

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial division)

NO: 500-11-062601-238

IN THE MATTER OF THE RECEIVERSHIP OF:

KALOOM INC.

Debtor

- and -

KPMG INC.

Receiver

- and -

INVESTISSEMENT QUEBEC

- and -

ACG KALOOM LIMITED PARTNERSHIP

- and -

SOMEL INVESTMENTS INC.

- and -

CAPITAL VISION VENTURES A.G.

- and -

9345-9345 QUÉBEC INC.

Secured Creditors

**RECEIVER'S APPLICATION FOR THE ISSUANCE OF AN APPROVAL AND VESTING
ORDER**

(Art. 243 and ss. *Bankruptcy and Insolvency Act*)

**TO ONE OF THE HONORABLE JUDGES PRESIDING IN THE COMMERCIAL DIVISION OF
THE SUPERIOR COURT, OR TO THE REGISTRAR OF THIS COURT, IN AND FOR THE
DISTRICT OF MONTREAL, THE RECEIVER SUBMITS THE FOLLOWING:**

1. KPMG Inc. ("**KPMG**" or the "**Receiver**") requests from this Court an approval and vesting order with respect to the sale of certain assets of Kaloom Inc. ("**Kaloom**" or the "**Debtor**") to 15385105 Canada Inc. (the "**Purchaser**"), in accordance with the draft Order attached hereto as **Exhibit A-1** (the "**Draft Order**").

I. The debtor

2. Headquartered in Montréal and established in 2014, the Debtor operated in the information technology ("**IT**") sector. It is an infrastructure software company which developed software networking solutions for hyperscale data centers and cloud computing service providers.
3. The Debtor employed more than a hundred (100) people, mainly computer programming specialists and engineers who worked on programming for the deployment of the IT solutions.
4. As will be further discussed herein, in June 2023, the Debtor ceased all of its operations and filed for bankruptcy on September 18, 2023.

II. The indebtedness and secured and unsecured creditors

5. Pursuant to various credit agreements, the Debtor is indebted as of the date of the bankruptcy and has provided security pursuant to various movable hypothecs to the following secured creditors:

Creditor	Credit facility	Security
Investissement Québec	Term loan A (Prêt IQ-FDE - D150620) in the amount of \$3,480,000 pursuant to a loan offer dated August 9, 2018	Conventional movable hypothec without delivery in the amount of \$3,480,000 charging the universality of Kaloom's present and future movable property and published in the Register of Personal and Movable Real Rights (the " RPMRR ") on October 5, 2018 under number 18-1106651-0001
	Term Loan B (R&D-2021 Loan - D163437) in the amount of \$2,488,700 pursuant to a loan offer dated April 29, 2021	Conventional movable hypothec without delivery in the amount of \$2,488,700 charging the universality of Kaloom's present and future receivables, including all present and future Crédit R&D, and published in the RPMRR on May 17, 2021 under number 21-0525341-0001
	Term loan C (Loan R&D-2022 - D167331) in the amount of \$3,447,000 pursuant to a financing offer dated May 5, 2022	Conventional movable hypothec without delivery in the amount of \$3,447,000 charging the universality of Kaloom's present and future receivables, including all present and future R&D Credits, and published in the RPMRR on May 9, 2022 under number 22-0494521-0001
	Term loan D (Loan IQ-FDE - D165367) in the amount of US\$10,500,000 pari passu with AGG LP pursuant to a debenture dated July 13, 2022	Conventional movable hypothec without delivery in the amount of \$21,000,000 charging the universality of Kaloom's present and future movable property and published in the RPMRR on July 13, 2022 under number 22-0768745-0001

	Term Loan E (Rescue Loan - D169817) in the amount of US\$2,500,000 <i>pari passu</i> with AGG LP pursuant to a debenture dated February 10, 2023	Conventional movable hypothec without delivery in the amount of \$42,000,000 charging the universality of Kaloom's present and future movable property and published in the RPMRR on February 13, 2023 under number 23-0172586-0001
ACG Kaloom Limited Partnership	A <i>Convertible Loan Agreement</i> made as of May 6, 2021, and as amended from time to time, in the total amount of US\$ 20,500,000	Movable hypothec in the amount of \$56,160,000 charging all of Kaloom's tangible and intangible, present and future property, including its intellectual property, and published in the RPMRR on December 29, 2021, under number 21-1394254-0001
		Movable hypothec in the amount \$63,960,000 charging all of Kaloom's tangible and intangible property, including its intellectual property, and published in the RPMRR on July 13, 2023, under number 22-0768745-0002
Somel Investments Inc.	Joint Rescue Loan Term Sheet with Capital Vision Ventures A.G. in the amount of US 1,000,000 (\$700,000 from Somel Investments Inc.)	Movable hypothec in the amount of \$4,274,550 charging all of Kaloom's tangible and intangible property, and published in the RPMRR on February 6, 2023, under number 23-0142401-0001
Capital Vision Ventures A.G.	Joint Rescue Loan Term Sheet with Somel Investments Inc. in the amount of US 1,000,000 (\$300,000 from Capital Vision Ventures A.G.)	Movable hypothec in the amount of \$1,831,950 charging all of Kaloom Inc.'s tangible and intangible, present and future property and published in the RPMRR on February 6, 2023, under number 23-0142401-0003
9345-9345 Québec Inc.	<i>Convertible Loan Agreement</i> dated as of March 16, 2022, with 9345, pursuant to which 9345 provided to Kaloom Inc. a loan in the initial capital amount of US \$75,000	Movable hypothec in the amount of \$234,000 charging all of Kaloom's movable tangible and intangible property, present and future, including its intellectual property, and published in the RPMRR on March 17, 2022, under number 22-0274724-0001
Bank of Montréal	Secured letter of credit in the principal amount of CA \$185,000, issued in April 2020 and which has been renewed until July 31, 2023	Movable hypothec in the amount of \$222,000 charging a guaranteed investment certificate number 0001-9748-609, and published in the RPMRR on April 22, 2020, under number 20-0349450-0001
	Secured letter of credit in the principal amount of CA \$125,000, issued in	Movable hypothec in the amount of \$150,000 charging a guaranteed investment certificate number 0230-9776-308, and published in the RPMRR on July 29, 2021, under number 21-0828014-0003

	April 2021, which has been renewed until July 21, 2023	
	Secured credit card facility in the principal amount of up to a maximum of US \$100,000	Movable hypothec in the amount of \$150,000 charging a guaranteed investment certificate number 0230-9994-217, and published in the RPMRR on September 25, 2018, under number 18-1058717-0001

6. As of September 18, 2023, Kaloom owed its unsecured creditors an aggregate amount of approximately \$2,700,000 according to the trustee's report paragraph 33;
7. On July 13, 2023, IQ proceeded with the service of its *Préavis d'exercice de recours hypothécaire (sale under judicial authority)*, as appears from a copy of the prior notice and proof of service filed as **Exhibit A-2**.
8. The prior notice was duly registered at the Register of Personal and Movable Real Rights on July 13, 2023 under number 23-0829185-0001 and 23-0829185-0002, **Exhibit A-3**.
9. The 20-day delay provided in the prior notice following the registration of the prior notice has lapsed without the Debtor or any third party having cured the defaults denounced in the prior notice.

III. The Receivership, notice of intention to make a proposal and bankruptcy

10. On or about June 25, 2023, the Debtor filed an *Application for the Issuance of a First Day Initial Order, an Amended and Restated Initial Order and a Bidding Procedures Order* (the "**CCAA Application**"), as appears from the Court record.
11. Challenged by IQ, the CCAA Application was dismissed by David Collier, s.c.j., on July 3, 2023, as appears from the Court record.
12. On or about July 13, 2023, IQ requested the appointment of a receiver of the Debtor's assets pursuant to section 243 and following of the *Bankruptcy and Insolvency Act* ("**BIA**") in order to (i) maintain a minimum level of activity, (ii) enable a rapid sale process of the Debtor's business, whose activities are specialized and require a minimum of expertise to enable an orderly liquidation of the assets, and (iii) trigger the application of the provisions of the *Wage Earner Protection Program* for the benefit of employees who had received no salary since June 2023.
13. On July 14, 2023, this Court issued an Order appointing KPMG to act as receiver to the Debtor's property.
14. As appears from the Court record, pursuant to this receivership order, the Receiver is authorized to act as receiver until (a) the sale of all of the Debtor's assets; or (b) the issuance of an order of this Court terminating the receivership.
15. On September 7, 2023, the Receiver filed on behalf of the Debtor a Notice of intention to make a proposal pursuant to section 50.4(1) of the BIA, as appears from the certificate of filing, **Exhibit A-4**.

16. As of September 18, 2023, the Debtor is deemed to have filed an assignment of its property due to the failure to file the required cash flow statement and reports with the official receiver pursuant to section 50.4(2) of the BIA and the Receiver was appointed as trustee to the bankruptcy of the Debtor., as appears from the bankruptcy notice filed in support hereof as **Exhibit A-5**.

IV. The process leading up to the proposed transaction

17. In July 2023, the Receiver carried out a Sale and Investment Solicitation Process (the "**SISP**") for the Debtor's assets.
18. It is noteworthy to indicate that the Debtor had, between February and May 2023, conducted a sale process with the assistance of a consulting firm which had led to no offer for the business of the Debtor.
19. As part of the SISP, the Receiver prepared an Information Memorandum (the "**Memorandum**") providing the term and conditions of a call for tender for the assets of the Debtor, as appears from a copy of the Memorandum, **Exhibit A-6**.
20. The Receiver solicited approximately 60 potential purchasers, 47 of which received the Memorandum which allowed for a two (2) step process where potential buyers were to provide (i) a non-binding letter of interest no later than August 7, 2023, and (ii), for the Qualified bidders (as defined in the Memorandum, a formal offer no later that August 30, 2023.
21. Following the receipt of the Memorandum, six (6) potential purchasers signed a Non-Disclosure Agreement and were allowed access to a data room containing information about the assets and the finance of the Debtor;
22. On August 7, 2023, only two (2) non-binding letters of interest from related parties were submitted to the Receiver, including one received from Somel Technologies Inc. (for and on behalf of an entity to be created) ("**Somel**"), and one from a former officer, the content of which was clearly insufficient to qualify as a Qualified Bid (as defined in the Memorandum).
23. On August 30, 2023, a formal offer was filed by Somel which included conditions that required additional negotiation between Somel and the Receiver and included the participation of IQ, main secured creditor holding a first rank hypothec on the assets of the Debtor.
24. As a result of numerous discussions between the interested parties, on September 20, 2023, Somel filed with the Receiver a revised formal offer to acquire most of the assets of the Debtor (the "**Offer**"), which detailed the proposed transaction (the "**Proposed Transaction**") including, among other things, the following summary terms and conditions:
 - a) Somel designated the Purchaser as purchaser of the Purchased Assets as defined in the Offer);
 - b) The shareholders of the Purchaser will be comprised of, *inter alia*, Somel;

- c) All assets of the Debtor will be purchased save and except the accounts receivable and any claim of any nature that are specifically excluded from the Purchased Assets;
- d) Purchaser intends to offer employment to approximately 30 former employees, including 5 key employees of the Debtor but will assume only post closing obligations to the employees. It is a condition of the offer that an agreement be reached with the 5 key employees;
- e) Purchaser intends to operate in the premises currently leased by the Company. As such, the Proposed Transaction is conditional to the Purchaser signing a new lease with the landlord.

as appears from a copy of said Offer filed in support hereof, under seal, as **Exhibit A-7**.

- 25. On September 20, 2023, Investissement Québec, the first rank secured creditors of the Debtor, approved the Offer and the Proposed Transaction.
- 26. On September 21, 2023, the Receiver accepted the Offer subject to (i) the confirmation that conditions of the Offer be lifted and (ii) the approval of this Court.
- 27. As of October 4, 2023, the conditions related to the Offer are deemed lifted and the Proposed Transaction is now only subject to the Court's approval.
- 28. Prior to the filing of this Application, the Receiver and Somel negotiated the terms and conditions of a draft Asset Purchase Agreement, which reflects the Offer and the Proposed Transaction, a copy of which is filed under seal as **Exhibit A-8**.

V. Reasons for issuing an approval and vesting order

- 29. The Receiver will file his report prior to the date of presentation of this Application recommending that the Court approve the Proposed Transaction and authorize the Receiver to execute Purchase Agreement.
- 30. It is appropriate for the Court to approve the Proposed Transaction for the following reasons:
 - a) The assets of the Debtor are specialized in nature and are mainly composed of intellectual property developed by the Debtor in a specialized IT sector;
 - b) The process leading to the Proposed Transaction was reasonable in the circumstances in that it results from a diligent process and a consultation of several potential buyers carried out through the SISP;
 - c) The Purchased Assets are specialized in nature and the Offer and Proposed Transaction constitute the best available transaction to realize the assets of the Debtor, the whole in the context where these assets were already subject to two (2) extensive sale process initiated by the Debtor in the spring of 2023 and by the Receiver under the SISP;
 - d) The Proposed Transaction will allow for the relaunch of the operations of the Debtor's activities and the re-hiring of approximately 30 employees specialized in IT, a sector that is creating high paying positions;

- e) IQ is favourable to the Proposed Transaction, as first-rank creditor; and
- f) The approval and vesting order is a condition precedent to the closing of the Proposed Transaction.

VI. Confidentiality of certain exhibits

- 31. The Receiver is requesting that a sealing order be issued with respect to the Offer (Exhibit A-7), the Purchase Agreement (Exhibit A-8).
- 32. These documents contain commercially sensitive information, which, if disclosed prior to closing of the Proposed Transaction, would compromise the integrity of the SISP and jeopardize the closing of the Proposed Transaction.
- 33. The sealing order sought is reasonable as it will only apply until the issuance of the Receiver's certificate attesting to the closing of the Proposed Transaction, and it is not useful or practicable to redact the exhibits.
- 34. As such, the benefits of the temporary sealing order sought outweigh the deleterious effects of same. These exhibits will be made available to any creditor who first undertakes to keep them confidential.

VII. Conclusions

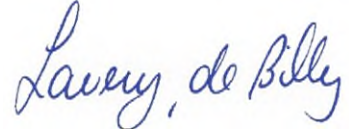
- 35. As appears from the Receiver's Report, the Proposed Transaction represents the best scenario under the circumstances to the benefit of the Debtor's creditors and other stakeholders.
- 36. The Creditors (excluding Bank of Montreal who holds security interest only on Excluded Assets) are assigned herein considering that they have registered hypothecs on purchased assets.
- 37. Therefore, the Receiver requests from this Court the issuance of an approval and vesting order with respect to the Proposed Transaction in accordance with the Draft Order, Exhibit A-1.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [1] **GRANT** the *Receiver's Application for the Issuance of an Approval and Vesting Order* (the "**Motion**");
- [2] **DECLARE** as valid and sufficient the service, production and presentation of the present Application;
- [3] **AUTHORIZE** the sale of the purchased assets in accordance with the Offer accepted on September 21, 2023 (Exhibit A-7) and with the terms and conditions of the proposed draft Asset Purchase Agreement (Exhibit A-8);
- [4] **ISSUE** the Approval and Vesting Order in accordance with the terms of the vesting order herein filed as Exhibit R-1 (the "**Vesting Order**");
- [5] **ORDER** the provisional execution of the Vesting Order, notwithstanding appeal;

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

Montréal, October 12, 2023

A handwritten signature in blue ink that reads "Lavery, de Billy". The signature is written in a cursive style.

LAVERY, DE BILLY, S.E.N.C.R.L.

Me Jean Legault

Me Daphné Pomerleau-Normandin

4000-1 Place Ville Marie

Montreal, Quebec H3B 4M4

Emails: jlegault@lavery.ca

dpomerleau-normandin@lavery.ca

Tel 514 878-5561

514 877-2933

Lawyers for the Receiver

AFFIDAVIT

I, the undersigned, Stéphane De Broux, having a place of business at 1500-600, De Maisonneuve Street West, Montréal, Québec, H3A 0A3, solemnly affirm that:


1. I am the authorized representative of KPMG Inc. and, as such, I have cognizance of all the facts in the present Application.
2. All the facts alleged in the *Receiver's Application for the Issuance of an Approval and Vesting Order* are true.

AND I HAVE SIGNED IN MONTREAL:



STÉPHANE DE BROUX

SOLEMNLY DECLARED before me by technology means, in Montréal, on October 12, 2023



Commissioner for Oaths for the Province
of Québec



**NOTICE OF PRESENTATION FOR THE COMMERCIAL DIVISION
(Room 16.10)**

TO: INVESTISSEMENT QUEBEC

c/o: Me Jean Legault
Lavery De Billy LLP
Jlegault@lavery.ca

ACG KALOOM LIMITED PARTNERSHIP

c/o: Me Hugo Babos-Marchand
McCarthy Tétrault LLP
Hbmarchand@mccarthy.ca

SOMEL INVESTMENTS INC.

c/o: Me Nicolas Mancini
Fasken Martineau Dumoulin LLP
nmancini@fasken.com

CAPITAL VISION VENTURES A.G.

c/o: Youssef Abdellaoui
youssef.abdellaoui@mbuzz.com.sa

9345-9345 QUÉBEC INC.

c/o: Laurent Marchand
laurent.marchand@sympatico.ca

1. INTRODUCTION OF THE PROCEEDING

TAKE NOTICE that the *Receiver's Application for the Issuance of an Approval and Vesting Order* will be presented in the practice division of the Commercial Division of the Superior Court, in room 16.10 of the Montreal courthouse during the **virtual roll call** on **October 17, 2023**, at 8:45 a.m., or as soon as counsel can be heard.

2. HOW TO COMMUNICATE WITH THE VIRTUAL ROLL CALL

The contact information to communicate with the virtual roll call in Room 16.10 is as follows:

- a) By Teams: by clicking on the link available <http://www.tribunaux.qc.ca>;

You will then be asked to enter your name and click on "Join Now". In order to facilitate the process and the identification of participants, we invite you to enter your name as follows:

- Lawyers: First name, Last name (the name of the represented party)
- Trustees: First name, Last name (trustee)
- The Superintendent: First Name, Last Name (Superintendent)

- Self-Represented Parties: First Name, Last Name (specify: plaintiff, defendant, applicant, respondent, creditor, opponent or other)
 - For persons attending a public hearing: the mention may be limited to registering: (public)
- b) **By telephone :**
- Canada, Québec (Toll or chargeable): +1 581-319-2194
- Canada (Toll-free): (833) 450-1741
- Conference ID: 820 742 874#
- c) **By videoconference:** teams@teams.justice.gouv.qc.ca
- Conference ID VTC: 11973653703
- d) **In person:** if and only if you do not have access to one of the above-mentioned technologies. You may then go to room 16.10 of the Montreal courthouse located at:
- 1, Notre-Dame Street East, Montréal, Québec H2Y 1B6.

3. **FAILURE TO PARTICIPATE TO THE VIRTUAL ROLL CALL**

TAKE NOTICE that if you wish to contest the proceeding, you must notify the person who instituted the proceeding in writing at the coordinates indicated in this notice of presentation at least 48 hours before the date of presentation of the procedure and participate in the appeal of the virtual roll call. Otherwise, a judgment may be rendered at the presentation of the procedure, without further notice or delay.

4. **OBLIGATIONS**

4.1. Collaboration

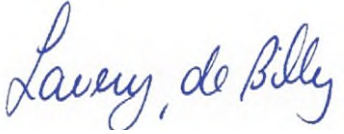
TAKE NOTICE that you have an obligation to cooperate with the other party, in particular by informing each other, at all times, of the facts and elements likely to promote a fair debate and by ensuring that you preserve the relevant evidence (*Code of Civil Procedure*, art. 20).

4.2. Dispute prevention and resolution process

TAKE NOTICE that you must, before addressing the Court, consider the use of private means of prevention and resolution of your dispute, which are, among others, negotiation, mediation or arbitration, for which the parties call upon the assistance of a third party (*Code of Civil Procedure*, art. 2).

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, October 12, 2023

A handwritten signature in blue ink that reads "Lavery, de Billy". The signature is written in a cursive style.

LAVERY, DE BILLY, S.E.N.C.R.L.

Me Jean Legault

Me Daphné Pomerleau-Normandin

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Tel 514 878-5561

514 877-2933

Lawyers for the Receiver

N° : 500-11-062601-238

SUPERIOR COURT
(Commercial division)
DISTRICT OF MONTREAL

IN THE MATTER OF THE RECEIVERSHIP OF :

KALOOM INC.

Debtor

- and -

KPMG INC.

Receiver / Petitioner

**RECEIVER'S MOTION FOR THE ISSUANCE OF
AN APPROVAL AND VESTING ORDER**
(Article 243 of the *Bankruptcy and Insolvency Act*),
**AFFIDAVIT, NOTICE OF PRESENTATION, LIST
OF EXHIBITS and EXHIBITS A-1 TO A-8**

ORIGINAL

ND 123041-00110

BL 1332

Me Jean Legault jlegault@lavery.ca

Me Daphné Pomerleau-Normandin
dpomerleau normandin@lavery.ca

LAVERY, DE BILLY, S.E.N.C.R.L.

BUREAU 4000, 1, PLACE VILLE MARIE, MONTRÉAL (QUÉBEC) H3B 4M4
TÉLÉPHONE : 514 871-1522 TÉLÉCOPIEUR : 514 871-8977
NOTIFICATIONS PAR COURRIEL: NOTIFICATIONS-MTL@LAVERY.CA
lavery.ca

The logo for Lavery, featuring a green horizontal line followed by the word "Lavery" in a bold, dark green sans-serif font.