

IN THE ROYAL COURT OF JERSEY
(Samedi Division)

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED

AND IN THE MATTER OF THE COMPANIES (JERSEY) LAW 1991

**AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR COURT
OF JUSTICE**

FIRST AFFIDAVIT OF MAX GALT

I, **MAX GALT**, of Mourant Ozannes, 22 Grenville Street, St. Helier, Jersey, JE4 8PX, hereby make oath and say as follows:-

1. I am a solicitor of the Senior Courts of England and Wales. I work at Mourant Ozannes as an Associate in the Jersey litigation team and assist Advocate Stephen Alexander in this matter. Mourant Ozannes are advocates for the Representor, Lydian International Limited (**Lydian International**), and I make this affidavit in support of its Representation.
2. Save where otherwise stated, the matters to which I depose in this affidavit are within my personal knowledge and are true to the best of my knowledge and belief. Where they are not within my personal knowledge, I identify the source of information upon which I rely and confirm that such matters are true to the best of my information and belief.
3. There is now produced and shown to me marked "**MG1**" a bundle of true copy documents relevant to this affidavit. Where reference is made in this Affidavit to a page number, the reference is to a page number in MG1, save where it appears otherwise from the context.
4. The purpose of this affidavit is to:-
 - (a) Outline the activities that have been undertaken to comply with the orders made by the Deputy Bailiff in the Act of Court of 14 August 2020 (the **Act of Court**) (**pages 1 - 2**).
 - (b) Apprise the Court of correspondence and interactions with certain of the shareholders and creditors of Lydian International.
 - (c) Provide the Court with information pertaining to the assets of the Lydian Group and the assets it holds following its restructuring.

Notification of these proceedings

5. Paragraph 2 of the Act of Court ordered that Lydian International was to within 7 days of the date of the convening orders and directions being made:
 - (a) Provide the creditors and the shareholders of Lydian International with a copy of the Representation and the Affidavit evidence filed in support; and
 - (b) Inform such creditors and shareholders that if they wish to be heard at the hearing on 11th September, 2020, they may appear in person or by Jersey counsel or may write to the Royal Court via Lydian International (Stephen.alexander@mourant.com and max.galt@mourant.com) on or before 5.00 p.m. on 9 September, 2020. Lydian International is to provide the Court with all correspondence received so that the Court may take it into account.
6. By paragraph 3 it was ordered that for the purposes of communicating the information required by the orders contained in paragraph 2, the shareholders of Lydian International, the Senior Lenders and Equipment Financiers, all as defined in the Representation, were to be notified by way of a letter from Lydian International. The letter was to inform the aforesaid parties of the nature and purpose of the hearing on 11 September, the terms of the orders made at the convening hearing and direct them to a web page link on the Monitor's website where the evidence in support was to be published. The content of that letter was to be in a form approved by the Court.
7. In addition, by paragraph 3 of the Act of Court, it was ordered that notification was to include publication on the Monitor's website at the following link: <https://www.alvarezandmarsal.com/content/lydian-jersery-motion-materials>. By paragraph 4 of the Act of Court it was ordered that Lydian International was to issue a press release confirming the hearing fixed for 11 September 2020 and providing a link to the aforementioned page on the Monitor's website. I set out below the steps taken to comply with the orders described above.
8. In summary, I consider that Lydian International has performed the orders in a way that is compliant with the Act of Court.

Correspondence with the Court regarding form of notification to shareholders, Senior Lenders, and Equipment Financiers

9. In accordance with the terms set out in paragraph 3 of the Act of Court, Lydian International sought the approval of the Court on the content of the notification letters prior to issuing them. On 14 August 2020, Mourant Ozannes sent to the Court by way of email, draft copies of the letters to the shareholders of Lydian International, the Senior Lenders and Equipment Financiers. Copies of the email correspondence with the Court, along with the draft letters

and draft Act of Court sent as attachments, appear at **pages 3 - 14**. The Deputy Bailiff proposed amendments to the letters (which appear in an email at **page 15**). These amendments were duly incorporated into the final issued versions of the letters, described below at paragraphs 15 and 16.

10. In the same email of 14 August 2020 (**page 3**) we informed the Court that, in respect of the shareholders of Lydian International, we would investigate whether the contact details of the individual shareholders could be obtained in order to write to them directly. After making the relevant enquiries, we were instructed that Lydian International's shareholder register was maintained by a third party entity called Computershare.
11. Computershare have provided the shareholder register as at August 2020 which includes details of 40 holders of ordinary shares (this list is not exhibited to this affidavit given that it contains personal details of the shareholders but is available for inspection should the Court wish to see it) and also a snapshot of the top 30 shareholders by number of shares held as at 31 October 2019 (**page 16**). Both lists include the intermediary, the Canadian Depositary for Securities (**CDS**). We are instructed that as at August 2019 there were at least 1135 individual shareholders whose shares are held by CDS on their behalf. Each of these shareholders have previously provided instructions to the intermediary that maintains its account that it does not object to the disclosure of information about the beneficial owner and its ownership of securities of Lydian International in connection with proxy solicitations. There are, in addition, a substantial number of shareholders who have not provided such instructions to the intermediary that maintains its account and consequently Lydian International does not know their identity.
12. For those reasons, by emails of 20 and 21 August 2020 (**pages 17 - 18**) we informed the Court that, due to Lydian International having a large number of shareholders, it would not be practically possible to write to them on an individual basis. In the email, we outlined the steps by which we had provided notification to the shareholders, to the extent practicably possible to comply with the provisions of the Act of Court. This included sending the letter directly by email to the shareholders which appear on the "Service List" used in the Canadian proceedings.
13. This Service List (**pages 19 - 29**) is a list of parties, along with their service addresses, who were sent documents to the addresses specified therein, in the Canadian proceedings. It includes:
 - a. The counsel on record in the Canadian proceedings for each of the Equipment Financiers;
 - b. The counsel on record in the Canadian proceedings for each of the Senior Lenders; and

- c. Those shareholders of Lydian International who took the opportunity to make representations to the Canadian Court.

14. By emails of 20 and 21 August we drew the Royal Court's attention to the judgment of the Canadian Court dated 29 June 2020 (**page 30 - 47**) , in which it held (at paragraph 60 (**page 40**)) that Lydian International's "stakeholders" (including shareholders) received adequate notice of the proceedings by virtue of service methods equivalent to those employed in these proceedings (i.e. publication on the website of the Monitor, notification to those addresses stipulated on the Service List, and press releases).

Notification of Senior Lenders and Equipment Financiers

15. By a letter dated 19 August 2020, notice of these proceedings was provided to the Equipment Financiers and Senior Lenders by way of email to their respective counsel. As defined in the Representation, the Senior Lenders comprise Osisko Bermuda Limited (**Osisko**), Resource Capital Fund VI L.P (**RCF**) and Orion Capital Management (**Orion**). The Equipment Financiers comprise Ameriabank Closed Joint Stock Company (**Ameriabank**), Caterpillar Financial Services (UK) Limited (**CAT**) and ING Bank N.V (**ING**). The Act of Court was included as an attachment to the emails. The email contact addresses of counsel to the Senior Lenders and the Equipment Financiers were obtained from the Service List and copies of all the letters and emails by which they were sent appear at **pages 48 - 71**.

Notification of Shareholders

16. By a letter dated 19 August 2020, Mourant Ozannes sent an email to each shareholder whose details appear on the Service List. A copy of the letter and email by which it was sent appears at **pages 72 - 74** and the Act of Court was also included as an attachment. The email addresses do not appear on the exhibited copy of the email due to the email having been sent to the recipients via blind copy.

Monitor's Press Release and publication

17. On 17 August 2020 Lydian International published a press release, in accordance with the provisions of paragraph 4 of the Act of Court, a copy of which appears at pages **75 to 76**. The press release is published at <https://www.globenewswire.com/news-release/2020/08/17/2079367/0/en/Lydian-Announces-Commencement-of-Just-and-Equitable-Wind-Up-Proceedings-Under-Jersey-Law.html> and directs to the Monitor's website where the material relating to these proceedings is published.

18. The materials for these proceedings, specifically the Act of Court and Affidavit evidence of Victor Flores and Alan Hutchens was published to the Monitor's website on 17 August 2020 at <https://www.alvarezandmarsal.com/content/lydian-jersery-motion-materials>.

19. For the reasons stated above, I consider that notification was validly effected by way of the abovementioned activities in accordance with the provisions of the Act of Court.

Communications with the Shareholders

20. Further to issuing the shareholder notification letter, on 20 August 2020 I received a telephone call from a shareholder who I believe was named Lisa Kalinda, who relayed that, whilst she is not a lawyer, she was acting on behalf of a group of shareholders. Ms Kalinda informed me that the group intended to object to the just and equitable winding up in Jersey. She also stated that the same shareholders intended to apply to the Canadian Court to try and overturn the decision there. In the conversation I advised her that we act for Lydian International, that any written communications sent to us would be brought to the attention of the Court, and that we strongly advised both her and the other shareholders to take advice from a Jersey Advocate in relation to these proceedings (and that we could provide recommendations if necessary). As at the date of swearing this affidavit, I have received no further communications from Ms Kalinda.
21. On 23 August 2020 I received an email from an individual named Atilla Bozkaya, (**page 77**), which relayed that he and other shareholders planned to attend the Court hearing on 11 September 2020, and were in the process of finalizing their documents to submit in opposition to the proceedings. That email further stated that the group had commenced a different legal claim in Canada and that details of would be provided to us at a later date. As at the date of swearing this affidavit, I have received no further information from Mr Bozkaya. Mr Bozkaya requested a copy of Lydian International's Articles of Association, and this was provided by my email response on 25 August 2020 (**page 77**).
22. In relation to Mr Bozkaya's assertion that a group of shareholders, whom he purportedly represents, had commenced a different claim in Canada, we are informed by Stikeman Elliot, who act for Lydian International in Canada, that they are not aware of any such action having been commenced. They have also informed us that the deadline for any party to appeal the order of the Canadian Court made on 29 June 2020 (30 days) has now expired.

Restructured Lydian and its assets

23. The structure chart of the post-CCAA restructuring Lydian Group appears at (**pages 78 – 80**). The entity that now sits atop the Lydian Group is Lydian Canada Ventures Corporation (**Restructured Lydian**). I am instructed that its sole asset are shares in Lydian UK Corporation Limited and 11910728 Canada Inc. but that via its subsidiaries it now owns the assets of the pre CCAA Lydian Group. This is consistent with the steps contemplated by the Plan (as detailed at paragraph 102 of Victor Flores' Affidavit).

Other matters

24. On 19 August 2020, Lydian International received a letter from counsel for ING, one of the Equipment Financiers (**pages 81 – 82**), by which it issued a formal demand for immediate payment and repayment of debts owed to it by Lydian International and Lydian Armenia. Pursuant to the Plan, claims which ING has in respect of Lydian International will be dealt with during the winding up process.

25. In the intervening time between Victor Flores affidavit being sworn on 6 August 2020 and the date of this affidavit, the Monitor has produced a further list of unsecured creditors of Lydian International (**page 83**).

Conclusion

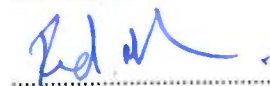
26. For the reasons set out above, I consider that the shareholders, Equipment Financiers and Senior Lenders of Lydian International have been duly notified of these proceedings. I also confirm that any further correspondence received from the aforementioned parties will be provided to the Court.

SIGNED and **SWORN** by the said **MAX GALT**

At Maurant Ozannes, 22 Grenville Street, St Helier, JE4 8PX

This 4 day of September 2020

BEFORE ME


.....

Name: John Frederick Edmund Milner

Qualification: Jersey Advocate

Address: Maurant Ozannes, 22 Grenville Street, St Helier, JE4 8PX



IN THE ROYAL COURT OF JERSEY
(SAMEDI DIVISION)

IN THE MATTER OF THE REPRESENTATION OF LYDIAN INTERNATIONAL LIMITED

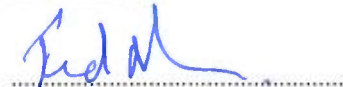
AND IN THE MATTER OF THE COMPANIES (JERSEY) LAW 1991

**AND IN THE MATTER OF THE LETTER OF REQUEST FROM THE ONTARIO SUPERIOR COURT
OF JUSTICE**

EXHIBIT MG1

This is the exhibit marked MG1 referred to in the First Affidavit of Max Galt

BEFORE ME



Name: John Frederick Edmund Milner

Qualification: Jersey Advocate

Address: Maurant Ozannes, 22 Grenville Street, St Helier, JE4 8PX

Date: 4 September 2020

