

**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 A PLAN OF COMPROMISE OR
ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION**

Applicants

**(REDACTED) FORTIETH REPORT
OF ERNST & YOUNG INC.
IN ITS CAPACITY AS MONITOR**

December 6, 2022

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FORTIETH REPORT OF THE MONITOR

December 6, 2022

INTRODUCTION

1. This Court granted Crystallex International Corporation (“**Crystallex**” or the “**Applicant**”) protection under the *Companies' Creditors Arrangement Act (Canada)* (the “**CCAA**”) pursuant to the Initial Order of Justice Newbould dated December 23, 2011 (the “**Initial Order**”). Also pursuant to the Initial Order, this Court appointed Ernst & Young Inc. as the monitor (the “**Monitor**”) of the Applicant and granted a stay of proceedings, which was most recently extended to December 13, 2022.
2. On the same date as the Initial Order, Crystallex also commenced a proceeding before the United States Bankruptcy Court in the District of Delaware (the “**Delaware Bankruptcy Court**”) pursuant to Chapter 15 of the United States Bankruptcy Code to obtain an order recognizing this CCAA proceeding as the foreign main proceeding, appointing Crystallex as the foreign representative, and providing a stay of proceedings in the United States (the “**Chapter 15 Proceedings**”). On January 20, 2012, the Delaware Bankruptcy Court granted an order approving the recognition of the CCAA proceeding as a foreign main proceeding and giving full force and effect in the United States to the Initial Order, including any extensions or amendments authorized under the CCAA proceeding.
3. To provide the necessary financing for its CCAA proceeding and to pursue its arbitration claim against the Bolivarian Republic of Venezuela (“**Venezuela**”) in relation to certain mine sites that it alleged were expropriated, Crystallex obtained debtor-in-possession

financing (“**CCAA Financing**”) from Luxembourg Investment Company 31 S.à.r.l. (successor to Tenor Special Situation I. LP.) (“**Tenor**” or the “**DIP Lender**”). This Court granted an Order dated April 16, 2012 approving the CCAA Financing (“**CCAA Financing Order**”). The current outstanding principal owed to the DIP Lender is \$75,733,333. The Applicant and the DIP Lender have advised the Monitor that the balance of the CCAA Financing was approximately \$182.8 million as at October 31, 2022.

4. On April 4, 2016, an arbitral tribunal constituted under the auspices of the Additional Facility of the International Center for Settlement of Investment Disputes granted an award (the “**Award**”) in favour of the Applicant. The Award against Venezuela includes:
 - a) US\$1.202 billion in damages;
 - b) interest accrued at 6-month average U.S. dollar LIBOR plus 1%, compounded annually, from April 13, 2008 to the date of the Final Award Order; and
 - c) post judgment interest from the date of the Final Award Order.

PURPOSE

5. The Monitor is filing this fortieth report (the “**Fortieth Report**”) to provide the Court with an update on:
 - a) the Applicant’s activities to realize on the Award;
 - b) the Applicant’s Chapter 15 proceedings
 - c) the Applicant’s liquidity position and cash flow projection from October 1, 2022 to December 31, 2023 (the “**2022-2023 Cash Flow Projection**”);
 - d) the status of the debtor-in-possession financing agreement (the “**DIP Credit Agreement**”) and the Applicant’s request for approval of the Seventeenth DIP Credit Agreement Amendment (as defined and described in greater detail below);
 - e) the Applicant’s request for an extension of the stay period to December 12, 2023 (the “**Proposed Stay Period**”);
 - f) the Applicant’s motion for an order sealing certain information and portions of documents filed in connection with motions in this CCAA proceeding (as described in greater detail below); and

- g) the Monitor's analysis and recommendations with respect to these matters.
6. In preparing this Fortieth Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by Crystallex, and discussions with and information from management of the Applicant (“**Management**”) (collectively, the “**Information**”).
 7. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
 8. Capitalized terms not defined in this Fortieth Report are as defined in previous reports of the Monitor. Unless otherwise stated, all monetary amounts contained herein are expressed in U.S. Dollars.

DEVELOPMENTS IN CRYSTALLEX’S U.S. AND CCAA PROCEEDINGS

Developments in the U.S. Enforcement Process

9. The status of Crystallex's activities to realize on the Award is described in greater detail in, among other things, the Thirty-Eighth Report of the Monitor dated November 9, 2021. Since then, there have been several developments in the U.S., as described in greater detail in the Affidavit of Robert Fung sworn on November 18, 2022 (the “**Fung Affidavit**”) and summarized below. Any capitalized terms used but not defined in this section have the meaning ascribed to them in the Fung Affidavit.
10. As reported in prior reports of the Monitor, on September 10, 2021, OFAC denied Crystallex a license to sell the PDVH Shares and stated as follows, “A request for a specific license for the sale of the PDVH shares is therefore denied without prejudice to reconsideration at a later time if the foreign policy considerations change. The United

States will reassess whether the sale of the PDVH shares is consistent with United States foreign policy, as the situation in Venezuela evolves. The United States anticipates doing so during the first half of 2022 as warranted by changed circumstances”.

11. In light of certain positive developments in the Applicant’s enforcement proceedings in the US described in greater detail below, Crystallex has not yet reapplied for an OFAC license,

[REDACTED]

12. [REDACTED]

13. The Monitor will engage in discussions with the Applicant and its U.S. advisors in respect of any major steps to be taken in respect of advancing this arbitration, as well as any potential significant increase in the Applicant’s enforcement costs in respect of same.

14. On March 2, 2022, the Delaware Court issued an order (the “**Sale Process Commencement Decision**”) stating that the Delaware Court could take steps toward a sale of the PDVH Shares, including the adoption of a sale procedure order and its implementation notwithstanding that neither Crystallex, nor any other party, currently held a special license from OFAC authorizing the sale or acquisition of the PDVH Shares.

15. The Delaware Court ordered the Special Master to work with the parties to prepare a version of the proposed sale procedures order that was consistent with the Sale Process Commencement Decision. The Delaware Court also provided the Special Master with a period of six months after the entry of a sales procedure order to (i) attempt to obtain guidance from OFAC regarding its views of the Sale Process and whether it will issue a license for the sale, and (ii) make a recommendation as to when and whether the Sale Process should begin. After the Special Master makes a recommendation as to whether the

Sale Process should begin, Crystallex and the other parties will have a final opportunity to provide their views to the Delaware Court.

16. As described in greater detail in the Fung Affidavit, Venezuela took several steps to appeal the Sales Process Commencement Decision which have been rejected or dismissed. There are no more appeals currently pending before the Third Circuit, and Crystallex is advised by its US counsel that Venezuela has no further right of appeal in respect of the Sale Process Commencement Decision.
17. Between the months of March 2022 and October 2022, as contemplated by the Sale Process Commencement Decision, the Special Master worked with Venezuela, Crystallex and ConocoPhillips (a competing creditor of Venezuela) to resolve a form of sale procedures order.
18. On October 7, 2022, the Delaware Court approved the sixth revised proposed sale procedures order (the “**Sale Procedures Order**”) submitted by the Special Master. Pursuant to the Sale Procedures Order the Special Master has six months (or until April 2023) to attempt to obtain OFAC’s views of the Sale Process and to make a recommendation to the Delaware Court as to whether the Sale Process should proceed.
19. The deadline for filing an appeal of the Sale Procedures Order was November 7, 2022. No notice of appeal was filed by Venezuela.
20. If the Sale Process proceeds, it will likely not be completed until sometime in 2024.

Applicant’s Chapter 15 Proceedings

21. In July 2021, a shareholder of Crystallex, Adelson Adrianza, filed a motion (the “**Examiner Motion**”) with the Delaware Bankruptcy Court overseeing Crystallex’ Chapter 15 case (the “**Chapter 15 Court**”) seeking the appointment of an examiner and independent counsel to represent shareholders, which motion was opposed by Crystallex in its capacity as the foreign representative. Judge Silverstein requested certain additional submissions by Crystallex, upon receipt of which she would decide the motion or hold a further hearing if necessary. Crystallex filed its supplemental submissions on September 20, 2021. Mr.

Adrianza filed his responding submissions in October 2021. All of the submissions filed in respect of the Examiner Motion are available at <https://pacer.uscourts.gov>.

22. On November 28, 2022, Judge Silverstein released her Order and decision in respect of the Examiner Motion. Judge Silverstein denied Mr. Adrianza's request to appoint an examiner and independent counsel to represent shareholders without prejudice. Judge Silverstein also ordered that no proceeds of sale of the PDVH Shares recovered by Crystallex shall be transferred out of the United States without permission of the Chapter 15 Court. The Court also ordered that no further transfer/disposition of the Net Arbitration Proceeds (as defined in the DIP Credit Agreement) can be made without the permission of the Chapter 15 Court.
23. The Chapter 15 Court also ordered Crystallex to file in the Chapter 15 proceedings unredacted versions of all documents that were filed in that proceeding under seal within 60 days of the Order unless the Company files a motion seeking to continue the sealing of one or more of these documents. Judge Silverstein ordered that any such motion must contain legal justification for the need to keep such documents under seal or to permit redactions. The Applicant has advised the Monitor that it is considering the Chapter 15 Court's ruling and will seek to continue to seal such information as it determines is necessary to protect its US enforcement strategy and consistent with sealing approved by this Court.
24. Copies of the Memorandum of Decision and Order dated November 28, 2022 are attached as **Appendices "A" and "B"**.

DIP Agreement Maturity and Amendment

25. The DIP Credit Agreement was originally scheduled to mature on December 31, 2016 and the DIP Lender has agreed to extend the Maturity Date (as defined in the DIP Credit Agreement) on a number of occasions (generally consistent with the duration of the extended Stay Period), with the last extension of the Maturity Date set to expire on December 13, 2022.
26. The Applicant engaged in discussions with the DIP Lender regarding a further amendment to the DIP Credit Agreement to extend the Maturity Date.

27. Following these discussions, the parties agreed to enter into an agreement, subject to Court approval, on the terms of a further extension and amendment to the DIP Credit Agreement (the “**Seventeenth DIP Credit Agreement Amendment**”), in substantially the form of agreement attached hereto as **Appendix “”**. The Seventeenth DIP Credit Agreement Amendment provides for extension of the Maturity Date until December 12, 2023 or the expiry of the Stay Period, if earlier. The Seventeenth DIP Credit Agreement is conditional on, among other things, an order being made extending the Stay Period until December 12, 2023. The terms of the Seventeenth Credit Agreement Amendment are essentially the same as the terms of the Sixteenth Credit Agreement Amendment approved by this Court on November 18, 2021.

THE APPLICANT’S LIQUIDITY POSITION AND 2023-2023 CASH FLOW PROJECTION

28. Attached as **Appendix “C”** is a summary of the Applicant’s actual receipts and disbursements for the period from October 1, 2021 to September 30, 2022 compared to the cash flow projection included in the Thirty-Eighth Report.

29. The balance of the Applicant’s cash and cash equivalents as at September 30, 2022 was approximately \$81.4 million, which was \$11.6 million higher than forecast. The favourable variance is primarily due to lower than forecast Arbitration and CCAA costs. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

were outstanding as at September 30, 2022.

30. Attached as Confidential **Appendix “D”** to this Fortieth Report is the 2022-2023 Cash Flow Projection.

31. The 2022-2023 Cash Flow Projection represents the estimates of Management of the projected cash flow during the period of October 1, 2022 to December 31, 2023 (the “**Period**”). The 2022-2023 Cash Flow Projection has been prepared by Management using the probable and hypothetical assumptions set out in the notes to the 2022-2023 Cash Flow Projection (the “**Probable and Hypothetical Assumptions**” or the “**Assumptions**”).

32. The 2022-2023 Cash Flow Projection contains Management's Assumption that the Applicant will not receive any payments from Venezuela during the Period. In addition, Management assumes that the Applicant will not make any payments in respect of the DIP Credit Agreement even if the DIP Credit Agreement matures during the Period. [REDACTED]
- [REDACTED]
- [REDACTED] The Applicant projects that it will have the ability to sustain its operations through the Proposed Stay Period to advance all necessary strategic initiatives related to asset preservation and enforcement strategies in connection with the Award.
33. The Monitor has reviewed the Cash Flow Projection to the standard required of a Court-appointed Monitor stipulated by section 23(1) (b) of the CCAA.
34. Pursuant to this standard, the Monitor's review of the Cash Flow Projection consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of Management and employees and legal counsel of the Applicant. Since the Hypothetical Assumptions need not be supported, the Monitor's procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Projection. The Monitor also reviewed the support provided by Management for the Probable Assumptions and the preparation and presentation of the Cash Flow Projection.
35. Based on this review, nothing has come to the Monitor's attention that causes it to believe, in all material respects, that:
- a) the Probable and Hypothetical Assumptions are inconsistent with the purpose of the 2022-2023 Cash Flow Projection;
 - b) as at the date of this Report, the Probable Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the 2022-2023 Cash Flow Projection, given the Hypothetical Assumptions; or

c) the 2022-2023 Cash Flow Projection does not reflect the Probable and Hypothetical Assumptions.

36. The 2022-2023 Cash Flow Projection has been prepared by Management solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

THE APPLICANT'S REQUEST FOR AN EXTENSION OF THE STAY PERIOD

37. The current stay of proceedings under the Initial Order, as extended by subsequent orders, expires on December 13, 2022. The Applicant seeks a 12-month extension of the Stay Period to December 12, 2023.

38. The length of the Stay Period sought by the Applicant is consistent with the most recent Stay Period extension.

39. Crystallex believes that a one-year extension is appropriate at this time because Crystallex needs to focus on enforcement efforts, the Applicant expects the enforcement steps in the U.S. proceedings to play out into 2024, Crystallex is not in a position to prudently make distributions to stakeholders at this time nor does it expect to be in a position to do so over the next 12 months, and a 12-month stay extension will reduce the costs to the Applicant.

40. During the previous 12-month Stay Period, the Applicant, with the assistance of the Monitor, has kept its stakeholders apprised of key financial information and critical developments via quarterly confidential and public meetings and/or Monitor's reports.

41. The Applicant has stated that its stakeholders will be kept abreast of developments through filings in the U.S. enforcement proceedings, through a proposed continued six-month interim reporting cycle in the CCAA Proceedings and continuing to hold regular information update meetings with its stakeholders.

SEALING REQUEST

42. In the past, Crystallex has sought to seal, or not publicly disclose, its financial information. For the reasons described in greater detail in the Fung Affidavit, the Company is now of the view that the risks associated with publicly disclosing its financial information have diminished significantly following recent developments in the U.S. enforcement proceedings and as a result the Company is not seeking to seal its financial information (other than the explanatory and related text in this report described below).
43. The Applicant is seeking to seal those portions of the Applicant's and other materials filed in connection with this motion that contain descriptions of the Applicant's monetization and enforcement strategy, including views and predictions by Crystallex about positions taken by Venezuela, competing creditors and the U.S. government (the "**Strategic Information**"). The Applicant advises that maintaining as much confidentiality of the Strategic Information as possible is a significant element in the Applicant's success so far and continues to be critical to its continued success. As stated in the Fung Affidavit, the Noteholders have not opposed the sealing of the Applicant's Strategic Information.
44. The Applicant is also seeking to seal the explanatory note to the Applicant's cash flows (and related text in the body of the Fortieth Report and any other materials that may be filed in connection with this motion) related to [REDACTED]
[REDACTED]
[REDACTED]

MONITOR'S RECOMMENDATIONS

45. The main objectives of the Applicant in this CCAA proceeding are the pursuit and collection of the Award and the distribution of proceeds to stakeholders.
46. The Monitor is of the view that the Applicant has made progress and is continuing to act in good faith and with due diligence.
47. The Monitor observes that the Applicant will have sufficient funding through its proposed 12-month extension period.

48. The Monitor supports the requested stay extension of 12 months and is of the view that, if this Court orders the stay extension requested by the Applicant, then it should be subject to there being sufficient safeguards put in place for the benefit of the Applicant's stakeholders, including interim reporting on the financial position of the Applicant, timely disclosure by the Applicant of any developments in the CCAA or U.S. enforcement proceedings or any other material matters, and confirmation of the ability of any stakeholder to come back to this Court in the interim to address any issues that may arise during the Stay Period. The Applicant has offered to report on this basis and it is consistent with the reporting structure that is in place since the last stay extension motion.
49. The Monitor supports the extension of the Maturity Date under the DIP Credit Agreement and approval of the Seventeenth DIP Amendment.
50. The Monitor supports the Applicant's sealing request.

All of which is respectfully submitted this 6th day of December 2022.

ERNST & YOUNG INC.

In its capacity as Court-appointed Monitor of
Crystallex International Corporation

Per:



Brian M. Denega
Senior Vice President

Appendix A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Crystallex International Corporation

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 11-14074 (LSS)

Re: Dkt. Nos. 328, 363

MEMORANDUM

I have two matters pending before me: (1) Mr. Adrianza's Motion for an Order Directing the Appointment of an Examiner and Independent Counsel for the Shareholders ("Examiner Motion")¹ and (2) the Foreign Representative's Motion for Entry of an Order Recognizing and Enforcing (I) the CCAA Eleventh Extension and Fifteenth Amendment Order; and (II) the CCAA Twelfth Extension and Sixteenth Amendment Order ("Recognition Motion").² Each party opposes the relief sought by the other. Hearings were held on August 20, 2021 and February 8, 2022. After each hearing, I requested the submission of additional documents and permitted certain additional submissions of legal authority.³ Both matters are ripe for decision.

¹ Dkt. No. 328. Mr. Adrianza is appearing *pro se*. Other shareholders, also appearing *pro se*, support the Examiner Motion. Letter from Frank Sisca, Dkt. No. 335; Letter from David Pacheco, Dkt. No. 336; Letter from Glenn W. Herbert, Dkt. No. 338; Letter from Barry Hatch, Dkt. No. 342; Letter from Przemyslaw Kosinski, Dkt. No. 343; Letter from Greg Warren, Dkt. No. 345.

² Dkt. No. 363.

³ Those submissions were made. Foreign Representative's Supplemental Objection to Motion for an Order Directing the Appointment of an Examiner and Independent Counsel for the Shareholders, Dkt. No. 359-1; Response to Foreign Representative's Supplemental Objection to Motion for an Order Directing the Appointment of an Examiner and Independent Counsel for the Shareholders, Dkt. No. 357. I also received a binder with the following documents filed in *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, Case No. 17-151-LPS (D. Del.): Motion of Adeldo Adriana to Intervene and for an Order Requiring an Independent Determination of the Amount that Needs to be Collected to Satisfy Crystallex Judgment [D.I. 404, 11/17/21]; Special Master's Report and Recommendation Regarding Proposed Sale Procedures Order [D.I. 345, 9/15/21]; Letter from

Background⁴

I have reviewed the documents and legal authority submitted. The filings show the following which is sufficient for me to rule on the two motions.⁵

1. Crystallex International Corporation (“Crystallex”) is a corporation organized under the laws of Ontario, Canada and headquartered in Ontario, Canadian. It has shareholders in Canada, the United States and perhaps other countries.

2. On December 23, 2011, Crystallex was granted protection under the Companies’ Creditors Arrangement Act (Canada) (“CCAA Proceedings”). That same day, Crystallex, as the Foreign Representative, commenced a chapter 15 case in this court (“Chapter 15 Case”).

3. The Foreign Representative contends that Crystallex’s major, if not only, asset is an arbitration claim (now judgment) against the Bolivarian Republic of Venezuela based on the expropriation of the Las Cristinas gold project in 2011. Mr. Adrianza contends that Crystallex also owns mining data (or a claim for such) worth \$340 million and has a \$600 million tax loss carry forward.

4. Crystallex’s arbitration proceeded under the auspices of the Additional Facility of the International Center for Settlement of Investment Disputes, which granted an award in favor of Crystallex on April 4, 2016 in the amount of US\$1.202 billion in damages,

Adelso Adriana [D.I. 368, 9/27/21]; Notice of Second Revised Proposed Sale Procedures Order [D.I. 391, 11/7/21]; Crystallex International Corporation’s Opposition to Adelso Adrianza’s Motion to Intervene and for an Order Requiring an Independent Determination of the Amount that Needs to be Collected to Satisfy Crystallex’s Judgment [D.I. 414, 12/1/21]; Reply to Crystallex’s Opposition to the Motion to Intervene and for an Order Requiring an Independent Determination of the Amount that Needs to Be Collected to Satisfy Crystallex’s Judgment [D.I. 416, 12/7/21].

⁴ I write for the benefit of the parties only, so a fulsome familiarity with the background knowledge is assumed.

⁵ I am not making findings of fact. These matters are either not in dispute or reflect the dispute between the parties.

interest accrued at 6-month average U.S. dollar LIBOR plus 1% compounded annually, from April 13, 2008 to the date of the Final Award Order and post judgment interest from the date of the Final Award Order.

5. On April 7, 2017, the United States District Court for the District of Columbia recognized the Final Award Order and entered Judgment in a Civil Action against Venezuela (“Judgment”).⁶

6. On June 19, 2017, Crystallex registered the Judgment in the United States District Court for the District of Delaware. On August 14, 2017, Crystallex moved for an order authorizing a writ of attachment *fierec facias* to PDV Holding, Inc., a Delaware corporation, against its shares that are wholly owned by Petróleos de Venezuela, an alter ego of Venezuela (“PDVH Stock”). After significant litigation, that motion was eventually granted. The Delaware District Court has appointed Robert B. Pincus, Esquire as a special master to conduct a sale of the PDVH Stock. Mr. Pincus has retained Evercore as his Investment Banker to assist with the marketing and sale. The extensive history of the case as well as the negotiations surrounding the proposed sale of the PDVH Stock are documented in several opinions of the Honorable Lenard P. Stark. The most recent order regarding the sale was issued by the Delaware District Court on October 4, 2022. As set forth in his opinions and reflected in that order, whether and when the PDVH Stock may be sold is complicated by, among other things, the necessity to deal with the Department of the Treasury’s Office of Foreign Assets Control.

⁶ The Judgment appears to have inadvertently omitted the award of post judgment interest from the date of the Final Award Oder.

7. To fund the arbitration and collection proceedings against Venezuela, Crystallex sought and obtained financing in the CCAA Proceedings. The following chart as well as the text below it and accompanying footnotes were supplied by the Foreign Representative in his supplemental filing [Dkt. 359-1 at page 23 of 279] and appears to accurately reflect the sequence of financing orders as well as their respective terms.

Agreement	Date of Final Order by the CCAA Court	Date Recognition Order made in Ch. 15	Principal Advanced	Interest	Additional Compensation
DIP Credit Agreement ^A	4/16/2012	4/26/2012 [Docket No. 111]	US\$36 million	10% per annum, compounded semi-annually	35% of Net Arbitration Proceeds ^B
Second Amendment Agreement ^C	6/5/2013	6/19/2013 [Docket No. 125]	US\$11.1 million	10% per annum, compounded semi-annually	14.874% of Net Arbitration Proceeds
Third Amendment Agreement ^D	4/14/2014	4/28/2014 [Docket No. 138]	(a) US\$12.1 million (b) US\$3.333 million	10% per annum, compounded semi-annually	(a) 16.214% of Net Arbitration Proceeds (b) 4.466% of Net Arbitration Proceeds
Fourth Amendment Agreement ^E	12/18/2014	2/3/2015 [Docket No. 162]	US\$13.2 million	10% per annum, compounded semi-annually	17.688% of Net Arbitration Proceeds ^F

The DIP Credit Agreement has also been amended pursuant to orders made on the following dates to, among other things, extend the maturity date of the DIP loan: (a) December 14, 2016; (b) May 25, 2017; (c) December 20, 2017; (d) February 27, 2018; (e) May 9, 2018; (f) October 31, 2018; (g) May 3, 2019; (h) November 4, 2019; (i) May 4, 2020; (j) November 3, 2020; and (l) May 4, 2021.

^A Senior Secured Credit Agreement, dated as of April 23, 2012 (the “DIP Credit Agreement”).

^B Pursuant to the Waterfall found as Exhibit "F" to the DIP Credit Agreement, the “Net Arbitration Proceeds” are calculated as the difference between the gross amount of any Arbitration proceeds received by the Company and the aggregate of the first five levels of the Waterfall (the “Net Arbitration Proceeds”) being: (i) post-filing expenses, (ii) taxes payable or required to be withheld, (iii) the principal amount of the DIP loan, (iv)

- interest on the DIP loan, and (v) subject to the Override (as defined in the DIP Credit Agreement), all proven and allowed unsecured pre-filing claims against the Company.
- ^C Second Credit Agreement Amendment Agreement, dated as of June 5, 2013.
- ^D Third Credit Agreement Amendment Agreement, dated as of April 16, 2014.
- ^E Fourth Credit Agreement Amendment Agreement, dated as of March 12, 2015.
- ^F Subject to the Net Arbitration Proceeds Transfer Agreement.

8. The chart shows that the DIP Lenders have advanced US\$75.733 million, with the last advance approved by the Canadian court in December 2014 and recognized by this court in February 2015. Counsel for the Foreign Representative represented that as of July 31, 2021 the DIP Lenders were owed principal and interest of approximately \$162 million. In addition, the share of Net Arbitration Proceeds granted to the DIP Lenders now stands at 88.242%, subject to the sharing arrangement set forth in the Net Arbitration Proceeds Transfer Agreement.

9. Counsel for the Foreign Representative also represented that the waterfall of priority in the CCAA Proceedings (which the parties have referred to as the Mechanics of Distribution) is as follows:

- First: Post filing expenses including any tax owed on the collection of the Judgment
- Second: DIP financing principal and interest
- Third: Unsecured creditors with post-filing interest
- Fourth: Amounts owed under a management incentive plan
- Fifth: Net Arbitration Proceeds
- Sixth: Equity

10. Crystallex's unsecured creditors include holders of 9.375% Senior Unsecured Notes, which have participated in the CCAA Proceedings and the Chapter 15 Case through an ad hoc committee. While not entirely clear, the principal amount of the Notes (which appears to include some permitted pre- and post-petition filing fees and expenses) is

approximately CN\$123.4 million. In 2013, Crystallex and the Ad Hoc Committee of Noteholders entered into a standstill agreement that, among other things, awarded the Noteholders and other general unsecured creditors increased interest on their respective claims, granted certain releases and provided that no party other than Crystallex could file a plan of arrangement in the CCAA Proceedings or bring a motion in the CCAA Proceedings without leave of the Canadian court.

11. Certain shareholders have participated in the CCAA Proceedings. Those shareholders were (and, perhaps still are) represented by Gowling WLF (Canada) LLP. Gowlings sought appointment as committee counsel to a group of opt-in shareholders with funding to be on a contingency fee basis (presumably, but not specified to be, based on the recovery by those shareholders). Gowlings sought CN\$50,000 for expenses related to providing notice to all shareholders of the formation of the committee and the ability to opt-in. In its application, Gowlings noted that there was a real prospect of recovery for shareholders in the CCAA Proceedings, but that shareholders needed advice with respect to the dilution of their interest in the arbitration proceeds, steps to be taken to realize on the Judgment and distribution of any proceeds. The request before the Canadian court was opposed by the DIP lender and Crystallex. In April 2016, the Canadian court ruled on the motion. In doing so, the court (among other things) recognized the Judgment, the Mechanics of Distribution and the “obvious prospects” that if the Judgment is collected in full “there will be some amount available for the shareholders.” Nonetheless, the court did not grant the motion. The court determined that there was nothing preventing Gowlings and its current shareholder clients from forming an ad hoc committee, that Crystallex would not benefit directly from other shareholders joining those currently represented by

Gowlings, that the shareholders were sophisticated investors (some “well-heeled”) and there was no evidence that they were “vulnerable” or in need of the CN\$50,000 to provide notice to other shareholders. Ultimately, the court ruled that the shareholders “are quite able to do this without Crystallex money and without a court order.”

12. Subsequently, in 2018, Gowlings (now, on behalf of over 200 shareholders) sought leave of the Canadian court to bring a motion to vary the terms of the court’s previous orders approving the Second Amendment Agreement, Third Amendment Agreement and the Fourth Amendment Agreement (as to both the increased percentage of the Net Arbitration Proceeds and the Net Arbitration Transfer Agreement) all as identified in the chart, above.⁷ Gowlings asserted that Crystallex, its directors and the DIP lenders acted in a manner that was oppressive, unfairly prejudicial to shareholders and in utter disregard of shareholder interests in that they, among other things, failed to explore alternatives after the original DIP loan was made. Further, Gowlings asserted that the arrangements with the DIP lenders violates various Canadian laws, including section 347 of the Canadian Criminal Code, which regulates interest rates.⁸ Gowlings also asserted that

⁷ The draft statement of claim referred to by Gowlings in its submission was not among the filings submitted to me.

⁸ Section 347 of the Criminal Code, RSC 1985 c C-46, in relevant part, provides:

(1) Despite any other Act of Parliament, everyone who enters into an agreement or arrangement to receive interest at a criminal rate, or receives a payment or partial payment of interest at a criminal rate, is

(a) guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six months or to both.

(2) In this section,

* * *

the orders were entered without any effective notice to shareholders. This application was opposed by the DIP Lenders, certain directors, individually and (it appears) Crystallex. The Canadian court dismissed the application. In doing so, the court ruled that: (i) notice of the orders approving the second, third and fourth amendments to the DIP Credit Agreement were effected in compliance with the CCAA and relevant orders in the CCAA Proceedings, (ii) any shareholder could have filed a notice of appearance to be added to the service list in the CCAA Proceedings, (iii) the orders the shareholders sought to vary were long final and (iv) money was loaned in reliance on them. As for the allegations that the orders violated the Canadian Criminal Code, the court held that the DIP credit agreement specifically (and on its face) prohibits the payment of interest at a criminal rate. Notwithstanding, the court held that any claim for actual receipt of interest by the DIP lender at a criminal rate of interest is premature until it is known what interest will actually be paid, including the timing and quantum “so as to permit calculation of the effective rate of interest.”⁹

criminal rate means an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds sixty per cent on the credit advanced under an agreement or arrangement; (*taux criminel*)

* * *

interest means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes.

* * *

⁹ The DIP lenders also made this argument in their factum submitted to the Canadian court.

Discussion

A. The Examiner Motion

By the Examiner Motion, Mr. Adrianza seeks to have this court appoint an examiner as well as independent counsel for shareholders (which Crystallex and I have treated as a request for an equity committee). Among other things, Mr. Adrianza argues that an examiner is warranted to review the circumstances of what he terms a self-interested board that violated its duties of care and loyalty in connection with the DIP financing and a fraudulent transfer of a tax loss carryforward to the lenders. He also argues that there was no effective representation of shareholders in the CCAA Proceedings as the Canadian court denied the various motions and many of the filings were under seal. Mr. Adrianza also complains that individuals cannot participate *pro se* in CCAA Proceedings, which makes participation cost prohibitive. The Foreign Representative responds that there is no legal authority under chapter 15 for this court to appoint an examiner or have the UST appoint an equity committee as the Foreign Representative was not (at the time) asking for any relief and only a Foreign Representative can do so.

I reject the Foreign Representative's argument that nothing in chapter 15 permits the court to grant the relief sought in the Examiner Motion. As I ruled in *Better Place*, § 1522¹⁰

¹⁰ 11 U.S.C. § 1522 provides:

- (a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.
- (b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3), to conditions it considers appropriate, including the giving of security or the filing of a bond.
- (c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.
- (d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

permits the court to condition relief granted under § 1519 or § 1521 and it permits the court to modify or terminate relief previously granted under those sections upon the request of the Foreign Representative or an entity affected by the relief previously granted.¹¹ Here, prior to the filing of the Examiner Motion, the Foreign Representative had asked for, and was granted, relief under both sections 1519 and 1521, accordingly, I may modify or terminate that relief. If I can modify or terminate it, I can certainly take the lesser step of conditioning the previous relief granted. But, if I am wrong, it is of no moment. Subsequent to the filing of the Examiner Motion, the Foreign Representative has sought further relief under § 1521 in the Recognition Motion.¹²

Notwithstanding that I can grant the relief requested in the Examiner Motion, I am not convinced that I should grant it at this time. As recognized by the Canadian courts (trial and appellate), serious questions exist about whether any of the previous orders entered in the CCAA Proceedings can and/or should be disturbed after so many years. During the hearings, I expressed similar concerns with respect to orders entered in the Chapter 15

¹¹ *In Re Better Place, Inc.*, Case No. 13-11814, 2018 Bankr. LEXIS 322 * 16-18 and n. 41 (Feb. 5, 2018) discussing and citing *Jaffé v. Samsung Elecs. Co.*, 737 F.3d 14, 26 (4th Cir. 2013) (“We believe that Jaffe’s view of the relationship between § 1521(a) and § 1522(a) is too myopic. While it is true that Jaffe ‘never affirmatively requested rejection authority under § 365,’ he did request several forms of discretionary relief under § 1521, among which was the privilege, pursuant to § 1521(a)(5), to have the bankruptcy court entrust him with ‘[t]he administration or realization of all or part of the assets of [Qimonda] within the territorial jurisdiction of the United States,’ specifically identifying the company’s U.S. patents as among the U.S. assets he sought to control. And, as a prerequisite to awarding *any* § 1521 relief, the court was *required* to ensure sufficient protection of the creditors and the debtor. Section 1522(a) states this explicitly, providing in relevant part, ‘The court may grant relief under section . . . 1521. . . *only if* the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.’ 11 U.S.C. § 1522(a) (emphasis added). Additionally, the court was authorized to ‘subject’ any § 1521 relief ‘to conditions it considers appropriate.’ *Id.* § 1522(b); *see also* H.R.Rep. No. 109-31, pt. 1, at 1, at 116 (describing § 1522 as ‘giv[ing] the bankruptcy court broad latitude to mold relief to meet specific circumstances, including appropriate responses if it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors’).”).

¹² The Foreign Representative states that the statutory predicates for the relief requested in the Recognition Motion are sections 105, 1507, 1521, 1525 and 1527.

Case.¹³ And, as even Mr. Adrianza recognizes until any proceeds from the sale of the PDVH Stock are collected, we are talking in hypotheticals regarding the actual outcome of the DIP lending.¹⁴ Further, I have no evidence that the interests of Crystallex and its shareholders are not aligned at this time in respect of maximizing recoveries on the PDVH Stock.

But, at least two issues may be appropriate to address once proceeds from the sale of the PDVH Stock are available. First, the Canadian court concluded that it is premature to consider whether the arrangement with the DIP lenders establishes an effective interest rate that violates Canada's Criminal Code. This Chapter 15 Case has been pending for eleven years, the collection proceedings have been pending for five years and the timing of the sale of the PDVH Stock is uncertain. Whether the effective rate of interest under the DIP Credit Agreement will turn out to be more than 60% is unknown.

Second, it appears that this court must determine whether any transfer under the Mechanics of Distribution (or otherwise) is appropriate as it relates to assets located in the United States.¹⁵ Section § 1520(a)(2) provides:

(a) *Upon recognition* of a foreign proceeding that is a foreign main proceeding—

¹³ See e.g. Aug. 20, 2021 Hr'g Tr. 50:18-53:9.

¹⁴ Aug. 20, 2021 Hr'g Tr. 4: 12-19.

¹⁵ At argument, I asked whether the Foreign Representative planned to seek permission from the Canadian court or this court before making a distribution of any recoveries on the Judgment. In a supplemental response, the Foreign Representative stated that "The Foreign Representative understands that the Debtor must make the appropriate application as Canadian Court approval of any material distributions will be required by both the Debtor's board of directors and the Monitor." Dkt. No. 359-1 n.5. This answer is less than satisfactory as it appears to leave that decision to the Debtor's board and the Monitor rather than the Canadian court or the CCAA statute. In its supplemental filing the Foreign Representative did not address whether it would seek approval of this court prior to any distribution.

(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the section would apply to property of an estate.¹⁶

This provision automatically applies upon recognition. It establishes that the court presiding over the chapter 15 proceedings has *in rem* jurisdiction over a debtor's assets in the United States and charges that court (not the court presiding over the foreign main proceeding) with the responsibility to approve transfers of those assets.¹⁷ At a minimum, the proceeds from the sale of the PDVH Stock appear to be property within the territorial jurisdiction of the United States. Section 1502(8) provides:

(8) “within the territorial jurisdiction of the United States”, when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and *intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.*¹⁸

Previous orders of this court recognizing orders in the CCAA Proceedings and/or approving the financing arrangements do not appear to reference either section § 1520(a)(2) or § 363. Rather, per the applicable motions and/or applications, the DIP lenders appear to have insisted upon approval/recognition of the financing arrangements by this court in

¹⁶ 11 U.S.C. § 1520(a)(2) (emphasis supplied).

¹⁷ *In re Elpida Memory, Inc.*, 2012 WL 6090194, at *7 (Bankr. D. Del. Nov. 20, 2012) (“In essence, the Model Law follows an *in rem* division of labor between competing sovereignties—tasking the domestic courts with responsibility over and for assets in their jurisdiction. Chapter 15’s legislative history leads to the same conclusion as the plain meaning analysis—the sound exercise of business judgment test is applicable” [to a motion to approve the transfer of a patent license and technology agreement and a motion to approve the sale of certain patents]).

¹⁸ 11 U.S.C. § 1502(8) (emphasis supplied). *Compare In re Fairfield Sentry Ltd*, 768 F.3d 239 (2d Cir. 2014) (“the sale of the SIPA Claim is a ‘transfer of an interest of the debtor in property within the territorial jurisdiction of the United States’ within the meaning of 11 U.S.C. § 1520(a)(2). The language of the statute makes it plain that the bankruptcy court was required to conduct a section 363 review. Deference to the BVI Court was not required. We remand to the district court with instructions to remand to the bankruptcy court to conduct the section 363 review.”).

order to receive § 364(e) protection. Whether those approvals already suffice or whether further approval is necessary has not been briefed by the parties.

Accordingly, while I am not granting the Examiner Motion at this time (without prejudice to a later renewal), I am placing certain conditions on the relief previously granted and the relief the Foreign Representative requests in the Recognition Motion.¹⁹ One, no proceeds of the sale of the PDVH Stock that the District Court awards to Crystallex can be transferred out of the United States without the permission of this court.²⁰ Two, no further transfer/disposition of Net Arbitration Proceeds can be made without the permission of this court. The order imposing the conditions will also address documents that have been sealed in the Chapter 15 Case.

B. The Recognition Motion

By the Recognition Motion, the Foreign Representative asks that I recognize two orders of the Canadian court. The first is the Canadian court's order dated May 4, 2021, which extends the original stay of proceedings against Crystallex and approves a Fifteenth Credit Agreement Amendment to the DIP Credit Agreement. This fifteenth amendment extends the maturity date to November 5, 2021. There is no fee associated with this amendment. It also permits certain documents to be filed under seal pending motion practice in the CCAA Proceedings. The second is the Canadian court's order dated

¹⁹ Compare *In re Cozumel Caribe, S.A. de C.V.*, 508 B.R. 330, 336 (Bankr. S.D.N.Y. 2014) (denying a motion to vacate recognition of a Mexican insolvency proceeding and finding: "CTIM holds approximately \$8 million in an account in New York; it has not alleged that the Foreign Debtors or the Non-Debtor Affiliates hold any other property in the United States. Whether its claim is \$27 million or \$103 million, CTIM's interests are sufficiently protected as long as the funds remain in the New York account.").

²⁰ At least one other judgment creditor has intervened in the Delaware District Court attachment proceedings claiming an interest in the proceeds of the sale of the PDVH Stock. I assume the Delaware District Court will resolve any inter-judgment creditor issues in the event there is not sufficient proceeds to satisfy all judgment creditors.

November 18, 2021, which extends the original stay of proceedings against Crystallex and approves a Sixteenth Amendment to the DIP Credit Agreement. This amendment extends the maturity date to November 18, 2022. There is no fee associated with this amendment. It, too, permits certain documents to be filed under seal in the CCAA Proceedings, but in more limited circumstances. Mr. Adrianza objects to the Recognition Order in light of his Examiner Motion. He also argues that the court should no longer permit sealing of documents in the Chapter 15 Case.

Having considered the Recognition Motion and the arguments made at the hearing, I will enter a simple order recognizing the extension of the maturity date of the DIP Credit Agreement, the waiver of defaults and certain other relief granted/conditions imposed by the Canadian court. Given my ruling, I will not (and, as I expressed at the hearing see no reason to) re-confirm or re-recognize previous orders of this court or the Canadian court related to the DIP financing.

An order will follow.

Dated: November 28, 2022



Laurie Selber Silverstein
United States Bankruptcy Judge

Appendix B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Crystallex International Corporation

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 11-14074 (LSS)

Re: Docket No. 328, 363

ORDER

For the reasons set forth in my Memorandum of even date,

IT IS HEREBY ORDERED that:

1. The Motion for an Order Directing the Appointment of an Examiner and Independent Counsel for the Shareholders [Docket No. 328] is denied without prejudice.
2. The Motion for Entry of an Order Recognizing and Enforcing (I) the CCAA Eleventh Extension and Fifteenth Amendment Order; and (II) the CCAA Twelfth Extension and Sixteenth Amendment Order [Docket No. 363] is granted, in part, as set forth herein, and otherwise denied.
3. The following provisions of the CCAA Eleventh Extension and the Fifteenth Amendment Order are recognized:
 - (i) Paragraph 3 of the Order;
 - (ii) Paragraph 4 of the Order to the extent that it provides that the date references to May 7, 2021 in the Fifteenth Credit Agreement are changed to November 5, 2021;
 - (iii) Paragraph 13 of the Order.

4. The following provisions of the CCAA Twelfth Extension and the Sixteenth Amendment Order are recognized:

- (i) Paragraph 3 of the Order;
- (ii) Paragraphs 4 through 11 of the Order, subject to Ordering paragraph 7, below.
- (iii) Paragraph 12 of the Order only to the extent that it approves a further extension of the maturity date beyond November 5, 2021; and
- (iv) Paragraph 18 of the Order.

5. The proceeds of the sale of the PDVH Stock recovered by Crystallex in *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, Case No. 17-151-LPS pending in the United States District Court for the District of Delaware shall not be transferred out of the United States without permission from this Court.¹

6. No further transfer/disposition of Net Arbitration Proceeds can be made without the permission of this Court.

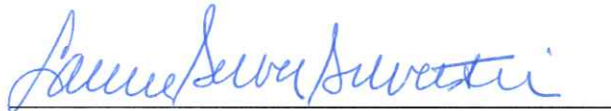
7. Sixty days from the entry of this Order, the Foreign Representative must file on the docket of this chapter 15 case unredacted versions of all documents that are currently on the docket in this case under seal unless before that date the Foreign Representative files a motion seeking to continue the sealing of one or more documents. Any such motion must contain legal justification for the need to keep such document(s) under seal or to permit redaction and be served on all appropriate parties, including Mr. Adrianza and those shareholders listed in footnote 1 of the Memorandum.

¹ The Court recognizes that there may be other judgment creditors competing for proceeds from the sale of the PDVH Stock. Memorandum n. 20. This Order does not affect the proceeds allocated to other judgment creditors in the Delaware District Court case.

8. The Foreign Representative shall serve a copy of the Memorandum and this Order on the Monitor in the CCAA Proceedings and Robert B. Pincus, Esquire, Special Master in the Delaware District Court case and file a certificate of service on the docket of this case evidencing the same.

9. This Court shall retain jurisdiction with respect to all matters relating to the interpretation and implementation of this Order.

Dated: November 28, 2022



Laurie Selber Silverstein
United States Bankruptcy Judge

Appendix C

Crystallex International Corporation ("Crystallex")
 Variance Statement
 October 1, 2021 to September 30, 2022
 US \$000

	Actual			Forecast			Variance			Notes
	Oct 1, 2021- Mar 31, 2022	Apr 1, 2022- Sep 30, 2022	Oct 1, 2021- Sep 30, 2022	Oct 1, 2021- Mar 31,	Apr 1, 2022- Sep 30, 2022	Oct 1, 2021- Sep 30,	Oct 1, 2021- Mar 31, 2022	Apr 1, 2022- Sep 30, 2022	Oct 1, 2021- Sep 30, 2022	
Opening Cash Balance	95,205	85,637	95,205	95,205	81,494	95,205	-	4,143	-	
Receipts										
Venezuela and Other Receipts	(33)	533	500	-	-	-	(33)	533	500	1
Total Receipts	(33)	533	500	-	-	-	(33)	533	500	
Disbursements										
General Corporate Expenses	(1,193)	(950)	(2,142)	(1,413)	(1,118)	(2,531)	220	169	389	2
Arbitration and CCAA Costs	(8,342)	(3,859)	(12,201)	(12,299)	(10,578)	(22,877)	3,956	6,719	10,675	3
Total Disbursements	(9,535)	(4,809)	(14,344)	(13,711)	(11,696)	(25,407)	4,176	6,887	11,064	
Net Cash Flow	(9,568)	(4,276)	(13,844)	(13,711)	(11,696)	(25,407)	4,143	7,421	11,564	
Ending Cash Balance	85,637	81,361	81,361	81,494	69,798	69,798	4,143	11,563	11,563	

* Certain numbers in the Variance Statement are rounded.

Unaudited- see accompanying notes.

1. The favourable variance in Venezuela and Other Receipts is mainly due to interest earned on Crystallex's term deposits and securities that are held at Canadian schedule 1 banks during the period from October 1, 2021 to September 30, 2022.
2. The favourable variance in General Corporate Expenses is mainly due to a timing difference in payroll and benefits, which is expected to reverse in the following months.
3. The favourable variance in Arbitration and CCAA costs is mainly due to lower-than-expected US and Canadian professional fees incurred.

Appendix D

Crystallex International Corporation ("Crystallex")
 Cash Flow Projection
 October 1, 2022 to December 31, 2023
 US \$000

		<i>Forecast</i>			
	October 1, 2022 - March 31, 2023	April 1, 2023 - September 30, 2023	October 1, 2023 - December 31, 2023	Total	
Opening Cash Balance	81,361	71,051	61,245	81,361	1
Receipts					
Venezuela and Other Receipts	-	-	-	-	
Total Receipts	-	-	-	-	2
Disbursements					
General Corporate Expenses	(1,447)	(1,119)	(556)	(3,122)	3
Arbitration and CCAA Costs	(8,863)	(8,687)	(4,343)	(21,894)	4
Total Disbursements	(10,310)	(9,806)	(4,899)	(25,015)	
Net Cash Flow	(10,310)	(9,806)	(4,899)	(25,015)	
Ending Cash Balance	71,051	61,245	56,346	56,346	

* Certain numbers in the Cash Flow Projection are rounded.
 Unaudited- see accompanying notes.

This Cash Flow Projection has been prepared by Management solely for the purpose of determining the ability of Crystallex International Corporation ("Crystallex" or the "Applicant") to fund its business activities as set out herein. The Cash Flow Projection represents Management's reasonable estimates at present. This is not a projection or forecast as contemplated in the Chartered Professional Accountants Canada Handbook. The actual timing and amount of the receipts and disbursements may fluctuate from the estimates shown herein and these fluctuations may be material. Readers are cautioned that the Cash Flow Projection may not be appropriate for their purposes.

Capitalized terms not defined in the notes to the Cash Flow Projection are defined in the reports of the Monitor.

The Cash Flow Projection is presented for the period from October 1, 2022 to December 31, 2023 (the "Period") and represents Management's estimate of the projected financial results from operations during that time on a cash, not accrual, basis. The Cash Flow Projection is presented in thousands of U.S. Dollars.

Actual disbursements will reflect the foreign exchange rate in effect on the date of the transaction.

1. The Opening Cash Balance includes Crystallex's cash on hand net of outstanding cheques as at September 30, 2022.
2. Venezuela and Other Receipts represent settlement receipts from Venezuela, interest earned, tax refunds and foreign exchange gains and losses.

3. General Corporate Expenses represent the Applicant's payroll and benefits, general office expenses and insurance payments.

4. Arbitration and CCAA Costs relate to the legal services for pursuing and enforcing the Applicant's Award against Venezuela. In addition, Arbitration and CCAA Costs also relate to professional fees of the Applicant's tax accountant, the Monitor and counsel to the Monitor, the Applicant and the DIP Lender. [REDACTED]

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

Court File No: CV-11-9532-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CRYSTALLEX INTERNATIONAL CORPORATION**

***ONTARIO*
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**(REDACTED) FORTIETH REPORT
OF ERNST & YOUNG INC.
IN ITS CAPACITY AS MONITOR**

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