



No. S243645
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, AS AMENDED

- AND -

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

- AND -

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF
INCA ONE GOLD CORP.

NOTICE OF APPLICATION

Name of applicant: Inca One Gold Corp.

TO: Service List, attached hereto as Schedule "A"

TAKE NOTICE that an application will be made by the applicant to the Honourable Madam Justice Fitzpatrick at the courthouse at 800 Smithe Street, Vancouver, in the Province of British Columbia, on July 22, 2024 at 10:00a.m. for the orders set out in Part 1 below.

The applicant estimates that the application will take a full day.

This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. The Petitioner, Inca One Gold Corp. ("**Inca One**"), seeks the following orders:

(a) an order substantially in the form of the draft order attached hereto as Schedule "B" extending the Stay Period (as defined below) and amending certain provisions of the Amended and Restated Initial Order granted on June 13, 2022 (the "**ARIO**") as follows:

i. deeming service of this application to be good and sufficient;

- ii. extending the Stay Period (as defined below) up to and including October 5, 2024;
 - iii. authorizing and empowering Inca One to obtain and borrow under an interim financing credit facility (the "**Interim Financing**") from 401601 B.C. Ltd. (in such capacity, the "**Interim Lender**") to finance the continuation of its business and preservation of its property on the terms and subject to the conditions set forth in the "**Interim Financing Term Sheet**" between Inca One and the Interim Lender;
 - iv. granting an "**Interim Lender's Charge**" over the assets, properties, and undertakings of Inca One as security for Inca One's obligations to the Interim Lender pursuant to the Interim Financing Term Sheet, subordinate in priority only to the Administration Charge; and
- (b) such further and other relief as may be sought by Inca One and as the Court deems just.

Part 2: FACTUAL BASIS

A. Background

1. The facts supporting this application are fully set out in the Third Affidavit of Edward Kelly affirmed on July 17, 2024 (the "**Third Kelly Affidavit**") and the pleadings filed by Inca one to date.
2. Capitalized terms used but not otherwise defined herein have the same meaning as ascribed to them in the Third Kelly Affidavit or the Affidavit of Edward Kelly affirmed on June 3, 2024 (the "**First Kelly Affidavit**").
3. On June 3, 2024, the Honourable Madam Justice Fitzpatrick pronounced the Initial Order in respect of Inca One pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Among other things, the Initial Order established a stay of proceedings against Inca One for an initial period of ten (10) days (the "**Stay Period**"). FTI Consulting Canada Inc. ("**FTI**") was appointed as the monitor (when referred to in such capacity, the "**Monitor**") of Inca One.
4. On June 13, the Honourable Madam Justice Fitzpatrick pronounced the ARIO, which extended the Stay Period to July 22, 2024 and increased the Administration Charge to \$220,000.
5. Since the granting of the ARIO, Inca One has been negotiating with its primary creditor OCIM Metals and Mining S.A. ("**OCIM**") along with other stakeholders and with the assistance

of the Monitor in order to develop a restructuring plan. At this time Inca One has obtained a term sheet (the "**Replacement Financing Term Sheet**") with Westmount Capital to provide Inca One with a \$25,000,000 USD replacement financing facility (the "**Replacement Facility**") to close no later than September 30, 2024. To fund these restructuring proceedings until such time as the Replacement Facility Closes, Inca One has also obtained the Interim Financing Term Sheet in the amount of \$1,000,000 USD.

6. Inca One obtained the Replacement Financing Term Sheet on July 9, 2024 and was informed that Westmount Capital managed its own funds along with those of its clients. On July 17, 2024, Inca One was informed by Westmount Capital that they had not planned to include their own funds in the Replacement Facility but were sourcing funds from its clients in the near future.

7. The Replacement Facility is necessary to fund a Plan of Arrangement (the "**Plan**") along with the Interim Financing in order to continue operations and these proceedings. Inca One anticipates further applications for a Meeting Order and, if approved by creditors, to approve the Plan and the Replacement Financing Term Sheet.

8. The relief sought by Inca One on this application is consistent with the underlying purpose of the CCAA.

9. Unless otherwise noted, all references to monetary amounts in this Notice of Application are in Canadian dollars ("**CAD**").

B. Status of Restructuring Proceedings and Operations

10. As detailed in the Affidavit #3 of Edward Kelly, Inca One has been carrying on operations in Canada and continues to wind down its operations in Peru until such time that refinancing is completed.

11. Inca One has continued to negotiate with its stakeholders, including OCIM, as to a path forward towards a Plan that would satisfy OCIM and its other creditors. Discussions with OCIM did not result in an outcome acceptable to Inca One.

12. Concurrent with those negotiations, Inca One obtained the Replacement Financing Term Sheet. It is Inca One's view that, if approved through the Plan, the Replacement Financing Term Sheet offers the most value to all stakeholders. The Replacement Financing is subject to court approval, which Inca One will seek to do in a matter of weeks in conjunction with an application approving a Meeting Order to vote on a Plan.

13. The Replacement Financing Term Sheet contains the following terms, among others:

- (a) Amount of \$25,000,000 USD to finance existing loans and purchase gold inventory;
 - (b) Interest at 8% per annum and principal amounts paid at a 15% discount to the gold price set on the closing of the loan;
 - (c) 5-year term secured by a priority debenture; and
 - (d) subject to court approval.
14. At this time, the terms of a Plan to be presented to Inca One's creditors have not been fully developed. However, Inca One's expectations are that the Plan will:
- (a) Allow for the payment to OCIM and provide other creditors with equity or otherwise according to a Plan;
 - (b) preserve the current management and organizational structure of Inca One, including its employees in Canada and Peru; and
 - (c) allow for sufficient working capital to recommence Plant operations, purchase gold inventory for the Plants, and achieve profitability.

C. Interim Financing

15. As demonstrated in Inca One's cash-flow projections filed herein, Inca One will require interim financing to continue its restructuring efforts and develop a Plan.
16. To address those liquidity needs, Inca One has agreed with the Interim Lender on the terms of the Interim Financing Term Sheet pursuant to which the Interim Lender will make the necessary financing available to Inca One.
17. The Interim Financing provides for a credit facility up to a maximum amount of \$1,000,000 USD, drawable in two advances and subject to a 5% drawdown fee along with a 2% standby fee.
18. Inca One's cash on hand is \$341,000. Expected expenses until October 5, 2024 include:
- (a) Payroll and benefits;
 - (b) Office and administration costs;
 - (c) Restructuring professional fees;
 - (d) Other professional fees;
 - (e) Other operating disbursements; and

(f) Transfers to Peruvian cashflows for operations.

19. Absent court approval of the Interim Financing, Inca One will not have the liquidity it requires to fund its operational needs, including payroll for employees critical to maintenance and preservation of the Plants. Furthermore, Inca One will not have the ability to work with the Monitor and other stakeholders in putting forward the Plan or to close the Replacement Facility.

20. The terms of the proposed Interim Financing, which are more fully set out in the Interim Financing Term Sheet, are as follows (with capitalized terms not otherwise defined in this paragraph having the meanings ascribed to them in the Interim Financing Term Sheet):

| | |
|--|---|
| Borrower | Inca One Gold Corp. |
| Lender | 401601 B.C. Ltd. |
| Purpose | To provide working capital for the Borrower, including to pay legal, restructuring, administrative and audit and relisting fees in connection with the CCAA Proceedings, all in accordance with the Borrower's cashflow forecast. |
| Interim Facility | A super-priority interim non-revolving credit facility up to a maximum principal amount of \$1,000,000 USD, to be drawn down in two increments of \$750,000 USD and \$250,000 USD. |
| Interest Rate | 20% per annum. |
| Fees | 5% drawdown fee, 2% standby charge fee |
| Interim Lender Charge | All interim financing obligations shall be secured by the "Interim Lender Charge" granted by the Court. |
| Priority of Interim Lender Charge | The Interim Lender Charge will rank after the Administration Charge. |
| Maturity Date | To be paid at the earliest of (i) the date on which the Lender demands repayment after the occurrence of an event of default; (ii) the implementation of a plan of arrangement and compromise within the CCAA Proceedings, which has been approved by an order made by the Court;; (iii) the termination of the CCAA Proceedings; and (iv) November 30, 2024. |

| | |
|-----------------------------|--|
| Conditions Precedent | Usual and customary (but material) for an interim facility of this type. |
| Covenants | Usual and customary (but material) for an interim facility of this type. |
| Events of Default | Usual and customary (but material) for an interim facility of this type. |

Part 3: LEGAL BASIS

Stay Period

21. Inca One seeks an extension of the Stay Period up to and including October 5, 2024.

22. Subsection 11.02(2) of the CCAA grants this Court the discretion to order a Stay Period for a period that this Court considers necessary and on any terms that this Court may impose. Section 11.02(3) of the CCAA further provides that this court cannot exercise its discretion to grant the Stay Period unless it is satisfied that:

- (a) the Stay Period is appropriate in the circumstances; and
- (b) the Petitioner has acted and continues to act in good faith and with due diligence.

CCAA, ss 11.02(2), (3)
Worldspan Marine Inc, Re, 2011 BCSC 1758 at para. 12

23. In assessing whether an extension of the Stay Period is appropriate in the circumstances, this Court inquires whether the extension advances the remedial purpose of the CCAA.

Century Services Inc v. Canada (Attorney General), 2010 SCC 60 at para. 70
Worldspan at para. 13

24. The Supreme Court of Canada has held that the purpose of the CCAA is "to facilitate the survival of going concerns" by "permit[ing] the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets".

Century Services at para. 15
Canada v. Canada North Group Inc., 2021 SCC 30 at para. 21

25. A stay of proceedings helps achieve this purpose by preserving the status quo for the debtor company, facilitating the ongoing operations of the debtor company's business, preserving

the value of the business, and providing the debtor company with the necessary time, flexibility, and "breathing room" to carry out a supervised restructuring or organized sale process.

Re Lehndorff General Partners Ltd. (1993), 17 CBR (3d) 24, 9 BLR 275 (Ont Gen Div)
at paras. 5- 7

Re North American Tungsten Corp., 2015 BCSC 1376 at para. 25

1057863 B.C. Ltd. (Re), 2020 BCSC 1359 at para 118, citing *Timminco Limited (Re)*,
2012 ONSC 2515 at para. 15

26. Debtor companies are entitled to seek protection under the CCAA in the context of a wide range of restructuring options.

Century Services at para 57, citing *Re Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at para. 44

27. Inca One requires additional time to continue the restructuring of its affairs in the best interest of its creditors and other stakeholders, including to continue to put forward the Plan to its creditors and have it approved, along with the Replacement Financing Term Sheet, by this Honourable Court.

28. These activities are necessary for Inca One's restructuring. The stay extension sought is reasonable in the circumstances.

29. In light of the progress made to date, and the steps contemplated to be completed during the extended Stay Period, the extension of the Stay Period sought by Inca One is appropriate.

30. Inca One has been working in good faith and with due diligence to advance these CCAA proceedings.

31. Since the commencement of the Stay Period, Inca One has continued to develop its restructuring plan by engaging with its counsel, the Monitor, and its material stakeholders regarding Inca One's restructuring process and prospects.

32. If the Interim Financing is approved, Inca One will have sufficient liquidity to meet its obligations during the Stay Period. Accordingly, the Company requests this Honourable Court to approve the requested extension of the Stay Period.

Interim Financing

33. Interim financing protects the going concern value of the debtor company while it develops a workable solution to its insolvency issues, enabling the preservation and realization of the value of a debtor's assets.

Quebec inc. v. Callidus Capital Corp., 2020 SCC 10 at para. 85

34. This Court has jurisdiction to approve the Interim Financing Term Sheet and the Interim Lenders' Charge pursuant to section 11.2 of the CCAA, which sets out a list of non-exhaustive factors to be considered by courts in deciding whether to approve interim financing and grant an interim lenders' charge, including:

- (a) the period during which the company is expected to be subject to CCAA proceedings;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or the charge; and
- (g) the views of the Monitor,

35. No one factor set out in s. 11.2 governs or limits the Court's consideration. The exercise is necessarily one of balancing the respective interests of the debtors and its stakeholders towards ensuring, if appropriate, that the financing will assist the debtor company to obtain the "breathing room" said to be needed to hopefully achieve a restructuring acceptable to the creditors and the court.

1057863 B.C. Ltd. (Re), 2020 BCSC 1359 at para.35

36. In addition to the statutory factors set out above, courts have determined that several additional factors are relevant to an application under section 11.2. These include whether:

- (a) the petitioner would be forced to stop operating without interim financing and whether bankruptcy would be in the interest of the petitioner's stakeholders;
- (b) the proposed interim financing will support the Applicants' restructuring plans, including implementation of a sales process; and
- (c) the proposed facility has been approved by the Applicants' management.

North American Tungsten Corp., (Re), 2015 BCSC 1376 at paras. 33-35

8440522 Canada Inc. (Re), 2013 ONSC 6167 at para. 32

37. The proposed Interim Financing and corresponding Interim Lenders' Charge are necessary and appropriate for the following reasons, among others:

- (a) the Interim Financing contemplates a short period of time for exit from the CCAA proceedings;
- (b) the Interim Financing will allow continuity of management until approval of the Plan;
- (c) the Interim Financing is required for a viable restructuring of Inca One, and to allow for the Plan to be approved by creditors, including OCIM;
- (d) the Interim Financing will allow Inca One to preserve value for the Plants;
- (e) the amount of the Interim Financing and terms of the Interim Financing Term Sheet are appropriate given the length of time Inca One expects to be under CCAA protection, including specifically with respect to its projected cashflow needs pending closing of the Replacement Facility;
- (f) Inca One would cease to be an operating entity if the Interim Financing is not approved;
- (g) The Interim Financing has been approved by management;
- (h) Although OCIM may suffer potential prejudice if the Replacement Facility fails to close, Inca One intends to have the Facility approved well in advance of the proposed closing date and will provide additional information to OCIM and to this Honourable Court as to its merits.

38. The terms of the Interim Financing Term Sheet are the best terms available to the Inca One in the circumstances given its urgent need for funding to implement its restructuring efforts.

Part 4: MATERIAL TO BE RELIED ON

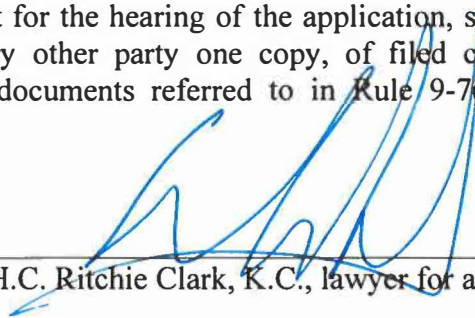
1. Affidavit #3 of Edward Kelly, made July 17, 2024;
2. The pleadings and proceedings herein; and
3. Such further materials as counsel may advise.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond

to the application, you must

- (a) file an application response in Form 33 within 5 days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and
- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of filed copy of the application response and other documents referred to in Rule 9-7(12) of the Supreme Court Civil Rules.

Date: July 18, 2024



H.C. Ritchie Clark, K.C., lawyer for applicant

To be completed by the court only:

Order made
 in the terms requested in paragraphs of Part I of this notice of application

with the following variations and additional terms:

Date:
 Signature of Judge Associate Judge

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts.

SCHEDULE "A" – SERVICE LIST

SCHEDULE "B" – DRAFT ORDER

SCHEDULE "A"

No. S-243645
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, AS AMENDED

-AND-

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

-AND-

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF INCA ONE
GOLD CORP.

PETITIONER

Service List (June 24, 2024)

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| <p>Bridgehouse Law 9th Floor, 900 West Hastings St. Vancouver, BC V6C 1E5,</p> <p>Attention: Ritchie Clark, K.C. and Benjamin La Borie</p> <p>Tel.: 604-336-8344 236-521-6150</p> <p>Email: rclark@bridgehouselaw.ca blaborie@bridgehouselaw.ca</p> <p><i>Counsel for the Petitioner</i></p> | <p>DLA Piper (Canada) LLP Suite 2700 – 1133 Melville Street Vancouver, BC V6E 4E5</p> <p>Attention: Colin D. Brousson</p> <p>Tel.: 604.643.6400</p> <p>Email: colin.brousson@ca.dlapiper.com dannis.yang@ca.dlapiper.com</p> <p><i>Counsel for the Monitor</i></p> |
| <p>FTI Consulting Canada Ltd. 701 West Georgia Street Suite 1450, PO Box 10089 Vancouver, BC V7Y 1B6</p> <p>Attention: Tom Powell and Mike Clark</p> <p>Tel. 833.819.4488</p> <p>Email: tom.powell@fticonsulting.com Mike.Clark@fticonsulting.com</p> <p><i>The Monitor</i></p> | <p>Nathanson, Schachter & Thompson LLP 750 - 900 Howe Street Vancouver, BC V6Z 2M4</p> <p>Attention: Peter Reardon</p> <p>Tel. 604.662.8840</p> <p>Email: preardon@nst.ca</p> <p><i>Counsel for OCIM</i></p> |

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| <p>Blake, Cassels & Graydon LLP 3500 – 1133 Melville Street Vancouver, BC V6E 4E5</p> <p>Attention: Peter Rubin</p> <p>Tel.: 604.631.3315</p> <p>Email: peter.rubin@blakes.com</p> <p><i>Counsel for Equinox</i></p> | <p>Department of Justice Canada British Columbia Regional Office 900 - 840 Howe Street, Vancouver, BC V6Z 2S9</p> <p>Attention: Aminollah Sabzevari</p> <p>Tel.: 587-930-5282</p> <p>Email: Aminollah.Sabzevari@justice.gc.ca Khanh.Gonzalez@justice.gc.ca</p> |
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SCHEDULE "B"

No.243645
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, AS AMENDED

- AND -

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- AND -

IN THE MATTER OF THE PLAN OF COMPROMISE AND ARRANGEMENT OF
INCA ONE GOLD CORP.

PETITIONER

ORDER MADE AFTER APPLICATION
SECOND AMENDED AND RESTATED INITIAL ORDER

BEFORE THE HONOURABLE JUSTICE)
FITZPATRICK)
)

MONDAY
JULY 22, 2024

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on the 22nd day of July, 2024 (the "**Order Date**"); AND ON HEARING H.C. Ritchie Clark, Q.C., and Benjamin La Borie, counsel for the Petitioner, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the First Affidavit of Edward Kelly affirmed June 3, 2024, the Second Affidavit of Edward Kelly affirmed June 11, 2024, the Third Affidavit of Edward Kelly affirmed July 17, 2024, and the consent of FTI Consulting Canada Inc. to act as Monitor; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court, and further to the Initial Order (the "Initial Order") pronounced on June 3, 2024 as amended June 13, 2024;

THIS COURT ORDERS AND DECLARES THAT:

1. This Second Amended and Restated Initial Order amends and restates the Initial Order. All capitalized terms used in this order but not otherwise defined herein have the meaning ascribed to them in the Initial Order.

JURISDICTION

2. The Petitioner is a company to which the CCAA applies.

SERVICE

3. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

SUBSEQUENT HEARING DATE

4. The hearing of the Petitioner's application for an extension of the Stay Period (as defined in paragraph 11 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at ____ on the ___ day of July, 2024 or such other date as this Court may order.

PLAN OF ARRANGEMENT

5. The Petitioner 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

6. Subject to this Order and any further Order of this Court, the Petitioner shall remain in possession and control of its 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 Petitioner 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 it deems reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

7. The Petitioner 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 Petitioner which are related to the Petitioner's 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.

8. Except as otherwise provided herein, the Petitioner shall be entitled to pay all expenses reasonably incurred by the Petitioner 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 \$100,000 shall be approved by the Monitor; and
- (b) all obligations incurred by the Petitioner after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioner following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioner's 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.

9. The Petitioner is 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, and (iii) 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 Petitioner in connection with the sale of goods and services by the Petitioner, 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.

10. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioner 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.

11. Except as specifically permitted herein, the Petitioner is 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 Petitioner to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

12. Until and including October 5, 2024, 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 Petitioner or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioner and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

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

14. Nothing in this Order, including paragraphs 10 and 11, shall: (i) empower the Petitioner 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 Petitioner.

NO INTERFERENCE WITH RIGHTS

15. 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 Petitioner and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

16. During the Stay Period, all Persons having oral or written agreements with the Petitioner 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 the Petitioner, and that the Petitioner shall be entitled to the continued use of its 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 the Petitioner in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. 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 Petitioner 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

18. 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 Petitioner with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioner 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 Petitioner, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioner 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 Petitioner 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.

APPOINTMENT OF MONITOR

19. FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioner with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioner and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioner 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.

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

- (a) monitor the Petitioner's 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 Petitioner, to the extent required by the Petitioner, in its dissemination of financial and other information which may be used in these proceedings;
- (d) advise the Petitioner in its preparation of the Petitioner's cash flow statement;
- (e) advise the Petitioner in its development of the Plan and any amendments to the Plan;
- (f) assist the Petitioner, to the extent required by the Petitioner, 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 Petitioner, to the extent that is necessary to adequately assess the Petitioner's 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.

21. 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.

22. 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.

23. The Monitor shall provide any creditor of the Petitioner and the Interim Lender with information provided by the Petitioner 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 Petitioner

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 Petitioner may agree.

24. 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.

ADMINISTRATION CHARGE

The Monitor, counsel to the Monitor, and counsel to the Petitioner shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioner as part of the cost of these proceedings. The Petitioner is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and counsel to the Petitioner on a periodic basis and, in addition, the Petitioner is hereby authorized to pay to each of the Monitor, and counsel to the Petitioner, retainers in the amounts of \$50,000 and \$50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

25. 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.

26. The Monitor, counsel to the Monitor, if any, and counsel to the Petitioner 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 \$220,000 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 27 hereof.

INTERIM FINANCING

27. The Petitioner is hereby authorized and empowered to obtain and borrow under a credit facility from 401601 B.C. Ltd. (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed USD \$1,000,000 unless permitted by further Order of this Court.

28. Such credit facility shall be on the terms and subject to the conditions set forth in the Interim Financing Term Sheet between the Petitioner and the Interim Lender dated as of July 17, 2024 (the "**Interim Financing Term Sheet**") attached to the Third Affidavit of Edward Kelly affirmed July 17, 2024.

29. The Petitioner is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioner is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the Interim Financing Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

30. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property. The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 39 and 41 hereof.

31. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender's Charge, the Interim Lender may immediately cease making advances to the Petitioner and, upon 5 business days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioner or the Property under or pursuant to the Interim Financing Term Sheet, Definitive Documents and the Interim Lender's Charge, including without limitation, to cease making advances to the Petitioner and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioner against the obligations of the Petitioner to the Interim Lender under the Interim Financing Term Sheet, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioner and for the appointment of a trustee in bankruptcy of the Petitioner; and
- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioner or the Property;

32. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioner under the CCAA, or any proposal filed by the Petitioner under the Bankruptcy and Insolvency Act of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. The priorities of the Administration Charge, and the Interim Lender's Charge, as among them, shall be as follows:

First — Administration Charge (to the maximum amount of \$220,000); and

Second — Interim Lender's Charge (to the maximum amount of \$1,000,000 USD).

34. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge or the Interim Financing Charge (together, the "**Charges**") shall not be required, and that the Charges 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 Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

35. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges 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 for those claims contemplated by section 11.8(8) of the CCAA.

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

37. The Administration Charge, the Interim Financing Term Sheet, the Definitive Documents and the Interim Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") shall not otherwise be limited or impaired in

any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) 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 Interim Financing Term Sheet 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 Charges 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 Interim Financing Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioner pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioner's interest in such real property leases.

SERVICE AND NOTICE

39. The Petitioner 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 Petitioner's 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.

40. 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: <http://cfcanada.fticonsulting.com/incaone> (the "Website").

41. 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 the Website.

42. Notwithstanding paragraphs 47 and 49 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, the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, and in respect of the British Columbia Crown.

GENERAL

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

44. 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 Petitioner, the Business or the Property.

45. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America and Peru 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 Petitioner 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.

46. Each of the Petitioner 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 Petitioner.

47. The Petitioner 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.

48. The Petitioner is 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.

49. 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.

50. Any interested party (including the Petitioner 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.

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

52. 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 H.C. Ritchie Clark, K.C.
Lawyer for the Petitioner

BY THE COURT

REGISTRAR

Schedule "A"

| Counsel Name | Party Represented |
|---------------------|----------------------------|
| Colin Brousson | FTI Consulting Canada Inc. |
| Peter J. Reardon | OCIM Metals and Mining SA |
| Peter Bychawski | Equinox Gold Corp. |