

**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
CLEARPIER ACQUISITION CORP. AND 1000238820 ONTARIO INC.

Applicants

FACTUM OF EXPORT DEVELOPMENT CANADA
(Motion returnable October 9, 2025)

October 8, 2025

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TO: SERVICE LIST

PART I - INTRODUCTION

1. These proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") were commenced with the objective of identifying and implementing going concern sale transactions for the businesses owned by Clearpier Acquisition Corp. ("**CPAC**"), through a court approved sale process.¹

2. CPAC itself does not conduct active business. It is a holding company for the following foreign operating subsidiaries (the "**CPAC Operating Subsidiaries**"):

- (a) Cygobel Media Ltd. ("**Cygobel**");
- (b) Pesto Harel Shemesh Ltd. ("**Pub Plus**");
- (c) HangMyAds Lda. ("**HMA**"); and
- (d) KPM Technologies Ltd. ("**KPM**").²

3. Export Development Canada ("**EDC**"), as the senior secured creditor of CPAC, owed in excess of CDN\$36 million and US\$40 million by CPAC and certain of its operating subsidiaries, agreed to these proceedings, instead of an alternative receivership application that was filed, on the basis of an expedited and comprehensive sale process that has now been conducted.³

4. The sale process has run its course and has not provided any successful bids at this time.⁴

¹ Fourth Report to Court of Richter Inc. as Monitor dated October 7, 2025 ("**Fourth Report**") at paras. 1 and 7, pp. 1 and 3.

² Fourth Report at paras. 2-3, p. 1.

³ Affidavit of Mark Doyle sworn October 6, 2025 ("**Doyle Affidavit**") at paras. 6 and 9, Motion Record of the Applicant returnable October 9, 2025 ("**MR**"), Tab 2, pp. 11-12.

⁴ Doyle Affidavit at para. 19, MR, Tab 2, p. 15.

5. The sale process has demonstrated that EDC is the only party with an economic interest in the assets of the Applicants.⁵

6. Management of CPAC has been pursuing, and continues to pursue, its own bid for the CPAC Operating Subsidiaries. Their interests are not aligned with EDC or other stakeholders at this stage.⁶

7. EDC is requesting that steps now be taken to enhance the powers of Richter Inc., in its capacity as Monitor (the “**Monitor**”), a neutral court officer, to recover value that can be obtained from the assets of the Applicants and the CPAC Operating Subsidiaries.⁷

8. No party is prejudiced by the enhancement of the Monitor’s powers. To the extent management wishes to continue pursuing a bid for any assets of the Applicants and the CPAC Operating Subsidiaries, they are free to do so. To the extent any other transactions are executable and may maximize value, the Monitor may pursue those transactions as well.⁸

PART II - THE FACTS

Background

9. The Applicants are Canadian holding companies for the CPAC Operating Subsidiaries, which operate in Israel (Pub Plus, Cygobel and KPM) and Portugal (HMA).⁹

⁵ Fourth Report at para. 47, p. 15.

⁶ Doyle Affidavit at para. 22, MR, Tab 2, p. 15.

⁷ Fourth Report at paras. 49 and 50, pp. 16-17.

⁸ Fourth Report at paras. 55-56, p. 18.

⁹ Doyle Affidavit at para. 3, Tab 2, p. 11.

10. Each of the CPAC Operating Subsidiaries was acquired by CPAC, in large part through secured debt funding provided by EDC. As a result, the CPAC Operating Subsidiaries have their own independent management and operational structures.¹⁰

CCAA Proceedings and SISP

11. On April 1, 2025, in response to extensive and persistent events of default under their secured credit facilities with EDC and an inability to satisfy their obligations generally, the Applicants filed an initial application under the CCAA.¹¹

12. On April 2, 2025, the Applicants were granted protection under the CCAA pursuant to an Initial Order granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Richter Inc. was appointed as Monitor.¹²

13. EDC consented to the commencement of the CCAA proceedings, instead of an alternative receivership process for which EDC had previously served an Application on March 6, 2025, on the understanding and agreement that the Applicants and the CPAC Operating Subsidiaries would immediately pursue a sale and investment solicitation process.¹³

14. On April 10, 2025, at the comeback hearing, the Court granted an Amended and Restated Initial Order, which, among other things, granted an extension of the Stay Period to August 7, 2025, as well as a Sale and Investment Solicitation Process Order (the “**SISP Order**”).¹⁴

15. The SISP Order authorized the Monitor to conduct, with the assistance of the Applicants and KPMG Corporate Finance Inc. (the “**Sale Advisor**”) a sale and investment solicitation process

¹⁰ Doyle Affidavit at para. 5, MR, Tab 2, p. 11.

¹¹ Doyle Affidavit at para. 7, MR, Tab 2, p. 11.

¹² Doyle Affidavit at para. 8(b), MR, Tab 2, pp. 11-12.

¹³ Doyle Affidavit at para. 9, MR, Tab 2, p. 12.

¹⁴ Doyle Affidavit at para. 10, MR, Tab 2, p. 12.

(the “**SISP**”) in respect of the business and assets of the Applicants and the CPAC Operating Subsidiaries, among others, in accordance with the procedures attached to the SISP Order (the “**SISP Procedures**”).¹⁵

16. On August 7, 2025, this Court granted a Stay Extension Order, whereby the Court extended the stay period to and including September 30, 2025. The stay period was most recently extended to October 10, 2025 pursuant to an Order of the Court dated September 26, 2025. These extensions were sought to provide additional time to determine appropriate next steps in view of the results of the SISP.¹⁶

17. The SISP provided a broad canvassing of the market for the assets and business of the Applicants and the CPAC Operating Subsidiaries, among others.¹⁷

18. At the commencement of the SISP, it was clear that existing executive management of the Applicants were interested in pursuing a bid of their own for the Applicants’ and the CPAC Operating Subsidiaries’ businesses and confirmed their intention to do so. Accordingly, the SISP has been conducted and overseen by the Monitor and the Sale Advisor.¹⁸

19. From the outset of the SISP, a shortfall to EDC was considered a likely outcome as a result of the large aggregate secured balance owing to them. In view of this likely outcome, the SISP Order includes certain protections in favour of EDC. For example,

- (a) a bid would only be eligible to be selected as the successful bid if either it provided consideration sufficient to repay EDC’s secured debt in full, or was otherwise consented to by EDC; and

¹⁵ Doyle Affidavit at para. 11, MR, Tab 2, p. 13.

¹⁶ Doyle Affidavit at para. 12, MR, Tab 2, p. 13.

¹⁷ Doyle Affidavit at para. 13, MR, Tab 2, p. 13.

¹⁸ Doyle Affidavit at para. 15, MR, Tab 2, p. 14.

- (b) if Phase 2 Qualified Bids (as defined in the SISP) were not received for a particular Applicant or Operating Subsidiary, then the Monitor could terminate the SISP in respect of such Applicant or Operating Subsidiary and the Applicants would then proceed with an orderly wind down of such Applicant or Operating Subsidiary if consented to by the Monitor and EDC, or otherwise EDC may realize upon its security.¹⁹

20. The above protections were essential to EDC due to the likelihood of an EDC shortfall, and also due to the risk of degradation of EDC's collateral if the businesses were permitted to continue to operate for a material period following determination that no potentially successful bids were available. These protections were also a necessary part of EDC's agreement not to proceed with its receivership application.²⁰

21. The SISP has completed without a successful offer and without any binding and actionable management bid. The SISP Order is clear about next steps in that circumstance. Notwithstanding the SISP Order, the Applicants have refused to cooperate in the wind down of Pub Plus at this time and have refused to prepare a wind down plan for the other CPAC Operating Subsidiaries.²¹

Loss of Confidence in Management

22. Management of the Applicants appear to be solely focussed continuing the business in the ordinary course in the hope of ultimately concluding a proposed management bid, which has proven unexecutable to date, at some point in the future. Meanwhile, EDC's collateral is at risk.²²

¹⁹ Doyle Affidavit at para. 17, MR, Tab 2, p. 14.

²⁰ Doyle Affidavit at para. 18, MR, Tab 2, p. 14.

²¹ Doyle Affidavit at para. 24, MR, Tab 2, p. 16.

²² Doyle Affidavit at para. 24, MR, Tab 2, p. 16.

23. Based on the outcome of the SISP, EDC advised the Monitor by letter from EDC's counsel on September 10, 2025 that a wind down of Pub Plus should proceed. EDC further advised the Monitor by letter from EDC's counsel on September 15, 2025 that a wind down plan should be prepared for Cygobel and KPM, but not that such plan should be immediately implemented as certain transactions for only the Cygobel and KPM business were still being reviewed.²³

24. To date, the CPAC Operating Subsidiaries have not complied with EDC's request to wind down Pub Plus or EDC's request for a wind down plan in respect of Cygobel and KPM, as required by the SISP Order and SISP Procedures. Instead, the Monitor and EDC have continued to receive various partially complete forms of unsigned purchase agreements for the business from the Applicants' senior management and the Monitor has received no deposit in respect of such transaction. The deadline for submission of bids under the SISP expired long ago.²⁴

25. Most recently, management of the Applicants advised they would be willing to put in an executable bid with an appropriate cash deposit, but submission of that bid and deposit would be conditional upon agreement from all parties that there would be no ongoing restrictions on the Applicants' or the CPAC Operating Subsidiaries' use of operating cash in a manner consistent with the going concern cash flow forecast previously filed in these proceedings. This condition for bid submission was not in accordance with the SISP and was not acceptable to EDC or the Monitor.²⁵

Proposed Next Steps

26. EDC believes at this stage expedited steps are required to preserve value. It is appropriate for the Monitor to take full control of the Applicants' business and affairs, with existing

²³ Fourth Report at paras. 37 and 39, p. 13.

²⁴ Doyle Affidavit at para. 22, MR, Tab 2, p. 15.

²⁵ Doyle Affidavit at para. 23, MR, Tab 2, p. 16.

management providing any necessary information required by the Monitor to do so. As the Applicants are holding companies, without independent ongoing businesses, the primary function for these entities is to manage the wind down or sale of the CPAC Operating Subsidiaries.²⁶

27. The Monitor would be able to exercise the Applicants' rights, as the shareholder of the CPAC Operating Subsidiaries, to ensure appropriate governance structures are in place to wind down or sell those subsidiaries, as applicable.²⁷

28. As a preliminary priority matter, EDC believes Pub Plus should be subject to an orderly wind down in Israel. EDC has been in contact with Israeli counsel regarding the process to appoint a receiver to pursue this matter, and EDC understands this process can move expeditiously. Cooperation from a Monitor with enhanced powers would further expedite that process.²⁸

29. Discussions are ongoing with interested parties for options to sell the shares of KPM and Cygobel. EDC believes the Monitor should continue those discussions in an effort to maximize value from these assets.²⁹

30. The Monitor is of the view that granting the Monitor enhanced powers is appropriate in the circumstances in light of the lack of executable transactions resulting from the SISP, the SISP requirement relating to wind-downs in these circumstances and the Applicants' failure to take steps to prepare the necessary wind-down plans. The Monitor's enhanced powers will facilitate the Monitor advancing the orderly completion of these proceedings in relation to the Applicants

²⁶ Doyle Affidavit at para. 25, MR, Tab 2, p. 16.

²⁷ Doyle Affidavit at para. 26, MR, Tab 2, p. 16.

²⁸ Doyle Affidavit at para. 27, MR, Tab 2, pp. 16-17.

²⁹ Doyle Affidavit at para. 28, MR, Tab 2, p. 17.

and the CPAC Operating Subsidiaries rather than leaving those steps in the hands of existing management, who are seeking to implement their own bid.³⁰

PART III - STATEMENT OF ISSUES, LAW AND AUTHORITIES

31. The issue for consideration on this motion is whether the enhancement of the Monitor's powers is appropriate in the circumstances.

The Court Has Jurisdiction to Enhance the Monitor's Powers

32. Pursuant to Section 23(1)(k) and Section 11 of the CCAA, the Court has jurisdiction to expand the powers of a monitor beyond what has been specifically enumerated in Section 23(1) of the CCAA and standard model orders.³¹ In recent years, courts have on many occasions granted the monitor expanded powers where it has been appropriate in the circumstances.³²

33. Such enhanced powers should be granted in furtherance of the remedial objectives of the CCAA, one of which is the maximization of creditor recovery.³³ This is also consistent with the Court's analysis in *Arrangement relatif à Bloom Lake*, where it affirmed that the Court may grant such powers as is necessary and appropriate to enable the monitor to fulfill its duties to, among other things, "further the valid purpose of the CCAA".³⁴

34. In the current circumstances, EDC proposes an expansion of the Monitor's powers for the following critical purposes:

³⁰ Fourth Report at para. 53, p. 17.

³¹ [Companies' Creditors Arrangement Act](#), R.S.C. 1985, c. C-36, as amended (the "CCAA") at ss. 11 and 23(1)(k).

³² See e.g., [Arrangement relatif à Bloom Lake General](#), 2021 QCCS 2946 (CanLII) ["**Bloom Lake**"]; [Ernst & Young Inc. v. Essar Global Fund Limited](#), 2017 ONCA 1014 (CanLII); [Endorsement of Justice Conway dated May 12, 2023, In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.](#) at para. 13 ["**Endorsement of Justice Conway**"]; [Harte Gold Corp. \(Re\)](#), 2022 ONSC 653 (CanLII) at paras. 91-93 ["**Harte Gold**"]; and [PricewaterhouseCoopers Inc. v. Canada Fluorspar \(NL\) Inc.](#), 2023 NLSC 88 (CanLII) at para. 85.

³³ [Arrangement relatif à 9323-7055 Québec inc. \(Aquadis International Inc.\)](#), 2020 QCCA 659 (CanLII) at para. 68.

³⁴ *Bloom Lake* at 73.

(a) To pursue an expedited realization of EDC's collateral from the highest bidders, following the completion of all reasonable efforts through the SISP process to maintain the Applicants' entire going concern business intact, which have failed.³⁵

(b) To guard against a substantial risk of erosion of EDC's remaining collateral held by the CPAC Operating Subsidiaries, including cash collateral which could otherwise be dissipated to subordinate unsecured creditors or others. The unrestricted cash of the CPAC Operating Subsidiaries and the Applicants have dropped from \$6.7 million as of July 31, 2025 to approximately \$4.6 million at this time.³⁶

(c) To remedy a clear conflict between the interests of stakeholders in achieving an expedited realization on collateral from the highest bidder and the interest of management of the Applicants in pursuing their own bid which to date has been unexecutable.

35. Many of the facts present in other cases where the Monitor's powers have been enhanced are present in the current case:

(a) The need to pursue additional avenues of recovery and bring the CCAA proceeding to an efficient conclusion for the benefit of all stakeholders;³⁷ and

(b) No creditor is prejudiced by the expansion of the Monitor's powers, on the contrary granting such relief appears to be necessary to achieve the benefits of available transactions.³⁸

36. The enhancement of the Monitor's powers will also ensure prompt compliance with the SISP Procedures that are applicable in the event that no successful bids are obtained. EDC

³⁵ Doyle Affidavit at para. 19, MR, Tab 2, p. 15.

³⁶ Appendix "A" to the Fourth Report, p. 21.

³⁷ Endorsement of Justice Conway at para. 13.

³⁸ Harte Gold at paras. [91-93](#).

specifically requested and obtained those protections, including with respect to the wind down of CPAC Operating Subsidiaries. From EDC's perspective, this was an important building block of the case on which EDC properly relied. As explained in *Target Canada Co. (Re)*.³⁹

It is essential that court orders made during CCAA proceedings be respected. In this case, the Amended Restated Order was an order that was heavily negotiated by sophisticated parties. They knew that they were entering into binding agreements supported by binding orders. Certain parties now wish to restate the terms of the negotiated orders. Such a development would run counter to the building block approach underlying these proceedings since the outset.⁴⁰

37. In the current case, there is no objection to the proposed expansion of powers from any stakeholder with an economic interest in the Applicants.⁴¹

PART IV - ORDER REQUESTED

38. EDC respectfully requests that an order be granted in the form attached to EDC's motion record expanding the Monitor's powers and extending the stay of proceedings to October 31, 2025 so that appropriate next steps in this case can be implemented.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of October, 2025.

Evan Cobb

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³⁹ *Target Canada Co. (Re)*, 2016 ONSC 316.

⁴⁰ *Ibid* at para. 81.

⁴¹ Fourth Report at para. 52, p. 17.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [Arrangement relatif à 9323-7055 Québec inc. \(Aquadis International Inc.\)](#), 2020 QCCA 659
2. [Arrangement relatif à Bloom Lake General](#), 2021 QCCS 2946
3. [Endorsement of Justice Conway dated May 12, 2023](#), *In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.*
4. [Ernst & Young Inc. v. Essar Global Fund Limited](#), 2017 ONCA
5. [Harte Gold Corp. \(Re\)](#), 2022 ONSC 653
6. [PricewaterhouseCoopers Inc. v. Canada Fluorspar \(NL\) Inc.](#), 2023 NLSC 88
7. [Target Canada Co. \(Re\)](#), 2016 ONSC 316

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

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.

23(1)(k) The monitor shall [...] carry out any other functions in relation to the company that the court may direct.

Export Development Canada
Applicant

and

Clearpier Acquisition Corp.
and 1000238820 Ontario Inc.
Respondents

Court File No.: CV-25-00740088-00CL

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(COMMERCIAL LIST)**

Proceeding commenced at Toronto

FACTUM
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