

IN THE MATTER OF THE BANKRUPTCY OF
AIR GEORGIAN LIMITED

TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS
ON PRELIMINARY ADMINISTRATION

BACKGROUND

Air Georgian Limited (“**AGL**”, or the “**Company**”) is an Ontario company who operated from leased premises at its registered head office located at 2450 Derry Road, Mississauga, Ontario. The Company also leased a hangar adjacent to its head office at Pearson International Airport and other space located nearby including for a training facility.

The Company’s sole shareholder is Regional Express Aviation Limited (“**REAL**”), a holding company owned jointly by 1775526 Alberta Ltd. (formerly Avmax Air Inc.) and GAC Capital Corp. (the “**Shareholders**”). The Company’s directors are Dan Revell and John Binder, who are each principals or officers of the Shareholders.

For approximately 20 years, AGL was a regional operator for Air Canada including pursuant to an amended and restated commercial agreement dated as of April 1, 2014 (the “**Commercial Agreement**”). Pursuant to the Commercial Agreement, AGL operated regional short haul domestic and Canada/US flights under the Air Canada banner. The Company had no other material sources of revenue.

On February 1, 2019 Air Canada gave notice to AGL that it was terminating the Commercial Agreement effective January 31, 2020 (the “**Termination Date**”). The parties subsequently entered into a transition agreement dated as of April 12, 2019 (the “**Transition Agreement**”) which provided for a transition of the services provided by AGL to Air Canada under the Commercial Agreement to a third party, amendments to the payment terms under the Commercial Agreement and additional changes to certain of the other agreements in place with Air Canada or its affiliates over the remaining period under the Commercial Agreement.

On January 24, 2020 the Company’s secured lender ATB Financial (“**ATB**”) assigned certain of its rights and obligations under its security interest to 2229275 Alberta Ltd. (“**222**”), a company related to John Binder. Chaitons LLP, legal counsel to the Proposal Trustee (“**Chaitons**”) subsequently

provided a favourable opinion in respect to the validity and enforceability of the initial security granted to ATB and subsequently assigned to 222.

By the time of the Termination Date, the Company had been unsuccessful in obtaining an extension of the Transition Agreement with Air Canada or in obtaining a contract with an alternative provider. As such the Company filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to Section 50.4 of the Bankruptcy and Insolvency Act, RSC 1985 c.B-3 as amended (the “**BIA**”). KPMG Inc. (“**KPMG**”) was appointed proposal trustee under the NOI proceedings (the “**Proposal Trustee**”).

The primary objectives of the NOI were to ensure the smooth ongoing operational capabilities of the Company to maximize value to its stakeholders and assess potential restructuring alternatives including revenue generating activities and negotiation a sale of its remaining business to a party related to John Binder, one of the principals or officers of the Shareholders. Interim financing of up to \$2 million was provided throughout the NOI by 222 through a Debtor in Possession facility (“**DIP Facility**”, and together with the debt assigned from ATB, the “**222 Facility**”) which was approved by the Court on February 23, 2020.

On March 16, 2020 the Court approved an asset purchase agreement (the “**APA**”) dated March 9, 2020 between the Company and 2746904 Ontario Inc., an entity related to one of the Company’s shareholders (the “**Purchaser**”), for substantially all of the Company’s assets, properties and undertakings (the “**Transaction**”). In exchange, the Purchaser agreed to assume the Company’s secured debt with 222 (including the DIP Facility) and certain other obligations. Following the approval of the Transaction, the Court ultimately extended the time in which the Company was required to file a proposal June 1, 2020 to allow for the completion of the Transaction. The Transaction closed on May 29, 2020.

The proceeds from the Transaction were insufficient to support a proposal to the Company’s unsecured creditors. As no proposal was filed by the Company by June 1, 2020, AGL was deemed to have made an assignment in Bankruptcy on June 2, 2020 with KPMG appointed as trustee in bankruptcy (the “**Trustee**”) of the bankrupt estate.

On June 8, 2020, Notice of the First Meeting of Creditors, a list of creditors with claims in excess of \$25, proof of claim form and proxy were sent to all known creditors of Air Georgian and on June 12, 2020, a notice of the bankruptcy and the first meeting of creditors was published in the National Post.

The activities of the Trustee since its appointment have primarily consisted of statutory work in accordance with the provisions of the BIA.

CAUSES OF BANKRUPTCY

As noted above, on February 1, 2019, the Company was informed by Air Canada of its termination of their Commercial Agreement effective January 31, 2020, the expiry of the Transition Agreement. This was the Company's sole source of substantial revenue.

In the 12 month period preceding the NOI proceedings, revenue generating operations of the Company were wound down in line with the terms of the Transitional Agreement and despite efforts to extend the term, and discussions with other providers, the Company was unable to reach a viable arrangement, and the Company was forced to seek creditor protection whilst restructuring alternatives were explored.

FINANCIAL POSITION/ASSETS

Cash

As noted above, substantially all of the assets of AGL formed part of the transaction. Pursuant to the APA, nominal cash remained with the Company following the closing of the Transaction.

Recovery of legal retainer

On June 10, the Company's legal counsel has repaid the unused balance of their retainer totalling \$8,555 into the bankrupt estate's bank account. The Trustee understands that the amount of \$9,350 included in the Statement of Affairs provided was based on an estimate at the bankruptcy date.

Recovery of Proposal Trustee retainer

Prior to the NOI filing date, the Company provided retainers to the Proposal Trustee (collectively, the "**NOI Retainer**"). The Trustee estimates that a portion of the NOI Retainer will be unused after deduction of fees and disbursements incurred in the NOI proceedings. The Trustee will review the final position and refund the estate in due course for any NOI Retainer balance.

Intercompany receivable

The Company holds a receivable balance of \$2.7M owing from its immediate parent company, REAL. This relates to professional fees and other costs paid out by the Company on behalf of REAL. Based on a review of recent financial statements prepared by REAL, its investment in AGL was REAL's only significant asset. We understand that other receivables are significantly aged and are unlikely to be recovered.

BOOKS AND RECORDS OF THE BANKRUPT

The Purchaser acquired the books and records of the Company pursuant to the APA, and is aware of its duty to provide information required by the Trustee in conducting its duties in the administration of the estate.

SECURED CREDITORS

The 222 Facility was assumed by the Purchaser in the Transaction which closed on May 29, 2020.

The Company however acted as a guarantor for a loan provided to GAC Capital Corp which was secured by a GSA.

In addition to above, during the NOI proceedings the Proposal Trustee was aware of various other registrations, largely in respect of leased aircraft and other leased assets, made pursuant to the *Personal Property Security Act* (Ontario) and *Personal Property Security Act* (Alberta). During the course of the NOI proceedings, various contracts were disclaimed by the Company in respect of same.

During the NOI proceedings, on February 26, 2020 the Court granted a charge (the “**Administration Charge**” and collectively with the other charges granted by the Court in the NOI proceedings, the “**Charges**”) over the Company's property in favour of the Proposal Trustee and its counsel, Chaitons, and the Company's counsel, Goldman Sloan Nash & Haber LLP for fees incurred in the NOI proceedings (the “**NOI Professional Fees**”). The Charges shall be binding on the Company and any trustee in bankruptcy appointed in respect of the Company notwithstanding, among other things, any bankruptcy that may result from the NOI proceedings or the provisions of any federal or provincial statute.

The Administration Charge was limited to \$200,000. As at the date of this report, KPMG had a retainer of \$40,000 which is detailed in the Financial Position/Assets section above.

SECURITY FOR UNPAID WAGES S.81.3 CLAIMS

The Trustee is in the process of reviewing AGL's records to determine what amounts, if any, are owed to the Company's terminated employees that would rank as secured claims pursuant to section 81.3 of the BIA. We understand that wages have been paid up to date for all employees however vacation pay relating to prior to the NOI filing date has not been paid and will be claimed as part of the process outlined below.

The Trustee is complying with the requirements of the *Wage Earner Protection Program Act* and will be advising Service Canada of all amounts owed by the Company to its terminated employees, including any amounts owed for termination and severance pay.

PREFERRED CREDITORS

The Company's Statement of Affairs indicates that there were no known preferred creditors as at the date of bankruptcy.

UNSECURED CREDITORS

The Company's Statement of Affairs indicates that there are 255 unsecured creditors with claims totalling approximately \$41.5 million, excluding the Company's terminated employees (which amounts were not calculated at the time of preparing the Statement of Affairs). Of this, approximately \$22 million related to its two shareholders 1775526 Alberta Ltd. and GAC Capital Corp.

PROVABLE CLAIMS

As at 9 am on Friday June 19, 2020, the Trustee has recorded Proof of Claims filed, as follows:

Summary of Claims						
\$	Notes	Claims Filed (#)	Amount	Proxies in Favour of Trustee	Amount	Amount
Secured		Nil	Nil	Nil	Nil	Nil
Wage earner	1	1	6,845.47	Nil	Nil	Nil
Unsecured	1	17	31,055,658.54	Nil	Nil	Nil
Total		18	31,062,504.01	Nil	Nil	Nil

Note 1: The trustee received a total of eighteen 18 proof of claim forms against the Company. 16 related entirely to unsecured claims, with one claim from a former employee of the company and one unsecured claim from a related party of \$17.2M with \$7.9M identified as a lessor claim.

PREFERENCE PAYMENTS AND TRANSACTIONS AT AN UNDERVALUE

As outlined below, the Trustee has taken preliminary steps toward a review of the Company's books and records with respect to potential fraudulent preferences, settlements, or transfers at undervalue, as defined in the BIA.

The Trustee has performed a preliminary trending analysis of disbursements made to a sample of third parties in the period from (3) months prior to the date of the NOI filing, as compared to the same period in the prior period to obtain a directional indication of payments which may be trending outside of the ordinary course of business. The sample included 15 entities which represented the largest overall spend for the period 25 May 2018 – 1 June 2020 and included 3 creditors known to the Trustee as related parties. For the related parties, analysis was additionally undertaken on the last (12) months of transactions prior to the NOI filing. This combined sample represented 61% of the Company's total disbursements during the aforementioned period.

Based on this preliminary review, the transactions, both third party and related, primarily related to payments for aircraft and equipment leases, equipment maintenance and use of software.

TRUSTEE'S FEES

Pursuant to the APA, a third party deposit in the amount of approximately \$275,000 was made by the Purchaser for amounts including but not limited to employee priority obligations, and the fees and disbursements of the Trustee.

OTHER

Further information related to Air Georgian's NOI or bankruptcy proceedings may be obtained from KPMG's website at www.kpmg.com/ca/AirGeorgian

Dated at Toronto, Ontario this 19th day of June, 2020

KPMG Inc.,
in its capacity as Trustee of the estate of
616900 N.B. Inc.
and not in its personal capacity

Per: 

Katherine Forbes
Senior Vice-President