

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PAYLESS
SHOESOURCE CANADA INC. AND PAYLESS SHOESOURCE CANADA GP INC.**

(the "Applicants")

FACTUM OF THE PAYLESS CANADA ENTITIES

September 10, 2020

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INDEX

	<u>Page</u>
PART I - OVERVIEW	1
PART II - FACTS	4
PART III - ISSUES	10
PART IV - LAW.....	10
PART V - RELIEF SOUGHT	13
SCHEDULE "A" LIST OF AUTHORITIES	A-1
SCHEDULE "B" RELEVANT STATUTES	B-1

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FACTUM OF THE PAYLESS CANADA ENTITIES

PART I - OVERVIEW

1. This factum is filed in support of the motion of Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (the "**Applicants**", and with Payless ShoeSource Canada LP, the "**Payless Canada Entities**") for an order (the "**CCAA Termination Order**") in connection with the termination of the Payless Canada Entities' proceedings under the *Companies' Creditors Arrangement Act*¹, (the "**CCAA**").

2. Having sold their assets through the CCAA and successfully implemented their CCAA Plan,² the Payless Canada Entities are nearly ready to terminate these proceedings. The

¹ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ["**CCAA**"], available at: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-36/latest/rsc-1985-c-c-36.html?autocompleteStr=companies&autocompletePos=2#sec11>.

² Terms not defined herein have the meanings ascribed to them in the Affidavit of Mario Zarazua sworn September 3, 2020 (the "**Zarazua Affidavit**"), at Tab 2 of the Motion Record.

challenges of the COVID-19 crisis have delayed certain of the post-implementation steps, thereby necessitating a brief extension of the stay period to allow the Payless Canada Entities and the Monitor to finalize certain payments and documentation. The Payless Canada Entities are therefore seeking an order, *inter alia*:

- a) extending the Stay Period (as defined in the Initial Order granted on February 19, 2019 (the “**Initial Order**”)) until the date the CCAA Termination Certificate (as defined below) is delivered (the “**Stay Extension**”);
- b) discharging Ankura Consulting Group, LLC (“**Ankura**”) from any further obligations in its capacity as Chief Restructuring Organization (the “**CRO**”) of the Payless Canada Entities and releasing Ankura from any and all liability that Ankura has or may have in the future arising out of its acts and omissions while acting in its capacity as CRO;
- c) authorizing the Monitor to pay outstanding invoices, including the professional fees and a retainer for a trustee in bankruptcy, from the Reserves (as defined below) without the requirement of further Court approval;
- d) releasing the Payless Canada Entities, the Monitor, FTI Consulting Canada Inc. (“**FTI**”), and their respective directors, officers, employees, legal counsel and advisors, from all claims relating to implementation of the CCAA Plan including any Director/Officer Claims or Post-Filing Claims through and including the date of the CCAA Termination Order;
- e) authorizing the Payless Canada Entities to destroy all documents held at Iron Mountain Canada (“**Iron Mountain**”), including all employee, payroll, and accounting and taxation records held;

- f) authorizing each of the Payless Canada Entities to file assignments in bankruptcy and to appoint FTI as trustee in bankruptcy or such other trustee as the Payless Canada Entities may determine;
- g) approving the ninth report of the Monitor to be filed (the “**Ninth Report**”), and the activities of the Monitor as described therein;
- h) approving the legal fees and disbursements of the Monitor and its counsel as set out and described in the Ninth Report;
- i) effective upon 14 days’ notice (the “**Notice Period**”) to the service list of the intent to file a certificate (the “**CCAA Termination Certificate**”) and the filing of the CCAA Termination Certificate upon the expiration of the Notice Period:
 - (i) authorizing the Monitor to transfer the balance of the Reserves to the Payless Canada Entities (or such other entities as designated by the Payless Canada Entities) after payment of all outstanding amounts including professional fees and payment of a bankruptcy retainer, and upon such transfer releasing and discharging the Administration Charge and the Directors’ Charge (each as defined in the Initial Order);
 - (ii) declaring that as of the date of the filing of the CCAA Termination Certificate (the “**CCAA Termination Date**”), the Monitor and the Payless Canada Entities will have satisfied all of their obligations pursuant to the CCAA and the Orders of this Court granted in the CCAA Proceedings;
 - (iii) extending the release of the Payless Canada Entities, the Monitor, FTI, and their respective directors, officers, employees, legal counsel and advisors granted in the CCAA Termination Order to the period through the date of the CCAA Termination Order; and
 - (iv) discharging FTI from its duties as Monitor in the CCAA Proceedings as of the CCAA Termination Date and declaring that FTI shall have no further duties, obligations, or responsibilities other than the authority to complete or address any matters that may be ancillary or incidental to the CCAA Proceedings following the CCAA Termination Date.

3. The terms of the CCAA Termination Order are consistent with the remedial purposes of the CCAA, within the scope of the Court’s jurisdiction under the CCAA, and appropriate in the circumstances. The Monitor supports the relief requested in the motion.

PART II - FACTS³

BACKGROUND

4. Payless Holdings LLC (“**Payless Holdings**”), through its subsidiaries and related parties, was the largest specialty family footwear retailer in the Western Hemisphere, offering a wide range of shoes and accessory items at affordable prices. The Payless Canada Entities comprised the Canadian operating arm of the global business and, as at February 19, 2019, sold footwear and merchandise throughout Canada from over 240 retail stores across 10 provinces.⁴

5. On February 18, 2019, Payless Holdings and certain affiliates (including the Payless Canada Entities) commenced insolvency proceedings (the “**U.S. Proceedings**”) by filing voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code. The U.S. Proceedings are pending before the United States Bankruptcy Court for the Eastern District of Missouri (the “**U.S. Bankruptcy Court**”).⁵

6. On February 19, 2019, Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. sought and obtained the Initial Order. The Initial Order’s benefits and protections extend to Payless ShoeSource Canada LP as the operating entity of the Payless Canada Entities.⁶

7. Among other things, the Initial Order granted an initial stay of proceedings in favour of the Payless Canada Entities up to and including March 21, 2019, appointed FTI as Monitor in these CCAA Proceedings and appointed the CRO. The Stay Period has been extended several times, most recently to September 25, 2020.⁷

³ The facts with respect to this motion are more fully set out in the Zarazua Affidavit.

⁴ Zarazua Affidavit at para 4.

⁵ Zarazua Affidavit at para 5.

⁶ Zarazua Affidavit at para 6.

⁷ Zarazua Affidavit at para 7; Ninth Report at para 3.

THE PARALLEL PLANS

8. On September 19, 2019, the Court granted a meetings order (the “**Meetings Order**”) which, among other things, accepted for filing the September 17, 2019 version of the CCAA Plan (which was subsequently amended). On October 29, 2019, the Court granted the Sanction Order.⁸

9. At the same time, Payless Holdings and the other debtors in the U.S. Proceedings other than the Payless Canada Entities (the “**U.S. Debtors**”) were pursuing a joint plan of reorganization in accordance with the practice in the U.S. Bankruptcy Court (the “**U.S. Plan**”). On October 23, 2019, the U.S. Bankruptcy Court confirmed the U.S. Plan.⁹

10. Concurrent with the confirmation hearing before the U.S. Bankruptcy Court, the Payless Canada Entities brought a motion before the U.S. Bankruptcy Court to dismiss their U.S. Proceedings because they were not proponents under the U.S. Plan and were seeking separate but related relief in Canada. The U.S. Bankruptcy Court granted the motion, providing that the dismissal of the Payless Canada Entities’ U.S. Proceedings would be effective upon implementation of the U.S. Plan.¹⁰

11. Following entry of the confirmation order in the U.S. Proceedings and the Sanction Order in the CCAA Proceedings, the U.S. Debtors and the Payless Canada Entities worked to satisfy the closing conditions set out in the respective plans. The effectiveness of the U.S. Plan was a condition precedent to the implementation of the CCAA Plan.¹¹

12. One of the conditions to implementation of the CCAA Plan was the receipt of a “Comfort Letter” from the Canada Revenue Agency (“**CRA**”). After negotiations with the CRA (through its

⁸ Zarazua Affidavit at para 8.

⁹ Zarazua Affidavit at para 9.

¹⁰ Zarazua Affidavit at para 10.

¹¹ Zarazua Affidavit at para 11.

counsel at the Department of Justice) in respect of its pre-filing claims and certain post-filing obligations, the CRA provided a Comfort Letter dated November 1, 2019.¹²

13. Due to then-ongoing negotiations in the U.S., the Payless Canada Entities were not able to implement the CCAA Plan by the original outside date of December 31, 2019 set out in the CCAA Plan. The Supporting Term Loan Lenders and the Monitor consented to the Payless Canada Entities' decision to extend the outside date to January 15, 2020 and again to January 16, 2020. On January 14, 2020, the U.S. Plan was implemented and on January 16, 2020, the CCAA Plan was implemented.¹³

14. Upon implementation of the Plan, the Payless Canada Entities funded (i) the Affected Creditor Distribution Account; (ii) the Administrative Reserve; (iii) the Post-Filing Claim Reserve; and (iv) the Directors' Claim Reserve. The Administration Charge and the Directors' Charge set out in the Initial Order were transferred to the Administrative Reserve and the Directors' Claim Reserve, respectively.¹⁴

POST IMPLEMENTATION UPDATES

Management Update

15. The Payless Canada Entities have not operated retail locations in Canada since mid-2019, but other members of the corporate group (the "**Payless Group**") continue to operate online, retail and franchise businesses through other members of the group and joint ventures.¹⁵

16. New management of the Payless Group has reviewed the existing arrangements with the company's professionals and determined that a number of the services provided by Ankura could

¹² Zarazua Affidavit at para 12.

¹³ Zarazua Affidavit at para 13.

¹⁴ Sanction Order at para 23, Zarazua Affidavit, at Exhibit B; Plan Supplement, Zarazua Affidavit at Exhibit B.

¹⁵ Zarazua Affidavit at para 14.

effectively and efficiently be brought back in-house following the completion of the restructuring. Many of these services included work that Ankura had provided for the Payless Canada Entities since the closure of the Ontario office in May of 2019. The Payless Canada Entities do not require further services from Ankura. In fact, the Payless Canada Entities and Ankura reached agreement on transitioning services to the Payless Group's employees in March 2019 but agreed not to incur the costs of a separate motion to discharge the CRO.¹⁶

Distributions and Remaining Claims

17. Since implementation, the Payless Canada Entities and the Monitor have worked to complete the distributions required under the CCAA Plan. The Affected Creditor Distribution Date was declared on March 10, 2020 and distributions were mailed to Affected Creditors shortly thereafter.¹⁷

18. Pursuant to the CCAA Plan, Affected Creditors who fail to cash their cheques within 6 months of the Affected Creditor Distribution Date will forfeit their distributions and those forfeited funds will be added to the Administrative Reserve and ultimately returned to the Payless Canada Entities if not required to administer the CCAA Plan. The 6-month period will expire on September 10, 2020. As of the date of the Ninth Report, approximately \$92,000 remained in the Affected Creditor Distribution Account.¹⁸

19. The COVID-19 pandemic has complicated the Payless Canada Entities' ability to address post-implementation matters and payment of Post-Filing Claims as quickly as they had expected. The corporate functions for the Payless Canada Entities are performed out of the Payless Group's offices in Lawrence, Kansas and Miami, Florida. As a result of local laws in the United States, the

¹⁶ Zarazua Affidavit at paras 15 and 16.

¹⁷ Zarazua Affidavit at para 18.

¹⁸ Zarazua Affidavit at para 18; Ninth Report at para 40.

Payless Group's offices were closed for several weeks (and, in Miami, have not yet reopened). Similarly, many of the claimants' offices around Canada were closed, delaying the Payless Canada Entities' ability to request or confirm information.¹⁹

20. Notwithstanding these challenges, the Payless Canada Entities, with the assistance of their tax advisors, have filed their 2019 tax returns and are awaiting a notice of assessment from CRA. The Payless Canada Entities are also working to finalize an amendment to their 2018 tax returns. The Payless Canada Entities do not believe there are any amounts outstanding to CRA or any of the provincial or municipal taxing authorities at this time.²⁰

21. In addition, the Payless Canada Entities, with the assistance of the Monitor, have responded to inquiries from various provincial and municipal governments with respect to post-filing obligations and provided additional information where required to comply with provincial reporting requirements.²¹

22. In late 2019, the Payless Canada Entities sent a letter to each of their former landlords, requesting that the landlords forward invoices for any outstanding post-filing amounts. Based on the Payless Canada Entities' accounts payable system, the Payless Canada Entities have paid all amounts received to date and have not received any additional invoices from landlords since the CCAA Plan was implemented on January 16, 2020.²²

23. The Payless Canada Entities continue to have documents in storage at Iron Mountain. The Monitor, on behalf of the Payless Canada Entities, is in the process of paying the current storage costs for approximately 800 boxes. The majority of the records relate to former employees of the Payless Canada Entities, but there are also records related to historical business

¹⁹ Zarazua Affidavit at para 20.

²⁰ Zarazua Affidavit at para 21; Ninth Report at para 32.

²¹ Zarazua Affidavit at para 22; Ninth Report at para 33.

²² Zarazua Affidavit at para 23; Ninth Report at para 34.

transactions. Neither the Payless Canada Entities nor the Payless Group requires retention of all of these paper records. In order to reduce the storage costs going forward, the Payless Canada Entities intend to destroy all records, unless the proposed trustee in bankruptcy requires any of the documents. If certain records need to be retained for a bankruptcy, the Monitor intends to request retention of those prior records to destruction.²³

24. At this time, the Monitor, on behalf of the Payless Canada Entities, has paid or is in the process of paying the known Post-Filing Claims. Other than those Post-Filing Claims identified in the Ninth Report, the Payless Canada Entities are not aware of any unpaid post-filing obligations and have made diligent efforts to confirm same with the parties likely to claim such amounts.²⁴

25. In light of the delays in implementing the CCAA Plan and undertaking the post-implementation steps necessary to complete these CCAA Proceedings, the Administrative Reserve has now been depleted. Pursuant to the CCAA Plan, to the extent that the Monitor or the Payless Canada Entities determine that there are insufficient funds in any of the Reserves, they may, in consultation with the Supporting Term Loan Lenders, transfer funds between the Reserves. Given that the Supporting Term Loan Lenders are now either: (i) the equity owners of the reorganized business; or (ii) compromised pursuant to the U.S. Plan (subject to certain limitations), out of an abundance of caution, the Payless Canada Entities are seeking a Court order permitting the Monitor to apply the funds in the Post-Filing Reserve to pay any unpaid professional fee invoices and fund a retainer for a trustee in bankruptcy.²⁵

26. As set out in section 7.3 of the CCAA Plan, any funds that remain in the Reserves and are not required for the purposes set out in the CCAA Plan may be returned to the Payless Canada Entities with the consent of the Supporting Term Loan Lenders or by an order of the Court. Again,

²³ Zarazua Affidavit at para 24; Ninth Report at para 52.

²⁴ Zarazua Affidavit at para 25; Ninth Report at paras 31 and 43.

²⁵ Zarazua Affidavit at para 26; Ninth Report at para 40.

in light of the Supporting Term Loan Lenders' new role in the Payless Group, out of an abundance of caution, the Payless Canada Entities are seeking an order of this Court permitting the balance of the Reserves (as determined by the Monitor) to be returned to the Payless Canada Entities. The Reserves currently total approximately \$2.8 million. The Monitor, on behalf of the Payless Canada Entities, is continuing to pay post-filing invoices from the Reserves.²⁶

27. It is anticipated that the Payless Canada Entities will return such funds to the Payless Group through a return of paid up capital or other intercompany transaction in advance of the assignment in bankruptcy. Because the CCAA Plan has been implemented and the Payless Canada Entities have satisfied all known Post-Filing Claims, the Payless Canada Entities do not expect any material claims to be filed in the bankruptcies.²⁷

PART III - ISSUES

28. The issue on this motion is whether the Court should approve the relief sought in the proposed CCAA Termination Order.

PART IV - LAW

29. Section 11 of the CCAA provides the Court with the power to make any order that it considers "appropriate" in the circumstances. The Supreme Court of Canada in *Century Services Inc. v. Canada (Attorney General)* confirmed that the appropriateness requirement must be assessed with reference to whether the relief in question furthers the underlying purposes of the CCAA.²⁸

²⁶ Zarazua Affidavit at para 27; Ninth Report at para 42.

²⁷ Zarazua Affidavit at para 28.

²⁸ CCAA, s. 11; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 ["**Century Services**"] at paras. 70-71, available at: <https://www.canlii.org/en/ca/scc/doc/2010/2010scc60/2010scc60.html?autocompleteStr=century%20ser&autocompletePos=1>.

30. It is well established that the Court may grant an order terminating proceedings under the CCAA on terms similar to those sought in the proposed CCAA Termination Order.²⁹ In particular, recent CCAA proceedings have used the method proposed in the draft CCAA Termination Order – the granting of an order with additional relief to be effective upon filing of a certificate – to facilitate additional steps in the restructuring without the need to make additional court appearances.³⁰

31. The Supreme Court of Canada has recognized the jurisdiction of the Court to permit an assignment in bankruptcy.³¹ Recent orders have recognized that an assignment in bankruptcy is appropriate where remaining matters, such as a wind-up of entities, may be efficiently effected through a bankruptcy.³² Similarly, the ancillary relief requested in the order, including the authorization to make payments and dispose of documents, is typical for proceedings of this size and nature.³³

²⁹ See, for example, the recent orders of the Ontario Superior Court of Justice (Commercial List) terminating the CCAA proceedings of (1) Old API Wind-Down Ltd., granted by the Honourable Madam Justice Dietrich on May 17, 2019: <https://www.richter.ca/wp-content/uploads/2018/12/079-ccaa-termination-order.pdf> ["**Aralez**"]; (2) Toys "R" Us Canada Ltd. Toys "R" Us (Canada) Ltee, granted by the Honourable Justice Myers on May 9, 2020: https://docs.grantthornton.ca/document-folder/viewer/docu18LWsxwWho7J/261385762109813186?_ga=2.239617287.58242814.1560862788-932185973.1560862788 ["**Toys "R" Us Canada**"]; (3) Golf Town Canada Holdings Inc., Golf Town Canada Inc., and Golf Town GP II Inc., granted by the Honourable Madam Justice Conway on March 29, 2018: <http://cfcanada.fticonsulting.com/golftown/docs/CCAA%20Termination%20Order%20dated%20March%2029%202018.pdf> ["**Golf Town**"]; (4) Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC, granted by the Honourable Chief Justice Morawetz on October 18, 2019: https://www.alvarezandmarsal.com/sites/default/files/canada/191018_discharge_order_of_cj_morawetz.pdf ["**Target Canada**"].

³⁰ See, for example, Toys "R" Us Canada at para 6; Court File No. CV-17-589016-00CL, In the Matter of a Plan of Compromise or Arrangement of Banro Corporation, Banro Group (Barbados) Limited, Banro Congo (Barbados) Limited, Namoya (Barbados) Limited, Lugushwa (Barbados) Limited, Twangiza (Barbados) Limited and Kamituga (Barbados) Limited, CCAA Termination and Discharge Order granted by the Honourable Mr. Justice Hainey on August 5, 2020, at para 6: <http://cfcanada.fticonsulting.com/banro/docs/ORDERBANROCV17589016.pdf>.

³¹ Century Services, at paras 80-81.

³² Aralez, at paras 22-24; Golf Town, at para 11.

³³ Golf Town, at para 3; Aralez, at paras 23 and 24; Target Canada, at para 13.

32. A similar order is appropriate under the circumstances because:
- a) The Payless Canada Entities expect to complete the steps required under the CCAA Plan in the next few weeks. The relief set out in the CCAA Termination Order will allow the Payless Canada Entities to pay outstanding obligations and dispose of the limited remaining assets (documents) that are being held in storage;³⁴
 - b) All matters requiring resolution under the ambit of the CCAA will have been completed by filing of the CCAA Termination Certificate. The wind-up of the Payless Canada Entities can be efficiently accomplished through a bankruptcy proceeding;
 - c) The return of the funds to the Payless Canada Entities is consistent with the CCAA Plan. The release of the Charges over such funds is required to facilitate this remaining step;³⁵
 - d) The Payless Canada Entities do not require additional services from the CRO to complete the remaining steps in the CCAA proceedings;³⁶
 - e) The release of the Payless Canada Entities, the Monitor and their respective directors, officers and professionals is consistent with the intent of the CCAA Plan. Here, where the proceedings have continued for an extended period of time due to the COVID-19 pandemic, an extension of the release is appropriate;³⁷

³⁴ Zarazua Affidavit, at para 29(a),(e); Ninth Report, at paras 51 and 52.

³⁵ Ninth Report, at para 54; Zarazua Affidavit, at para 30(a).

³⁶ Zarazua Affidavit, at para 29 (b); Ninth Report, at paras 45 and 46.

³⁷ Zarazua Affidavit, at para 30 (c); Ninth Report, at para 50.

- f) The discharge of the Monitor, subject to its residual rights as set out in the proposed Order, is consistent with the discharge granted in other CCAA proceedings of a similar size and nature;³⁸
- g) The approval of the Monitor's fees and activities is appropriate and consistent with past practice in these and other CCAA proceedings; and
- h) The Monitor supports the relief requested.³⁹

33. Ultimately, terminating the CCAA proceedings, granting the ancillary relief, and converting the CCAA Proceedings into bankruptcy proceedings will allow for the orderly wind-up of the Payless Canada Entities in the most efficient manner available. In light of the above, the Payless Canada Entities respectfully submit that this relief be granted pursuant to this Court's flexible jurisdiction under section 11 of the CCAA.

PART V - RELIEF SOUGHT

40. The Payless Canada Entities request that this Court exercise its discretion and grant the proposed CCAA Termination Order which is reasonable in the circumstances, related to the proposed restructuring and is essential to conclude the CCAA Proceedings for the Payless Canada Entities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of September, 2020.

Cassels Brock & Blackwell LLP

Cassels Brock & Blackwell LLP

Lawyers for the Payless Canada Entities

³⁸ See, for example, Target Canada at paras 6-8.

³⁹ Ninth Report, at para 70.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, available at: <https://www.canlii.org/en/ca/scc/doc/2010/2010scc60/2010scc60.html?autocompleteStr=century%20ser&autocompletePos=1>.
2. Court File No. CV-18-603054-00CL, In the Matter of a Plan of Compromise or Arrangement of Old API Wind-Down Ltd., CCAA Termination Order granted by the Honourable Madam Justice Dietrich on May 17, 2019, available at: <https://www.richter.ca/wp-content/uploads/2018/12/079-ccaa-termination-order.pdf>.
3. Court File No. CV-17-00582960-00CL, In the Matter of a Plan of Compromise or Arrangement of Toys “R” Us Canada Ltd. Toys “R” Us (Canada) Ltee, CCAA Discharge Order granted by the Honourable Justice Myers on May 9, 2020, available at: https://docs.grantthornton.ca/document-folder/viewer/docul8LWsxwWho7J/261385762109813186?_ga=2.239617287.58242814.1560862788-932185973.1560862788
4. Court File No. CV-16-11527-00CL, In the Matter of a Plan of Compromise or Arrangement of Golf Town Canada Holdings Inc., Golf Town Canada Inc., and Golf Town GP II Inc., CCAA Termination Order granted by the Honourable Madam Justice Conway on March 29, 2018, available at: <http://cfcanada.fticonsulting.com/golftown/docs/CCAA%20Termination%20Order%20dated%20March%2029%202018.pdf>.
5. Court File No. CV-15-10832-00CL, In the Matter of a Plan of Compromise or Arrangement of Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC, Discharge Order granted by the Honourable Chief Justice Morawetz on October 18, 2019, available at: https://www.alvarezandmarsal.com/sites/default/files/canada/191018_discharge_order_of_cj_morawetz.pdf.
6. Court File No. CV-17-589016-00CL, In the Matter of a Plan of Compromise or Arrangement of Banro Corporation, Banro Group (Barbados) Limited, Banro Congo (Barbados) Limited, Namoya (Barbados) Limited, Lugushwa (Barbados) Limited, Twangiza (Barbados) Limited and Kamituga (Barbados) Limited, CCAA Termination and Discharge Order granted by the Honourable Mr. Justice Hainey on August 5, 2020, available at: <http://cfcanada.fticonsulting.com/banro/docs/ORDERBANROCV17589016.pdf>.

SCHEDULE "B"
RELEVANT STATUTES

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

General power of court

11 Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, 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.

- R.S., 1985, c. C-36, s. 11
- 1992, c. 27, s. 90
- 1996, c. 6, s. 167
- 1997, c. 12, s. 124
- [2005, c. 47, s. 128](#).

Available at: <https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-36/latest/rsc-1985-c-c-36.html?autocompleteStr=companies&autocompletePos=2#sec11>.

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PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE PAYLESS CANADA ENTITIES

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