

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF VITAMIN OLDSCO HOLDINGS, INC., VITAMIN OLDSCO CENTRES COMPANY, VITAMIN OLDSCO PARENT LLC, VITAMIN OLDSCO CORPORATION, VITAMIN OLDSCO CENTERS, INC., VITAMIN OLDSCO, INC., VITAMIN OLDSCO INVESTMENT COMPANY, VITAMIN OLDSCO LUCKY CORPORATION, VITAMIN OLDSCO FUNDING, INC., VITAMIN OLDSCO INTERNATIONAL HOLDINGS, INC., VITAMIN OLDSCO HEADQUARTERS LLC, VITAMIN HOLDSCO ASSOCIATES, LTD., VITAMIN OLDSCO CANADA HOLDINGS, INC., VITAMIN OLDSCO GOVERNMENT SERVICES, LLC, VITAMIN OLDSCO PUERTO RICO HOLDINGS, INC., AND VITAMIN OLDSCO PUERTO RICO, LLC

APPLICATION OF VITAMIN OLDSCO HOLDINGS, INC., UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

**FACTUM OF THE APPLICANT
(Motion for Recognition of Additional U.S. Orders
and Termination of Proceedings, returnable October 30, 2020)**

October 29, 2020

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PART I – NATURE OF THE MOTION

1. This factum is filed in support of a motion by Vitamin OldCo Holdings, Inc. (formerly known as “GNC Holdings, Inc.”) (“**Vitamin Holdings**”) as the foreign representative (in such capacity, the “**Foreign Representative**”) of itself and the other debtors¹ (collectively, the “**Debtors**”, and formerly known as “**GNC**”) for: (i) an order recognizing, and giving full force and effect in Canada to, the Additional U.S. Orders (as defined below) granted by the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) (the “**Recognition Order**”); and (ii) an order providing, upon the filing of a certificate of FTI Consulting Canada Inc., in its capacity as the information officer (in such capacity, the “**Information Officer**”), for the termination of the within CCAA recognition proceedings with respect to the Applicant and the discharge and release of the Information Officer (the “**Termination Order**”), pursuant to section 49 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). The Applicant also seeks other ancillary relief.

¹ In addition to Vitamin OldCo Holdings, Inc., the other Debtors are Vitamin OldCo Centres Company, Vitamin OldCo Parent LLC, Vitamin OldCo Corporation, Vitamin OldCo Centers, Inc., Vitamin OldCo, Inc., Vitamin OldCo Investment Company, Vitamin OldCo Lucky Corporation, Vitamin OldCo Funding, Inc., Vitamin OldCo International Holdings, Inc., Vitamin OldCo Headquarters LLC, Vitamin Holdco Associates, Ltd., Vitamin OldCo Canada Holdings, Inc., Vitamin OldCo Government Services, LLC, Vitamin OldCo Puerto Rico Holdings, Inc., and Vitamin OldCo Puerto Rico, LLC.

PART II – THE FACTS

Proceedings to Date

2. GNC is a global health and wellness brand with a diversified business. In its stores and online in certain regions, GNC sold an assortment of performance and nutritional supplements, vitamins, herbs and greens, health and beauty, food and drink, and other general merchandise, featuring innovative GNC-branded products as well as nationally recognized third-party brands, many of which were exclusive to GNC.²

3. On June 23, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief (the “**Petitions**”) commencing cases before the U.S. Court under Chapter 11 of Title 11 of the *United States Bankruptcy Code* (the “**Chapter 11 Cases**”).³

4. The Debtors also filed several first day motions with the U.S. Court (collectively, the “**First Day Motions**”). The U.S. Court heard the First Day Motions on June 25, 2020, following which it entered various interim and/or final orders in respect of the First Day Motions (collectively, the “**First Day Orders**”).⁴

5. On June 24, 2020, the Debtors filed an application with this Court for recognition of the Chapter 11 Cases as foreign main proceedings pursuant to Part IV of the CCAA. Part IV of the CCAA establishes a process for addressing the administration of cross-border and multi-national

² Tolivar Affidavit, paras 13-14, Exhibit A to the Affidavit of Michael Noel, affirmed October 27, 2020 (“**Noel Affidavit**”).

³ Noel Affidavit, para 5.

⁴ Noel Affidavit, para 6.

insolvencies in a coordinated and cooperative manner with foreign courts. It requires the Court to make an order recognizing a foreign insolvency proceeding if (i) the application for recognition of a foreign proceeding relates to a “foreign proceeding” within the meaning of the CCAA and (ii) the applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding.⁵

6. The Debtors sought the appointment of a foreign representative and the recognition of the Chapter 11 Cases as foreign main proceedings. They also sought recognition of certain First Day Orders entered by the U.S. Court, particularly an Interim DIP Order. The Interim DIP Order was necessary to provide the Debtors’ access to financial liquidity required for them to continue as a going concern and to implement their restructuring plan.⁶

7. Finally, the Debtors sought the appointment of the Information Officer, in its capacity as such, for these proceedings and the grant of various charges, including an Administration Charge of CDN \$250,000.⁷

8. On June 29, 2020, this Court found that the Debtors’ centres of main interest are all in the United States and that the proceedings in the U.S. Court are foreign main proceedings as defined in section 45 of the CCAA. It issued an initial recognition order recognizing GNC Holdings, Inc. (now “Vitamin OldCo Holdings, Inc.”) as the foreign representative of the Debtors in

⁵ [Conway J - Endorsement on Application in CV-20-00642970-00CL \(Re GNC\) dated June 29, 2020](#) at paras 2, 12 [GNC Application Endorsement].

⁶ [GNC Application Endorsement](#) at para 2.

⁷ [GNC Application Endorsement](#) at paras 2, 26.

respect of the Chapter 11 Cases. At the same time, this Court granted a supplemental order that, among other things, recognized and gave full force and effect to certain First Day Orders granted by the U.S. Court.⁸

9. Following the initial hearing of the Debtors' Chapter 11 Cases, the Debtors filed several additional motions (the "**Second Day Motions**") in the U.S. Court.⁹ The Debtors received informal comments as well as objections in relation to the proposed orders attached to the motions but were able to resolve nearly all of these comments and objections prior to the scheduled hearing of the Second Day Motions.

10. The U.S. Court entered all of the orders in relation to the Second Day Motions (the "**Second Day Orders**"). This Court recognized those orders for which recognition in Canada was sought following a hearing on July 27, 2020 (the "**July Recognition Hearing**").¹⁰

11. The Debtors filed several additional motions in the U.S. Court seeking additional orders (the "**August 19 Orders**"). The U.S. Court entered all of the August 19 Orders. The U.S. Court also entered an amended cash management order. This Court recognized those orders for which recognition in Canada was sought following a hearing on August 25, 2020 (the "**August Recognition Hearing**"), including an Order (a) approving the disclosure statement, (b) establishing the voting record date, voting deadline, and other dates, (c) approving procedures for soliciting, receiving, and tabulating votes on the plan and for filing objections to the plan, (d)

⁸ See generally [GNC Application Endorsement](#).

⁹ Noel Affidavit, para 9.

¹⁰ Noel Affidavit, para 9.

approving the manner and forms of notice and other related documents, and (e) granting related relief (“**Disclosure Statement Order**”).¹¹

12. The Debtors underwent a competitive bidding process for the sale of substantially all of their assets under the supervision of the U.S. Court in the Chapter 11 Cases. The result of this bidding process was the agreement of purchase and sale of substantially all of their assets (the “**Sale Agreement**”) with Harbin Pharmaceutical Group Holding Co., Ltd. (“**Harbin**”). The Debtors sought and obtained from the U.S. Court an order approving (a) the sale of substantially all of the Debtors’ assets free and clear of all claims, liens, liabilities, rights, interests and encumbrances, (b) the Debtors’ assumption and assignment of certain executory contracts and unexpired leases and (c) related relief (the “**U.S. Sale Order**”). This Court recognized the U.S. Sale Order, among other orders of the U.S. Court, on September 22, 2020 (the “**Sale Order Hearing**”).¹²

13. Following the Sale Order Hearing, the Debtors filed further motions in the U.S. court regarding the entry of orders authorizing the debtors to assume and assign certain unexpired leases (the “**Further September Orders**”). The U.S. Court entered, and this Court recognized, the Further September Orders on September 30, 2020.¹³

14. After the closing of the Sale Agreement, the Debtors filed their Joint Chapter 11 Plan of Reorganization of Vitamin OldCo Holdings, Inc. and its Debtor Affiliates Under Chapter 11 of

¹¹ Noel Affidavit, para 10.

¹² Noel Affidavit, para 11.

¹³ Noel Affidavit, para 12.

the Bankruptcy Code, dated October 7, 2020 (the “**Plan**”). The Plan was confirmed by the Findings of Fact, Conclusions of Law and Order Confirming the Plan (the “**Confirmation Order**”) of the U.S. Court on October 14, 2020. This Court recognized the Confirmation Order, and certain additional orders of the U.S. Court, following a hearing on October 16, 2020.¹⁴

The Additional U.S. Orders

15. The Debtors are seeking recognition of the following U.S. orders in this court (collectively, the “**Additional U.S. Orders**”):

- (a) Forty-First (41st) Omnibus Order (A) Authorizing Rejection of Certain Unexpired Leases Effective as of October 13, 2020 and (B) Granting Related Relief (“**41st Rejection Order**”); and
- (b) Forty-Sixth (46th) Omnibus Order Authorizing the Debtors to Assume and Assign Certain Executory Contracts (“**46th Assumption Order**”). (This Order has not yet been entered by the U.S. Court.)

16. The Debtors are parties to numerous executory contracts in connection with their ongoing business operations. In connection with the sale transaction under the Sale Agreement, the Debtors and Harbin have identified certain contracts the Debtors wish to assume and assign to Harbin as part of the sale.¹⁵ The 46th Assumption Order authorizes the Debtors to assume and

¹⁴ Noel Affidavit, para 14.

¹⁵ 46th Assumption Motion, paras 7 and 11, Exhibit “C” to Noel Affidavit.

assign the contracts identified therein to Harbin's designated assignee, one of which relates to the Debtors' Canadian operations.¹⁶

17. The Debtors are also parties to several thousand real property leases in the United States, Canada, and Puerto Rico. As part of their ongoing restructuring efforts, the Debtors have identified stores whose leases they seek to reject.¹⁷

18. By rejecting certain leases, the Debtors avoid accruing unnecessary expenses which provide no benefits to the Debtors' estates. The Debtors and their advisors have concluded that the leases are not marketable given current market conditions and are unlikely to generate material value of the Debtors' estates.¹⁸

19. The 41st Rejection Order authorizes and approves the lease rejections for 29 stores in Canada.¹⁹

20. Counsel for certain Canadian landlords has not objected to the recognition of these orders. Vitamin OldCo Centres Company has assured the Canadian landlords' counsel that it will give the landlords at least 30 days' notice prior to the effective date of a lease rejection and will continue to pay rent during that time period. This understanding between the parties is reflected in Justice Conway's endorsement from the initial recognition hearing in this matter.²⁰

¹⁶ Noel Affidavit, para 18.

¹⁷ 41st Rejection Motion, para 8, Exhibit "B" to Noel Affidavit.

¹⁸ *Ibid.*

¹⁹ Noel Affidavit, para 18.

²⁰ [GNC Application Endorsement](#) at para 29.

Termination of these Part IV Proceedings

21. Upon commencing the Chapter 11 Cases, the Debtors entered a restructuring support agreement (the “**RSA**”) to pursue, in parallel, both a standalone plan of reorganization (the “**Standalone Plan Transaction**”) and a competitive sale process for their assets (the “**Sale Transaction**”).²¹

22. In furtherance of the Debtors’ pursuit of the Sale Transaction under the terms of the RSA, the Debtors signed the Sale Agreement with Harbin. Subsequent to the Sale Agreement’s Closing (as such term is defined in the Sale Agreement), the Debtors filed their Joint Chapter 11 Plan of Reorganization of Vitamin OldCo Holdings, Inc. and its Debtor affiliates under Chapter 11 of the Bankruptcy Code, dated October 13, 2020 (the “**Plan**”). The Plan provides for: (i) the winddown of the Debtors; (ii) the distribution of the proceeds from the Sale Agreement and settlement of claims of creditors; and (iii) the grant of certain releases, exculpations and injunctions.²²

23. The Plan does not become effective until the occurrence of the Effective Date (as such term is defined in the Plan). The Effective Date is the date on which: (a) no stay of the Confirmation Order is in effect; and (b) certain conditions precedent specified in the Plan have been satisfied or waived according to the Plan.²³ Upon the occurrence of the Effective Date, there will be no further need for relief from this Court.

²¹ Noel Affidavit, para 5.

²² Noel Affidavit, para 14.

²³ Noel Affidavit, para 15.

24. As set out in the draft Termination Order, following receipt of written notice from the Applicant or its counsel advising that the Effective Date has occurred, the Information Officer will file a certificate indicating that the Plan has been implemented, the releases thereunder are effective and that these proceedings may be terminated (the “**Information Officer’s Certificate**”). The filing of the Information Officer’s Certificate will additionally trigger the release and discharge of the Administration Charge (as such term is defined in the Order of the Honourable Justice Conway dated June 29, 2020 (the “**Supplemental Order**”)), along with the discharge and relief of the Information Officer from any further obligations, liabilities, responsibilities or duties in its capacity as Information Officer pursuant to the Supplemental Order.

PART III – THE ISSUES

25. The issue to be determined in this motion is whether the Court should grant the Orders sought by Vitamin Holdings pursuant to section 49 of the CCAA.

PART IV – THE LAW

A. Part IV of the CCAA

26. The purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada. Orders under this part are intended, among other things, to promote cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions. Such orders are also

intended to promote fair and efficient administration of cross-border insolvencies, which also protects the interests of debtors, creditors, and other interested persons.²⁴

27. In the context of Part IV of the CCAA, the Court is granted the authority to apply any legal or equitable rules necessary, provided they are not inconsistent with the provisions of the CCAA.²⁵

B. The Additional U.S. Orders should be recognized by this Court

28. Section 49 of the CCAA provides that the Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company's property or that the order is in the interests of a creditor or creditors. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the Court considers appropriate. Further, once an order recognizing a foreign proceeding is made, the Court is required to cooperate, to the maximum extent possible, with the foreign representative and the foreign court, so long as the requested relief is not inconsistent with the CCAA and does not raise concerns regarding public policy.²⁶

29. Vitamin Holdings seeks the recognition of the Additional U.S. Orders that have been obtained by the Debtors from the U.S. Court.

²⁴ [Zochem Inc. \(Re\), 2016 ONSC 958](#) at para 15; CCAA at s. 44.

²⁵ CCAA at s. 61(1).

²⁶ CCAA at ss. 49, 50, 52(1) and 61(2).

30. None of the Additional U.S. Orders are inconsistent with any order that may be granted under the CCAA. Canadian courts have regularly exercised their jurisdiction under sections 49 and 50 of the CCAA to recognize Chapter 11 bankruptcy orders with similar effect to the Additional U.S. Orders, including recognition of U.S. lease rejection orders, as sought here.²⁷

31. In cross-border insolvencies, Canadian and U.S. courts routinely seek to complement, coordinate and, where appropriate, accommodate the proceedings of the other court in order to enable cross-border enterprises to successfully restructure. Comity and cooperation are increasingly important in the restructuring context given the multi-jurisdictional presence of so many businesses, including GNC. Without coordination by the courts of cross-border restructuring proceedings, the result would be multiple proceedings with the likely consequence of inconsistent court orders and decisions and general uncertainty as to the direction and effect of the restructuring proceedings on creditors and stakeholders in various jurisdictions.²⁸

32. When a Canadian court considers whether it should recognize a foreign order, including an order made in a Chapter 11 proceeding, the following considerations should be taken into account:

²⁷ [*Zochem Inc. \(Re\)*](#) at paras 14, 42; [*Massachusetts Elephant & Castle Group, Inc. \(Re\)*](#), 2011 ONSC 4201 at paras 36, 40. Regarding lease rejection orders, see, for example, [*Laidlaw Inc. \(Re\) \(In Bankruptcy\)*](#), 2003 CanLII 8003 (ON SC) at para 19; [*Order of Hainey J., as issued & entered on Feb. 21, 2020, re Amended and Restated Supplemental Order \(Pier One proceeding\)*](#).

²⁸ [*Babcock & Wilcox Canada Ltd., Re*](#), 5 BLR (3d) 75 at paras 9-10; Order of Newbould J. dated January 25, 2017, *In the Matter of Modular Space Intermediate Holdings Inc. et al.*.

- (a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions;
- (b) the need to accord respect to foreign bankruptcy and insolvency legislation unless in substance generally it is so different from the bankruptcy and insolvency laws of Canada or diverges radically from the processes in Canada;
- (c) whether stakeholders will be treated equitably, and in particular whether recognition will ensure that, to the extent reasonably possible, stakeholders are treated equally, regardless of the jurisdiction to which they reside;
- (d) the importance of promoting plans that allow the enterprises to reorganize globally, especially where there is an established interdependence on a transnational basis. To the extent reasonably practical, one jurisdiction should take “charge” of the principal administration of the enterprise’s reorganization, where this approach will facilitate a potential reorganization and which will respect the claims of stakeholders in all jurisdictions and does not detract from the net benefits that may be available from alternative approaches;
- (e) that the appropriate level of court involvement depends to a significant degree upon the court’s nexus to the enterprise;
- (f) that where one jurisdiction is to have an ancillary role, the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments regarding the reorganizational efforts in the foreign

principal jurisdiction and stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction; and

- (g) that all affected stakeholders receive effective notice as is reasonably practicable in the circumstances.²⁹

33. The Additional U.S. Orders have been obtained by the Debtors to facilitate their restructuring efforts in the Chapter 11 Cases by, among other things, minimizing the adverse effects of the Chapter 11 Cases on their business and preserving and maximizing the potential value of the Debtors' assets for the benefit of their creditors and other stakeholders.

34. Vitamin Holdings submits that consideration of the factors above favour granting the relief sought, and it is appropriate that the Court recognize and give effect to the orders of the U.S. Court. The Additional U.S. Orders were made in good faith and in the interest of the Debtors' creditors and stakeholders. The Additional U.S. Orders do not breach any applicable Canadian law. Vitamin Holdings submits that recognition of the Additional U.S. Orders is necessary to ensure that the purposes of the CCAA are satisfied and the Debtors have the best opportunity to restructure their affairs.

35. Accordingly, Vitamin Holdings requests that the Court recognize the Additional U.S. Orders.

²⁹ [*Babcock & Wilcox Canada Ltd., Re*](#) at para 21; [*Re Xerium Technologies Inc.*, 2010 ONSC 3974](#) at paras 26-27.

C. The Termination Order should be granted by this Court

36. The Applicant is seeking the Termination Order, and related relief, at this time. The termination of these CCAA proceedings will only occur after the Effective Date occurs and the Information Officer files the Information Officer's Certificate with this Court. The Applicant submits that related relief in the Termination Order, including the discharge and release in favour of the Information Officer and its counsel, is appropriate in these circumstances. This Court has previously granted a release in favour of an information officer upon its discharge and such release is consistent with the discharge of court officers analogous to information officers.³⁰

PART V – RELIEF REQUESTED

37. The Applicant requests that this Court grant the requested Recognition Order and Termination Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Scott A. Bomhof / Adam Slavens / Jeremy Opolsky /
Leora Jackson

Lawyer for the Applicant

³⁰ See, e.g., [syncreon Group B.V. et al, Re](#), Order of Hainey J 19 September, 2019 (Ont Sup Ct J (Commercial List)) Court File No CV-19-624659-00CL; [Chemtura Canada Co., Re](#), Order of Morawetz J 25 February, 2011 (Ont Sup Ct J (Commercial List)) Court File No 10-CL-8846-00CL; [Relay Blocker, LLC et al, Re](#), Order of McEwen J 24 January, 2019 (Ont Sup Ct J (Commercial List)) Court File No CV-18-597987-00CL.

SCHEDULE A – LIST OF AUTHORITIES

- 1 Conway J - Endorsement on Application in CV-20-00642970-00CL (*Re GNC*) dated June 29, 2020
- 2 *Zochem Inc. (Re)*, 2016 ONSC 958
- 3 *Massachusetts Elephant & Castle Group, Inc. (Re)*, 2011 ONSC 4201
- 4 *Laidlaw Inc. (Re) (In Bankruptcy)*, 2003 CanLII 8003 (ON SC)
- 5 Order of Hainey J., as issued & entered on Feb. 21, 2020, re Amended and Restated Supplemental Order (*Pier One* proceeding)
- 6 *Royal Bank of Canada v. Soundair Corp.*, 4 OR (3d) 1
- 7 *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6460
- 8 *Tiger Brand Knitting Co. (Re)*, 2005 CanLII 9680 (ON SC)
- 9 *Babcock & Wilcox Canada Ltd., Re*, 5 BLR (3d) 75
- 10 Order of Newbould J. dated January 25, 2017, *In the Matter of Modular Space Intermediate Holdings Inc. et al.*
- 11 *syncreon Group B.V. et al, Re*, Order of Hainey J 19 September, 2019 (Ont Sup Ct J (Commercial List)) Court File No CV-19-624659-00CL
- 12 *Chemtura Canada Co., Re*, Order of Morawetz J 25 February, 2011 (Ont Sup Ct J (Commercial List)) Court File No 10-CL-8846-00CL
- 13 *Relay Blocker, LLC et al, Re*, Order of McEwen J 24 January, 2019 (Ont Sup Ct J (Commercial List)) Court File No CV-18-597987-00CL

SCHEDULE B – TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act, RSC 1985, C. C-36

PART IV – CROSS-BORDER INSOLVENCIES

PURPOSE

Purpose

44 The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

INTERPRETATION

Definitions

45 (1) The following definitions apply in this Part.

[...]

foreign main proceeding means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

Centre of Debtor Company's Main Interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

RECOGNITION OF FOREIGN PROCEEDING

Application for recognition of a foreign proceeding

46 (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

[...]

Other Orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and Other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

Terms and Conditions of Orders

50 An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

[...]

OBLIGATIONS

Cooperation — Court

52 (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Cooperation — Other Authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of Cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a) the appointment of a person to act at the direction of the court;
- (b) the communication of information by any means considered appropriate by the court;
- (c) the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d) the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e) the coordination of concurrent proceedings regarding the same debtor company.

MISCELLANEOUS PROVISIONS

[...]

Court not prevented from applying certain rules

61 (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

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SUPERIOR COURT OF JUSTICE
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Proceeding commenced at TORONTO

**FACTUM OF THE APPLICANT
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