

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

TRUIST BANK, AS AGENT

Applicant

- and-

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

**NOTICE OF MOTION
(Returnable April 9, 2020)
(Sale Approval – TCB Media Rights Ltd.)**

FTI CONSULTING CANADA INC. (“**FTI**”), in its capacity as the Court-appointed receiver and manager (FTI, in such capacity, the “**Receiver**”) of all of the undertaking, property and assets of Kew Media Group Inc. (“**KMG**”) and Kew Media International (Canada) Inc. (together with KMG, the “**Kew Group**”) acquired for, or used in relation to a business carried on by the Kew Group (collectively, the “**Property**”), will make a telephonic motion to a Judge presiding over the Ontario Superior Court of Justice (Commercial List), on April 9 2020, at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR orders:

- (a) approving the purchase and sale of the issued share capital of TCB Media Rights Ltd. currently owned by KMG (the “**Transaction**”) pursuant to a share purchase agreement dated March 31, 2020 (the “**SPA**”), between the Receiver and Beyond Entertainment Limited (the “**Purchaser**”);
- (b) approving and authorizing the Receiver’s execution of the SPA and authorizing and directing the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of KMG’s right, title and interest in and to the shares described in the SPA (the “**Purchased Shares**”) to the Purchaser;
- (c) vesting KMG’s right, title and interest in and to the Purchased Shares free and clear of certain encumbrances upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached to the draft order confirming, among other things, that all terms and conditions under the SPA have been satisfied or waived by the Receiver and the Purchaser (the “**Receiver’s Certificate**”);
- (d) declaring that, for greater certainty, the Receiver is not bound by any prior contractual agreement by KMG not to enter into or complete the Transaction or to do so only with the consent of a third party;
- (e) authorizing the Receiver to repay any portion of the principal sums advanced to it pursuant to a receiver’s borrowing certificate, together with interest

thereon and all reasonable expenses incurred by the holder or holders of such receiver's borrowing certificate, all in accordance with the Receivership Order (as defined below), in the within proceedings;

- (f) authorizing the Receiver, subject to the establishment of reasonable reserves in the discretion of the Receiver (including, without limitation, for any priority claims and the Receiver's costs of administration), to distribute from time to time any proceeds of sale or other realizations by the Receiver, other than the Purchase Price received for the TCB Shares, to Truist Bank, as administrative agent (in such capacity, the "**Agent**") for Truist Bank, Bank of Montreal and Toronto-Dominion Bank, provided that the aggregate amount so distributed shall not exceed the obligations of the Kew Group to such lenders. For greater certainty, the Purchased Price received for the sale of the TCB Shares shall not be distributed without further Order of this Court;
- (g) amending the style of cause of the within proceedings to remove Architect Films Inc., as a respondent; and
- (h) such further and other relief as counsel may request and this Court may deem just,

substantially in the form of the draft orders included in the Receiver's Motion Record.

THE GROUNDS FOR THE MOTION ARE:

- (a) On February 28, 2020, this Court granted an order (the "**Receivership Order**") appointing FTI as Receiver of the Property pursuant to Section 243(1) of the

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, R.S.O. 1990, c. C.43, as amended (the “**CJA**”);

- (b) The Receivership Order authorizes the Receiver to market any or all of the Property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (c) As described in greater detail in the First Report of the Receiver (to be filed) (the “**First Report**”), the Purchased Shares were suitably marketed in a process that was fair, transparent and reasonable in the circumstances and otherwise consistent with the *Soundair*;
- (d) Also as described in greater detail in the First Report, negotiations between the Receiver and the Purchaser (in consultation with the Agent) culminated in the SPA, which represents the highest and best offer in terms of both price and conditions, in the view of the Receiver;
- (e) The granting of an approval and vesting order substantially in the form of the draft order is a condition of the SPA;
- (f) The Agent, a secured creditor and the Applicant in these proceedings, supports this Transaction;
- (g) The proceeds generated by the Transaction (and further proceeds of sale or other realizations by the Receiver) are expected to permit the Receiver to make

distribution(s) to the Agent and repayments of amounts owed under Receiver's borrowing certificates;

- (h) Section 247 of the BIA and other provisions of the BIA;
- (i) Sections 1.04, 1.05, 2.03, 3.02, 37 and 138 of the CJA;
- (j) The *Rules of Civil Procedure*, R.R.O. 1990, reg. 194, including, without limitation, rules 1.04(1) and 6.01(1) thereof; and
- (k) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The First Report; and
- (b) Such further and other evidence as counsel may advise and this Court may permit.

Date: April 3, 2020

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AND TO: The Service List

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	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding Commenced at TORONTO</p>
	<p style="text-align: center;">NOTICE OF MOTION (Returnable April 9, 2020) (Sale Approval – TCB Media Rights Ltd.)</p>
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