

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N° : 500-11-

**SUPERIOR COURT**  
(Commercial Division)

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**IN THE MATTER OF THE NOTICE OF  
INTENTION TO MAKE A PROPOSAL OF:**

**COMPTOIR DES INDES INC.**, legal person duly incorporated according to law having its principal place of business at 5950, Côte-de-Liesse Road, in the city of Mont-Royal, judicial district of Montreal, province of Quebec, H4T 1E2

Debtor/Petitioner

-and-

**KPMG INC.**, legal person duly incorporated according to law having its principal place of business at 600, de Maisonneuve Boulevard West, suite 1500, in the city and judicial district of Montreal, province of Quebec, H3A 0A3

Trustee

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**APPLICATION FOR THE AUTHORIZATION OF A SALE AND SOLICITATION PROCESS,  
PRIORITY CHARGES AND OTHER INTERIM RELIEFS**

(Sections 50.6, 64.1 et 64.2 of the *Bankruptcy and Insolvency Act*, R.S.C. (1985) c. B-3)

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE  
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, OR TO ONE OF ITS  
REGISTRARS, THE PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

**I. INTRODUCTION**

1. On March 9, 2018, Comptoir des Indes inc. ("**Debtor**") filed a *Notice of Intention to Make a Proposal* ("**NOI**") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* ("**BIA**"), and named KPMG inc. as the trustee thereto ("**Trustee**"), a copy of the certificate of filing of said NOI is communicated in the support of the present application as **Exhibit P-1**;

2. With the filing of the NOI, the Debtor, with the assistance of its counsel and the Trustee, will diligently and expeditiously carry out a formal restructuring process;
3. In order to properly embark on this restructuring process, by the present Application, the Debtor seeks orders of this Honourable Court:
  - (i) authorizing the Debtor, with the assistance of the Trustee, to conduct a sale and solicitation process (hereinafter "**SSP**") in order to market the Business (hereinafter defined) and related assets and approving the SSP Procedures (hereinafter defined), pursuant to the provisions of the draft SSP approval order, copy of which is communicated in the support of the present application as **Exhibit P-2** (hereinafter "**Draft SSP Approval Order**");
  - (ii) granting a charge ranking behind and immediately after the security of the Debtor's operating lender, Canadian Imperial Bank of Commerce (hereinafter "**CIBC**"), in order to secure the fees of the Debtor's counsel, the Trustee and the Trustee's counsel (hereinafter "**Administration Charge**"), pursuant to the provisions of the draft charge order, copy of which is communicated in the support of the present application as **Exhibit P-3** (hereinafter "**Draft Charge Order**");
  - (iii) granting a charge ranking behind and immediately after CIBC's security and the Administration Charge in order to indemnify the directors and officers of the Debtor for any obligation and liabilities they may incur in such capacities (hereinafter "**D&O Charge**"), pursuant to the provisions of the Draft Charge Order (Exhibit P-3);

## II. THE BUSINESS

4. The Debtor operates a distribution and design business of home furniture and lighting and sells such products in Canada and the United States (hereinafter "**Business**");
5. The Debtor operates the Business from premises located in Ville Mont-Royal and employs a workforce of approximately 40 employees;
6. As mentioned above, the Debtor's operating lender is CIBC pursuant to various credit facilities secured by hypothecs charging the universality of the Debtor's Claims and Property in Stock (hereinafter "**CIBC Security**"), the whole as appears from the summary of registrations in the *Register of Personal and Movable Real Rights of*

*Quebec* communicated in the support of the present application as **Exhibit P-4** (hereinafter "**Search Summary**");

7. In virtue of the CIBC Security, CIBC ranks first over all of the Debtor's movable property and, the BDC ranks first over all of the Debtor's trademarks and intangible properties;

### III. **DEBTOR'S FINANCIAL SITUATION**

8. The Debtor was sued by Halo Creative & Design Ltd, Halo Trademarks Ltd and Halo Americas Ltd (collectively "**Halo**"), its competitor based in Hong Kong, for damage arising from patent, trademark and copyright infringement (hereinafter "**Lawsuit**");

9. On January 29, 2018, the Debtor was condemned to pay to Halo the sum of USD \$3,559,284; as appears from the *Memorandum Opinion and Order* and the *Joint Proposed Verdict Form* (hereinafter "**Condemnation**"), copy of which are communicated *en liasse* in support of the present application as **Exhibit P-5**;

10. The Condemnation has since been appealed by the Debtor but the substantial costs incurred to defend the Lawsuit is one of the major reasons of the financial difficulties met by the Debtor;

11. Given the Debtor's insolvency, CIBC has sent to the Debtor a *Demand for payment and Notice of Intention to enforce security pursuant to Section 244 of the Bankruptcy and Insolvency Act* (hereinafter "**244 Notice**"), copy of which is communicated in the support of the present application as **Exhibit P-6**;

12. The foregoing has rendered the Debtor insolvent and accordingly, it was determined that it was in the best interests of the Debtor to file the NOI and enter into a formal restructuring process;

### IV. **SALE AND SOLICITATION PROCESS**

13. As part of its formal restructuring, the Debtor has mandated the Trustee to conduct the SSP in order to market the Business and related assets to one or more potential acquirers, investors or strategic partners;

14. The SSP is urgently required, the whole with a view to prevent the precipitous loss of the value of the Business, to allow, if possible, the continuation of the operation of the Business, to preserve, if possible, jobs of the Debtor's employees and to protect the

interests of the Debtor's major stakeholders, including most particularly, its secured lender CIBC;

15. The SSP was designed by the Debtor, in consultation with its advisors and the Trustee, and will be administrated by the Debtor in tandem with the Trustee, the whole in accordance with the below described procedures (hereinafter "**SSP Procedures**") and the document communicated in the support of the present application as **Exhibit P-7** (hereinafter "**SSP Procedure Document**");
16. In order to attract interest from various parties, the Trustee will send a teaser document to interested parties, which will contain summary information about the Business and will inform the recipient of the availability of additional information. Such parties will be identified by the Debtor and the Trustee;
17. Parties interested in obtaining more detailed information about the Debtor and/or becoming a party qualified to make an offer will be required to sign a non-disclosure agreement (hereinafter "**NDA**") with the Trustee;
18. Interested parties who have executed a NDA may then proceed to submit offers (hereinafter "**Offers**") to acquire all of Debtor's assets as a whole only. The deadline for the submission of Offers shall be April 6, 2018, (or such later date designated by the Debtor with the consent of the Trustee), and all Offers must include a deposit, the whole as appears from the SSP Procedure Document;
19. The Debtor, with the assistance of the Trustee, will evaluate the Offers to determine whether each offeror is a qualified bidder pursuant to the SSP Procedure Document (hereinafter "**Qualified Bidders**") and whether each of the Offers constitutes a qualified bid pursuant to the requirement under the SSP Procedure Document (hereinafter collectively "**Qualified Bids**" and each a "**Qualified Bid**");
20. The Qualified Bidders will be informed of the Debtor's decision in respect of their respective Qualified Bids in writing by no later than April 10, 2018 (or such later date designated by the Debtor with the consent of the Trustee);
21. Once a successful bidder is declared, the Debtor will seek this Honourable Court's authorization and approval of the transaction contemplated by such bidder's Offer. The closing of the sale and purchase envisaged by a successful Qualified Bid shall occur no later than April 12, 2018 (or such later date designated by the Debtor with the consent of the Trustee);

22. Notwithstanding the above, the Debtor will have the right to reject all the Offers, even the highest one, and to end the sale and solicitation process at all times;

**V. ADMINISTRATION CHARGE AND D&O CHARGE**

23. The Debtor is seeking an order of this Honourable Court ordering that its assets be subject to a charge, ranking behind the CIBC Security, as security for payment of the fees and disbursements of the parties who have played and will continue to play a critical role in the Debtor's restructuring, namely the Trustee, its counsel and the Debtor's counsel;
24. The Administration Charge sought is in the amount of \$100,000, as appears from the Draft Charge Order (Exhibit P-3);
25. Likewise, the Debtor is seeking an order of this Honourable Court ordering that its assets be subject to a charge, ranking behind the CIBC Security and the Administration Charge, in order to indemnify its directors and officers for obligations and liabilities they may incur in such capacities from and after the filing of the NOI;
26. The D&O Charge sought is in the amount of \$100,000, as appears from the Draft Charge Order (Exhibit P-3);
27. The amount of the D&O Charge takes into account certain obligations and liabilities, such as sales tax obligations, which may arise during these insolvency proceedings, which are expected to be paid in the normal course to the extent the Debtor is able to satisfy same;
28. The charges contemplated under the Draft Charge Order will cause no prejudice to any secured creditor of the Debtor since such charges will rank behind the Debtor's only current secured creditor, CIBC, and as such, there are no secured creditors likely to be affected by such charges;
29. In light of the foregoing and in order for the Debtor to continue its formal restructuring process, the Debtor requires this Honourable Court's (i) authorization to proceed with the proposed SSP and approval of the SSP Procedures and (ii) granting of the Administration Charge and the D&O Charge;

30. The shortening of the delays to notify/serve and present the present Application is required in order to be in a position to conduct a fulsome sale and solicitation process and to allow the Debtor to proceed with its restructuring;
31. The present Application is well founded in fact and in law.

**WHEREFORE, PETITIONER PRAYS FOR JUDGMENT OF THIS HONOURABLE COURT:**

**GRANTING** the present Application;

**ISSUING** an order authorizing the Debtor, with the assistance of KPMG inc., to conduct a sale and solicitation process in substantially the form of the Draft SSP Approval Order produced as Exhibit P-2 in support of the present Application;

**ISSUING** an order granting the Administration Charge and the D&O Charge in substantially the form of the Draft Charge Order communicated in support of the present application as Exhibit P-3;

**SHORTENING** the delays to notify/serve and present the present Application;

**ISSUING** any other order(s) the Court deems appropriate;

**THE WHOLE** without costs, save in the event of contestation.

Montreal, March 13, 2018

  
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**Joli-Cœur Lacasse** L.L.P.  
Attorneys for the Debtor/Petitioner

## DECLARATION UNDER OATH

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I, the undersigned, **DAVID OUAKNINE**, businessman, resident and domiciled for the purpose hereof at 5950, Côte-de-Liesse Road, in the city of Mont-Royal, judicial district of Montreal, province of Quebec, H4T 1E2, solemnly declare the following:

1. I am an authorized representative of the Debtor/Petitioner in the present Court file;
2. All of the facts alleged in the *Application for the authorization of a sale and solicitation process, priority charges and other interim reliefs* and in the present *Declaration under oath* are true and correct to my personal knowledge.

AND I HAVE SIGNED

  
\_\_\_\_\_  
DAVID OUAKNINE

Solemnly sworn before me, in Montreal,  
this March 13, 2018

  
\_\_\_\_\_  
Commissioner of oaths for Quebec



## NOTICE OF PRESENTATION

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**TO:**

**Canadian Imperial Bank of Commerce (CIBC)**  
6850, Jean Talon Blvd. East  
St-Leonard, Quebec, H1S 1N1

**Development Bank of Canada (BDC)**  
1570, Ampère Street, suite 300  
Boucherville, Quebec, J4B 7L4

**Superintendent of Bankruptcy Canada**

Sun Life Building  
1155, Metcalfe Street, suite 950  
Montreal, Quebec, H3B 2V6

**TAKE NOTICE** that the present *Application for the authorization of a sale and solicitation process, priority charges and other interim reliefs* will be presented for decision to one of the Honourable Judges of the Superior Court, of the judicial district of Montreal, at the Montreal Courthouse, located at 1, Notre-Dame Street East, **in room 16.10, this March 16, 2018, at 8h45**, or as soon as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montreal, March 13, 2018

  
\_\_\_\_\_  
**Joli-Cœur Lacasse L.L.P.**  
Attorneys for the Debtor/Petitioner

**Mtres Jean Lozeau and Josée Brière**  
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Trustee

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**LIST OF EXHIBITS**

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<b>Exhibit P-1:</b>	Certificate of filing of a Notice of Intention to Make a Proposal dated March 9, 2018;
<b>Exhibit P-2:</b>	Draft sales and solicitation process approval order;
<b>Exhibit P-3:</b>	Draft charge order;
<b>Exhibit P-4:</b>	Summary of registrations in the Register of Personal and Movable Real Rights of Quebec;
<b>Exhibit P-5:</b>	<i>En liasse</i> , Memorandum Opinion and Order and Joint Proposed Verdict Form;
<b>Exhibit P-6:</b>	Demand for payment and Notice of Intention to enforce security pursuant to Section 244 of the BIA;

<b>Exhibit P-7:</b>	Sales and solicitation process procedure documents.
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Montreal, March 13, 2018

  
\_\_\_\_\_  
**Joli-Cœur Lacasse L.L.P.**  
Attorneys for the Debtor/Petitioner

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SUPERIOR COURT  
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Debtor / Petitioner

-and-

**KPMG INC.**

Trustee

**APPLICATION FOR THE AUTHORIZATION  
OF A SALE AND SOLICITATION  
PROCESS, PRIORITY CHARGES  
AND OTHER INTERIM RELIEFS  
AND EXHIBITS P-1 TO P-7**

Original

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