exercise") issued pursuant to articles 2757 and 2791 and following of the *Civil Code of Quebec*. A copy of the 244 Notice and the Prior Notice of Exercise are communicated herewith, as Exhibit P-13 and Exhibit P-14, respectively.

(C) Subsequent Developments

(i) *Debtor's Insolvency*

30. The Debtor filed a notice of intention to make a proposal to its creditors under the BIA on November 29, 2013 in the present court file and the Debtor's delay to file a proposal was extended several times by order of this Court, as appears from the Court record.
31. The Lender did not contest the Debtor's several requests to extend the delay to file a proposal under the BIA. Rather, the Lender engaged in good faith negotiations with the Debtor to reach an agreement that would allow the Debtor

an opportunity to proceed with an orderly restructuring, as described in more detail below.

32. On May 28, 2014, the Debtor filed a proposal to its unsecured creditors, which, as of the date hereof, has yet to be voted upon. This proposal, a copy of which is communicated as **Exhibit P-15**, provides in part that "*Secured Claims shall be paid in accordance with the existing contracts*", thus leaving the Lender's secured claim under the Loan unaffected.

(ii) *Forbearance Agreement*

33. Beginning in mid-December 2013, the Debtor, Hilton and the Lender initiated discussions with a view to reaching a solution which would allow IHG to proceed with an orderly restructuring of its business and affairs.
34. In light of these discussions, Hilton agreed to extend, from time to time, the effective date of termination set forth in the Hilton Notice, so as to allow all parties to pursue their negotiations. On February 6, 2014, the Lender's deadline to take possession of the Hotel and assume the franchise agreement pursuant to Paragraph 1 of the Comfort Letter was extended by Hilton to July 1, 2014.
35. The Lender, although it was willing to grant the Debtor time to search for a global solution, was also concerned with preserving its rights vis-à-vis Hilton under the Comfort Letter, by ensuring, among other things, that the Lender benefit from sufficient time before the termination of the Franchise Agreement became effective to take possession of the Hotel and cure any outstanding default, should the Debtor fail to implement a viable restructuring.
36. On December 24, 2013, the Debtor executed a term sheet which set out the basic terms of a forbearance agreement with the Lender and on February 13, 2014, the Debtor and the Lender entered into the Forbearance Agreement, a copy of which is communicated, under confidential seal, as **Exhibit P-16**.
37. Pursuant to the Forbearance Agreement:
- (a) the period during which the Lender accepted not to enforce its security began on the Effective Date (February 3, 2014) and lasted until June 2, 2014 (the "**Forbearance Period**", page 6);
 - (b) the Borrower's failure to pay the balance of the Loan to the Lender in full at the end of the Forbearance Period constituted a "**Forbearance Triggering Event**" (para. 4.1(c) and 6.1 (f)); and
 - (c) upon the occurrence of a "**Forbearance Triggering Event**", the Debtor irrevocably and unconditionally agreed and consented to an order appointing a receiver to the Hotel, without prior notice or consent (para. 4.1 (a)(i)).

38. The Forbearance Period has effectively expired without the balance of the Loan being repaid.
- (iii) *Sale Process*
39. During the pendency of the notice of intention stay period, the Debtor retained real estate services firm Collier's International ("Colliers") to undertake a process to market the Hotel for sale and to solicit offers from potential purchasers (the "Sale Process").
40. The Lender is informed that after conducting a thorough marketing and sales process, the Debtor received a letter of intent from a prospective purchaser (the "Prospective Purchaser") to purchase the Hotel (the "Offer"). The Prospective Purchaser also operates hotels as a franchisee of Hilton.
41. The purchase price submitted in the Offer would permit the Debtor to pay all secured debts as well as a large proportion of unsecured debts.
42. The Sale Process was conducted with the knowledge and support of the Lender and the prospective receiver, in its capacity as trustee to the proposal of the Debtor, both of whom continue to support the contemplated transaction whereby the Debtor would sell the Hotel to the Prospective Purchaser under the rubric of these receivership proceedings.
43. It is intended that Deloitte, once appointed as receiver, will continue the Sale Process in order to ensure that this sale is completed.
44. On May 23, 2014, the Lender received a letter from the Debtor in which it was informed of the Sale Process and in which the Debtor requested an extension of the Forbearance Period to September 15, 2014. A copy of this letter is communicated, under confidential seal, as Exhibit P-17.
45. The Lender's answer on the requested extension of the Forbearance Period was that it remained conditional on a number of conditions, including, *inter alia*, a formal agreement between the Lender and Hilton confirming the extension of the Franchise Agreement to October 15, 2014, as well as the extension of all cure periods under the Comfort Letter to provide for a reasonable additional period of time for the lender beyond October 15, 2014, to cure any curable defaults.
46. The Lender is advised that Hilton has not consented to the extension of the delays referred to in the preceding paragraph, such that it is left with no choice but to request the appointment of a receiver before the July 1, 2014, being the deadline for the termination of the Franchise Agreement.
47. On May 28, 2014, the Debtor filed a proposal to its unsecured creditors, which, as of the date hereof, has yet to be voted upon. This proposal, a copy of which is communicated as Exhibit P-18, provides in part that "*Secured Claims shall be paid*

in accordance with the existing contracts", thus leaving the Lender's secured claim under the Loan unaffected.

IV. GROUNDS FOR THIS MOTION

48. As at June 4, 2014, the indebtedness of IHG to the Lender pursuant to the Loan Agreement is CAD \$9,887,297.00 plus applicable fees and expenses.
49. The Debtor has consented to the appointment of a receiver in the Forbearance Agreement and the Lender submits that the circumstances under which such appointment is triggered have materialized.
50. The Lender is further advised that the Debtor does not intend to contest the appointment of Deloitte as receiver and will actively cooperate with Deloitte in order to cure any outstanding defaults under the Franchise Agreement and to proceed with the sale of the Hotel to a third-party.
51. Unless the relief sought herein is granted prior to July 1, 2014, being the deadline imposed by Hilton for the Lender to take possession of the Hotel to exercise its rights under the Comfort Letter, the Lender submits that it could suffer a material and irreparable prejudice caused, *inter alia*, by the loss of the Hilton banner, which would significantly diminish the value of the collateral on which the Lender holds security.
52. The termination of the Franchise Agreement, in addition to putting the Lender's security position at risk, could also cause an important prejudice to all of IHG's other stakeholders by jeopardizing the Hotel's operations.
53. Deloitte is qualified and has agreed to act as receiver to the assets of the Debtor and exercise any and all of the proposed powers provided for in the order sought herein, as will be demonstrated at the hearing on this motion.
54. In order to preserve the value of the Hotel and maximize its value for a potential sale and transfer of the rights under the Franchise Agreement, it is crucial that Deloitte, if appointed as receiver to the assets of the Debtor, be able to cure the latter's defaults under the Franchise Agreement and finance, *inter alia*, the care and maintenance of the Hotel, as well as any other costs and expenses necessary to perform its powers and duties as receiver.
55. In that regard, the Lender has indicated that it is prepared, to the extent required, to advance the funds necessary to cover Deloitte's anticipated costs and expenses, including the costs and expenses necessary to fund the Debtor's employee payroll as well as the care and maintenance of the Hotel provided, however, that such funding be secured by its existing Hypothec.
56. Given the delays referred to above, the Lender submits that the appointment of Deloitte as receiver is urgent and requests that this Court grant provisional execution of the relief sought without the need to furnish security.

WHEREFORE, THE PETITIONER PRAYS THAT, BY JUDGMENT TO INTERVENE, THIS HONOURABLE COURT:

- [1] GRANT the present *Motion for the Appointment of a Receiver* (the "Motion");
- [2] ISSUE an order substantially in the form of the draft receivership order communicated as Exhibit P-3 to the Motion.

THE WHOLE WITHOUT COSTS.

MONTREAL, June 11, 2014

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP

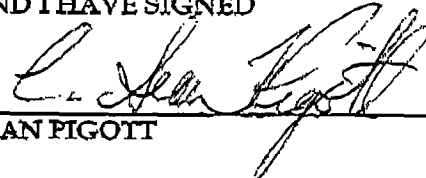
Attorneys for Computershare Trust
Company of Canada as custodian,
agent, bailee and *fondé de pouvoir* for and
on behalf of 9303-7026 Quebec inc.

AFFIDAVIT

I, the undersigned, SEAN FIGOTT, an employee, ^{F.C.S.P.} Computershare Trust Company of Canada, which has a place of business at 100 University Avenue, 11th Floor, Toronto, Ontario, solemnly declare:

- a) I am Corporate Trust Officer at Computershare Trust Company of Canada, as custodian, agent, bailee and *fondé de pouvoir* for and on behalf of 9303-7026 Quebec inc.
- b) All the facts alleged in the *Motion to Appoint a Receiver* are true.

AND I HAVE SIGNED


SEAN FIGOTT

SOLEMNLY DECLARED before me in Toronto, this 17th day of June 2014


Commissaire de la Justice

Notary Public in and for
The Province of Ontario
100 University Ave., 8th Flr.
Toronto, ONTARIO M5J 2Y1
416-263-9319

ATTESTATION OF AUTHENTICITY

I, the undersigned, **JOSEPH REYNAUD**, attorney, practicing my profession at Stikeman Elliott LLP, located at 1155 René-Lévesque Boulevard West, Suite 4000, in the City and District of Montréal, Province of Quebec, H3B 3V2, do hereby solemnly affirm as follows:

1. I am an attorney at the law firm of Stikeman Elliott LLP;
2. On June 11, 2014, at 16:28 PM Eastern time (ET), I received the Affidavit of Sean Pigott, dated June 11, 2014, by email received from Sean Pigott (Sean.Pigott@computershare.com);
3. The copy of the Affidavit attached hereto is a true copy of the said Affidavit of Sean Pigott received by email today;
4. The facts alleged herein are true.

Solemnly declared before me, at Montreal, AND I HAVE SIGNED
Quebec, this 11th day of June, 2014

Commissioner of Oaths for the all judicial
district(s) of the Province of Québec

JOSEPH REYNAUD



NOTICE OF PRESENTATION

TO: Me Sébastien Guy
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600, Maisonneuve W. Blvd., #2200
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Attorneys for the Debtor

TO: Me Luc Morin
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Attorneys for the Proposed Receiver

TAKE NOTICE that the *Motion to Appoint a Receiver* will be presented for adjudication before one of the Honourable Judges of Superior Court or to the Registrar, sitting in practice in and for the District of Montréal, in room 16.10, of the Montreal Courthouse, located at 1, Notre-Dame East street, on, **June 13, 2014** at 9:00 a.m. or soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, June 11, 2014

Stikeman Elliott LLP.

STIKEMAN ELLIOTT LLP
Attorneys for Computershare Trust
Company of Canada as custodian,
agent, bailee and *fondé de pouvoir* for and
on behalf of 9303-7026 Quebec inc.

SUPERIOR COURT

N°. 500- 11-045763-139

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE PROPOSAL UNDER
THE BANKRUPTCY AND INSOLVENCY ACT OF:

IHG HARILELA HOTELS LTD
Debtor/Respondent

- and -
COMPUTERSHARRE TRUST COMPANY OF
CANADA
Principal Secured
Creditor/Petitioner

- and -
SAMSON BÉLAIR/DELOITTE & TOUCHE INC.
Proposed Receiver

BS0350 File: 122220-1051

MOTION TO APPOINT A RECEIVER

ORIGINAL

Mtre Joseph Reynaud 514-397-3019
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