

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1992, c. 27, s.2, AS AMENDED  
AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH  
RESPECT TO BANNERS BROKER INTERNATIONAL LIMITED**

**APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE  
*BANKRUPTCY AND INSOLVENCY ACT* (CROSS-BORDER INSOLVENCIES)**

**AFFIDAVIT OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED**

**FACTUM OF THE FOREIGN REPRESENTATIVE AND THE RECEIVER**

**(Motion for Additional Investigatory Authority and CPL, Returnable October 15, 2014)**

October 10, 2014

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## PART I - OVERVIEW

1. This motion, brought by Paul Robert Appleton and Miles Andrew Benham, in their capacity as the Joint Liquidators and Foreign Representative (“**Joint Liquidators**” or “**Foreign Representative**”) of Banners Broker International Limited (“**BBIL**”) in proceedings currently before the High Court of Justice in the Isle of Man (“**Isle of Man Proceeding**”), and by msi Spergel inc., in its capacity as the Receiver of BBIL (“**Receiver**”), seeks an order granting certain additional investigatory authority to the Receiver in respect of five associated companies that are closely associated with BBIL, are under common direction and control as BBIL, and have been identified by the Royal Canadian Mounted Police (“**RCMP**”) as being integral to an alleged Banners Broker criminal enterprise in which BBIL and the associated companies were used interchangeably to divert funds as part of a ponzi scheme to defraud investors.

2. The Isle of Man Proceeding was recognized by this Court as a “foreign main proceeding” pursuant to section 270(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) on August 22, 2014. Upon recognition, this Court also granted a Supplemental Order pursuant to section 272 of the BIA appointing the Receiver and granting full investigatory powers with respect to BBIL.

3. The Foreign Representative and the Receiver have recently obtained information arising from an ongoing criminal investigation into the principals of BBIL, Christopher Smith (“**Smith**”) and Rajiv Dixit (“**Dixit**”), in respect of an alleged fraudulent enterprise conducted through the use of several corporations in Canada and abroad, including BBIL. It is in respect of five of these entities, and six related business names or styles, that the Receiver seeks certain additional investigatory authority, namely:

- (i) 2087360 Ontario Incorporated o/a Local Management Services;
- (ii) Parrot Marketing Inc. (formerly o/a “8264554 Canada Limited”);

- (iii) 2341620 Ontario Corporation;
- (iv) Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited");
- (v) Dixit Holdings Inc. (formerly o/a "8163871 Canada Limited"); and
- (vi) Any other entity operating under the business names "Bannersbroker", "Banners Broker", "Bannersbroker Limited", "Bannersmobile", "Banners Mobile" or "Banners Broker Belize".

(the referred to collectively herein, as in the RCMP evidence, as "**Associated Corporations**")

4. The RCMP allege that Smith and Dixit made use of the Associated Corporations to mask illegal activity and the flow of funds constituting proceeds of crime. Based on this new information, the Foreign Representative and the Receiver are of the belief that the liquidation of BBIL can only be advanced if they have the ability to ask questions and obtain documents in respect of the business and dealings of the Associated Corporations. At the present time, the moving parties are seeking only investigatory (as opposed to possessory) powers in respect of the Associated Corporations. Proposed inquiries will focus on the identification of BBIL assets that have been diverted to the Associated Corporations in furtherance of the alleged scheme.

5. Additionally, the Foreign Representative and the Receiver have learned that one of the associated corporations, 2341620 Ontario Corporation ("**234**"), is the registered owner of a commercial / residential property on Bayview Avenue in Toronto, which is believed to have been purchased using funds properly belonging to BBIL. The Bayview Property (as defined herein) has recently been listed for sale and another property owned jointly by 234 and another Associated Corporation has recently been sold. The Receiver asserts a claim in respect of the Bayview

Property and seeks an Order granting leave to register a certificate of pending litigation (“CPL”) against the Bayview Property in order to preserve the status quo.

6. Finally, the Receiver seeks an order from this court approving of its activities since appointment as described in the First Report of the Receiver, dated October 2, 2014 (“**First Report**”), filed in support of this motion.

## **PART II - THE FACTS**

### **(a) Receiver’s Appointment and Background**

7. On application made by the Joint Liquidators pursuant to Part XIII of the BIA, recognition was granted by the Honourable Madam Justice Matheson of this Court to Orders granted by the High Court of Justice of the Isle of Man in respect of the liquidation of BBIL and the appointment of the Joint Liquidators (“**Initial Recognition Order**”).

**First Report of the Receiver, dated October 2, 2014 (“First Report”), Motion Record of the Receiver and Foreign Representative, dated October 2, 2014 (“Motion Record”), Tab B, para. 1.0.1 and Appendix 1**

8. On further application made by the Foreign Representative, msi Spergel inc. was appointed as the Receiver pursuant to a further Order of Justice Matheson, dated August 22, 2014 (“**Supplemental Order**”).

**First Report, Motion Record, Tab B, para. 1.0.2 and Appendix 2**

9. Prior to being ordered wound up by the Isle of Man court, BBIL was a purported internet advertising business with operations either directly or through related companies around the world.

**First Report, Motion Record, Tab B, para. 1.0.3**

**(b) Actions of the Receiver Upon Appointment**

10. Immediately upon its appointment, the Receiver commenced its investigation into the business and affairs of BBIL in Canada. This was preceded by a thorough review of the documentary evidence provided to it by the Joint Liquidators.

**First Report, Motion Record, Tab B, para. 3.0.1**

11. In accordance with the Appointment Order, the Receiver established and activated the e-protocol URL, <http://www.spergel.ca/banners>.

**First Report, Motion Record, Tab B, para. 3.0.2**

12. In addition, the Receiver published the Media Notice approved by the Supplemental Order on two occasions in each of The Globe and Mail and The National Post.

**First Report, Motion Record, Tab B, para. 3.0.3 and Appendix 3**

13. Correspondence has been sent by the Receiver to all relevant Canadian electronic payment processors, as well as to all depository Schedule I, II and III financial institutions in Canada in an effort to obtain information as to the nature and extent of BBIL's business activities in Canada.

**First Report, Motion Record, Tab B, para. 3.0.4**

14. The Receiver has also made efforts to coordinate examinations of Smith and Dixit in accordance with paragraph 11 of the Supplemental Order. Smith and Dixit are represented by counsel and have been served with this motion.

**First Report, Motion Record, Tab B, para. 3.0.5**

**(c) Closure of the Banners Broker Website and Social Media Presence**

15. Shortly after the Receiver's appointment, on September 4, 2014, the Receiver obtained information confirming that the website formerly maintained by BBIL at



<http://www.bannersbroker.com/> was taken down. Banners Broker Facebook and Twitter accounts were deactivated or ceased activity on or about the same day.

**First Report, Motion Record, Tab B, para. 3.0.6**

**(d) Criminal Proceedings in Respect of Banners Broker**

16. Also on September 4, 2014, the Receiver was made aware of criminal proceedings before the Ontario Superior Court of Justice arising from an RCMP investigation into Smith and Dixit related to Banners Broker in Canada ("**RCMP Investigation**").

**First Report, Motion Record, Tab B, para. 3.0.7**

17. Additionally, the Receiver was provided with copies of *ex parte* Restraint Orders obtained by the Ministry of the Attorney General, Crown Law Office-Criminal ("**Crown**") and issued by the Honourable Justice Kelly, on July 18, 2014, and the Honourable Justice Code, on July 29, 2014 ("**Restraint Orders**").

**First Report, Motion Record, Tab B, para. 3.0.8 and Appendices 4 and 5**

18. The Restraint Orders, issued pursuant to section 462.33 of the *Criminal Code of Canada*, freeze funds held by third party electronic payment processors in connection with Banners Broker. They also compel financial institutions to provide information to the Director of Asset Management – Criminal, regarding restrained accounts held by Associated Corporations.

**First Report, Motion Record, Tab B, para. 3.0.9**

19. Further to its review of the Restraint Orders, the Receiver obtained copies of the affidavit evidence filed by the Crown in support of its *ex parte* applications. Counsel for the Receiver obtained copies of two affidavits sworn by RCMP Constable Katie Judd on July 17, 2014 and July 28, 2014 ("**RCMP Affidavits**").

**First Report, Motion Record, Tab B, para. 3.0.10 and Appendices 6 and 7**

20. The RCMP Affidavits detail the basis for what is stated to be the reasonable belief of the RCMP investigators that Smith and Dixit, through their operation of Banners Broker, which, as noted in the RCMP Affidavits, includes BBIL, have committed criminal offences related to the operation of a "Pyramid Scheme", fraud, possession and laundering of the proceeds of crime and criminal misrepresentations contrary to the *Competition Act*.

**First Report, Motion Record, Tab B, para. 3.0.11 and Appendices 6 and 7**

21. The position of the RCMP investigators is summarized at paragraph 6 of the July 17 RCMP Affidavit:

It is the position of investigators that this business [Banners Broker] was a pyramid scheme that over time evolved into a straight Ponzi scheme in which new victims were recruited to stave off requests for withdrawals and complaints from older ones. As the scheme progressed, Smith recruited another principal wrongdoer named Rajiv Dixit ("Dixit") and set up a host of associated corporations to mask both their illegal activities and the flow of money. Throughout the scheme, Smith, Dixit and their associated corporations had investors pay their "investment" money to merchant account providers (i.e. legitimate corporations that process credit card payments). Those funds were then diverted by the suspects and their associated corporations to various offshore and other bank accounts controlled by them. [emphasis added]

**First Report, Motion Record, Tab B, para. 3.0.12 and Appendices 6 and 7**

22. BBIL is specifically identified by Constable Judd as one of Associated Corporations believed to be involved in Banners Broker's Canadian operations. At paragraph 12.12, Constable Judd describes information obtained from a Competition Bureau interview with John Rock, a former Compliance Officer employed by Banners Broker:

Rock was told by Smith, Dixit and Josun that Smith and Josun were the owners of Banners Broker International [associated corporation] and Dixit was the owner of Bannersbroker Limited [associated corporation], later named Stellar Point Inc., which was the Canadian reseller;

[...]

Banners Broker International was operated by Smith and was registered in the Isle of Man.

**First Report, Motion Record, Tab B, para. 3.0.13 and Appendices 6 and 7**

23. Constable Judd also identifies a number of Canadian entities operated by Smith and/or Dixit, namely:

- (i) 2087360 Ontario Incorporation o/a Local Management Services;
- (ii) 8264554 Canada Limited o/a Parrot Marketing Inc.;
- (iii) 2341620 Ontario Corporation;
- (iv) 7250037 Canada Inc. o/a Stellar Point Inc. (formerly o/a “Banners Broker Canada”); and
- (v) 8163871 Canada Limited o/a Dixit Holdings Inc.

The Joint Liquidators’ independent investigations had earlier identified certain of the same parties as being associated with BBIL.

**First Report, Motion Record, Tab B, para. 3.0.14 and Appendices 6 and 7**

**Affidavit of Paul Appleton, sworn August 6, 2014 (“Appleton Affidavit”), Application Record of the Joint Liquidators (Application for Recognition of Foreign Main Proceeding), dated August 12, 2014 (“Application Record”), Tab B, paras. 42(d), 100(d)**

24. The RCMP Affidavits also reference funds held by Canadian financial institutions and electronic payment processors in relation to Banners Broker.

**First Report, Motion Record, Tab B, para. 3.0.16 and Appendices 6 and 7**

25. The RCMP Affidavits provided sufficient evidentiary grounds for Justices of the Ontario Superior Court to grant, on an *ex parte* basis, on two separate occasions, broad ranging relief requiring accounts connected with the Associated Corporations to be frozen. As indicated, the court orders granted also compel third party financial institutions to provide information to the Crown.

**First Report, Motion Record, Tab B, para. 3.0.17 and Appendices 4, 5, 6 and 7**

26. The allegation that BBIL was integral to a Banners Broker pyramid scheme or Ponzi scheme is not new to the Joint Liquidators or the Receiver. The overwhelming consensus of social and on-line media commentary in respect of Banners Broker is consistent with the conclusions in the RCMP Affidavits that fraudulent activity was allegedly undertaken by BBIL and Banners Broker. As noted in the First Report, this includes:

- (a) An active “Banners Broker Ponzi Scam” Facebook group with upwards of 11,000 members; and
- (b) Several articles in the international media, including a February 27, 2014 article in the Irish Examiner by Conor Ryan, titled “Fears for investors as suspected pyramid scheme wound up”.

**First Report, Motion Record, Tab B, para. 3.0.18 and Appendices 8 and 9**

27. Based on advice received from an electronic payment processor named “Payza”, the Joint Liquidators have previously expressed their concern that certain Associated Corporations may have been set up as e-payment account holder “beneficiaries” designated to receive payments on behalf of BBIL. The newly obtained RCMP evidence further supports such an inference.

**First Report, Motion Record, Tab B, para. 3.0.19**

**Appleton Affidavit, Application Record, Tab B, paras. 103-105**

**(e) Receiver’s Investigations**

28. The Receiver’s investigations have included requisitioning corporate profile and business names searches in respect of each of the Associated Corporations identified in the RCMP Affidavits.

**First Report, Motion Record, Tab B, para. 3.0.20**

29. Corporate search results, together with other documents previously obtained by the Joint Liquidators, confirm that four of the five Associated Corporations in respect of which the Receiver seeks investigative authority are set up such that Smith and/or Dixit are the sole director and/or officer. The exception is 2087360 Ontario Incorporation o/a Local Management Services ("**LMS**"), of which Edmund A. Clarke is the sole director and officer. However, based on evidence obtained by the Joint Liquidators in their investigations, it is apparent that LMS was also operated by Smith and maintained various account relationships with payment processors and financial institutions under the Banners Broker name. Smith also used LMS to register a number of "Banners Broker" related internet domain names.

**First Report, Motion Record, Tab B, para. 3.0.21**

**Appleton Affidavit, Application Record, Tab B, paras. 100(d), 103**

30. The Receiver's inquiries with Canadian financial institutions and payment processors have, to date, been restricted by the fact that the investigatory powers granted in the Appointment Order are limited to BBIL.

**First Report, Motion Record, Tab B, para. 3.0.22**

31. For example, upon requesting information from an Oshawa branch of the Canadian Imperial Bank of Commerce ("**CIBC**"), which is known to have held funds on behalf of Banners Broker entities and may have received transfers from BBIL's Isle of Man bank account, the Receiver was advised that no information could be released without a court order specifically referencing the account holder. Other Canadian financial institutions maintain a similar position. Consequently the Receiver's inquiries of financial institutions have not, to date, been met with sufficient disclosure of information to advance investigations into BBIL.

**First Report, Motion Record, Tab B, para. 3.0.23**

32. The Receiver has written to Smith's counsel, as well as other counsel at Aird & Berlis LLP known to have been retained by BBIL in the past, requesting relevant information pursuant to the Supplemental Order.

**First Report, Motion Record, Tab B, para. 3.0.24 and Appendix 11**

33. The Receiver is not at this early stage in its investigation in a position to conclude that BBIL or Banners Broker was in fact a Ponzi scheme, pyramid scheme, or criminal enterprise more generally. The Receiver can, however, report that serious allegations to that effect have been made by the RCMP and others in respect of BBIL and a small number of Associated Corporations. If such allegations are to be further considered, in accordance with the Receiver's mandate to investigate, identify, and preserve assets of BBIL, it is necessary that the Receiver have authority to make inquiries in respect of the Associated Corporations. For the time being, the Receiver is seeking investigatory – as opposed to possessory powers – in respect of the Associated Corporations.

**First Report, Motion Record, Tab B, para. 3.0.25**

**(f) Bayview Property**

34. The Receiver has recently become aware of a mixed use commercial / residential property on Bayview Avenue in Toronto, municipally known as 1376 Bayview Avenue, Toronto, Ontario, M4G 3A1 ("**Bayview Property**"). The Bayview Property was purchased for \$2.9 million on March 19, 2013 by 234, an Associated Corporation identified in the RCMP Affidavits. Smith is the sole officer and director of 234. It is believed that the Bayview Property was at one time intended to become the head office of Banners Broker.

**First Report, Motion Record, Tab B, para. 3.0.26**

35. The Bayview Property was very recently listed for sale for \$4.1 million.

**First Report, Motion Record, Tab B, para. 3.0.27 and Appendix 12**

36. A property subsearch indicates that the Bayview Property is unencumbered. 234's purchase of the Bayview Property occurred during the time frame in which BBIL was actively involved in the Banners Broker enterprise. In the months prior to the purchase, regular and substantial deposits had been made to the credit of BBIL's Isle of Man bank account.

**First Report, Motion Record, Tab B, para. 3.0.28**

**Appleton Affidavit, Application Record, Tab B, para. 111**

37. On the basis of its ongoing investigations, including a review of the allegations set out in the RCMP Affidavits, the Receiver and/or the Joint Liquidators claim and intend to assert a property interest in the Bayview Property. The basis for this assertion is and will be that the Bayview Property was purchased and/or improved with monies properly belonging to, or owing to BBIL. Alternatively, or additionally, it will be alleged that the Bayview Property was acquired in the context of the illegal scheme and diversion of funds to Associated Corporations that is described in the RCMP Affidavits. To the extent available, the Receiver and/or the Joint Liquidators intend to assert constructive trust, tracing, and other proprietary and equitable remedies in respect of the Bayview Property.

**First Report, Motion Record, Tab B, para. 3.0.29**

38. The Receiver is concerned that the Bayview Property may be sold, and the proceeds of sale put beyond reach of BBIL creditors, if a CPL is not issued.

**First Report, Motion Record, Tab B, para. 3.0.30**

39. In this regard, as recently as March of this year, 234 sold its interest in another Banners Broker connected real property in Whitby, Ontario. On March 27, 2014, 234 and Dixit Holdings Inc., an Associated Corporation controlled by Dixit, sold a jointly owned property municipally known as 5 Carlow Court, Whitby, Ontario. The property was sold for \$1.2 million. The Carlow Court property had been identified as a Banners Broker "Support Center" operated by Stellar

Point Inc., an Associated Corporation controlled by Dixit, which formerly operated under the name “Bannersbroker Limited” or “Banners Broker Canada”.

**First Report, Motion Record, Tab B, para. 3.0.31-3.0.32 and Appendix 13**

**Appleton Affidavit, Application Record, Tab B, para. 42(d)**

40. Based on the recent sale of the Carlow Court property and the listing for sale of the Bayview Property, the Receiver has reasonable grounds to believe that the status quo will not be preserved if a CPL is not issued. If a CPL is not issued, the Bayview Property will likely be sold and the proceeds of sale may become unrecoverable to creditors having claims against 234 and its owners, including the Foreign Representative and the Receiver as representative of creditors of BBIL.

**First Report, Motion Record, Tab B, para. 3.0.33**

### **PART III - ISSUES AND THE LAW**

41. The issues to be determined on this motion are:

- (a) In the circumstances of this case, should the Foreign Representative and Receiver's request that the Receiver have some investigatory authority in respect of the Associated Corporations be granted?
- (b) In view of the Receiver's claim for an interest in the Bayview Property, should leave be granted to issue a CPL for registration against title to the Bayview Property?

#### **A. The Purpose of Part XIII of the BIA**

42. The purpose of Part XIII of the BIA is to effect cross-border insolvencies and facilitate and enhance international cooperation and coordination through a system under which multinational business groups can be dealt with coherently as a whole in cross-border proceedings. Section 267 of the BIA provides as follows:



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

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

***Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 267***

43. In the context of cross-border insolvencies, Canadian courts have consistently encouraged comity and cooperation with courts in other countries.

***Re Lear Canada*, 2009 CarswellOnt 4232 (S.C.J. [Commercial List]), BOA, Tab 1, at paras. 11 and 17 [*Lear Canada*]**

***Re Grant Forest Products Inc.*, 2010 ONSC 1846, 2010 CarswellOnt 2455 (S.C.J. [Commercial List]), BOA, Tab 2, at paras. 65, 76-78 [*Grant Forest*]**

***Re Babcock & Wilcox Canada Ltd.*, 2000 CarswellOnt 704 (S.C.J. [Commercial List]), BOA, Tab 3, at paras. 9, 21 [*Babcock*]**

44. As Newbould J. recently stated in *Re MtGox Co. Ltd.*, the adoption of the UNCITRAL Model Law on Cross-Border Insolvency in Part XIII of the BIA reflects the consistent commitment of Canadian courts' to promoting principles of international comity in insolvency proceedings:

There is increasingly a move towards what has been called modified universalism. The notion of modified universalism is court recognition of main proceedings in one jurisdiction and non-main proceedings in other jurisdictions, representing some compromise of state sovereignty under domestic proceedings to advance international comity and cooperation. It has been advanced by the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross Border Insolvency, which Canada largely adopted by 2009 amendments to the CCAA and the BIA. Before this amendment, Canada had gone far down the road in acting on comity principles in international insolvency.

***Re MtGox Co. Ltd.*, 2014 ONSC 5811 (S.C.J. [Commercial List]), BOA, Tab 4, at para. 11 [*Babcock*]**

45. Canadian courts have also found the cross-border provisions under Part XIII of the BIA to be flexible and equipped to deal with peculiar and unusual circumstances. The cross-border provisions under the BIA have been applied to recognize foreign insolvency proceedings even where the initial focus of the proceeding is not strictly in the nature of a bankruptcy proceeding.

*Re Straumur-Burdaras Investment Bank hf.*, 2009 CarswellOnt 5454, 180 A.C.W.S. (2d) 777, 57 C.B.R. (5th) 256 (SCJ [Commercial List]), BOA, Tab 5, at paras. 24-25 [*Straumur*]

*Zayed v. Cook*, 2009 CarswellOnt 8079, 183 A.C.W.S. (3d) 328, 62 C.B.R. (5th) 114 (SCJ), BOA, Tab 6, at para. 10 [*Zayed*]

46. This case is unusual in that an international insolvency is proceeding in parallel with a Canadian criminal investigation of the debtor, its principals, and certain associated corporations alleged to be involved in a scheme to defraud investors. Because the criminal investigation is more advanced than the insolvency administration, the Foreign Representative and the Receiver have been able to inform their investigation with the results of the prior police investigation as documented in RCMP affidavits filed to successfully obtain broad ranging relief from this Court on an *ex parte* basis. It is in these rather unique circumstances that the Foreign Representative and the Receiver return to court to seek certain additional investigatory authority tailored to most efficiently advance the wind-up of BBIL.

**B. The Foreign Representative's Request for the Receiver to be Granted Additional Investigatory Authority in Respect of the Associated Corporations Should be Granted**

47. After an order is made pursuant to subsection 270(1) of the BIA recognizing a foreign proceeding, section 272 of the BIA provides that the Court may, in its discretion, make any order that it considers appropriate if it is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors.

*Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 272

48. As noted above, upon recognizing the Isle of Man Proceeding as a foreign main proceeding in respect of BBIL, the Honourable Madam Justice Matheson granted a Supplemental Order pursuant to section 272 of the BIA, that, among other things:

- (a) Appointed the Receiver;
- (b) Required certain key individuals believed to have knowledge of BBIL's business, affairs or property to attend an examination under oath by the Foreign Representative and/or the Receiver; and
- (c) Required any person, including third party service providers and financial institutions, to produce or otherwise make available to the Joint Liquidators and/or the Receiver any and all documents and information in their possession or control concerning BBIL's property, affairs, debts, liabilities and obligations.

49. In light of the newly disclosed information concerning the Associated Corporations and their involvement, with BBIL, in an alleged fraudulent criminal enterprise that may have involved the use of the Associated Corporations and BBIL as a mask for illegal activity and the flow of money belonging to BBIL, the Receiver and the Foreign Representative request that this Honourable Court grant a Further Supplemental Order in the form attached as Schedule "1" to the Notice of Motion.

50. The proposed Further Supplemental Order requires third parties to advise of the existence of property and records in their possession in relation to the Associated Corporations and to provide the Receiver with information and documents in respect of any accounts held by or on behalf of the Associated Corporations. The order is focused and, for the time being, seeks only investigatory (not possessory) authority in respect of the Associated Corporations. Proposed inquiries will be directed to identifying BBIL assets and monies, as are alleged to have been

illegally diverted to and amongst Associated Corporations that were commonly controlled by BBIL principals Smith and Dixit.

51. Pursuant to section 101 of the *Courts of Justice Act*, the court may appoint a receiver whose main function is to monitor and investigate the assets and affairs of a party, where such an appointment is necessary to monitor the affairs of the party so that a more fulsome investigation can be undertaken.

***Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101**

***General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living Inc.*, 2011 CarswellOnt 5867, 2011 ONSC 4136, 204 A.C.W.S. (3d) 543, 80 C.B.R. (5th) 259, BOA, Tab 7, at paras. 88-92 [*General Electric*]**

***Loblaws Brands Ltd. v. Thornton*, 2009 CarswellOnt 1588, [2009] O.J. No. 1228, 176 A.C.W.S. (3d) 141, 78 C.P.C. (6th) 189, BOA, Tab 8, at paras. 14-15 [*Loblaws*]**

52. The power to seek production of documents relevant to the Banners Broker related business and dealings of the Associated Corporations is appropriate in the circumstances. Such efforts are essential to the protection of BBIL creditor interests.

53. Subsection 272(1)(b) expressly contemplates that, upon recognition of a foreign insolvency proceeding, the court may make “any order that it considers appropriate” including an order respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor’s property, affairs, debts, liabilities and obligations:

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

[...]

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

***Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 272(1)(b)**

54. Such relief is consistent with the powers granted to a trustee in bankruptcy under section 164(1) of the BIA.

***Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, s. 164(1)***

**C. Leave Should be Granted to Issue a CPL for Registration Against Title to the Bayview Property**

55. The court may make an order granting leave for the registrar to issue a CPL for registration against title to property pursuant to Section 103(1) of the *Courts of Justice Act* and Rule 42.01(1) of the *Rules of Civil Procedure*.

***Courts of Justice Act, R.S.O. 1990, c. C.43, s. 103(1)***

***Rules of Civil Procedure, R.R.O. 1990, Reg. 194, Rule 42.01(1)***

56. To obtain a CPL, the moving party must demonstrate that the underlying litigation contains “a claim of some kind, which, if substantiated, would adversely affect the defendant's interest in the land.” The party seeking a CPL need not prove its case at this stage. The test to issue a CPL is met where there is sufficient evidence to establish a “reasonable claim” to an interest in the property based on the facts. Further, it is not required that the plaintiff be claiming an interest in the land directly for themselves. All that is required is that an “interest in land” be “in question” in the proceeding. The moving party must satisfy the court that the balance of convenience favours issuing a CPL in the circumstances of the particular case.

***Chilian v Augdome Corp*, [1991] OJ No 414 (CA), BOA, Tab 9, at para. 55  
[Chilian]**

***Gerger Mechanical Ltd v Salvarinas*, 2012 CarswellOnt 11900, 2012 ONSC 5348, 220 A.C.W.S. (3d) 844, BOA, Tab 10, at para. 29**

57. The balance of convenience favours the granting of a CPL against the Bayview Property in the circumstances.

58. The Receiver intends to assert a claim, in constructive trust, tracing, and other proprietary and equitable remedies to the extent available, alleging that the Bayview Property was purchased and/or improved with monies properly belonging to, or owing to BBIL. Alternatively, or additionally, it will be alleged that the Bayview Property was acquired in the context of the illegal scheme and diversion of funds to Associated Corporations.

59. Based on the recent sale of the Carlow Court property and the evidence that the Bayview Property was recently listed for sale, the Receiver has good reason to believe that the status quo may not be preserved and the Bayview Property may be disposed beyond the reach of BBIL creditors should a CPL not be issued.

60. If necessary, the Foreign Representative is prepared to meet the technical requirement of including a claim for a CPL and the assertion of a claim for an interest in the Bayview Property in its originating process along with a proper legal and municipal description of the property by amending the Notice of Application, with leave. To the extent this Court deems it necessary, the Foreign Representative also requests leave to add 234 as a respondent.

61. In *Roseglen Village for Seniors Inc. v. Doble*, a CPL was granted under similar circumstances with respect to properties where misappropriated funds were invested directly in the properties by the defendants. The plaintiff in that case sought an order tracing the misappropriated funds and claimed a constructive trust over the properties to the extent of the misappropriation. The court confirmed that such a claim gives rise to an interest in land sufficient to grant a CPL.

*Roseglen Village for Seniors Inc. v. Doble*, 2010 CarswellOnt 7133, 2010 ONSC 3239 (Ont. Master), at paras. 6-7, 10-11, 14-15, 18; aff'd by 2010 CarswellOnt 7011, 2010 ONSC 4680 (SCJ), at paras. 2, 6, BOA, Tab 12 [Roseglen]

62. The Foreign Representative and the Receiver reasonably claim and intend to assert an interest in the Bayview Property based on the evidence disclosed in the Appleton Affidavit and the RCMP Affidavits appended to the First Report.

#### **PART IV - ORDER REQUESTED**

63. The Receiver and Foreign Representative therefore respectfully requests orders substantially in the form of the draft orders appended to the application record:

- (a) granting certain additional investigatory authority to the Receiver pursuant to section 272 of the BIA in respect of the Associated Corporations;
- (b) granting leave to amend the Joint Liquidators' Notice of Application to assert a claim in respect of the Bayview Property and to include interim relief in the form of a CPL over that property;
- (c) granting leave to issue a CPL for registration against title to the Bayview Property;
- (d) if necessary, granting leave to amend the Joint Liquidators' Notice of Application to add 234 as a respondent;
- (e) approving the actions and activities of the Receiver as described in the First Report;
- (f) if necessary, abridging the time for and validating service of this notice of application and the application record and dispensing with further service thereof; and
- (g) such further and other relief as this Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of October, 2014.

*Cassels Brock & Blackwell LLP*

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Lawyers for the Receiver and Joint Liquidators



## SCHEDULE "A"

### LIST OF AUTHORITIES

1. *Re Lear Canada*, 2009 CarswellOnt 4232 (S.C.J. [Commercial List])
2. *Re Grant Forest Products Inc.*, 2010 ONSC 1846, 2010 CarswellOnt 2455 (S.C.J. [Commercial List])
3. *Re Babcock & Wilcox Canada Ltd.*, 2000 CarswellOnt 704 (S.C.J. [Commercial List])
4. *Re MtGox Co. Ltd.*, 2014 ONSC 5811 (S.C.J. [Commercial List])
5. *Re Straumur-Burdaras Investment Bank hf.*, 2009 CarswellOnt 5454, 180 A.C.W.S. (2d) 777, 57 C.B.R. (5th) 256 (SCJ [Commercial List])
6. *Zayed v. Cook*, 2009 CarswellOnt 8079, 183 A.C.W.S. (3d) 328, 62 C.B.R. (5th) 114 (SCJ)
7. *General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living Inc.*, 2011 CarswellOnt 5867, 2011 ONSC 4136, 204 A.C.W.S. (3d) 543, 80 C.B.R. (5th) 259
8. *Loblaw Brands Ltd. v. Thornton*, 2009 CarswellOnt 1588, [2009] O.J. No. 1228, 176 A.C.W.S. (3d) 141, 78 C.P.C. (6th) 189
9. *Chilian v Augdome Corp.*, [1991] OJ No 414 (CA)
10. *Gerger Mechanical Ltd v Salvarinas*, 2012 CarswellOnt 11900, 2012 ONSC 5348, 220 A.C.W.S. (3d) 844
11. *Roseglen Village for Seniors Inc. v. Doble*, 2010 CarswellOnt 7133, 2010 ONSC 3239 (Ont. Master); aff'd by 2010 CarswellOnt 7011, 2010 ONSC 4680 (SCJ)

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

#### ***Rules of Civil Procedure, R.R.O. 1990, REGULATION 194***

##### **COURT MAY DISPENSE WITH COMPLIANCE**

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

[...]

##### ***General Powers of Court***

3.02 (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just. R.R.O. 1990, Reg. 194, r. 3.02 (1).

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed. R.R.O. 1990, Reg. 194, r. 3.02 (2).

[...]

##### **VALIDATING SERVICE**

16.08 Where a document has been served in a manner other than one authorized by these rules or an order, the court may make an order validating the service where the court is satisfied that,

(a) the document came to the notice of the person to be served; or

(b) the document was served in such a manner that it would have come to the notice of the person to be served, except for the person's own attempts to evade service.

#### ***Bankruptcy and Insolvency Act, R S.C., 1985, c. B-3***

##### **Trustee may require books and property of bankrupt to be produced**

164. (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

[...]

### **PART XIII - CROSS-BORDER INSOLVENCIES**

#### **Purpose**

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

(a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;

(b) greater legal certainty for trade and investment;

(c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtors;

(d) the protection and the maximization of the value of debtors' property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

## **Interpretation**

### **Definitions**

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

"foreign court"

« tribunal étranger »

"foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding.

"foreign main proceeding"

« principale »

"foreign main proceeding" means a foreign proceeding in a jurisdiction where the debtor has the centre of the debtor's main interests.

"foreign non-main proceeding"

« secondaire »

"foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding.

"foreign proceeding"

« instances étrangères »

"foreign proceeding" means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditor's collective interests generally under any law relating to bankruptcy or insolvency in which a debtor's property and affairs are subject to control or supervision by a foreign court for the purpose of reorganization or liquidation.

"foreign representative"

« représentant étranger »

"foreign representative" means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding in respect of a debtor, to

(a) administer the debtor's property or affairs for the purpose of reorganization or liquidation; or

(b) act as a representative in respect of the foreign proceeding.

### **Centre of debtor's main interests**

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor's registered office and, in the case of a debtor who is an individual, the debtor's ordinary place of residence are deemed to be the centre of the debtor's main interests.

## **Recognition of Foreign Proceeding**

### **Application for recognition of a foreign proceeding**

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

### **Documents that must accompany application**

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

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

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

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

### **Documents may be considered as proof**

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

### **Other evidence**

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

### **Translation**

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

### **Order recognizing foreign proceeding**

270. (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

### **Nature of foreign proceeding to be specified**

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

### **Effects of recognition of a foreign main proceeding**

271. (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding,

(a) no person shall commence or continue any action, execution or other proceedings concerning the debtor's property, debts, liabilities or obligations;

(b) if the debtor carries on a business, the debtor shall not, outside the ordinary course of the business, sell or otherwise dispose of any of the debtor's property in Canada that relates to the business and shall not sell or otherwise dispose of any other property of the debtor in Canada; and

(c) if the debtor is an individual, the debtor shall not sell or otherwise dispose of any property of the debtor in Canada.

#### **When subsection (1) does not apply**

(2) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor at the time the order recognizing the foreign proceeding is made.

#### **Exceptions**

(3) The prohibitions in paragraphs (1)(a) and (b) are subject to the exceptions specified by the court in the order recognizing the foreign proceeding that would apply in Canada had the foreign proceeding taken place in Canada under this Act.

#### **Application of this and other Acts**

(4) Nothing in subsection (1) precludes the commencement or the continuation of proceedings under this Act, the Companies' Creditors Arrangement Act or the Winding-up and Restructuring Act in respect of the debtor.

#### **Orders**

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

(a) if the foreign proceeding is a foreign non-main proceeding, imposing the prohibitions referred to in paragraphs 271(1)(a) to (c) and specifying the exceptions to those prohibitions, taking subsection 271(3) into account;

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

(c) entrusting the administration or realization of all or part of the debtor's property located in Canada to the foreign representative or to any other person designated by the court; and

(d) appointing a trustee as receiver of all or any part of the debtor's property in Canada, for any term that the court considers appropriate and directing the receiver to do all or any of the following, namely,

(i) to take possession of all or part of the debtor's property specified in the appointment and to exercise the control over the property and over the debtor's business that the court considers appropriate, and

(ii) to take any other action that the court considers appropriate.

#### **Restriction**

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

### **Application of this and other Acts**

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

### **Terms and conditions of orders**

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

### **Commencement or continuation of proceedings**

274. If an order recognizing a foreign proceeding is made, the foreign representative may commence or continue any proceedings under sections 43, 46 to 47.1 and 49 and subsections 50(1) and 50.4(1) in respect of a debtor as if the foreign representative were a creditor of the debtor, or the debtor, as the case may be.

### **Obligations**

#### **Cooperation — court**

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

#### **Cooperation — other authorities in Canada**

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

### **Forms of cooperation**

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

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

### **Obligations of foreign representative**

276. If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

(a) without delay, inform the court of

(i) any substantial change in the status of the recognized foreign proceeding,

(ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and

(iii) any other foreign proceeding in respect of the same debtor that becomes known to the foreign representative; and

(b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

## **Multiple Proceedings**

### **Concurrent proceedings**

277. If any proceedings under this Act in respect of a debtor are commenced at any time after an order recognizing the foreign proceeding is made,

(a) the court shall review any order made under section 272 and, if it determines that the order is inconsistent with any orders made in the proceedings under this Act, the court shall amend or revoke the order; and

(b) if the foreign proceeding is a foreign main proceeding, the court shall make an order terminating the application of the prohibitions in paragraphs 271(1)(a) to (c) if the court determines that those prohibitions are inconsistent with any similar prohibitions imposed in the proceedings under this Act.

### **Multiple foreign proceedings**

278. (1) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of a debtor, an order recognizing a foreign main proceeding is made in respect of the debtor, the court shall review any order made under section 272 in respect of the foreign non-main proceeding and, if it determines that the order is inconsistent with any orders made under that section in respect of the foreign main proceedings, the court shall amend or revoke the order.

### **Multiple foreign proceedings**

(2) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of the debtor, an order recognizing another foreign non-main proceeding is made in respect of the debtor, the court shall, for the purpose of facilitating the coordination of the foreign non-main proceedings, review any order made under section 272 in respect of the first recognized proceeding and amend or revoke that order if it considers it appropriate.

## **Miscellaneous Provisions**

### **Authorization to act as representative of proceeding under this Act**

279. The court may authorize any person or body to act as a representative in respect of any proceeding under this Act for the purpose of having them recognized in a jurisdiction outside Canada.

### **Foreign representative status**



280. An application by a foreign representative for any order under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other court order.

### **Foreign proceeding appeal**

281. A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application if such proceedings have been taken, grant relief as if the proceedings had not been taken.

### **Presumption of insolvency**

282. For the purposes of this Part, if a bankruptcy, an insolvency or a reorganization or a similar order has been made in respect of a debtor in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor is insolvent and proof of the appointment of the foreign representative made by the order.

### **Credit for recovery in other jurisdictions**

283. (1) If a bankruptcy order, a proposal or an assignment is made in respect of a debtor under this Act, the following shall be taken into account in the distribution of dividends to the debtor's creditors in Canada as if they were a part of that distribution:

- (a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the debtor; and
- (b) the value of any property of the debtor that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires outside Canada by way of a transfer that, if the transfer were subject to this Act, would be a preference over other creditors or a transfer at undervalue.

### **Restriction**

(2) Despite subsection (1), the creditor is not entitled to receive a dividend from the distribution in Canada until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend whose amount is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (1)(a) and the value referred to in paragraph (1)(b) is of that creditor's claim.

### **Court not prevented from applying certain rules**

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

### **Public policy exception**

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



***Courts of Justice Act, R.S.O. 1990, c. C.43*****Injunctions and receivers**

101.(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

**Terms**

(2) An order under subsection (1) may include such terms as are considered just.

**SCHEDULE "C"**

**BLACKLINE OF DRAFT FURTHER SUPPLEMENTAL ORDER  
TO MODEL SUPPLEMENTAL ORDER**

CV-14-10663-00CL

## ONTARIO

**SUPERIOR COURT OF JUSTICE**

~~(COMMERCIAL LIST)~~

(Commercial List)

~~THE HONOURABLE~~

JUSTICE

THE HONOURABLE

## JUSTICE

IN THE MATTER OF THE ~~COMPANIES' CREDITORS ARRANGEMENT~~BANKRUPTCY AND  
INSOLVENCY ACT,  
R.S.C. 1985, 1992, c C-36, 27, s.2, AS AMENDED

AND IN THE MATTER OF ~~THE [LIST DEBTOR NAMES](the "Debtors")~~CERTAIN  
PROCEEDINGS TAKEN IN THE ISLE OF MAN WITH RESPECT TO BANNERS BROKER  
INTERNATIONAL LIMITED

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~  
UNDER SECTION 46 OF THE  
~~COMPANIES' CREDITORS ARRANGEMENT ACT~~MILES ANDREW BENHAM AND PAUL  
ROBERT APPLETON, IN THEIR CAPACITY AS JOINT LIQUIDATORS OF BANNERS  
BROKER INTERNATIONAL LIMITED, UNDER PART XIII OF THE BANKRUPTCY AND  
INSOLVENCY ACT (CROSS-BORDER INSOLVENCIES)

ORDER

(FURTHER SUPPLEMENTAL ORDER<sup>1</sup>  
(FOREIGN MAIN<sup>2</sup> PROCEEDING)  
)

THIS ~~APPLICATION, made by [NAME OF FOREIGN REPRESENTATIVE] in its~~  
~~capacity as the foreign representative (the "~~MOTION, made by Miles Andrew Benham and Paul  
Robert Appleton, in their capacity as Joint Liquidators and as Foreign Representative ("Foreign  
Representative") of the Debtors,~~")~~ of Banners Broker International Limited ("Debtor") pursuant to

<sup>1</sup> As noted in several footnotes in this model order, practice under Part IV of the CCAA is still developing, and as certain issues are determined by Canadian courts, this model order will be amended to reflect the development of the law in this area.

<sup>2</sup> If the Canadian Court has recognized a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of the model Initial Recognition Order (Foreign Main Proceeding) fulfill the mandatory requirements of section 48 with respect to a foreign main proceeding. Section 49 of the CCAA also allows the Court to make any order that it considers appropriate for the protection of the debtor company's property or the interests of a creditor or creditors. This Supplemental Order contains discretionary relief that might be granted by the Court in the appropriate circumstances. The Model Order Subcommittee has attempted to make the provisions of this model Order consistent with similar provisions in other model Orders. Supplemental relief (whether contained in this Order or in subsequent Orders) may also include provisions dealing with the sale of assets, the recognition of critical vendors, a claims process, or any number of other matters, or may recognize foreign orders or laws granting such relief.

the ~~Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA")~~Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 ("BIA") and msi Spergel inc., in its capacity as receiver and manager of Banners Broker International Limited pursuant to the Order of the Honourable Justice Matheson, issued August 22, 2014 ("**Receiver**"), for an Order substantially in the form ~~enclosed in the Application Record~~attached to the notice of motion, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

ON READING the Receiver and Foreign Representatives' Notice of Application, the affidavit of [NAME] sworn [DATE], ~~[the preliminary report of [NAME], in its capacity as proposed information officer dated [DATE]], and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the~~Motion and the First Report of the Receiver, dated October 2, 2014 ("**First Report**"), and on hearing submissions of counsel for the Foreign Representative, ~~[counsel for the proposed information officer,]~~ counsel for [OTHER PARTIES], no one appearing for [NAME]<sup>3</sup> although duly served as appears from the affidavit of service of [NAME] sworn [DATE], and on reading the consent of [NAME OF PROPOSED INFORMATION OFFICER] to act as the information officer from counsel for the Receiver and Foreign Representatives:

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<sup>3</sup> Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1) and 11.52(1).

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the ~~Notice~~notice of ~~Application~~motion and the ~~Application-Record~~motion record is hereby abridged and validated<sup>4</sup> so that this ~~Application~~motion is properly returnable today and hereby dispenses with further service thereof.

## INITIAL RECOGNITION ORDER AND SUPPLEMENTAL ORDER

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated ~~[DATE]~~August 22, 2014 (the "**Recognition Order**") and Supplemental Order (Foreign Main Recognition), dated August 22, 2014 ("Supplemental Order")

3. **THIS COURT ORDERS** that the provisions of this Further Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order and Supplemental Order, provided that in the event of a conflict between the provisions of this Further Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

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<sup>4</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in the appropriate circumstances.~~



## RECOGNITION OF FOREIGN ORDERS<sup>5</sup>

### DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that ~~the following orders (collectively, the "Foreign Orders") of [NAME OF FOREIGN COURT] made in the Foreign Proceeding are hereby recognized and given full force and effect<sup>6</sup> in all provinces and territories of Canada pursuant to Section 19 of the CCAA;~~ all persons having notice of this Order, including but not limited to the Canadian financial institutions and electronic payment processors listed in Schedule "A" to this Order, advise the Receiver of the existence of any Property and Records (as such terms are used in the Recognition Order, but without limiting their application to BBIL) in their possession or control in relation to the following corporations:

(a) ~~— [list Foreign Orders, or portions of Foreign Orders, copies of which should be attached as schedules to this Order], attached as Schedule A to this Order,~~

~~provided, however, that in the event of any conflict between the terms of the Foreign Orders and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to Property (as defined below) in Canada.~~

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<sup>5</sup> This model Order adopts an approach that might be applicable to some foreign proceedings, but not others. For example, U.S. proceedings will typically generate court orders that will be brought to the Canadian Courts for recognition. Other jurisdictions may have statutory or regulatory rights (rather than court orders) that need to be recognized in Canada.

<sup>6</sup> Section 50 of the CCAA provides that an order made under Part IV of the CCAA may be made on any terms and conditions that the Court considers appropriate in the circumstances. Such terms and conditions would presumably need to be consistent with the orders or laws applicable to the foreign proceeding, subject to (i) the limitations imposed by section 48(2) (an order made under section 48(1) must be consistent with any order made under the CCAA), and (ii) the limitations imposed in section 61 (which provides that the Court may apply legal or equitable rules that are not inconsistent with the CCAA, and further that the Court may refuse to do something that would be contrary to public policy). All of the Foreign Orders should be reviewed by counsel with these issues in mind, and the Court may require confirmation from counsel that there is nothing in the Foreign Orders that is inconsistent with the CCAA or that would raise the public policy exception referenced in section 61 of the CCAA.

**APPOINTMENT OF INFORMATION OFFICER<sup>7</sup>**

- (i) 2087360 Ontario Incorporated o/a Local Management Services;
- (i) Parrot Marketing Inc. (formerly o/a "8264554 Canada Limited");
- (ii) 2341620 Ontario Corporation;
- (iii) Stellar Point Inc. (formerly o/a "7250037 Canada Inc." and "Bannersbroker Limited");
- (iv) Dixit Holdings Inc. (formerly o/a "8163871 Canada Limited"); and
- (v) Any other entity operating under the business names "Bannersbroker", "Banners Broker", "Bannersbroker Limited", "Bannersmobile", "Banners Mobile" or "Banners Broker Belize"  
(collectively, "Associated Corporations")

and further, that they respond to the Receiver's request(s) for information in respect of the accounts listed in **Schedule "A"** to this Order and any other accounts held by or on behalf of the above listed Associated Corporations ("**Accounts**") by providing all available information in respect of the application for, direction of, and transaction history in respect of, the Accounts.

5. **THIS COURT ORDERS** that ~~[NAME OF INFORMATION OFFICER]~~ (the "~~Information Officer~~") ~~is hereby appointed as an officer of this Court, with the powers and duties set out herein~~the actions and activities of the Receiver as described in the First Report be and are hereby approved.

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<sup>7</sup> ~~The appointment of an Information Officer is not required by the CCAA, and is in the discretion of the Court. Information Officers are normally trustees licensed under the Bankruptcy and Insolvency Act.~~



## ~~NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY~~<sup>8</sup>

~~6. — THIS COURT ORDERS that until such date as this Court may order (the "Stay Period") no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding") shall be commenced or continued against or in respect of the Debtors or affecting their business (the "Business") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), except with leave of this Court,<sup>9</sup> and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended by virtue of this Order of this Court.~~

## ~~NO EXERCISE OF RIGHTS OR REMEDIES~~

~~7. — THIS COURT ORDERS that 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 Debtors [or the Foreign Representative], or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on, (iii) [affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA,] (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.~~

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<sup>8</sup> The Model Order Subcommittee notes that a "Non Derogation of Rights" section (found, for example, in the initial Initial CCAA Order) has not been included in this model Order. In a 'full' CCAA proceeding, which would typically include a stay of proceedings made under section 11.02 of the CCAA, a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, and 11.1(2). However, in a Part IV proceeding, section 48 of the CCAA (rather than section 11.02 of the CCAA) is being relied upon when a stay of proceedings is being sought, and despite the wording of section 48(2) and section 61, it is not clear if the restrictions applicable to a section 11.02 stay of proceedings are also applicable to a section 48 stay of proceedings, or would restrict the recognition of foreign proceedings or foreign orders that include a stay of proceedings broader than permitted in a section 11.02 stay of proceedings. These issues remain open for determination by Canadian courts.

<sup>9</sup> Where the Court considers it to be appropriate, it may authorize other Persons, including a Court-appointed Information Officer, to provide consent to any Proceeding. This same comment applies in paragraphs 6 through 11 of this Order.

## **NO INTERFERENCE WITH RIGHTS**

8. — ~~THIS COURT ORDERS that during the Stay Period, no Person shall use, interfere, 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 any of the Debtors and affecting the Business in Canada, except with leave of this Court.~~

## **ADDITIONAL PROTECTIONS**

9. — ~~THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Debtors, 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 Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.~~<sup>10</sup>

10. — ~~[THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof or that relates to any obligations of the Debtors whereby the directors or officers are otherwise under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.]~~<sup>11</sup>

11. — ~~THIS COURT ORDERS that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded the Information Officer herein, or as an officer of this Court, the Information~~

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<sup>10</sup> Section 11.01 of the CCAA provides that no order made under section 11 or 11.02 has the effect of (a) prohibiting a person from requiring immediate payment for goods, services, etc. provided after the order is made, or (b) requiring the further advance of money or credit. It is unclear whether these provisions also apply to an order made pursuant to section 48 of the CCAA. Please see the discussion in footnote 8 above.

<sup>11</sup> Counsel should specifically address with the Court whether this provision is appropriate in the context of this Order.



Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA, and 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.

#### **OTHER PROVISIONS RELATING TO INFORMATION OFFICER**

**12.** — ~~THIS COURT ORDERS that the Information Officer:~~

- ~~(a) — is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;~~
- ~~(b) — shall report to this Court at least once every [three] months with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the Property, the Business, or such other matters as may be relevant to the proceedings herein;~~
- ~~(c) — in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;~~
- ~~(d) — shall 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 Debtors, to the extent that is necessary to perform its duties arising under this Order; and~~
- ~~(e) — shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.~~

**13.** — ~~THIS COURT ORDERS that the Debtors and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Debtors or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information~~

Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

14. — ~~THIS COURT ORDERS that the Information Officer 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.~~

15. — ~~THIS COURT ORDERS that the Information Officer (i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.~~

16. — ~~THIS COURT ORDERS that the Information Officer may provide any creditor of a Debtor with information provided by the Debtors in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer 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 Information Officer has been advised by the Debtors is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court on such terms as the Information Officer, the Foreign Representative and the relevant Debtors may agree.~~

17. — ~~THIS COURT ORDERS that the Information Officer and counsel to the Information Officer shall be paid by the Debtors their reasonable fees and disbursements incurred in respect of these proceedings, both of record after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtors are hereby authorized and directed to pay the accounts of the Information Officer and counsel for the Information Officer on a [TIME INTERVAL] basis and, in addition, the Debtors are hereby authorized to pay to the Information Officer and counsel to the Information Officer, retainers in the amount[s] of \$[AMOUNT OR AMOUNTS] [, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.~~

18. — ~~THIS COURT ORDERS that the Information Officer and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Information Officer and its~~



legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

19. — THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the ~~benefit of and are hereby granted a charge (the~~ "Administration Charge") on the Property in Canada, which charge shall not exceed an aggregate amount of \$[AMOUNT], ~~as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs [21] and [23] hereof.~~

### ~~INTERIM FINANCING~~<sup>12</sup>

20. — THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property in Canada, which DIP Lender's Charge shall be ~~consistent with the liens and charges created by the [DESCRIBE DIP LENDER ORDER MADE IN THE FOREIGN PROCEEDING], provided however that the DIP Lender's~~ Charge (i) shall not secure an obligation that exists before this Order is made,<sup>13</sup> and (ii) with respect to the Property in Canada, shall have the priority set out in paragraphs [21] and [23] hereof, and further provided that the DIP Lender's Charge shall not be enforced except with leave of this Court.

### ~~VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER~~

21. — THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:<sup>14</sup>

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<sup>12</sup> Optional — if there is a DIP Lender which takes security over assets in Canada in respect of Canadian debtors. If more comprehensive interim financing provisions are required, please refer to the model CCAA Initial Order for sample provisions.

<sup>13</sup> This restriction appears in the interim financing provisions found in section 11.2(1) of the CCAA. It is unclear if this prohibits the recognition of a foreign order that creates a DIP Lender's Charge securing pre-filing obligations.

<sup>14</sup> The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.

~~First—Administration Charge (to the maximum amount of \$[AMOUNT]); and~~

~~Second—DIP Lender's Charge.~~

22. — ~~THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.~~

23. — ~~THIS COURT ORDERS that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property in Court in and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.~~

24. — ~~THIS COURT ORDERS that except as otherwise expressly provided herein, no may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Court that rank in priority to, or pari passu with, the Administration Charge or the DIP Lender's Charge, unless the Debtors also obtain the prior written consent of the Information Officer and the DIP Lender.~~

25. — ~~THIS COURT ORDERS that the Administration Charge and the DIP 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 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, continuing any existing borrowings, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement;~~



- (a) ~~the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;~~
- (b) ~~none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any agreement or otherwise or resulting from the creation of the Charges; and~~
- (c) ~~the payments made by the Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.~~

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

#### ~~SERVICE AND NOTICE~~

27. ~~THIS COURT ORDERS that that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at [http://www.ontariocourts.ca/scj/practice/practice\\_directions/toronto/e-service\\_protocol/](http://www.ontariocourts.ca/scj/practice/practice_directions/toronto/e-service_protocol/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <img alt="redacted URL" data-bbox="845 685 875 705"/>~~

28. ~~THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors, the Foreign Representative and the Liquidation Officer are at liberty to serve or distribute 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 facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the applicable Debtor and that any such service or distribution by courier, personal delivery or facsimile 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.~~

## **GENERAL**

~~29. — THIS COURT ORDERS that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.~~

~~30. — THIS COURT ORDERS that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of any Debtor, the Business or the Property.~~

~~31. — THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the [JURISDICTION OF THE FOREIGN PROCEEDING], to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.~~

~~32. — THIS COURT ORDERS that each of the Debtors, the Foreign Representative and the Information Officer 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.~~

~~33. — THIS COURT ORDERS that the Guidelines for Court-to-Court Communications in Cross-Border Cases developed by the American Law Institute and attached as Schedule [\*] hereto is adopted by this Court for the purposes of these recognition proceedings.~~

6. ~~34.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the ~~Information Officer~~Receiver and their respective counsel, 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.

~~35. THIS COURT ORDERS that this Order shall be effective as of [THE] n the date of this Order.~~<sup>15</sup>

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<sup>15</sup> ~~The time referenced in this Order should be the same time as the time referenced in the Recognition Order, if the two Orders are made on the same date. In the absence of such a provision, Rule 59.01 of the Ontario *Rules of Civil Procedure* appears to indicate that an Order is effective as of 12:01 a.m. on the date of the Order (Rule 59.01 provides that "An order is effective from the date on which it is made, unless it provides otherwise").~~

**SCHEDULE "A"**

Companies:

- a) TD Canada Trust;
- b) CIBC;
- c) HSBC Bank Canada;
- d) Royal Bank of Canada;
- e) Beanstream Internet Commerce Inc.;
- f) Mazarine Commerce Inc. o/a Payza.com;
- g) 677381 Canada Inc. o/a SolidTrust Pay;
- h) UseMyServices, Inc.;
- i) Vector Card Services;
- j) 1587803 Ontario Limited o/a Aramor;

Accounts:

- a) Account no. 5028436 at Royal Bank of Canada branch no. 06802, held by Christopher G. Smith;
- b) Account no. 268400233 at HSBC Bank Canada branch no. 10850, held by Christopher G. Smith;
- c) Account no. 6269372 at TD Canada Trust branch no. 1084, held by Patricia London;
- d) Account no 5234643 at TD Canada Trust branch no. 11042, held by Local Management Services;
- e) Account no. 0512-7313130 at TD Canada Trust branch no. 11042, held by 2087360 Ontario Inc.;
- f) Account(s) using the name "Bannersbroker" or "Banners broker" with UseMyServices, Inc. and/or SolidTrustPay.

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER  
INSOLVENCIES)

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

Proceeding commenced at TORONTO

ORDER

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**[ATTACH APPROPRIATE SCHEDULES]**

APPLICATION OF MILES ANDREW BENHAM AND PAUL ROBERT APPLETON, IN THEIR  
CAPACITY AS JOINT LIQUIDATORS OF BANNERS BROKER INTERNATIONAL LIMITED,  
UNDER PART XIII OF THE BANKRUPTCY AND INSOLVENCY ACT (CROSS-BORDER  
INSOLVENCIES)

	<b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b> (Commercial List)  Proceeding commenced at TORONTO
	<b>FACTUM OF THE RECEIVER AND FOREIGN REPRESENTATIVE</b>
	<b>Cassels Brock &amp; Blackwell LLP</b> 2100 Scotia Plaza 40 King Street West Toronto, Ontario M5H 3C2  <b>David S. Ward LSUC #: 33541W</b> Tel: 416.869.5960 Fax: 416.640.3154 dward@casselsbrock.com  <b>Christopher Horkins LSUC #: 61880R</b> Tel: 416.815.4351 Fax: 416.642.7129 chorkins@casselsbrock.com  Lawyers for the Receiver and Joint Liquidators