

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

N<sup>o</sup>: 500-11-062928-235  
500-11-062927-237  
500-11-062929-233

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IN THE MATTER OF THE RECEIVERSHIP  
OF:

CANADIAN IMPERIAL BANK OF  
COMMERCE

Petitioner

LXR PRODUITS DE LUXE  
INTERNATIONAL INC.

LXR CANADA INC.

GROUPE GLOBAL LXR INC.

Debtors

-and-

KPMG INC.

Proposal Trustee / Proposed Receiver

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**APPLICATION TO APPOINT A RECEIVER  
AND TO APPROVE AND IMPLEMENT A TRANSACTION**  
(Section 243 of the *Bankruptcy and Insolvency Act*)

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**TO A JUDGE OR A REGISTRAR OF THE SUPERIOR COURT, SITTING IN AND FOR  
THE COMMERCIAL DIVISION IN THE DISTRICT OF MONTRÉAL, THE PETITIONER  
RESPECTFULLY STATES AS FOLLOWS:**

**I. INTRODUCTION**

1. By the present application (this **Application**), the Petitioner, Canadian Imperial Bank of Commerce (**CIBC**) seeks the appointment of the Proposal Trustee / Proposed Receiver, KPMG Inc. (**KPMG**) as receiver to the assets of the Debtors pursuant to section 243 of the *Bankruptcy and Insolvency Act* (**BIA**), as well as an order from the Court authorizing the disposition of certain of the Debtors' assets (the **Purchased Assets**) outside the ordinary course of business (the **Proposed Transaction**) to Fashionphile Group, LLC, (the **Purchaser**), the whole in accordance with the proposed order appointing a receiver (the **Proposed Receivership Order**) and the proposed approval and vesting order (the **Proposed Approval Order**) communicated herewith respectively as **Exhibit R-1** and **Exhibit R-2**.

2. The purpose of the receivership contemplated in the Proposed Order (the **Proposed Receivership**) is to continue the orderly liquidation of certain of the Debtor's assets (the **Liquidation Process**) commenced by the filing by the Debtors of notices of intention to make a proposal under the BIA on October 5, 2023 (the **NOIs**) and to approve and implement the Proposed Transaction.
3. CIBC is the Debtors' first ranking secured creditor, is financing the Liquidation Process and is to receive the proceeds realized pursuant thereto. In such circumstances and given that the Debtors do not intend to seek an extension of the NOIs, CIBC has elected to continue the Liquidation Process through the Proposed Receivership in order to reduce costs and promote efficiency.
4. KPMG, which conducted a sale and solicitation process in respect of the Debtors' business and assets further to the filing of the NOIs and in consultation with the CIBC and the Debtors (the **SSP**), is of the view that the Proposed Transaction, which is based on an offer received in the SSP, is fair and reasonable in the circumstances and should be approved, the whole as will appear from KPMG's report (the "**Report**"), which will be communicated and filed before the hearing of this Application.

## **II. BACKGROUND**

5. The circumstances surrounding the Debtors' business, their financial difficulties, the filing of the NOIs as well as the deployment and results of the SSP will be described for fully in the Report.
6. The Debtors are all subsidiaries of LXRandCo Inc. (the **Parent**), a publicly listed company on the Toronto Stock Exchange engaged in the business of selling branded vintage luxury handbags and other personal accessories.
7. On two occasions in 2022 and 2023, the Parent retained Stifel Nicolaus Canada Inc. in order to solicit interest in the sale of the Debtors' business, a process which failed to lead to a transaction despite the fact that approximately 160 parties were contacted (the **Previous Sales Process**).
8. Recently, the Debtors' financial and liquidity situation deteriorated such that the Debtors elected to commence formal insolvency proceedings.
9. In such circumstances, after consulting with CIBC, the Debtors filed the NOIs and commenced the Liquidation Process on October 5, 2023.

## **III. THE CREDIT FACILITIES AND THE SECURITY**

10. The Debtors are indebted to CIBC under certain credit facilities made available to them pursuant to a credit agreement dated May 24, 2023 (as amended, restated, supplemented, or otherwise modified from time to time, the **Credit Agreement**),

as appears from the documents forming part of the Credit Agreement, communicated herewith *en liasse* as **Exhibit R-3**.

11. As security for their obligations under the Credit Agreement, the Debtors, *inter alia*, hypothecated in favor of CIBC the universality of their movable property, corporeal and incorporeal, tangible and intangible, present and future, of whatever nature and wherever situated (the **CIBC Collateral**), pursuant to a *Deed of Hypothec* dated June 8, 2017, in the amount of \$35,000,000, plus interest at the rate of 25% per annum, (the **CIBC Hypothec**) which was duly published at the Register of Personal and Movable Real Rights (**RPMRR**) on June 8, 2017 under number 17-0588946-0001, the whole as appears from the deed of hypothec and the certified statement of its registration, communicated herewith *en liasse* as **Exhibit R-4**.
12. Also as security for the performance of its obligations under the Credit Agreement, the debtor LXR Canada Inc. granted in favor of CIBC security in all of its present and future property, assets and undertakings, wherever located, pursuant to a *General Security Agreement* dated June 14, 2017, which security was duly published in Ontario pursuant to the Ontario *Personal Property Security Act* on June 7, 2017 under file number 728500095 and registration number 20170607 1645 1590 5511, in Manitoba pursuant to the Manitoba *Personal Property Security Act* on April 7, 2020 under registration number 202005338400, in Alberta pursuant to the Alberta *Personal Property Security Act* on June 7, 2017 under registration number 17060733068, and in British Columbia pursuant to the British Columbia *Personal Property Security Act* on June 7, 2017 under registration number 057726K, the whole as appears from the general security agreement, the search reports from the personal property security registries of Ontario, British Columbia, and Alberta, as well as the confirmation statement from the Manitoba property registry, communicated herewith *en liasse* as **Exhibit R-5**.
13. Based on searches conducted at the RPMRR and other public registries, CIBC holds first ranking security on the CIBC Collateral, as appears from the moveable property security search report (the **Security Report**), communicated herewith as **Exhibit R-6**.
14. KPMG will also obtain an independent opinion from its legal counsel confirming the validity and enforceability of the security registered in favour of the CIBC prior to distributing the net proceeds of the Proposed Transaction.

#### **IV. THE PRIOR NOTICES**

15. On October 4, 2023, CIBC issued a notice of intention to enforce security to each of the Debtors pursuant to section 244 of the BIA (the **244 Notices**), the receipt of which was acknowledged that same day by each of the Debtors, which also agreed to waive the 10-day notice period and consent to the immediate enforcement of the security pursuant to subsection 244(2) of the BIA, as appears from the 244 Notices communicated herewith *en liasse* as **Exhibit R-7**.

16. Also on October 4, 2023, CIBC served and published prior notices of the exercise of hypothecary rights to each of the Debtors pursuant to articles 2757 and ff. of the *Civil Code of Quebec* on the basis of the CIBC Hypothec (the **CCQ Notices**), as appears from the CCQ Notices communicated herewith *en liasse* with the proof of their service on the Debtors and their publication at the RPMRR as **Exhibit R-8**.
17. The defaults of the Debtors identified in the CCQ Notices were as follows:
  - a) The Debtors are insolvent; and
  - b) The Debtors have announced their intention to cease their operations and avail themselves of the protection of the laws governing insolvency.
18. As further appears from the 244 Notices and the CCQ Notices, the Debtors were, as at October 4, 2023, indebted to CIBC under the Credit Agreement in principal, interest and fees in the aggregate amount of CAD \$3,112,788.02 (subject to fluctuation and additional interest and costs, the **CIBC Debt**).
19. More than 20 days have now elapsed since the CCQ Prior Notices were served and published and the Debtors have not remedied the defaults identified therein or repaid the CIBC Debt.

## V. THE NOI PROCEEDINGS

20. Following the filing of the NOIs on October 5, 2023, the Debtors, CIBC, and others, with the intervention of KPMG, entered into a *Forbearance and First Amendment to Credit Agreement* (the **Forbearance Agreement**), communicated herewith as **Exhibit R-9**.
21. Under the terms of the Forbearance Agreement, CIBC agreed to refrain from enforcing its rights or exercising its remedies under the Credit Agreement in consideration of the performance of certain obligations by the Debtors.
22. The Debtors notably agreed to conduct an orderly liquidation of the CIBC Collateral, by way of a self-liquidation process implemented by the Debtors themselves or through an approved third party, in accordance with the strategy developed by KPMG in consultation with the Debtors and CIBC.
23. Following the conclusion of the Forbearance Agreement, KPMG, in consultation with the Debtors and with the support of CIBC, initiated the SSP on October 9, 2023 with a view to identifying a viable transaction to dispose of the Debtors' business and/or property, as appears from the *Information Memorandum* (the **Process Letter**) communicated herewith as **Exhibit R-10**.
24. In accordance with the Process Letter, KPMG solicited offers for a transaction, with acceptance subject to the approval of CIBC and the following assessment criteria:

- a) the type and of amount of the consideration offered, with a preference for cash;
  - b) factors affecting the speed, certainty, and value of the transaction;
  - c) the likelihood of securing all necessary approvals for the transaction; and
  - d) the counterparties to the transaction.
25. As will appear from the Report, KPMG contacted twelve (12) parties that had shown an interest in the Debtors' business during the Previous Sales Process, as well as five (5) liquidators whom it believed might be interested in purchasing the Debtors' assets, eventually receiving five (5) binding offers before the expiration of the deadline on October 16, 2023.
  26. KPMG has prepared a summary of the key terms of the binding offers received, which will be included as Appendix B (under seal) to the Report.
  27. On October 17, 2023, KPMG, after having consulted with CIBC and the Debtors, entered into negotiations with the Purchaser with a view to increasing the consideration offered pursuant to the latter's offer.
  28. On October 19, 2023, the Purchaser amended its offer and on October 20, 2023, KPMG, after having consulted with CIBC and the Debtors, accepted the amended offer (the **Offer**) and advised the Purchaser that its offer had been retained as the Successful Bid (as defined in the Process Letter).
  29. Following the acceptance of the Offer, the Purchaser and KPMG agreed to the terms of a definitive agreement in respect of the Proposed Transaction (the **Purchase Agreement**), a draft of which is communicated herewith (under seal) as **Exhibit R-11**.
  30. Given that nearly all of the Debtors' operating assets will be sold pursuant to the Proposed Transaction, the Debtors will not, in the event the transaction is approved, continue to operate their business. The next steps in the Liquidation Process will therefore involve the realization of any remaining assets of the Debtors, which primarily consist of the collection of certain receivables.
  31. In such circumstances, the Debtors will not seek an extension of the initial stay period resulting from the filing of the NOIs, which expires on November 4, 2023, and CIBC is seeking to continue the Liquidation Process through the Proposed Receivership.
  32. It is therefore proposed that KPMG be appointed as receiver to the assets of the Debtors, including the Purchased Assets, with all the powers necessary to sign the Purchase Agreement and implement the Transaction as well as to complete the Liquidation process in the context of the Proposed Receivership.

## **VI. IT IS JUST AND CONVENIENT TO APPOINT THE PROPOSED RECEIVER**

33. It is respectfully submitted that the requirements to appoint KPMG as receiver to the assets of the Debtors are satisfied and that the proposed appointment would be just and convenient in the circumstances in order to continue the orderly liquidation of the CIBC Collateral and to implement the Proposed Transaction.
34. The Proposed Receivership Order contemplates the appointment of KPMG to the universality of the Debtors' moveable property with all the powers necessary to take control of the Debtors' operations, as required, and to dispose of the CIBC Collateral, including the Purchased Assets, which are to be sold of pursuant to the Proposed Transaction.
35. Given the amount of the CIBC Debt, CIBC, as first-ranking secured creditor of the Debtors, will receive all of the proceeds of the Proposed Transaction and is expected to receive all of the proceeds to be realized from any of the Debtors' remaining assets in the Liquidation Process.
36. Consequently, CIBC has the only remaining economic interest in the Liquidation Process and has elected to continue it through the Proposed Receivership and to seek the appointment of the Proposed Receiver at this stage.
37. The continuation of the Liquidation Process and the implementation of the Proposed Transaction through the Proposed Receivership will promote certainty and efficiency as well as reduce the costs that CIBC is supporting, particularly with respect to professional fees.
38. Seeing as the Debtors have indicated that they will neither file a proposal nor seek an extension of the period for filing a proposal at the expiry of the NOIs on November 4, 2023, the Debtors will be deemed to have made an assignment in bankruptcy on that date. The Debtors also consent to the proposed Receivership.
39. It is therefore respectfully submitted that the criteria to appoint a receiver pursuant to the BIA are satisfied in that:
  - a) each of the Debtors is insolvent;
  - b) CIBC is a secured creditor of each of the Debtors with security over substantially all of the Debtors' moveable property that is used in the operation of the Debtors' business;
  - c) CIBC has sent the 244 Notices and the 10-day delay provided for therein expired on October 5, 2023, having been waived by each of the Debtors prior to the filing of the NOI;
  - d) CIBC has served and published the CCQ Prior Notices and the 20-day delay provided for therein expired on October 25, 2023;

- e) CIBC has acted in good faith and the Proposed Receivership will not put other creditors in a worse position than that which they would be in under a bankruptcy;
  - f) the Proposed Receivership will not frustrate any restructuring by the Debtors, which had already elected to begin the Liquidation Process and which will be bankrupt as of November 4, 2023; and
  - g) it would be just and convenient to do so, given that CIBC, as first ranking secured creditor, will receive the proceeds of realization of all of the Debtors' assets, that the Debtors consent to the Proposed Receivership, that the appointment of a receiver would promote efficiency and reduce costs and that the Debtors will imminently enter bankruptcy.
40. KPMG is a person possessing the requisite qualities to act as receiver, has consented to act in such capacity, and is in an ideal position to do so, having acted as the trustee under the NOI since October 6, 2023.
41. It is therefore respectfully submitted that KPMG should be appointed as receiver to the assets of the Debtors in accordance with the Proposed Receivership Order.

## **VII. THE PROPOSED TRANSACTION**

### **A. OVERVIEW OF THE PROPOSED TRANSACTION**

42. Pursuant to the Proposed Transaction:
- a) KPMG, in its capacity as receiver to the assets of the Debtors, will sell to the Purchaser the Purchased Assets on an "as is where is" basis and free and clear of any encumbrances;
  - b) the Purchased Assets consist of substantially all of the Debtors' inventory and intangible assets used in the operation of their businesses; and
  - c) the purchase price is payable in cash at closing in the amount provided for in the Purchase Agreement, which is subject to a post-closing inventory adjustment.
43. The Proposed Transaction is not subject to any financing conditions but is conditional on the approval of the Court and the issuance of an order substantially in the form of the Proposed Approval Order.

### **B. THE PROPOSED TRANSACTION SHOULD BE APPROVED**

44. As will appear from the Report, the offer forming the basis of the Proposed Transaction was the highest received pursuant to the SSP and KPMG recommends the approval of the Proposed Transaction.

45. In particular and as will further appear from the Report, the Proposed Transaction should be approved for the following reasons:
- a) the SSP was conducted by KPMG, in consultation with CIBC and the Debtors, and was a fair, transparent and efficient process aimed at maximizing value for all stakeholders;
  - b) the SSP identified the most likely purchasers for the Debtors' assets and/or business, and further canvassing of the market would be unlikely to result in the identification of new prospective purchasers that would create greater value for stakeholders, particularly given that these assets were already marketed pursuant to the Previous Sales Process;
  - c) the purchase price under the Proposed Transaction is fair and reasonable and any additional liquidation efforts for the Purchased Assets would not reliably yield a realization value higher than the Proposed Transaction;
  - d) CIBC, the Debtors' first ranking secured creditor, was consulted during the SSP and elected to accept the Offer and to seek Court approval of the Proposed Transaction; and
  - e) KPMG is of the view that the Proposed Transaction is more beneficial to the Debtors' stakeholders than a liquidation pursuant to a bankruptcy.
46. It is therefore respectfully submitted that the Proposed Transaction should be approved in accordance with the Proposed Approval Order.

## **VIII. CONCLUSION**

47. In light of the foregoing, the Petitioner respectfully submits that the relief sought in this Application should be granted and that orders substantially in the form of the Proposed Receivership Order and the Proposed Approval Order should be rendered.

### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present Application to Appoint a Receiver and to Approve and Implement a Transaction (the **Application**);

**RENDER** orders substantially in the form of the proposed orders communicated in support of the Application as **Exhibit R-1** and **Exhibit R-2**;

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



Montréal, October 30, 2023

*Norton Rose Fulbright Canada LLP*

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**NORTON ROSE FULBRIGHT CANADA LLP**  
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Our reference: 1000305634

**AFFIDAVIT**

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I, the undersigned, Sébastien Grenon, having my professional address at 1155 René-Lévesque Blvd West, Suite 1400, Montréal, Québec H3B 3Z4, district of Montreal, solemnly declare the following:

1. I am an authorized representative of the Petitioner Canadian Imperial Bank of Commerce (**CIBC**);
2. I have read the attached *Application to Appoint a Receiver and to Approve and Implement a Transaction* and all of the facts contained therein that do not otherwise appear from the exhibits thereto or the Court record are true.


AND I HAVE SIGNED:



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SÉBASTIEN GRENON

Solemnly declared before me by  
technological means in Montréal,  
Québec, on October 30, 2023





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Stéphanie Lavoie, 180,551  
Commissioner of Oaths for the Province  
of Québec

**CANADA  
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DISTRICT OF MONTRÉAL**

**SUPERIOR COURT  
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INTERNATIONAL INC.**

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Debtors

-and-

**KPMG INC.**

Proposal Trustee / Proposed Receiver

### **LIST OF EXHIBITS**

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- EXHIBIT R-1:** Proposed Receivership Order;
- EXHIBIT R-2:** Proposed Approval Order;
- EXHIBIT R-3:** *En liasse*, documents forming the Credit Agreement;
- EXHIBIT R-4:** *En liasse*, deed of hypothec and certified statement of its registration;
- EXHIBIT R-5:** *En liasse*, general security agreement and registration documents from Ontario, British Columbia, Alberta, and Manitoba;
- EXHIBIT R-6:** Security Report;
- EXHIBIT R-7:** *En liasse*, 244 Notices;
- EXHIBIT R-8:** *En liasse*, CCQ Notices with proof of service and publication at the RPMRR;

**EXHIBIT R-9:** Forbearance and First Amendment to Credit Agreement;

**EXHIBIT R-10:** Information Memorandum;

**EXHIBIT R-11: (UNDER SEAL)** Purchase Agreement;

Montréal, October 30, 2023

*Norton Rose Fulbright Canada LLP*

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Our reference: 1000305634

**C A N A D A  
PROVINCE OF QUÉBEC  
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**NOTICE OF PRESENTATION  
COMMERCIAL DIVISION (ROOM 16.10)**

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**1. PRESENTATION OF THE PROCEEDING**

**TAKE NOTICE** that the *Application to appoint a receiver and to approve and implement a transaction* will be presented for adjudication before the Commercial Division of the Superior Court of Québec, in room 16.10, of the Montréal Courthouse, at the **virtual calling of the roll** on **November 3, 2023**, at 8:45 a.m., or so soon thereafter as counsel may be heard.

**2. HOW TO JOIN THE VIRTUAL CALLING OF THE ROLL**

The coordinates for you to join the virtual calling of the roll in room 16.10 are as follows:

- a) **By Teams: via the Teams link** (available on the website <http://www.tribunaux.qc.ca>)

You must fill in your name and click on “Join now” (“*Rejoindre maintenant*”). To facilitate the process and identification of participants, we invite you to fill in your name as follows:

Attorneys: Mtre Name, Surname (Name of the party you represent)

Trustees: Name, Surname (Trustee)

Superintendent: Name, Surname (Superintendent)

Parties not represented by a lawyer: Name, Surname (specify : Plaintiff, Defendant, Petitioner, Respondent, Creditor, Opponent or Other)

Persons attending a public hearing may simply indicate “public”.

**b) By telephone:**

Canada, Québec (Charges may apply): +1 (581) 319-2194

Canada (Toll free): (833) 450-1741

Conference ID: 820 742 874#

**c) By VTC videoconference: [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)**

VTC Conference ID: 1193653703

**d) In person**, if and only if you do not have access to one of the above mentioned technological means of connecting, you may then attend in room 16.10 of the Montreal Courthouse located at :

1, Notre-Dame Street East, Montréal, Québec.

**3. FAILURE TO PARTICIPATE IN THE VIRTUAL CALLING OF THE ROLL**

**TAKE NOTICE** that if you wish to contest the proceeding, you must inform in writing the party that initiated the proceeding at the contact information mentioned in the present Notice of Presentation at least 48 hours before the date of presentation of the proceeding and participate at the virtual calling of the roll, failing which, judgment may be rendered against you during the presentation of the proceeding, without further notice or delay.

**4. OBLIGATIONS**

**4.1 Duty of cooperation**

**TAKE NOTICE** that the parties are duty-bound to co-operate and, in particular, to keep one another informed at all times of the facts and particulars conducive to a fair debate and make sure that relevant evidence is preserved. (*Code of Civil Procedure*, art. 20).

## 4.2 Dispute prevention and resolution processes

**TAKE NOTICE** hat before referring your dispute to the Court, you must consider private dispute prevention and resolution processes, which consist of negotiation between the parties as well as mediation and arbitration, in which the parties call on a third person to assist them (*Code of Civil Procedure*, art. 2).

### **DO GOVERN YOURSELF ACCORDINGLY.**

Montréal, October 30, 2023



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**APPLICATION TO APPOINT A RECEIVER  
AND TO APPROVE AND IMPLEMENT A  
TRANSACTION**

**ORIGINAL**

BO-0042

# 1000305634

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