Court File No.: CV-22-00683820-00CL

***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 VOYAGER DIGITAL LTD.**

**APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED**

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# FACTUM OF THE PROPOSED CLASS ACTION PLAINTIFF

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July 14, 2022


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**TO:** **SERVICE LIST**

## PART I – OVERVIEW

1. On or about July 12, 2022, Voyager Digital Ltd. ("**VDL**" or the "**Canadian Debtor**") obtained an initial recognition order (the "**Initial Order**") and supplementary order from the Ontario Superior Court of Justice (Commercial List) (the "**Court**") regarding the case under Chapter 11 of title 11 (the "**Chapter 11 Case**") of the United States Code (the "**U.S. Bankruptcy Code**") commenced by VDL in the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Bankruptcy Court**"). The Initial Order contained certain relief, including a stay, under the *Companies Creditors' Arrangement Act,* R.S.C. 1985, c. C-35 (the "**CCAA**" and the "**CCAA Proceedings**," respectively) and further recognized certain orders of the U.S. Bankruptcy Court.

2. The Court adjourned certain relief sought on the application of the Canadian Debtor to a hearing on July 19, 2022, to determine whether:

   (a) The centre of main interest ("**COMI**") of VDL is the United States of America (the "**U.S.**"); and

   (b) The Chapter 11 Case should be recognized as a "foreign main proceeding" under Part IV of the CCAA.

3. Granting the relief as sought by VDL will negatively impact the rights of thousands of stakeholders in the Canadian Debtor, who will have limited access to the Canadian judicial system for claims against a company that purported to comply with, take advantage of, and be governed by the Canadian legal system. VDL voluntarily came to Canada and availed itself of the benefits of being incorporated in Canada, being a reporting issuer in Canada, and being listed on the Toronto Stock Exchange, including the ability to raise capital from the investing public—many of whom are Canadians, like Ms. De Sousa. She contests the relief sought by the Canadian Debtor, which now seeks to change the primary jurisdiction governing its restructuring from Canada to the U.S. That should not be allowed in the circumstances.

4. VDL attempts to downplay the importance of its public listing on the TSX and capital raising function. However, previous statements by VDL Chief Executive Officer Stephen Ehrlich emphasized that the public listing was important for its customers and platform because it "furthers trust and transparency" and gave Voyager an "opportunity for growth."[1] VDL's presence in Canada as a publicly traded company was integral to business' overall growth.

5. The Canadian Debtor is potentially implicated in inappropriate conduct that violates Canadian securities legislation in multiple provincial jurisdictions. The Canadian Debtor is implicated in one of the largest scandals in North American crypto industry history.

6. Such conduct committed within Canada must be investigated by Canadian authorities and addressed by or redressed through the Canadian judicial system. The granting of an order that recognizes the U.S. as a "foreign main proceeding" will have the practical effect of transferring the administration of VDL's estate to the U.S. Bankruptcy Court. This Court should be loath to do that in the unique circumstances of this case relating to this Canadian entity. Furthermore, the Chapter 11 Case has already presented Canadian (and other) investors with a proposed joint plan of reorganization (the "**American Plan**") that effectively substantively consolidates their claims and silences their voices in favour of claimants of the Canadian Debtor's subsidiaries in the United States.

7. As a matter of pressing public policy, this Court should exercise its discretion to protect the legal rights of victims who are stakeholders in the Canadian Debtor and safeguard its own jurisdictional ability to, among other things, be the primary investigator or supervisor of misbehaviour that may have been committed by the Canadian Debtor *within* Canada.

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[1] Stephen Ehrlich blog post entitled "Why Voyager is a publicly-traded crypto company?", Exhibit A to the Affidavit of Rory Smith affirmed July 14, 2022 ("**Smith Affidavit**").

8. In light of the short service of the application of the Canadian Debtor, the public nature of this file, and the mounting public interest concerns of thousands of investors in the Canadian Debtor, Ms. De Sousa requests this Court's declaration that the COMI of the Canadian Debtor is Canada and that, at most, the Chapter 11 Case be recognized as a foreign non-main proceeding under Part IV of the CCAA.

**PART II – FACTS**

9. VDL's Canadian corporate history is longstanding. VDL is incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 ("***BCBCA***") and its registered head office is Suite 2900 – 595 Burrard Street, Vancouver, British Columbia, V7X 1J5, Canada. It was first incorporated under the *BCBCA* in 1990 and has been a *BCBCA* corporation ever since.[2]

10. VDL's business is Canadian-centric. VDL is currently listed for trading on the secondary market on the TSX and was previously listed on the Canadian Securities Exchange and TSX Venture Exchange.[3] As VDL's chief executive officer and director Stephen Ehrlich explains, VDL's core business is raising capital from public markets, which is facilitated by its listing on a Canadian stock exchange: "VDL serves only as a publicly-traded holding company whose sole function is to raise capital from public markets by listing on the TSX."[4]

11. Everything about VDL's publicly traded nature and capital raising function is focused on Canadian markets.

12. VDL's trading on public markets is regulated by Canadian securities authorities. VDL's principal securities regulator is the Ontario Securities Commission. It is a reporting issuer in all provinces and territories of Canada. To maintain its publicly traded status and listing on the TSX (and before that the Canadian Securities Exchange and the TSX Venture Exchange), VDL was required to and did file periodic and

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[2] Affidavit of Stephen Ehrlich sworn July 10, 2022 ("**Ehrlich Affidavit**") at para 8; BC Company Summary for Voyager Digital Ltd, Exhibit A to the Ehrlich Affidavit.
[3] Ehrlich Affidavit at para 35.
[4] Ehrlich Affidavit at para 88(e).

timely disclosure documents with Canadian securities regulators. Those disclosure documents were then posted on the System for Electronic Document Analysis and Retrieval (run by Canadian securities commissions, "**SEDAR**") for the benefit of Canadian (and other) investors.

13. When VDL sought to raise capital from the public it did so on Canadian markets and clearly indicated that the securities to be offered would not be registered in the United States. As stated in its Short Form Base Shelf prospectus dated August 17, 2021:

> This short form prospectus is a base shelf prospectus. This short form base shelf prospectus has been filed under legislation in each of the provinces and territories of Canada, that permits certain information about these securities to be determined after this short form base shelf prospectus has become final and that permits the omission from this short form base shelf prospectus of that information. The legislation requires the delivery to purchasers of a prospectus supplement containing the omitted information within a specified period of time after agreeing to purchase any of these securities.
>
> […]
>
> These securities have not been, and will not be, registered under the United States Securities Act of 1933, as amended (the "U.S. Securities Act"), or the securities laws of any state of the United States (as such term is defined in Regulation S under the U.S. Securities Act) (the "U.S." or the "United States") and may not be offered, sold or delivered, directly or indirectly, in the United States except pursuant to an exemption from registration under the U.S. Securities Act and applicable U.S. state securities laws. This short form base shelf prospectus does not constitute an offer to sell or a solicitation of an offer to buy any of these securities in the United States. See "Plan of Distribution".[5]
>
> [Emphasis added.]

14. VDL's share register and transfer agent—Computershare—is located in Vancouver, British Columbia.[6]

15. VDL's voluntary petition for Chapter 11 bankruptcy (signed by Mr. Ehrlich) even states that VDL's principal place of business is "333 Bay Street, Suite 2400, Toronto, ON M5H 2R2."[7]

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[5] Short Form Base Shelf Prospectus dated August 17, 2021 at p.1 Exhibit B to the Smith Affidavit.
[6] Short Form Base Shelf Prospectus dated August 17, 2021 at p.49 Exhibit B to the Smith Affidavit.

16. Additionally, both a related Canadian subsidiary company to the Canadian Debtor and an American subsidiary company currently subject to the Chapter 11 Case have been granted Money Services Business ("**MSB**") registrations with Canada's Financial Transaction and Reports Analysis Centre of Canada ("**FINTRAC**"), which is the significant first step in licensing and operating crypto-asset businesses within Canada.[8] MSB recognition allows for the foreign exchange dealing in virtual currencies. Given potential misconduct concerns, there could be cryptocurrency movement within these corporate entities that hold Canadian licenses that would be in violation of Canadian anti-money laundering laws and may require the attention of Canadian authorities.

17. Furthermore, VDL has little to no trade debt. Beyond its function in raising money on public markets, it serves as an unsecured guarantor on a loan facility from Alameda Ventures Ltd.[9] The precise nature of that loan and whether Alameda Ventures Ltd. would make a claim against VDL is unclear—an affiliated entity to Alameda Ventures Ltd. owes substantially more money to VDL's subsidiaries than VDL owes Alameda.[10]

18. Shareholders—as both equity claimants and possible unsecured creditors through claims advanced against VDL and its directors and officers by Francine De Sousa in a proposed securities misrepresentation class action[11]—have a substantial interest in VDL's insolvency.

19. Ms. De Sousa, a retail investor, and the proposed class members have Canadian-centric claims. They seek relief under Canadian securities legislation for damages for losses they allegedly suffered from acquiring shares (primarily through the facilities of

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[7] VDL's Voluntary petition for bankruptcy, Exhibit B to the Ehrlich Affidavit.
[8] Both Voyager Digital, LLC, which is subject to the Chapter 11 Case, and Voyager Digital Brokerage Ltd., which is a Canadian subsidiary of the Canadian Debtor, are registered MSBs within Canada. See Voyager Digital, LLC's FINTRAC MSB Registry Search dated July 14, 2022, Exhibit C to the Smith Affidavit and Voyager Digital Brokerage Ltd.'s FINTRAC MSB Registry Search dated July 14, 2022, Exhibit D to the Smith Affidavit.
[9] Ehrlich Affidavit at para 49.
[10] Ehrlich Affidavit at para 45.
[11] Notice of Action Exhibit G to the Ehrlich Affidavit.

a Canadian exchange) because of misrepresentations in the documents VDL and the other Defendants filed with Canadian securities regulators.[12]

20. In contrast, customers who directly used the Voyager Digital digital asset brokerage platform likely primarily have their claims against two non-Canadian entities, Voyager Digital Holdings, Inc. and Voyager Digital, LLC. Mr. Ehrlich candidly acknowledges that protecting these customers—who are not retail investors, such as Ms. De Sousa, who suffered losses because of misrepresentations in VDL's public disclosures—is the focus of the Chapter 11 Case.[13]

21. For reasons further discussed below, this should give the Court comfort that the US proceedings ought to be separate from the proceedings relating to the Canadian Debtor. The circumstances and claims surrounding the US entities versus the Canadian Debtor are entirely separate and distinct from each other.

**PART III – ISSUES**

22. The issues are as follows:

(a) Whether this Court should declare that the COMI of the Canadian Debtor is Canada; and

(b) Whether this Court should recognize the Chapter 11 Case as a foreign main proceeding under Part IV of the CCAA.

**PART IV- LAW & LEGAL AUTHORITIES**

23. The automatic statutory presumption under s. 45(2) of the CCAA is that "in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests." It is the Canadian Debtor's obligation to disprove this premise.

24. Part IV of the CCAA came into force via September 2009 amendments to the CCAA, which adopted model provisions from the United Nations Commission on International Trade Law ("**UNCITRAL**") to assist cross-border insolvencies. The purpose of the UNCITRAL

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[12] Notice of Action at paras 27-34 Exhibit G to the Ehrlich Affidavit.
[13] Ehrlich Affidavit at para 24.

Model Law that differentiates between "foreign main proceedings" and "foreign non-main proceedings" is to specify the relief and consequences of using concurrent insolvency systems across countries.[14]

25. The Supreme Court of Canada has emphasized that Canadian courts must protect Canadian (and other) interests in cross-border insolvencies and exercise discretion in favour of public faith in the Canadian justice system. The position of disadvantaged Canadian (and other) stakeholders must not be eroded by foreign courts:[15]

> [A] Canadian bankruptcy court has a responsibility to consider the interests of the litigants before it and other affected parties in this country as well as the desirability of international cooperation and other relevant circumstances. Its function is not simply to rubber stamp commands issuing from the foreign court of the primary bankruptcy. […] When called upon to lend assistance to foreign bankruptcy courts, Canadian law requires our courts to consider as one of the relevant circumstances the juridical advantage which those disadvantaged by deferral to the foreign court would enjoy in a Canadian court.
>
> [Emphasis added.]

26. The underlying purpose of Part IV of the CCAA, per s. 44, is to ensure the "fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons" (emphasis added).

27. As discussed further below, the disadvantages suffered by Canadian (and non-Canadian) investors, should a declaration of "foreign main proceeding" be made, would have an irreparable impact on their legal rights.

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[14] "UNCITRAL Model Law on Cross-Border Insolvency (1997)" online: *United Nations Commission on International Trade Law* <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency>.
[15] *Holt Cargo Systems Inc v ABC Containerline NV (Trustees of)*, [2001] 3 SCR 907 at para 33.

## (A) THE COMI OF THE CANADIAN DEBTOR IS CANADA

28. The legal test to determine the COMI of a debtor corporation is simple. Three factors are "usually" significant:[16]

(a) The location of the debtor's headquarters or head office functions or nerve centre;

(b) The location of the debtor's assets; and

(c) The location which significant creditors recognize as being the centre of the company's operations.

29. However, these factors must be assessed on a case-by-case basis.[17] Canadian case law has raised two additional factors which may arise: (i) the jurisdiction whose law would apply to most disputes;[18] and (ii) prejudice suffered by Canadian stakeholders.[19]

30. These CCAA Proceedings are novel. Here, these factors *must* be weighed as significant and primary in light of public interest concerns.

31. As outlined above and pursuant to the application record of VDL, relevant factors include:

(a) The Canadian Debtor was incorporated on August 30, 1990 in British Columbia and has significant connections to Ontario;

(b) The Canadian Debtor has had Canadian employee(s), although it has not disclosed sufficient details of this information;

(c) The Canadian Debtor is a public company listed on the TSX;

(d) The Canadian Debtor's "sole function is to raise capital from public markets by listing on the TSX";

(e) The expectation of shareholders (potential creditors of VDL in the putative securities misrepresentation class action) is that a Canadian company governed by Canadian securities regulation, listed solely on the TSX and who filed its required disclosure documents with Canadian securities regulators has its

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[16] *Massachusetts Elephant & Castle Group Inc (Re),* 2011 ONSC 4201 at para 30.
[17] *Ibid* at para 31.
[18] *Ibid* at para 29(c); *Babcock & Wilcox Canada Ltd Re,* [2000] 5 BLR (3d) 75 at para 21.
[19] *Probe Resources Ltd (Re),* 2011 BCSC 552 at para 42.

centre of operations in Canada. It should not be otherwise. As the applicant acknowledges, capital raising through its TSX listing was its "sole function";

(f) The Canadian Debtor has been granted exemptive relief by the Ontario Securities Commission across multiple jurisdictions of Canada;[20]

(g) Both a related Canadian subsidiary company to the Canadian Debtor and an American subsidiary company that is currently subject to the Chapter 11 Case have been granted FINTRAC status;

(h) The Canadian Debtor has a Canadian director and certain books and records of the Canadian Debtor are located in Ontario;

(i) The Canadian Debtor potentially has thousands of Canadian (and non-Canadian) investors;

(j) It is unclear what assets the Canadian Debtor holds; and

(k) The Canadian Debtor has been accused of making misrepresentations and lack of disclosure to Canadian (and other) investors through public disclosure.

32. The COMI of the Canadian Debtor is appropriately located in Canada.

## (B) THE CHAPTER 11 CASE RELATING TO VDL SHOULD BE RECOGNIZED AS A FOREIGN NON-MAIN PROCEEDING TO PROTECT THE RIGHTS OF CANADIAN (AND OTHER) INVESTORS/SHAREHOLDERS

33. Allowing a largely American proceedings and plan of arrangement to settle or resolve Canadian victims' claims involving Canadian securities law in respect of this Canadian Debtor might cause serious prejudice to thousands of Canadian investors.

34. As it stands, the American Plan *practically* substantively consolidates Canadian investors' claims without allowing any means for representation or consultation with any appointed Canadian representative counsel or Canadian courts. While the American Plan states at Article I(G) that it is not committing substantive consolidation, for the purposes of "administrative convenience," and efficiency it presents classes of claims against and interests in the debtors jointly, including the Canadian Debtor. Furthermore, Class 6–Section 510(b) Claims (claims arising for "damages arising from the purchase or sale" of securities) ("**Class**

[20] *Voyager Digital Ltd (Re)* (2021), 44 OSCB 10368.

**6**") and Class 9 – Existing Equity Interests ("**Class 9**") are all conclusively deemed to not be entitled to vote to accept or reject the American Plan.[21] Classes 6 and 9 includes all investors in the Canadian entity, which includes Canadian investors.

35. Furthermore, despite pressing questions that need to be answered regarding potential misrepresentations, non-disclosure, and misconduct by the Canadian Debtor through its representatives in publicized Canadian securities documents, under the American Plan, Classes 6 and 9 are not entitled to any recovery from the Canadian Debtor's estate, and yet the Plan seeks to grant broad releases in favour of the Canadian Debtor and its current and former directors and officers for all "Causes of Action of any nature whatsoever,"[22] including "the purchase, sale or recission of the purchase or sale of any security of the Debtors." While there may be an ability to opt-out from these provisions, the details of this are still under "investigation" and currently unclear.

36. For obvious reasons this is unacceptable.

37. Foreign states should not be allowed to compel Canadian courts to comply with foreign insolvency regimes to the detriment of Canadian (and other) stakeholders. The concept of stakeholder democracy is fundamental to the Canadian judicial system. Where Canadian stakeholders have been unable to vote on American plans and their rights to participate in legal processes are demoted by the American judicial process, Canadian courts have refused to approve American plans of reorganization.[23] Debtors should not be permitted to possibly evade the implications of the Canadian judicial regime by dealing with Canadian stakeholders under a foreign regime where they will be treated less favourably. Clearly, the Canadian debtor wishes to do exactly that. It wants to have its jurisdictional cake and eat it too.

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[21] *Re Voyager Digital Holdings Inc et al*, 22-10943 Bankr. S.D.N.Y (Joint Plan of Reorganization of Voyager Digital Holdings, Inc and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code) at Articles I(G) and III(C) Exhibit E to the Smith Affidavit.
[22] *Ibid* at Articles II(C), VIII(A), VIII(C).
[23] *Menegon v Phillip Services Corp,* [1999] 11 CBR (4th) 262.

38. Furthermore, there is only a single legal precedent for the recognition of a foreign cryptocurrency exchange within Canada as a "foreign main proceeding": *MtGox*.[24]

39. The practical impacts of recognizing a "foreign main proceeding" in *MtGox* cannot be understated. As Justice Newbould stated, MtGox's COMI was located in Japan because, *inter alia*, "[MtGox] commenced an investigation in Japan with regard to the circumstances that led to the Japan civil rehabilitation, which investigation was subject to the oversight of the Tokyo Court" (emphasis added).[25]

40. In *MtGox*, as a direct practical implication of the "foreign main proceeding" classification, despite a criminal hack impacting thousands of Canadian users of the crypto-asset exchange, there was no Canadian police, regulatory, or criminal authority involvement. Furthermore, a Canadian court did not intervene to initially protect Canadian users through the appointment of representative counsel, nor did a Canadian court play any active role in the proceedings. All ongoing litigation and investigations against MtGox were enjoined and halted within Canada.[26] There is no known public record of Canadian police agencies or quasi-criminal authorities assisting with any cross-border investigations involving MtGox, despite a significant number of Canadian victims. If the same approach is taken in the case at hand, Canadian (and other) investors could suffer irreparable harm, and any oversight by the Canadian courts in the restructuring processes could be eliminated.

41. The classification of this case as a "foreign non-main proceeding" will thus cause significant practical implications to Canadian (and other) victims, as seen through *MtGox.* It will: (a) prevent Canadian (and other) victims of the improprieties perpetuated in respect of the Canadian Debtor to engage or trigger the engagement of Canadian authorities and regulators to conduct legal investigations into potential misconduct by the Canadian Debtor; (b) remove control from the Canadian Court in deciding whether the process being advanced in respect of the Chapter 11 Case in the U.S. proceedings is consistent with Canadian process and law; and (c) interfere with the protection of the interests of investors in the Canadian

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[24] *MtGox Co, Ltd (Re)*, 2014 ONSC 5811.
[25] *Ibid* at para. 22.
[26] *Ibid* at para 25.

Debtor for the purpose of civil, quasi-criminal and criminal advocacy. These processes will be subsumed by the Chapter 11 Case and left inappropriately in control of American parties and the American courts.

42. Once *MtGox* was classified as a "foreign main proceeding," Canadian investors lost their voice.

43. In comparison, insolvency proceedings run within Canada in large crypto-asset insolvencies such as *Quadriga* have enabled counsel for groups of victims to:[27]

(a) Collect evidence from victims about misconduct to assist authorities;

(b) Advocate directly to the Royal Canadian Mounted Police on investigation routes; and

(c) Conduct and form their own committees for self-governance and democratic purposes.

44. The *actual* impact of a "foreign main proceeding" classification, as seen in *MtGox*, will be to functionally remove and eliminate any positive obligation of Canadian authorities or regulators to investigate potential securities misconduct against Canadian investors. Instead, that obligation will be shifted inappropriately to U.S. Authorities; furthermore, the American Plan attempts to silence Canadian investors' right of action even in light of potential claims and crimes. This is an issue of national concern.

45. Given the alleged violation of the Canadian securities disclosure regime by the Canadian Debtor and thousands of investors in the Canadian Debtor, Canadian and otherwise, a declaration that the ongoing Chapter 11 Case is a "foreign main proceeding" threatens to harm the international reputation of the Canadian justice system. In view of the above, the relief sought by counsel to VDL ought not to be granted.

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[27] *Quadriga Fintech Solutions Corp (Re)*, Hfx No 484742 (Representative Counsel Appointment Order, February 28, 2019), Hfx No 484742 (Order Appointing the Official Committee of Affected Users, March 18, 2019).

**PART V – RELIEF SOUGHT**

46. In light of the above, it is respectfully requested that this Court deny the request for relief by the Canadian Debtor and grant an Order declaring that:

(a) The COMI of VDL is Canada; and

(b) The Chapter 11 Case should be recognized as a "foreign non-main proceeding" under Part IV of the CCAA.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 14th day of July, 2022.

**SISKINDS LLP / AIRD & BERLIS LLP**

**SCHEDULE "A"**
**LIST OF AUTHORITIES**

1. *Holt Cargo Systems Inc v ABC Containerline NV (Trustees of)*, [2001] 3 SCR 907.
2. *Massachusetts Elephant & Castle Group Inc (Re),* 2011 ONSC 4201.
3. *Babcock & Wilcox Canada Ltd Re,* [2000] 5 BLR (3d) 75.
4. *Probe Resources Ltd (Re),* 2011 BCSC 552.
5. *Voyager Digital Ltd (Re)*, 2021 LNONOSC 489.
6. *Re Voyager Digital Holdings Inc et al*, 22-10943 Bankr. S.D.N.Y (Joint Plan of Reorganization of Voyager Digital Holdings, Inc and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code).
7. *Menegon v Phillip Services Corp,* [1999] 11 CBR (4th) 262.
8. *MtGox Co, Ltd (Re),* 2014 ONSC 5811.
9. *Quadriga Fintech Solutions Corp (Re)*, Hfx No 484742 (Representative Counsel Appointment Order).
10. *Quadriga Fintech Solutions Corp (Re)*, Hfx No 484742 (Order Appointing the Official Committee of Affected Users).

**SCHEDULE "B"**
**RELEVANT STATUTES**

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

**PART IV**

**Cross-border Insolvencies**

**Purpose**

**44** 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 debtor companies;

**(d)** the protection and the maximization of the value of debtor company's property; and

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

**Definitions**

**45 (1)** The following definitions apply in this Part.

***foreign court*** means a judicial or other authority competent to control or supervise a foreign proceeding. (*tribunal étranger*)

***foreign main proceeding*** means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

***foreign non-main proceeding*** means a foreign proceeding, other than a foreign main proceeding. (*secondaire*)

***foreign proceeding*** means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization. (*instance étrangère*)

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

**45 (2)** For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

**APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED**

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**SUPERIOR COURT OF JUSTICE**
**(COMMERCIAL LIST)**
Proceedings commenced at Toronto

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