



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

PETITION TO THE COURT

Petitioner:

Inca One Gold. Corp.
c/o Bridgehouse Law LLP
9th floor, 900 West Hastings Street
Vancouver, BC V6C 1E5
Attention: H.C. Ritchie Clark, K.C.

The address of the registry is: 880 Smithe Street, Vancouver, British Columbia

The Petitioner estimates that the hearing of the petition will take two hours.

This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by the person named as petitioner in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

<p>(1) The ADDRESS FOR SERVICE of the petitioner is:</p> <p>Address: Bridgehouse Law LLP 9th Floor, 900 West Hastings Street Vancouver, B.C., V6E 1C5 Attention: H.C. Ritchie Clark, K.C., Benjamin La Borie</p> <p>Fax number address for service of the petitioner: 604.684.0916</p> <p>Email addresses for service of the petitioner: rclark@bridgehouselaw.ca; blaborie@bridgehouselaw.ca; rheinecke@bridgehouselaw.ca</p>
<p>(2) The name and office address of the petitioner's (s') lawyer is:</p> <p style="text-align: center;">Same as address for service</p>

CLAIM OF THE PETITIONER

Part 1: ORDER(S) SOUGHT

- 1. The petitioner, Inca One Gold Corp., ("**Inca One**" or the "**Petitioner**") seeks an initial order under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), substantially in the form attached as Schedule "A" (the "**Initial Order**") to this Petition, among other things:
 - a. declaring the Petitioner to be a company to which the CCAA applies;
 - b. appointing FTI Consulting Canada Inc. ("**FTI**") as an officer of this Court to monitor the assets, business, and affairs of the Petitioner (in such capacity, the "Monitor");
 - c. ordering that, until further order of this Court, all proceedings against the Petitioner and its directors and officers be stayed;
 - d. granting the following charges over the assets, properties, and undertakings of the Petitioner as security for the obligations of the Petitioner to the beneficiaries of such

charges, in each case as set out in the initial Order, and having the following relative priorities as among such charges:

- i. an "Administration Charge" as security for the respective fees and disbursements incurred by the Monitor, counsel to the Monitor, and counsel to the Petitioner at the standard rates and charges of the Monitor and such counsel, both before and after the making of the Initial Order, which are related to the Petitioner's restructuring;
- e. providing for a comeback hearing in respect of the relief granted under the Initial Order, on a date to be fixed by the Court (the "**Comeback Hearing**"); and
- f. other orders as this Honourable Court may deem just and convenient and as may be appropriate in the circumstances.

Part 2: FACTUAL BASIS

Capitalized Terms and Currency References

2. Capitalized terms used but not otherwise defined in this Petition have the meanings ascribed to them in Affidavit #1 of Edward Kelly, made June 3, 2024 (the "**Kelly Affidavit**").
3. All references to monetary amounts in this affidavit are in Canadian dollars unless otherwise stated.

Business Operations

2. Inca One is a Vancouver-based industrial services, manufacturing and trading company to the Artisanal Small-Scale Miners ("**ASM**") market in Peru, which conducts its operations through various foreign subsidiaries (the "**Inca Group**").
3. The Company owns two Peruvian gold milling facilities (the "**Chala One Plant**" and "Kori One Plant")(together, the "**Plants**") which have been in commercial production since 2015. Chala One Plant is held by Chala One S.A.C. ("**Chala One**") and Kori One is held by Korichancha Joint Venture ("**Kori JV**") and leased to and operated by EMC Green Group S.A. ("**EMC**"). Chala One has a tolling relationship with EMC and Kori One Plant so that Chala One operates both Plants. The subsidiaries are not petitioners in these proceedings.
4. Two other companies in the Inca Group are relevant:
 - a. Corizona S.A.C. ("**Corizona**"). which holds the permit for the Chala One Plant; and
 - b. Inca One Metals Peru S.A, which provides services to Chala One and EMC, including administration, logistics, accounting, corporate services and commercial ore buying services..

5. Inca One is a British Columbia corporation. Inca One is charged with overseeing strategy and finance for the Inca Group, including all finance, regulatory, investor relations, legal and public markets activities. The corporate relationships and ownership interests as between Inca One and the other members of the Group are set out in further detail in the Kelly Affidavit and the exhibits thereto.

6. The Plants are located within the Nazca-Ocona gold belt in Southern Peru. The total built out and permitted capacity of the Plants is 450 tonnes per day. Inca One's business services the ASM market, is to process ore for legal small-scale miners. Under Peruvian law, small-scale miners must send their ore to licensed processing facilities.

7. The high-level operations of the Plants are to intake tonnage of gold bearing ore from various mining partners, weigh it, process it, and then export gold doré to European refineries for further smelting.

8. Without sufficient working capital to pay mining partners, the Plants must run at reduced capacity. Failure to pay mining partners results in loss to competing processors as well as creates risk for the Plants' property and staff. Given the lack of available working capital for the Plants, the Plants are winding down operations and will be on care and maintenance in several weeks.

9. Inca One is a public issuer and reporting issuer in British Columbia, Alberta, Ontario and Quebec. Inca One shares trade on the Toronto Stock Exchange Venture Exchange ("TSX-V") under the symbol "INCA." Inca One is also listed on the OTCQB Exchange under the symbol "INCAF," on the Frankfurt Stock Exchange under the symbol "SU9." and the Santiago Stock Exchange Venture under the symbol "IOCL." The TSX-V and OTCQB have recently suspended trading due to a default notice from OCIM.

10. Inca One operates its head office in Vancouver, and has 3 employees and 3 contractors. However, the subsidiaries employ approx.135 people.

Secured Creditors

11. Inca One's senior secured, and largest creditor is OCIM Mines and Minerals SA ("OCIM"). OCIM granted Inca One a \$9 million gold pre-payment facility (the "**Facility**") under which OCIM agreed to be paid vial gold tonnage. In practice, however, OCIM has been paid cash which production was not sufficient to meet tonnage amounts. The Inca Group has granted security over the following to OCIM as follows:

- a. A first-ranking general security agreement over all personal and after-acquired property of Inca One;
- b. A share pledge (the "**Share Pledge**") over the shares of Chala One and Corizona; and
- c. Liens over the Plants.

12. OCIM was to provide an additional \$15 million facility to Inca One per an agreement in February 2022, but it was not finalized. A bridge loan was provided and in July 2022 OCIM

advised they would not be pursuing the other facility. As a consequence, Inca One has had to rely on other lenders in Peru to service the Facility and to provide working capital for operations.

13. On April 8, 2024, Inca One received a Notice of Default from OCIM related to a missed gold loan payment. On May 23, 2024 OCIM delivered a demand letter claiming indebtedness of \$US9,741,008.00 to be paid by June 3, 2024 along with a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*. On May 2024, Chala One and Corizona received letters that demanded that the share registries be amended to reflect OCIM's ownership of their shares.

14. Equinox Gold Corp. ("**Equinox**") is a 19.99 percent shareholder in Inca One. In 2018, Inca One obtained Anthem United Inc. ("**Anthem**") which owns a 90.14 percent interest in Kori One. As a term of the transaction, Inca One provided a secured promissory note to Anthem in the amount of \$9,000,000.00 and a share pledge agreement over Anthem's shares. Currently Equinox is owed approximately CAD\$7.1 million.

15. On April 18, 2024, Equinox delivered a reservation of rights letter to Inca One in relation to its promissory note and share pledge.

Other Creditors

16. Given the strained working capital, Chala One has used supplementary Confirming Lines of Credit from Peruvian lenders which factor the purchase of gold ore for the Plants. The providers have reduced operating limits to the extent that it is impracticable to operate the Plants effectively. Approximately CAD\$1.0 million is outstanding against Chala One.

17. In 2016, Inca One completed a restructuring which included issuing contingent debentures totaling CAD\$0.78 million. Those debentures bear an annual rate of 12 percent quarterly. Currently CAD \$0.5 million remains outstanding. Inca One has agreed with the holders to extend the terms to October 31, 2024.

18. On April 17, 2023 Inca One closed an unsecured convertible debenture offering for gross proceeds of CAD\$1.3 million. The principal amount of each Convertible Debenture is convertible into units of the Company and bears interest at 12 percent per annum. The majority of debenture holders are management or insiders.

19. As at April 30, 2024, the estimated balance due to trade creditors of the Inca One subsidiaries totaled approximately \$US4.2 million. Of this amount, approximately US\$2.2 million was related to Chala One, US\$1.1 million related to EMC and US\$0.9 million related to Inca One Metals S.A.C.

CCAA Protection

20. Given current financial challenges, Inca One urgently requires a stay of proceedings under the CCAA to maintain the status quo and obtain the "breathing room" required to consider strategic restructuring alternatives and pursue and implement a restructuring strategy.

21. It is imperative for the success of any such strategy that potential enforcement actions against Inca One and its property and business operations be stayed, that its current operations and arrangements be preserved to the extent necessary. It will likely be necessary to obtain interim financing in the near future.

22. With the benefit of the protection afforded by the CCAA, Inca One will be able to maintain the value of its assets and stabilize its financial position for the continued benefit of its stakeholders as restructuring alternatives are considered with the advice of the Monitor.

23. In the absence of the imposition of a stay of proceedings and the granting of other relief afforded by the CCAA, there is the risk of OCIM and Equinox taking control of the entirety of Inca One's assets and operations to the detriment of other stakeholders.

24. Inca One has been undercapitalized since second phase of its OCIM loan was not advanced. Other lenders have been hesitant to provide working capital with OCIM's security in place. Furthermore, the 20% increase in the gold price over the last four months has taken debt ratios to an unexpected level due to repayment being measured in gold ounces. Supplementary financing is not sufficient at present to meet working capital requirements.

25. In the last week, Inca One has been in discussions with two potential lenders (the "**Lenders**") for a replacement \$25 million dollar facility in order to replace OCIM's Facility. The Lenders are international lenders who are familiar with the Peruvian ASM market and who approve of Inca One's business operations and its restructuring and refinancing plans. Inca One is very close to finalizing a term sheet for such replacement financing. Entering into such a facility would allow the Plants to purchase higher-grade ore from the ASM market, which would have a dramatic effect on Inca One's ability to produce gold doré for export.

26. Inca One's current plan while under CCAA protection involves the following:

- a. continue ongoing negotiations with OCIM, the Lenders and other stakeholders to replace the OCIM security and/or locate sources of new financing for the Plants;
- b. restructure various members of the Inca Group to reduce costs and create efficiencies in consultation with the Monitor;
- c. present a Plan of Arrangement to Inca One's creditors with respect to the existing secured and unsecured debt obligations; and
- d. if the above prove unsuccessful, engage in a sale process for one or both of the Plants to pay down secured creditors and/or create sufficient working capital to restart operations.

27. Inca One has been in contact with Peruvian counsel and intends to take steps if necessary to have any Order in these proceedings recognized or enforced.

28. Preserving the going concern value of the business will likely achieve a better long-term result for Inca One's stakeholders than a forced liquidation of its assets. Inca One is of the view that it can become profitable with the availability of sufficient working capital.

Part 3:LEGAL BASIS

Applicable Legislation

29. The Petitioner relies on:

- a. the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c, C-36, as amended;
- b. the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. 3-3, as amended (the "BIA");
- c. the inherent jurisdiction of this Honourable Court; and
- d. such further and other legal basis as counsel may advise and this Honourable Court may allow.

The Remedial Purpose of the CCAA

30. The CCAA is remedial legislation, affording Canadian courts with broad jurisdiction to approve and implement restructuring arrangements:

The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor-initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at Para. 59

31. The Petitioner submits that the granting of the Initial Order would further the objective of the CCAA.

32. With the benefit of the protection afforded by the CCAA, the Petitioner will be able to maintain the value of its assets, and generally stabilize Inca One's business operations for the continued benefit of its stakeholders as restructuring alternatives are considered.

33. In the absence of the granting of the relief sought by the Petitioner, including the imposition of a stay of proceedings, there is the risk of loss of the Petitioners' key assets and businesses, along with loss to employees and the greater ASM market.

The CCAA Applies to the Petitioner

34. The CCAA applies in respect of a "debtor company" where the total amount of claims against the debtor exceed five (5) million dollars. The term "debtor company" is defined in Section 2 of the CCAA to include any company that is "Insolvent."

CCAA, ss. 2(1) and 3(1)

35. The claims against Inca One are substantially more than the CCAA's statutory \$5 million threshold. Inca One is also insolvent.
36. Although the term "insolvent" is not defined in the CCAA, Canadian courts have applied the BIA definition of "insolvent person" for the purposes of assessing entitlement to apply for relief under the CCAA, which term includes persons who are for any reason unable to meet their obligations as they generally become due. Courts have interpreted this test expansively to include a company that "is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring".

Re Stelco Inc., 2004 CarswellOnt 1211 at paras. 21 -22, 26 and 28, [2004] OJ No 1257 (Ont Sup Ct), leave to appeal to Ont CA refused, 2004 CarswellOnt 2936, leave to appeal to SCC refused, 2004 CarswellOnt 5200.

37. Inca One meets this statutory definition. The company is in the midst of a liquidity crisis. It cannot meet its obligations generally as they become due. Absent CCAA protection, Inca One will also not be able to meet its post-filing obligations to its creditors, employees, and stakeholders generally.

Jurisdiction

38. Section 9(2) of the CCAA provides that any application under the CCAA may be made to the court that has jurisdiction in the province within which the "head office" or "chief place of business" of the company in Canada is situated.
39. Inca One is British Columbia corporation. Inca One's head office and chief place of business for the purposes of the CCAA is in British Columbia within the jurisdiction of this Court.

Filing Requirements

40. Section 10(2) of the CCAA provides that an initial application under the CCAA must be accompanied by:
- a. a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
 - b. a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

- c. copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

41. Each of these conditions have been satisfied based on the evidence provided herein.

The Requested Stay of Proceedings is Appropriate

42. Section 11.02(1) of the CCAA provides that a court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days, among other things, restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

CCAA, s. 11.02(1)

43. A stay order under section 11.02(1) is the first step in all CCAA proceedings as it maintains the status quo while the debtor company consults with its creditors and stakeholders, allowing breathing room for reorganization.

Re JTI-Macdonald Corp., 2019 ONSC 1625 at para. 12

44. Consistent with the purpose of the CCAA, a stay of proceedings facilitates the ongoing operations of the debtor company's business to preserve its value and prevents any creditor from gaining an unfair advantage over other creditors.

45. In the circumstances, given its present financial and liquidity challenges, the Petitioner urgently requires a stay of proceedings under the CCAA to maintain the status quo and obtain the breathing room required to consider strategic restructuring alternatives and pursue and implement a restructuring strategy.

46. It is imperative for the success of any such strategy that current and potential actions against the Petitioner be stayed. With the benefit of the protection afforded by the CCAA, the Petitioner will be able to maintain the value of the Petitioner's assets, and generally stabilize its business operations for the continued benefit of its stakeholders as restructuring alternatives are considered. Furthermore, there is a risk that the Inca Group's operations in Canada and Peru would be disrupted.

47. As noted above, in the absence of the imposition of a stay of proceedings and the granting of other relief afforded by the CCAA, risk of loss of the Petitioners' key assets and businesses.

An Administration Charge is Appropriate

48. The Petitioner seeks an Administration Charge for \$150,000.00 to secure the collective fees and disbursements incurred both before and after the commencement of these proceedings of legal counsel for the Petitioner, the proposed Monitor, and legal counsel for the proposed Monitor.
49. Section 11.52 of the CCAA expressly provides the Court with the power to grant a charge in respect of professional fees and disbursements. In determining whether to grant an administration charge, Canadian courts have considered several factors including:
- a. the size and the complexity of the business being restructured;
 - b. the proposed role of the beneficiaries of the charge;
 - c. whether there is an unwarranted duplication of roles;
 - d. whether the quantum of the proposed charge appears to be fair and reasonable;
 - e. the position of the secured creditors likely to be affected by the charge; and
 - f. the position of the monitor.

CCAA, s. 11.52(1)

Mountain Equipment Co-Operative (Re), 2020 BCSC 2037 at para. 58

50. Courts have recognized that, unless professional advisor fees are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA would be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically, any failure to provide protection for professional fees will "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings".

Re Timminco Ltd., 2012 ONSC 506 at para. 66

51. The Petitioner requires the specialized expertise, knowledge, and continuing participation of the proposed beneficiaries of the Administration Charge to complete the restructuring, and the Administration Charge is necessary to ensure their continued assistance and participation in these proceedings.
52. The Petitioner believes that an Administration Charge in the amount sought is fair and reasonable and will provide the level of appropriate protection for the payment of the Petitioner's essential professional services given the size and complexity of the Petitioner's business.
53. There will be no duplication of the roles of the beneficiaries of the Administration Charge. Each of these professionals will have a unique and distinct focus in the restructuring.

54. The proposed Monitor has reviewed the underlying assumptions upon which the Petitioner has based the quantum of the proposed Administration Charge, the anticipated complexity of these CCAA proceedings, and the services to be provided by the beneficiaries of the Administration Charge, and is of the view that the proposed quantum of the Administration Charge is reasonable and appropriate in the circumstances.

The Monitor

55. Section 11.7 of the CCAA provides that the court shall appoint a person to monitor the business and affairs of a debtor company granted relief under the CCAA. It also provides restrictions on who may be appointed as a monitor.
56. FTI is a licensed trustee within the meaning of section 2 of the BIA and is not subject to any of the restrictions on who may be appointed as monitor set out in section 11.7(2) of the CCAA. FTI is qualified to act as Monitor in these CCAA proceedings and has consented to act

The Initial Order

57. In accordance with this Court's Practice Direction-47, the form of proposed Initial Order is based upon this Court's form of Model CCAA Initial Order and pursuant to section 11.02(1) of the CCAA seeks only such relief as is necessary in the circumstances.
58. The relief sought in the Initial Order is appropriate in the circumstances and within this Court's jurisdiction to grant pursuant to, among other provisions of the CCAA, section 11 as being appropriate in the circumstances.

Notice

59. Rule 8-5(6) provides that "The court may make an order without notice in the case of urgency."
60. Section 11 of the CCAA further provides that:

...if an application is made under this Act in respect of a debtor Petitioner, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

61. The Initial Order is being sought on very short notice only to OCIM and to Equinox. OCIM has delivered notice to Inca One under section 244 of the BIA and whose notice period expires tomorrow. OCIM has purported to seize control of Chala One SAC and Corizona SAC's shares in apparent violation of the BIA and the Share Pledge Agreement.
62. The limited notice being provided with respect to this Petition is necessitated by the urgency of the Petitioner's need for the relief sought in the Petition. Additionally, Inca One is a


publicly traded company. Provision of advance notice of the Petitioner's intention to seek the relief of CCAA protection is impractical and could compromise the integrity of the public markets.

- 63. The Petitioner will, on a subsequent application on notice to those Secured Creditors likely to be affected by the charges sought on this Petition, seek priority of additional charges over such Secured Creditors.

Part 4: MATERIAL TO BE RELIED UPON

- 1. Affidavit #1 of Edward Kelly made June 3, 2024.

Date: June 3, 2024



Signature of lawyer for the Petitioner
H.C. Ritchie Clark, K.C.

To be completed by the court only:

Order made
 in the terms requested in paragraphs of Part 1 of this petition
 with the following variations and additional terms:
.....
.....
.....
.....
.....
.....

Date: Signature of Judge Master

SCHEDULE "A"

Initial Order

SCHEDULE "A" TO PETITION

No. _____
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

ORDER MADE AFTER APPLICATION
INITIAL ORDER

BEFORE THE HONOURABLE JUSTICE)
FITZPATRICK)
)

June 03, 2024

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on the 3rd day of June, 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 May 31, 2024 (the "**Kelly Affidavit**") 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;

THIS COURT ORDERS AND DECLARES THAT:

JURISDICTION

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

SUBSEQUENT HEARING DATE

2. The hearing of the Petitioner's application for an extension of the Stay Period (as defined in paragraph 14 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at ____ on the 13th day of June, 2024 or such other date as this Court may order.

PLAN OF ARRANGEMENT

3. 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

4. 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.

5. 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.

6. 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 \$250,000 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.
- 7. 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.
- 8. 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.

9. 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

10. Until and including June 13, 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.

11. 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.

12. 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 CCM 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

13. 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

14. 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

15. 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

16. 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

17. 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.

18. 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.

19. 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.

20. 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*, 1999, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Ontario Environmental Protection Act*, R.S.O. 1990, c. E.19, the *Ontario Water Resources Act*, R.S.O. 1990, c. 0.40, and the *Ontario Occupational Health and Safety Act*, R.S.O. 1990, c. 0.1 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.

21. The Monitor shall provide any creditor of the Petitioner 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.

22. 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

23. 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, \$50,000 respectively to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

24. 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.

25. 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 \$150,000.00 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.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

26. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge shall not be required, and that the Administrative Charge 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 Administrative Charge coming into existence, notwithstanding any failure to file, register or perfect any such Administrative Charge.

27. The Administrative Charge shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charge 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.

28. 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 Administrative Charge, unless the Petitioner obtains the prior written consent of the Monitor and the beneficiaries of the Administration Charge.

29. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administrative Charge 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) the creation of the Administrative Charge shall not create or be deemed to constitute a breach by the Petitioner of any Agreement to which it is a party;
- (b) 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.

30. 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

31. The Monitor shall (i) without delay, publish in The Globe and Mail and The Northern Miner a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioner of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

32. 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.

33. 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/> (the "Website").

34. 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.

35. 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

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

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

45. 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