

**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

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**MOTION RECORD  
OF CRYSTALLEX INTERNATIONAL CORPORATION  
(August 17, 2023)**

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August 10, 2023

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*, R.S.C.  
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# TAB 1

## Notice of Motion

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

**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**NOTICE OF MOTION**

**TAKE NOTICE THAT** the Applicant, Crystallex International Corporation ("Crystallex" or the "Company"), will make a motion before The Honourable Madam Justice Conway on August 17, 2023 at 10:30 a.m., or as soon thereafter as the motion can be heard, by way of Zoom at Toronto.

**PROPOSED METHOD OF HEARING:**

The motion is to be heard orally.

**THE MOTION IS FOR AN ORDER:**

- (a) partially unsealing certain information previously sealed by Order of this Court in these proceedings; and
- (b) such further and other relief as counsel may request and this Court may deem just.

## THE GROUNDS FOR THE MOTION ARE:

### A. Background

1. On December 23, 2011, an order (the “**Initial Order**”) was made granting Crystallex protection from its creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceeding**”);
2. Crystallex subsequently obtained an order of the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”) on December 28, 2011, recognizing this CCAA Proceeding as a foreign main proceeding under Chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceeding**”);
3. Crystallex’s only assets are: (a) an award of U.S.\$1.202 billion, plus interest, rendered by the World Bank’s International Centre for the Settlement of Investment Disputes against the government of Venezuela (the “**Award**”); and (b) the related proceeds of recovery on the Award received to date. The Award was rendered on April 4, 2016 in respect of Venezuela’s expropriation from Crystallex of its rights in respect of the Las Cristinas gold mine;
4. In the more than seven years since the Award was granted, Crystallex has been engaged in complex legal and international political proceedings aimed at enforcing or otherwise realizing the value of the Award, its success in which will dictate its ability to provide any meaningful recovery to its stakeholders;
5. Historically, a critical component of Crystallex’s enforcement strategy and a key to its success has been the Company’s decision to maintain the confidentiality of certain strategic and financial information filed in this CCAA Proceeding and the Chapter 15 Proceeding;

6. Crystallex has historically sealed three categories of information: (a) strategic information concerning its enforcement strategy, (b) information relating to certain retention amounts payable to Robert Fung and Marc Oppenheimer, including information relating to a portion of the contingent value rights (the “**CVR Amounts**”) that would otherwise be payable to the Company’s debtor-in-possession (“**DIP**”) lender, and (c) until 2021, certain financial information, including the Company’s cash balance and historical and future cash flows;

7. The Company has sought and obtained orders of this Court on 17 prior occasions to seal certain of its strategic and financial information. Crystallex has also obtained orders of the U.S. Bankruptcy Court on eight prior occasions to seal certain of its strategic and financial information;

8. On June 26, 2023, the U.S. Bankruptcy Court made an order (the “**Chapter 15 Disclosure Order**”) requiring Crystallex to review each document previously sealed in the Chapter 15 Proceeding by order of the U.S. Bankruptcy Court (collectively, the “**Chapter 15 Sealed Documents**”) to ensure that the only information now redacted in those documents is either strategic information or information relating to the CVR Amounts;

9. To the extent that the redactions are broader than those categories, the Chapter 15 Disclosure Order requires Crystallex to file revised versions of the documents containing only the permitted redactions;

**B. Unsealing of Previously Sealed Information**

10. Eight of the Chapter 15 Sealed Documents were also sealed by orders of this Court at the relevant times on the basis of evidenced adduced by Crystallex and the application of the relevant legal test;

11. In light of existing sealing orders in this proceeding Crystallex advised the U.S. Bankruptcy Court that it wished to address the implications of the Chapter 15 Disclosure Order in this Court before re-filing the Chapter 15 Sealed Documents in accordance with the Chapter 15 Disclosure Order; the U.S. Bankruptcy Court has therefore held the Chapter 15 Disclosure Order in abeyance for 90 days in order to permit the Company to bring this motion;

12. Crystallex has undertaken a review of the Chapter 15 Sealed Documents. Following such review, the Company advises that:

- (a) the information that Crystallex seeks to unseal in this motion no longer constitutes strategic information relevant to the Company's ongoing litigation and enforcement strategy; and
- (b) Crystallex no longer views such information as harmful to its recovery efforts;

13. The information the Crystallex seeks to unseal no longer poses a serious risk to an important public interest, and the benefits of continuing to maintain the redactions at issue do not outweigh any deleterious effects of such sealing;

14. Accordingly, Crystallex requests an Order partially unsealing the eight Chapter 15 Sealed Documents previously filed in this Court (as identified and described in the

Affidavit of Robert Fung sworn August 9, 2023) in order to facilitate compliance with the Chapter 15 Disclosure Order;

**C. Other Grounds**

15. Section 11 of the CCAA;
16. Section 137(2) of the *Courts of Justice Act*;
17. The *Rules of Civil Procedure*, including rules 1.04(1), 37.01 and 37.02(1); and
18. Such further and other grounds as counsel may advise and this Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Affidavit of Robert Fung sworn August 9, 2023;
- (b) Such further and other materials as counsel may advise and this Court may permit.

August 10, 2023

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**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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**TAB 2**  
**Affidavit of Robert**  
**Fung sworn August 9,**  
**2023**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Applicant

**AFFIDAVIT OF ROBERT FUNG  
Sworn August 9, 2023**

I, Robert Fung, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am the Chairman and CEO of Crystallex International Corporation ("**Crystallex**" or the "**Company**"). I have also been a director of Crystallex since 1996, Chairman of the Board of Directors of Crystallex since 1998 and CEO since June 2008. As such, I have knowledge of the matters to which I hereinafter depose, which knowledge is either personal to me, obtained from a review of the documents to which I refer, or, where indicated, based on information and belief, in which case I have identified the source of my belief and verily believe such information to be true.

2. I swear this Affidavit in support of a motion by Crystallex for an Order partially unsealing certain confidential materials previously sealed by order of this Court in these proceedings.

**A. BACKGROUND AND OVERVIEW**

3. On December 23, 2011, an order (the “**Initial Order**”) was made granting Crystallex protection from its creditors under the *Companies’ Creditors Arrangement Act* (the “**CCAA Proceeding**”) and appointing Ernst & Young Inc. as monitor (the “**Monitor**”). Crystallex subsequently obtained an order of the United States Bankruptcy Court (the “**U.S. Bankruptcy Court**”) for the District of Delaware on December 28, 2011, recognizing this CCAA Proceeding as a foreign main proceeding under chapter 15 of the United States Bankruptcy Code (the “**Chapter 15 Proceeding**”).

4. Crystallex’s only assets are: (a) an award of U.S.\$1.202 billion, plus interest, rendered by the World Bank’s International Centre for the Settlement of Investment Disputes against the government of Venezuela (the “**Award**”); and (b) the related proceeds of recovery on the Award received to date. The Award was rendered on April 4, 2016 in respect of Venezuela’s expropriation from Crystallex of its rights in respect of the Las Cristinas gold mine.

5. In the more than seven years since the Award was granted, Crystallex has been engaged in complex legal and international political proceedings aimed at enforcing or otherwise realizing the value of the Award. The Company’s success in enforcing the Award is the single most important issue in this CCAA Proceeding; Crystallex’s success on this front will dictate its ability to provide any meaningful recovery to its stakeholders.

6. Historically, a critical component of Crystallex's enforcement strategy and a key to its success has been the Company's decision to maintain the confidentiality of certain strategic and financial information filed in this CCAA Proceeding and the Chapter 15 Proceeding.

7. On June 26, 2023, the U.S. Bankruptcy Court made an order requiring Crystallex to review each document sealed by the U.S. Bankruptcy Court in the Chapter 15 Proceeding to ensure that the only information now redacted in those documents is either strategic information or information relating to certain compensation payable to management of the Company (described and defined below as the CVR Amounts). To the extent the redactions are broader than those categories, Crystallex must file with the U.S. Bankruptcy Court revised versions of the documents containing only the permitted redactions.

8. Eight of the documents that were sealed in the Chapter 15 Proceeding were also sealed by orders of this Court at the relevant times on the basis of evidence from Crystallex and this Court's consideration of the relevant legal test. I understand that the U.S. Bankruptcy Court relied in part on the Canadian sealing orders in making its own sealing orders.

9. Given the existing sealing orders in this proceeding, and the U.S. Bankruptcy Court's June 26, 2023 order, Crystallex determined that it first should seek this Court's authorization to unseal portions of the applicable documents in Canada.

10. In this motion, Crystallex is seeking this Court's authorization to unseal portions of the eight documents outlined in the attached Schedule A in accordance with the U.S.

Bankruptcy Court's June 26, 2023 order. The effect of such partial unsealing will be that the documents will *only* contain redactions in respect of strategic information or information relating to certain compensation payable to management of the Company (described and defined below as the CVR Amounts).

**B. History of Sealing in the CCAA Proceeding and Chapter 15 Proceeding**

11. As described in previous Affidavits filed in this CCAA Proceeding, the only way for Crystallex to pay its stakeholders is to successfully enforce on the Award. The Company's enforcement efforts against Venezuela to date have involved Crystallex obtaining a writ of attachment against Venezuela's interest in the shares of PDV Holding, Inc. (the "**PDVH Shares**"). The PDVH Shares represent an indirect 100% ownership interest in CITGO – a major U.S. oil company valued at over U.S.\$8 billion and Venezuela's largest overseas asset. Significant progress has been made by Crystallex in its enforcement and recovery efforts against Venezuela. In particular, the U.S. District Court in Delaware has approved a sale process for the PDVH Shares, which process is currently underway and expected to play out into 2024.

12. The Company's primary objective is to maximize its focus on its U.S.-based efforts to enforce the Award, and to safeguard its U.S. litigation strategy (and its key personnel) by keeping certain information about that strategy confidential while the Company's enforcement efforts are underway.

13. As a result, Crystallex has historically sealed three categories of information: (a) strategic information concerning its enforcement strategy, (b) information relating to certain retention amounts payable to me and to Marc Oppenheimer, including information

relating to a portion of the contingent value rights (the “**CVR Amounts**”) that would otherwise be payable to the Company’s debtor-in-possession (“**DIP**”) lender, and (c) until 2021, certain of the Company’s financial information, including its cash balance and historical and future cash flows.

14. As a result, the Company has sought and obtained orders of this Court on 17 prior occasions to seal certain of its strategic and financial information. Crystallex has also obtained orders of the U.S. Bankruptcy Court on eight prior occasions to seal certain of its strategic and financial information.

15. Commencing Fall 2021, Crystallex determined that the harms previously associated with the disclosure of its historical financial information had abated. From that point onward, Crystallex has publicly disclosed a significant portion of the financial information that it had historically sealed in this CCAA Proceeding and, to a lesser extent, the Chapter 15 Proceeding. However, the Company has continued to request, and this Court has continued to approve, the sealing of the Company’s strategic information and information relating to the CVR Amounts.

16. On November 18, 2021, this Court made an order (a) granting a stay of proceedings, (b) approving an amendment to the Company’s DIP credit agreement, and (c) sealing certain of Crystallex’s limited financial and strategic information, and approving the Company’s request for the rolling six-month disclosure of the Company’s cash flow forecasts and variance reports (the “**CCAA Stay Extension and Sealing Order**”).

17. As described below, Crystallex sought recognition of the CCAA Stay Extension and Sealing Order in the Chapter 15 Proceeding, which ultimately led to the U.S.

Bankruptcy Court making an order on June 26, 2023 requiring Crystallex to unseal portions of historical documents that had been partially sealed in the Chapter 15 Proceeding.

**C. The Chapter 15 Proceeding and Orders Made re Sealing of Materials**

18. On February 8, 2022, Crystallex sought recognition of the CCAA Stay Extension and Sealing Order<sup>1</sup> in the Chapter 15 Proceeding (the “**Recognition Motion**”). The primary purpose of the Recognition Motion was to seek approval of amendments to the DIP credit agreement and an extension of the stay of proceedings in the Chapter 15 Proceeding, which was required as a condition to the effectiveness of the DIP credit agreement amendments. Attached as **Exhibit “A”** is a copy of the Recognition Motion.

19. The Company did not file any confidential materials as part of the Recognition Motion.

20. Mr. Adelso Adrianza, one of the Company’s shareholders, filed an objection to the Recognition Motion, which is attached to my Affidavit as **Exhibit “B”** (the “**Adrianza Objection**”). As part of the Adrianza Objection, Mr. Adrianza objected to the “continued sealing and redaction of case records”, notwithstanding that the Recognition Motion did not seek to seal any confidential materials. Mr. Adrianza did not oppose the CCAA Stay Extension and Sealing Order. To the best of my knowledge, Mr. Adrianza has never appeared before this Court to oppose any of the Company’s sealing motions.

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<sup>1</sup> Crystallex also sought recognition of an order of this Court made on May 4, 2021. Crystallex did not seek recognition of the May 4, 2021 order in the Chapter 15 Proceeding until February 2022 because the motion to seal the materials filed in connection with the May 4, 2021 motion was not heard until November 18, 2021.

21. On November 28, 2022, the Honourable Chief Judge Silverstein made an order in respect of the Recognition Motion (the “**Recognition Order**”), a copy of which is attached to my Affidavit as **Exhibit “C”**. Attached as **Exhibit “D”** is the Memorandum of Chief Judge Silverstein in respect of the Recognition Order. In the Recognition Order, Chief Judge Silverstein recognized the amendments to the DIP credit agreement and approved the extension of the stay of proceedings. The Recognition Order also required Crystallex, by no later than January 27, 2023, either to file unredacted versions of all of the documents under seal in the Chapter 15 Proceeding or to file a motion seeking continued sealing.

22. On January 27, 2023, Crystallex filed a motion in the Chapter 15 Proceeding (the “**Chapter 15 Continued Sealing Motion**”) for entry of an order authorizing the continued sealing of certain documents identified therein (the “**Chapter 15 Sealed Documents**”). The Chapter 15 Continued Sealing Motion is attached as **Exhibit “E”** to my Affidavit.

23. The Chapter 15 Sealed Documents involve the same three categories of sealed information that have historically been sealed in this CCAA Proceeding (a) strategic information containing details about the Company’s litigation and enforcement strategy, (b) information relating to the CVR Amounts payable to myself and Mr. Oppenheimer, and (c) certain of the Company’s financial information.

24. On February 6, 2023, Mr. Adrianza filed an objection to the Chapter 15 Continued Sealing Motion, which is attached to my Affidavit as **Exhibit “F”**.

25. On June 26, 2023, Chief Judge Silverstein issued an order (the “**Chapter 15 Disclosure Order**”) in respect of the Chapter 15 Continued Sealing Motion wherein Her



Honour ruled that two categories of information could remain sealed: (a) strategic information, and (b) information regarding the CVR Amounts. The Chapter 15 Disclosure Order required that any information in the Chapter 15 Sealed Documents that was not within the approved categories was to be made available to the public. Attached to my Affidavit as **Exhibits “G”** and **“H”** are true copies of the Chapter 15 Disclosure Order and ruling of Chief Judge Silverstein, respectively.

26. Eight of the Chapter 15 Sealed Documents are currently subject to a sealing order in both Canada and the U.S.

27. The Chapter 15 Disclosure Order has been held in abeyance for 90 days, by order of Chief Judge Silverstein, in order to give Crystallex time to take any actions it views as necessary before the Canadian Court in order to give effect to the Chapter 15 Disclosure Order.

#### **D. Relief Sought – Partial Unsealing**

28. Crystallex carefully considered its response to the Chapter 15 Disclosure Order and determined that before responding to such Order in the Chapter 15 Proceeding, Crystallex should apply to this Court to unseal portions of the Chapter 15 Sealed Documents that are currently under seal in Canada.

29. Crystallex, in consultation with its Canadian insolvency counsel and its U.S. enforcement counsel, undertook a review of the Chapter 15 Sealed Documents. Following such review, Crystallex determined that the Chapter 15 Sealed Documents contain redactions that can be partially unsealed in order to comply with the Chapter 15 Disclosure Order.

30. The information that Crystallex is seeking to unseal in the Chapter 15 Sealed Documents is no longer strategic information relevant to Crystallex's ongoing litigation and enforcement strategy, with the result that Crystallex no longer views its disclosure as harmful to the Company's recovery efforts. To the extent that the Chapter 15 Sealed Documents contain information that is strategic in nature or discloses information relating to the CVR Amounts, those categories still fall within the scope of what the U.S. Bankruptcy Court has permitted to remain sealed and Crystallex seeks no relief from this Court with respect to the ongoing sealing of those categories of information.

31. Attached as Schedule A to this Affidavit is a table identifying the specific lines and paragraphs within the relevant Chapter 15 Sealed Documents that the Company seeks to partially unseal in this Court. The table also identifies the relevant Endorsement or Order of this Court that authorized the sealing of such information and the relevant paragraphs of such orders.

32. In addition, the Company intends to provide to the Court a confidential compendium containing an unredacted copy of the relevant Chapter 15 Sealed Documents and applicable orders. This compendium will be annotated to reflect the table in Schedule A: information that the Company proposes to unseal will be shaded in gray and information to remain sealed in accordance with this Court's prior Orders will be highlighted in yellow.


33. If this Court grants the requested relief, Crystallex will proceed to re-file the partially unsealed Chapter 15 Sealed Documents in both the CCAA Proceeding and the Chapter 15 Proceeding. All of the sensitive information in the Chapter 15 Sealed Documents that

remains sealed would continue to be fully available to any stakeholder on a confidential basis.

**SWORN** by Robert Fung at the City  
of Toronto, in the Province of  
Ontario, on the 9<sup>th</sup> day of August,  
2023.



\_\_\_\_\_  
Commissioner for taking Affidavits  
Alexander Barnes

  
\_\_\_\_\_  
ROBERT FUNG

Alexander Gregory Barnes, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires June 28, 2024.

**SCHEDULE A**

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
1.	Affidavit of Robert Fung sworn April 9, 2014	Para. 5	Entire paragraph	Order of Justice Newbould dated April 14, 2014		n/a
		Para. 8	Entire paragraph			
		Para. 9	Second and third words of line three;  Second last word of line three			
		Para. 11	Two words following “the amount” and preceding “had been” on line one;  Remainder of paragraph following “DIP Loan” on line two			
		Paras. 12-13	Entire paragraphs			
		Para. 14	Remainder of paragraph following “agreed to,” on line three			
		Para. 15	First word on line four;  Word following “amount of” and preceding “being the” on line five;  Word following “amount of” and preceding “being the” on line six			
		Para. 16	Entire paragraph			
		Para. 17	Entire paragraph up to “The Second DIP” on line six			

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	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Paras. 20-21	Entire paragraphs			
		Para. 22	Remainder of paragraph following "Second DIP Amendment" on line three			
		Paras. 23-27	Entire paragraphs			
		Para. 28	Remainder of paragraph starting on line four			
		Para. 29	Entire paragraph			
		Para. 30	Remainder of paragraph starting on line five			
		Para. 31	Beginning of paragraph until "with the oversight" on line two; Remainder of paragraph following "(the "Additional Financing Period")" on line six			
		Paras. 32-33	Entire paragraphs			
		Para. 35	Beginning of paragraph until "Crystallex carefully" on line two			
		Paras. 38-39	Entire paragraphs			
		Para. 40	Words following "borrowing" and preceding "are discussed"			

- 3 -

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Heading following para. 40	Entirety			
		Paras. 41-55	Entire paragraphs			
		Para. 47	Remainder of paragraph following "Budget be sealed" on line three			
2.	Eleventh Report of the Monitor dated April 12, 2014	Page 19	Remainder of page following "Appendix A"	Order of Justice Newbould dated April 14, 2014		n/a
		Page 20	Entire page			
		Page 21	Beginning of page until paragraph (g); Words following "Washington DC on" on line two of paragraph (g) and preceding paragraph (h); Remainder of page from "first" on line two of paragraph (h)			
		Page 22-24	Entire page			
		Page 23	Remainder of page following "Appendix B"			
		Page 24	Entire page			
		Page 29	Remainder of page following "Appendix D"			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Pages 40-42	Entire pages			
		Page 43	Beginning of page until two final sentences of note 10.; Remainder of page following two final sentences of note 10.			
3.	Affidavit of Harry Near sworn December 15, 2014	Para. 4	Remainder of paragraph following "2014" on line five	Confidential Endorsement of Justice Newbould dated December 18, 2014		9-7
		Paras. 5-8	Entire paragraphs			
		Para. 9	Remainder of line two following "an order"; Entirety of subparagraphs (b) and (c); Words following "approving" and preceding "and" in subparagraph (d)			
		Paras. 10-24	Entire paragraphs			
		Heading following para. 24	Entirety			
		Para. 25	Entirety of paragraph until third last line			
		Paras. 26-43	Entire paragraphs			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Para. 44	Remainder of paragraph following “December 31, 2015” on line three			
		Heading following para. 44	Entirety			
		Para. 46	Words following “Oppenheimer” on line two and preceding “No additional” on line four;  Remainder of paragraph following “by Crystallex” on line five			
		Heading following para. 46	Remainder of heading following “Terms of”			
		Para. 47	Entire paragraph up to “Oppenheimer and Fung” on line six, but for the single words immediately following “(i)” and “(ii)”, respectively;  Words following “in the future” on line seven and preceding “A further key term” on line eleven;  Remainder of paragraph following “as an employee” on line thirteen			
		Heading following para. 47	Entirety			



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	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Para. 48	Remainder of paragraph following “award or settlement” on line two			
		Paras. 50-51	Entire paragraphs			
		Para. 52	Remainder of paragraph following “MIP participants” on line two			
		Para. 53	Entire paragraph			
		Para. 54	Remainder of paragraph following “As described above”, but for the single word following “would be” and preceding “of the Net” on the final line			
		Para. 56	Entire paragraph			
		Para. 57	Remainder of paragraph following “described above”			
		Heading following para. 57	Entirety			
		Paras. 58-60	Entire paragraphs			
		Para. 61	Remainder of paragraph following “foregoing reasons”			
		Para. 62	Remainder of paragraph following “Materials describing” on line two, but for the two words following “be sealed” and preceding “Crystallex” on line three			

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	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Para. 63	Words following “two reasons” on line two and preceding the remainder of the paragraph starting on line seven			
		Pages 27-31	Remainder of page following “Schedule A”			
		Pages 28-31	Entire pages			
		Pages 34-47	Entire pages			
		Page 48	Entire page up to “the Facility” on the second last line of the page			
		Pages 49-50	Entire pages			
		Page 51	Entire page up to “determine” on the second last line of the page			
		Page 52	Entire page			
		Page 53	Entire page up to “related to” on the second last line of the page			
		Page 55	Entire page up to “Amendment Agreement” on the second last line of the page			
		Page 56	Entire page			
		Page 57	Entire page, but for:			

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	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
			<p>The two words following “aggregate of” and preceding “the Net” on line five of subparagraph 5(a);</p> <p>The single words immediately following points (i) and (ii) on lines six and seven of subparagraph 5(a), respectively;</p> <p>The third last word on the second last line of subparagraph 5(a)</p>			
		Page 58	Entire page up to “conviction may result” on the second last line of the page			
		Page 59	Entire page			
		Page 60	Entire page up to “to the Lender” on the second last line of the page			
		Pages 61-72	Entire pages			
		Page 73	Entire page but for lines 2-4 and 7-10			
		Pages 74-86	Entire pages			
4.	Thirteenth Report of the Monitor dated December 14, 2014	Para. 3	<p>Entirety of subparagraph (d);</p> <p>Remainder of subparagraph (e) from “discussions between” on;</p> <p>Entirety of subparagraph (f);</p>	Confidential Endorsement of Justice Newbould dated December 18, 2014		9-7

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
			<p>Words following “relating to” and preceding “to Robert Fung” in subparagraph (g);</p> <p>Words following “approval” and preceding “DIP” in subparagraph (h);</p> <p>Final word of subparagraph (h);</p> <p>Remainder of subparagraph (i) from the second line on</p>			
		Para. 8	Words following “Monitor Reports” on line three and preceding “it has been” on line four			
		Para. 9	<p>Words following “Eleventh Report” on line two and preceding “which had not been” on line five;</p> <p>Remainder of paragraph following “in the forecast” on line five</p>			
		Heading after para. 9	Entirety			
		Para. 10	Entirety of line two until the final word			
		Heading after para. 12	Remainder of title following “between”			
		Para. 13	Words following “several months” and preceding “have been” on line two’			

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	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
			Line three until "The Monitor"			
		Para. 14	Beginning until "No resolution" on line two			
		Heading after para. 14	Entirety			
		Paras. 16-19	Entire paragraphs			
		Heading following para. 19	Remainder of heading following "views"			
		Paras. 20-23	Entire paragraphs			
		Para. 24	Entirety of subparagraph (a);  Words following "Eleventh Report" and preceding "given" in subparagraph (b)  Remainder of paragraph following "given" in subparagraph (b)  Remainder of subparagraph (c) following "the"			
		Paras. 25-29	Entire paragraphs			

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	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Heading following para. 29	Entirety			
		Heading following para. 30	Entirety			
		Heading following para. 31	Entirety			
		Paras. 32-34	Entire paragraphs			
		Heading following para. 34	Entire heading up until last word			
		Para. 35	Entire paragraph			
		Heading following para. 35	Entirety			
		Para. 36	Remainder of paragraph following "Monitor's report"			
		Para. 37	Second and third words of the paragraph; Remainder of paragraph following "Crystallex"			

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	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Para. 38	Words following “since” on line one and preceding “accordingly” on line three;  Words following “whether” and preceding “and” on line four			
		Para. 39	Entire paragraph			
		Para. 40	Remainder of paragraph following “Arbitration Claim”			
		Para. 42	Final five words of the paragraph			
		Para. 43	Entire paragraph			
		Heading following paragraph 43	Words following “Transfer of” and preceding “to management”			
		Para. 44	Words following “by Crystallex” on line three and preceding “Robert Fung” on line five;  Words following “of such” and preceding “as” on line six;  Words following “of Crystallex” and preceding “are unaffected” on line seven			
		Para. 45	Entire paragraph			
		Para. 46	Words following “Management” on line two and preceding “and allow” on line three;			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
			Remainder of paragraph following "Management" on line four			
		Para. 47	Beginning of paragraph until "Based on" on line two; First word of line three; Remainder of paragraph from "the view" on line three			
		Para. 48	Line five until the last word of line six; The final four words of line seven			
		Para. 49	Remainder of paragraph following "and remains"			
		Para. 51	Beginning of paragraph until "Claim" on line five; Words following "Claim" on line five and preceding the final word of the paragraph			
		Para. 52	Words between "its motion" on line one and "the Applicant" on line two			
		Para. 53	Beginning of paragraph until "In this context" on line two			
		Para. 54	Words between "the transfer" on line two and "to Robert Fung" on line three			
		Para. 55	Remainder of paragraph following "an Order" on line two			
		Page 15	Entire page			



	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Pages 17-22	Entire pages			
		Page 23	Beginning of page until two final sentences of note 10.; Remainder of page following two final sentences of note 10			
5.	Affidavit of Robert Fung sworn October 23, 2018	Paras. 12-15	Entire paragraphs	Order of Justice Hainey dated October 28, 2018		11-13
		Para. 16	Beginning until first word of third line of subparagraph (c); Entirety of subparagraph (d)			
		Heading following para. 16	Entirety			
		Heading following para. 17	Entirety			
		Para. 18	Entirety of paragraph but for:  Fourth word of the third line;  Second word of the sixth line			
		Para. 19	Entire paragraph			
		Para. 25	Entirety of subparagraph (a);			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
			Words following “Crystallex” on line five of subparagraph (b) and preceding “Since” on line six of subparagraph (b);  Remainder of subparagraph (b) following “Tax Reports” on the second last line			
		Para. 26	Words following “maximizes value” on line three and preceding “Crystallex” on line four			
		Para. 27	Words following “November” on line twelve and preceding “and to discuss” on line thirteen			
		Para. 28	Beginning of paragraph until “The Waterfall” on line three			
		Para. 29	Words following “in order” on line two and preceding the last word of line three			
		Para. 30	Remainder of paragraph following “Stay Period” on line seven			
		Para. 39	Remainder of paragraph following “Award” on the last line			
		Para. 40	Words following “DIP Lender” on line four and preceding “to properly” on line five			
		Para. 44	Words following “this as” on line three and preceding “the Tax Reports” on line four			
		Para. 47	Words following “Company’s efforts” on line four and preceding “to address” on line five			
		Para. 49	Beginning of paragraph until final word of line three;			

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	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
			Words starting at the final word of line eight and ending at line ten			
		Para. 50	Entire paragraph			
		Para. 51	Entire paragraph, but for the words following “the Company’s” and preceding “or” on the third last line			
6.	Affidavit of Robert Fung sworn April 23, 2019	Para. 9	Remainder of paragraph following “effect” on line three	Order of Justice Hainey dated May 3, 2019		10-12
		Para. 15	Remainder of paragraph following “months” on line three			
		Para. 23	Words following “Payment” on line two and preceding subparagraph (a);  Remainder of subparagraph (c) following “Payment” on line five;  Remainder of paragraph following “(the “Maduro Government”)” on line five of subparagraph (d);  Entirety of subparagraph (f);  Remainder of subparagraph (h) following “Appeal” on line two			
		Para. 24	Beginning of paragraph until “in continuing” on line one			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Para. 25	Words following “negotiated settlement” on line five and preceding “in this current environment” on line seven			
		Para. 26	Entire paragraph			
		Para. 27	Beginning of paragraph ending at “proceedings” on line three			
		Para. 28	Beginning of paragraph ending at “addressed” on line two;  Words beginning with “I am” on line four and ending with “Payment” on line seven			
		Para. 29	First word of paragraph;  Remainder of paragraph beginning with “the Company” on line two			
		Para. 33	Remainder of paragraph following “ongoing” on line four			
		Para. 37	Remainder of paragraph following “CCAA Proceeding” on line three			
		Para. 55	Words following “strategy” on line two and preceding the final two words of line three			
		Para. 56	Entire paragraph but for the words following “Company’s” and preceding “and” on line eight			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
7.	Affidavit of Robert Fung sworn October 25, 2019	Para. 5	First five words of line three	Order of Justice Hainey dated November 4, 2019		10-12
		Para. 10	Words following “effect” on line three and preceding “As a result” on line five			
		Para. 16	Remainder of paragraph following “future” on line four			
		Para. 20	Entire paragraph			
		Para. 22	Entire paragraph			
		Para. 27	Remainder of paragraph following “oil sales” on line four			
		Paras. 28-30	Entire paragraphs			
		Para. 34	Words following “2019” on line three and preceding “As a result” on line five;  Words following “Delaware Stay” on line seven until the end of line eight			
		Paras. 35-36	Entire paragraphs			
		Para. 37	Beginning of paragraph until the words following “of the” on line two			
		Para. 38	Beginning of paragraph until “Crystallex” on line three;			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
			Words following “value” on line four and preceding “It remains” on line five			
		Para. 39	Beginning of paragraph until the words following “Court” on line three			
		Para. 40	Beginning of paragraph until the words following “Court” on line three;  Words beginning with “The Sanctions” on line five and ending with “securities and” on line six			
		Para. 44	Beginning of paragraph until the words following “until recently” on line five;  Words beginning with “The appeal” on line six and ending with “Crystallex” on the final line			
		Para. 46	Words beginning with the last word of line two and preceding “The Company” on line three			
		Para. 47	Remainder of paragraph following “the Waterfall” on line eight			
		Paras. 49-51	Entire paragraphs			
		Para. 53	Entire paragraph			
		Para. 54	Remainder of paragraph following “2020” on line two			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Para. 55	Words following “unresolved” on line two and preceding “it is” on line three;  Remainder of paragraph following “stakeholders” on line five			
		Para. 57	Final line of the paragraph			
		Para. 72	Beginning of paragraph until “The disclosure” on line two;  Words following “budgets” on line three and ending on the first word of line nine;  Remainder of paragraph beginning with the third last word of line nine			
8.	Affidavit of Robert Fung sworn October 28, 2020	Para. 12	Words following “cash” on line four and ending with “liquidated” on line six	Order of Justice Hainey dated November 3, 2020		10-12
		Para. 14	Words following “below” on line seven until the end of line eight			
		Para. 20	Remainder of paragraph following “separately” on line six			

	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Para. 24	Beginning of paragraph until the words following “support is” on line two;  Words beginning with “while” on line three and ending with “to” on line four”;  Words beginning with “Guaido” on line four and ending with “several” on line five;  Words beginning with “Attached” on the third last line until the fourth last word on the last line;  Last two words on the final line			
		Para. 29	Remainder of paragraph following “time” one line four			
		Para. 30	Entire paragraph			
		Para. 40	Final two words of line three and first word of line four;  Words beginning with “have the” on line four” and ending with “this time” on line eight			
		Para. 44	Beginning of paragraph until end of the third line;  Words beginning with “the Initial” on line six and preceding “Crystallex” on line eleven;  Final two lines of the paragraph			

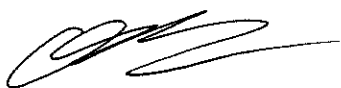


	Document	Location of Information Proposed to be Unsealed		CCAA Order	Court	Court Order Paras. Ordering Sealing
		Para. 59	Words following “Crystallex” on line two and preceding “which” on line four;  Words following “Decision” on line five and preceding “Even” on line six;  Words following “Information” on line eight and preceding “will cause” on line nine			
		Para. 72	Entire paragraph			

**TAB A**

**Exhibit A - February  
8, 2022 Recognition  
Motion**

This is Exhibit "A" referred to in the Affidavit of Robert Fung sworn August 9, 2023.



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*Commissioner for Taking Affidavits (or as may be)*

Alexander Gregory Barnes, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires June 28, 2024.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	X	
	:	Chapter 15
	:	
Crystallex International Corporation <sup>1</sup>	:	Case No. 11-14074 (LSS)
	:	
Debtor in a Foreign Proceeding.	:	<b>Hearing Date:</b>
	:	February 8, 2022 at 11:30 a.m. (ET)
	:	
	:	<b>Objection Deadline:</b>
	:	February 1, 2022 at 4:00 p.m. (ET)
	:	
	X	

**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**

Crystallex International Corporation, in its capacity as the court-appointed foreign representative (the “Foreign Representative”) for the above-captioned debtor (the “Debtor” or “Crystallex”) in a proceeding (the “Canadian Proceeding”) under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”), respectfully submits this motion (the “Motion”) requesting entry of an order, substantially in the form annexed hereto as **Exhibit I** (the “Proposed Order”), recognizing and enforcing (i) the Canadian Court’s *Order* dated May 4, 2021 (the “CCAA Eleventh Extension and Fifteenth Amendment Order”)<sup>2</sup> and (ii) the Canadian Court’s *Order* dated November 18, 2021 (the “CCAA Twelfth Extension and Sixteenth Amendment Order”)<sup>3</sup> and together with the CCAA Eleventh Extension and Fifteenth Amendment

<sup>1</sup> The last four digits of the Debtor’s United States taxpayer identification number are 2628. The Debtor’s executive headquarters are located at 8 King Street East, Suite 1201, Toronto, Ontario, M5C 1B5, Canada.

<sup>2</sup> A copy of the CCAA Eleventh Extension and Fifteenth Amendment Order is annexed hereto as **Exhibit II**.

<sup>3</sup> A copy of the CCAA Twelfth Extension and Sixteenth Amendment Order is annexed hereto as **Exhibit III**

Order, the “CCAA Orders”) that, among other things, (a) request that this Court grant recognition of the CCAA Orders; (b) approve an eleventh extension and fifteenth amendment (the “Fifteenth Credit Agreement Amendment”)<sup>4</sup> to the *Senior Secured Credit Agreement* dated as of April 23, 2012 (as amended, prior to the Fifteenth Amendment), by and between the Debtor, as borrower, and Tenor Special Situations I, LP, in its capacity as successor lender through assignment by Luxembourg Investment Company 31 S.à.r.l., which, in turn, was the assignee of Tenor KRY Coöperatief U.A., which, in turn, was the assignee of Tenor Special Situation Fund I, LLC, the original lender (the “DIP Lender”); (c) approve a twelfth extension and sixteenth amendment (the “Sixteenth Credit Agreement Amendment”)<sup>5</sup> to the *Senior Secured Credit Agreement* dated as of April 23, 2012 (as amended, including pursuant to the Fifteenth Amendment, the “DIP Credit Agreement”), by and between the Debtor, as borrower, and the DIP Lender; and (d) extend the period during which no proceeding or enforcement process in any court or tribunal may be commenced or continued against or in respect of the Debtor (the “Stay Period”), which was originally put in place by the Canadian Court by order entered on December 23, 2011 (the “Initial Order”), to November 18, 2022. In support of this Motion, the Foreign Representative relies upon the *Declaration of Robert A. Fung in Support of: (I) Verified Petition Under Chapter 15; (II) Motion for Provisional and Final Relief in Aid of Foreign Proceeding; and (III) Motion to Establish Certain Procedures in Connection with Filing of Verified Petition Under Chapter 15*, dated December 23, 2011 [Docket No. 2] (the “Fung Declaration”). In further support of the relief requested herein, the Foreign Representative respectfully represents as follows:

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<sup>4</sup> A copy of the Fifteenth Credit Agreement Amendment is annexed hereto as **Exhibit IV**.

<sup>5</sup> A copy of the Sixteenth Credit Agreement Amendment is annexed hereto as **Exhibit V**.

### **JURISDICTION**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(P), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court and in this District pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are sections 105, 1507, 1521, 1525, and 1527 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).<sup>6</sup>

### **GENERAL BACKGROUND**

2. On December 23, 2011 (the “Petition Date”), the Debtor commenced the Canadian Proceeding and the Canadian Court entered the Initial Order, pursuant to the CCAA, providing various forms of relief thereunder. Also on the Petition Date, the Foreign Representative commenced this proceeding by filing a verified petition on behalf of the Debtor, pursuant to sections 1504 and 1515 of the Bankruptcy Code, seeking recognition by this Court of the Canadian Proceeding as a “foreign main proceeding” under chapter 15.

3. On January 20, 2012, this Court entered the *Order Granting Final Relief in Aid of Canadian Proceeding Pursuant to Section 105(a), 1517, 1520, and 1521 of the Bankruptcy Code* [Docket No. 44] (the “Recognition Order”). Pursuant to the Recognition Order, this Court (a) granted recognition of the Canadian Proceeding as a “foreign main proceeding” under section 1517 and (b) enforced in full the Initial Order on a permanent basis in the United States, including,

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<sup>6</sup> All references to “section” in this Motion shall be to the Bankruptcy Code unless otherwise noted.

without limitation, any extensions of the Stay Period granted by the Canadian Court. Below is a brief summary of the various financing orders entered by the Court:

- a. On April 26, 2012, this Court entered the *Order Enforcing Financing Order of the Canadian Court* [Docket No. 111] (the “U.S. Financing Order”), which, among other things, (a) recognized and enforced the *CCAA Financing Order* of the Canadian Court, issued on April 16, 2012 (the “CCAA Financing Order”), including any amendments thereto, approving the DIP Credit Agreement and (b) granted to, and for the benefit of, the DIP Lender certain protections afforded by the Bankruptcy Code.
- b. On June 19, 2013, this Court entered the *Order Recognizing the Additional Financing Order of the Canadian Court* [Docket No. 125] (the “First Additional U.S. Financing Order”), which, among other things, recognized and enforced the *Additional CCAA Financing Order* of the Canadian Court, issued on June 5, 2013 (the “First Additional CCAA Financing Order”), including any amendments thereto, approving the Second DIP Amendment (as defined in the First Additional U.S. Financing Order).
- c. On April 28, 2014, this Court entered the *Order Recognizing the Second Additional CCAA Financing Order* [Docket No. 138] (the “Second Additional U.S. Financing Order”), which, among other things, recognized and enforced the *Second Additional CCAA Financing Order* of the Canadian Court, issued on April 14, 2014 (the “Second Additional CCAA Financing Order”), including any amendments thereto, approving the Third DIP Amendment (as defined in the Second Additional U.S. Financing Order).
- d. On February 3, 2015, this Court entered the *Order Recognizing Approval Order* [Docket No. 162] (the “Third Additional U.S. Financing Order”), which, among other things, recognized and enforced the *Approval Order* of the Canadian Court, issued on December 18, 2014 (the “Third Additional CCAA Financing Order”), including any amendments thereto, approving the Fourth DIP Amendment (as defined in the Third Additional U.S. Financing Order).
- e. On December 27, 2016, this Court entered the *Order Recognizing and Enforcing the CCAA Extension and Amendment Order* [Docket No. 184] (the “U.S. Extension and Amendment Order”), which, among other things, recognized and enforced the *Order* of the Canadian Court, issued on December 14, 2016 (the “CCAA Extension and Amendment Order”) approving the Extension and

Amendment (as defined in the U.S. Extension and Amendment Order).

- f. On June 23, 2017, this Court entered the *Order Recognizing and Enforcing the CCAA Second Extension and Amendment Order* [Docket No. 189] (the “U.S. Second Extension and Amendment Order”), which, among other things, recognized and enforced the *Order* of the Canadian Court, issued on May 25, 2017 (the “CCAA Second Extension and Amendment Order”) approving the Second Extension and Amendment (as defined in the U.S. Second Extension and Amendment Order).
- g. On February 15, 2018, this Court entered the *Order Recognizing and Enforcing the CCAA Bridge DIP Loan Order* [Docket No. 251] (the “U.S. Bridge Loan Order”), which, among other things, recognized and enforced the *Order* of the Canadian Court, dated December 20, 2017, approving the Bridge Loan Agreement and the Seventh Amendment Agreement (as such terms are defined in the U.S. Bridge Loan Order).
- h. On June 20, 2018, this Court entered the *Order Recognizing and Enforcing the CCAA Fifth Extension and Ninth Amendment Order* [Docket No. 260] (the “U.S. Fifth Extension and Ninth Amendment Order”), which, among other things, recognized and enforced the *Order* of the Canadian Court, dated May 9, 2018 (the “CCAA Fifth Extension and Ninth Amendment Order”) approving the Ninth Amendment Agreement (as defined in the U.S. Fifth Extension and Ninth Amendment Order).
- i. On November 13, 2018, this Court entered the *Order Recognizing and Enforcing the CCAA Sixth Extension and Tenth Amendment Order* [Docket No. 275] (the “U.S. Sixth Extension and Tenth Amendment Order”), which, among other things, recognized and enforced the *Order* of the Canadian Court, dated October 29, 2018 (the “CCAA Sixth Extension and Tenth Amendment Order”) approving the Tenth Amendment Agreement (as defined in the U.S. Sixth Extension and Tenth Amendment Order).
- j. On May 28, 2019, this Court entered the *Order Recognizing and Enforcing the CCAA Seventh Extension and Eleventh Amendment Order* [Docket No. 294] (the “U.S. Seventh Extension and Eleventh Amendment Order”), which, among other things, recognized and enforced the *Order* of the Canadian Court, dated May 3, 2019 (the “CCAA Seventh Extension and Eleventh Amendment Order”) approving the Eleventh Amendment Agreement (as defined in the U.S. Seventh Extension and Eleventh Amendment Order).



- k. On December 5, 2019, this Court entered the *Order Recognizing and Enforcing the CCAA Eighth Extension and Twelfth Amendment Order* [Docket No. 306] (the “U.S. Eighth Extension and Twelfth Amendment Order”), which, among other things, recognized and enforced the *Order* of the Canadian Court, dated November 4, 2019 (the “CCAA Eighth Extension and Twelfth Amendment Order”) approving the Twelfth Credit Agreement Amendment (as defined in the U.S. Eighth Extension and Twelfth Amendment Order).
- l. On January 5, 2021, this Court entered the *Order Recognizing and Enforcing the CCAA Tenth Extension and Fourteenth Amendment Order* [Docket No. 320] (the “U.S. Tenth Extension and Fourteenth Amendment Order”), which, among other things, recognized and enforced the *Order* of the Canadian Court, dated November 3, 2020 (the “CCAA Tenth Extension and Fourteenth Amendment Order”) approving the Fourteenth Credit Agreement Amendment (as defined in the U.S. Tenth Extension and Fourteenth Amendment Order).<sup>7</sup>

4. Additional information about the Debtor’s business and operations, the events leading up to the Petition Date, and the facts and circumstances surrounding the Canadian Proceeding and this chapter 15 case are set forth in the Fung Declaration.

#### **BACKGROUND SPECIFIC TO THE RELIEF REQUESTED**

5. The Debtor asserted a claim through arbitration against the Bolivarian Republic of Venezuela (“Venezuela”) in respect of such matter (the “Arbitration Claim”). The Arbitration Claim was pursued in a proceeding before the Additional Facility of the International Centre for the Settlement of Investment Disputes of the World Bank (the “Arbitral Tribunal”) against Venezuela pursuant to a bilateral investment treaty between Canada and Venezuela. Post-closing briefs were submitted to the Arbitral Tribunal on May 12, 2014. Subsequent to the submission of the post-closing briefs, the Arbitration Tribunal requested additional documentation

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<sup>7</sup> Recognition by this Court of the Order entered by the Canadian Court granting a ninth extension of the stay to November 6, 2020 and approving the Thirteenth Amendment to the DIP Credit Agreement was not sought by the Foreign Representative (the “CCAA Ninth Extension and Thirteenth Amendment Order”).

and briefing submissions on at least two separate occasions from the Debtor and held an impromptu hearing in November of 2014. On April 4, 2016, the Arbitral Tribunal issued an award to the Debtor against Venezuela. The award was in the amount of US \$1.202 billion, plus interest thereon calculated from April 13, 2008 (the “Award”). The Award is the Debtor’s primary asset.

6. The Debtor developed and implemented a dual-track strategy for enforcement of the Award, while remaining open to the possibility of a negotiated resolution with Venezuela. The current economic and political situation in Venezuela makes it difficult for Crystallex to pursue a negotiated settlement with Venezuela. Accordingly, although Crystallex is continuing to pursue the possibility of a negotiated resolution with Venezuela, the Debtor's primary focus is maximizing stakeholder recovery through its enforcement efforts.

**A. Recognition and Enforcement of the Award**

7. On March 25, 2017, the United States Federal Court for the District of Columbia confirmed the Award and a formal judgment was entered in the Debtor’s favor in the amount of approximately \$1.4 billion (the “Judgment”).

**B. Enforcement of the Judgment**

8. The Debtor registered the Judgment in the United States District Court for the District of Delaware (the “Delaware Court”) and sought to execute the Judgment against PDVSA’s shares in its subsidiary PDV Holding, Inc. (“PDVH”), which indirectly owns the shares in the American oil company, CITGO Petroleum Corp. On August 9 and 23, 2018, the Delaware Court issued an order (the “Delaware Order”) authorizing the attachment of the shares of PDVH (the “Writ of Attachment”).

9. On April 15, 2019, the United States Court of Appeals for the Third Circuit (the “Third Circuit”) heard an appeal by PDVSA of the Writ of Attachment and Delaware Order

(the “Appeal”). On July 29, 2019, the Third Circuit released its decisions whereby it affirmed the Delaware Order authorizing the Writ of Attachment.

10. Venezuela’s application to the Third Circuit for a rehearing was denied and Venezuela and PDVSA petitioned the United States Supreme Court for a writ of certiorari for leave to appeal the Third Circuit Decision to the United States Supreme Court. On May 18, 2020, the United States Supreme Court dismissed Venezuela’s and PDVSA’s petition seeking leave to appeal.

11. On January 14, 2021, Judge Stark entered an order establishing sale procedures (the “Sales Process”) for the sale of the shares of PDVH (the “Sale Procedures Order”). Among other things, the Sale Procedures Order required the parties to identify a special master to oversee the sale process.

12. The United States Department of Treasury's Office of Foreign Assets Control (“OFAC”) has taken the position that U.S. sanctions on Venezuela prohibit the Debtor from, among other things, executing on the PDVH Shares subject to the Writ of Attachment without first obtaining a license from OFAC.

13. Crystallex submitted its application to OFAC for a specific license authorizing the sale of the PDVH Shares on April 9, 2020. On September 10, 2021, OFAC denied the Debtor’s request for a license to sell the shares of PDVH. The denial was without prejudice to the Debtor’s ability to reapply. Crystallex plans to reapply for an OFAC license and has urged the Delaware Court to continue to advance the Sales Process to the fullest extent possible, so that the sale of the PDVH Shares may proceed quickly if Crystallex is ultimately successful in obtaining and OFAC license.

14. A further hearing in respect of the Sales Process was heard by the Delaware Court on November 8, 2021 to consider, among other issues, whether the Sales Process should proceed and the timing of that process. The parties are still awaiting a decision of the Delaware Court,

**C. Settlement with Venezuela**

15. In November of 2017, the Debtor and Venezuela settled all of the outstanding issues between the parties, which settlement was approved by the Canadian Court (the “Settlement Agreement”). While the Debtor received certain payments under the Settlement Agreement, the terms of the Settlement Agreement were not fulfilled by Venezuela. As a result of the Debtor’s success in its enforcement efforts, the parties entered into the *Amended and Restated Settlement Agreement* dated September 10, 2018 (the “Amended Settlement Agreement”), which was approved by the Canadian Court on September 17, 2018.

16. Pursuant to the Amended Settlement Agreement, Venezuela agreed to make an initial payment in cash or securities with a market value equal to \$425,000,000, which was received in full by November of 2018. However, none of the additional payments required under the Amended Settlement Agreement have been received, and Venezuela remains in breach of the Amended Settlement Agreement. As a result, the Debtor has continued to pursue its enforcement strategy against Venezuela, including seeking to execute upon the Writ of Attachment and other efforts to enforce the Judgment.

17. The Debtor has identified priorities that it will be pursuing during the requested extension of the Stay Period and continues, to the extent possible, to advance threshold issues relating to distributions to its stakeholders. However, no material steps are expected to

occur in connection with the enforcement proceedings until later in 2022 and, as a result, the Debtor is not currently in a position to begin to make distributions to its stakeholders.

**D. Summary of the CCAA Orders and Endorsement by Justice Conway**

18. The Debtor has been utilizing the funds provided pursuant to the DIP financing orders to meet its obligations and to pursue its strategy related to the collection and enforcement of the Award, including as that strategy relates to the Amended Settlement Agreement. The Debtor has determined that it has sufficient funds to continue to pursue its enforcement efforts until at least November 18, 2022.

19. The key provisions of the CCAA Eleventh Extension and Fifteenth Amendment Order are as follows:

- (a) **Aid and Recognition.** The Canadian Court requests the aid and recognition of this Court to give effect to the CCAA Tenth Extension and Fourteenth Amendment Order in this proceeding. (CCAA Eleventh Extension and Fifteenth Amendment Order ¶¶ 14).
- (b) **Extension of Stay.** The Stay Period was extended to November 5, 2021. (CCAA Eleventh Extension and Fifteenth Amendment Order ¶ 3).
- (c) **Approval of Fifteenth Credit Agreement Amendment Terms.** The Debtor is authorized to enter into the Fifteenth Credit Agreement Amendment, which, among other things, extends the maturity date of the DIP Credit Agreement to November 5, 2021, and the terms of the Fifteenth Credit Agreement Amendment are approved. (CCAA Eleventh Extension and Fifteenth Amendment Order ¶¶ 4 & 5).
- (d) **Extension and Amendment Fee.** No extension or amendment fee is being paid pursuant to the terms of the Fourteenth Credit Agreement Amendment. (Fifteenth Credit Agreement Amendment).
- (e) **Charges.** The charge on the property of the Debtor to secure all obligations under the DIP Credit Agreement and related documents (the “DIP Charge”) and the charge on the property of Debtor to pay the compensation payable to the DIP Lender under the DIP Credit Agreement (the “Lender Additional Compensation Charge”) will continue to secure the obligations of the Debtor under the DIP Credit Agreement, as amended by the Fifteenth Credit

Agreement Amendment. (CCAA Eleventh Extension and Fifteenth Amendment Order ¶ 7).

- (f) **Confidentiality.** The Canadian Court ordered that all unredacted materials filed in connection with the Debtor's application seeking the Canadian Court's entry of the CCAA Tenth Extension and Fourteenth Amendment Order be sealed pending determination in connection with a motion to be scheduled at a later date. Additionally, the sealed materials shall not be copied or disseminated beyond counsel except as authorized by the Debtor or by further order of the Canadian Court. (CCAA Eleventh Extension and Fifteenth Amendment Order ¶¶ 10, 11 & 12).

20. The key provisions of the CCAA Twelfth Extension and Sixteenth Amendment Order are as follows:

- (a) **Aid and Recognition.** The Canadian Court requests the aid and recognition of this Court to give effect to the CCAA Tenth Extension and Fourteenth Amendment Order in this proceeding. (CCAA Twelfth Extension and Sixteenth Amendment Order ¶ 19).
- (b) **Extension of Stay.** The Stay Period has been extended to November 18, 2022. (CCAA Twelfth Extension and Sixteenth Amendment Order ¶ 3).
- (c) **Reporting to Court and Stakeholders.** At least every six months, the Debtor or the Monitor is required to provide public reports to the Canadian Court and the stakeholders of the Debtor's then current cash balance, DIP balance and an update of the Debtor's enforcement activities. If there are any material changes to the business or affairs of the Debtor, the Debtors or the Monitor is required to report such changes to the Court and the stakeholders, which reports can be confidential or public depending on the nature of the material change. (CCAA Twelfth Extension and Sixteenth Amendment Order ¶¶ 4(a), (b), (c))
- (d) **Meeting with Stakeholders.** The Monitor is required to meeting with the Debtor, the DIP Lender, representatives of the Committee and representatives of the Debtor's other stakeholders on a no less than quarterly basis. (CCAA Twelfth Extension and Sixteenth Amendment Order ¶ 4(d)).
- (e) **Approval of Sixteenth Credit Agreement Amendment Terms.** The Debtor is authorized to enter into the Sixteenth Credit Agreement Amendment, which, among other things, extends the maturity date of the DIP Credit Agreement to November 18, 2022, waives an event of default and related default interest, and the terms of the Sixteenth Credit Agreement Amendment are approved. (CCAA Twelfth Extension and Sixteenth Amendment Order ¶ 12).

- (f) **Extension and Amendment Fee.** No extension or amendment fee is being paid pursuant to the terms of the Sixteenth Credit Agreement Amendment. (Sixteenth Credit Agreement Amendment).
- (g) **Charges.** The DIP Charge and the Lender Additional Compensation Charge will continue to secure the obligations of the Debtor under the DIP Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment. (CCAA Twelfth Extension and Sixteenth Amendment Order ¶ 15).
- (h) **Confidentiality.** The Canadian Court ordered that certain information and materials filed in connection with the Debtor's application seeking the Canadian Court's entry of the CCAA Twelfth Extension and Sixteenth Amendment Order be sealed. (CCAA Twelfth Extension and Sixteenth Amendment Order ¶¶ 6 & 7).

21. The Ad Hoc Committee of the Noteholders (the "Committee") opposed the Debtor's request for a one-year extension of the stay, the Debtor's request to seal its financial information and opposed the form of financial reporting the Debtor proposed. The Committee also filed a cross-motion to unseal certain information. Justice Conway overruled the Committee's objection, denied the cross-motion and approved the relief requested by the Debtor. In connection with Justice Conway's rulings, she issued an endorsement, a copy of which is attached hereto as **Exhibit VI** (the "Endorsement"). The Endorsement by Justice Conway, among other things, specifically approves the 12-month extension of the stay and the Sixteenth Credit Agreement Amendment. It also approves and sets forth the rationale for the Canadian Court's ruling to seal of certain strategic and financial information of the Debtor.

### **RELIEF REQUESTED**

22. By this Motion, the Foreign Representative seeks entry of the Proposed Order, substantially in the form annexed hereto as **Exhibit I**, recognizing and enforcing the CCAA Orders.

**BASIS FOR RELIEF**

**E. Recognition of the CCAA Orders Is Appropriate Under Sections 105, 1507, 1521, 1525, and 1527**

23. Section 105(a) provides a bankruptcy court with broad powers in its administration of a case under the Bankruptcy Code: “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” Id. at § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). In addition, section 1521(a) provides that, upon recognition of a foreign proceeding, at the request of a foreign representative, a bankruptcy court may grant “any appropriate relief,” subject to certain exceptions not applicable here, provided that the bankruptcy court determines that doing so is necessary to effectuate the purpose of chapter 15 of the Bankruptcy Code and to protect the assets of the debtor or the interests of the creditors. See 11 U.S.C. § 1521(a).

24. Recognition of the CCAA Orders is appropriate under sections 105 and 1521 of the Bankruptcy Code because, among other things, it will enable the Debtor to continue its strategy related to the enforcement and collection of the Award and is similar to relief routinely granted to debtors in domestic proceedings. If this Court does not recognize the CCAA Orders, it would be to the detriment of the Debtor’s stakeholders given the fact that the Award represents the only presently available chance that any party (including the DIP Lender and unsecured creditors in the United States) has at a meaningful recovery in the Canadian Proceeding. In addition, approval by this Court is a condition precedent under the Fifteenth Credit Agreement Amendment (Fifteenth Credit Agreement Amendment ¶ 4(c)(iii)) and the Sixteenth Credit Agreement



Amendment (Sixteenth Credit Agreement Amendment ¶ 4(c)(iii)) Accordingly, the relief requested herein is consistent with well-established policies underlying the Bankruptcy Code and is appropriate under the circumstances.

25. Similarly, section 1507 of the Bankruptcy Code provides that “the court, if recognition is granted, may provide additional assistance to a foreign representative under this title” and “shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure . . . the just treatment of all holders of claims against or interests in the debtor’s property [and] the protection of claim holders in the United States against prejudice and inconvenience.” 11 U.S.C. § 1507. Recognition of the CCAA Orders is appropriate under section 1507 of the Bankruptcy Code because it will enable the Debtor to continue pursuit of the Award, which not only represents a major victory for the Debtor, but also, as stated above, represents the only chance that any interested party has at a meaningful recovery. Thus, recognition of the CCAA Orders will protect, and prevent prejudice to, creditors by ensuring that the Debtor can pursue its dual-track strategy to maximize value and realize on the Award.

26. Finally, section 1525(a) of the Bankruptcy Code provides that “consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative,” and section 1527(3) of the Bankruptcy Code explicitly provides that one form of cooperation may include “coordination of the administration and supervision of the debtor’s assets and affairs.” 11 U.S.C. §§ 1525(a) & 1527(3). There can be no doubt that recognition of the CCAA Orders will promote cooperation between the Canadian Court and this Court. Failure to grant recognition to the CCAA Orders could undermine the Canadian Court’s ability to effectively supervise the Debtor’s restructuring path. Moreover, the CCAA Orders specifically request this Court’s aid and assistance in giving effect to the CCAA Orders. (CCAA

Eleventh Extension and Fifteenth Amendment Order ¶ 14; CCAA Twelfth Extension and Sixteenth Amendment Order ¶ 19).

**F. Recognition of the CCAA Orders Is Consistent with Public Policy**

27. Pursuant to section 1506 of the Bankruptcy Code, even if chapter 15 of the Bankruptcy Code's requirements for recognition of a foreign order are satisfied, recognition can nevertheless be denied where it would be "manifestly contrary to the public policy of the United States." 11 U.S.C. § 1506. This "public policy" exception has been narrowly construed to apply to only those "matters of fundamental importance to the [United States]." *See, e.g., In re Ephedra Prods. Liability Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006) (affirming a decision of the bankruptcy court recognizing a Canadian claims process that did not provide personal injury claimants with the right to a jury trial).

28. Recognition of the CCAA Orders does not contravene United States public policy. The Foreign Representative submits that: (a) the Debtor has a need for entering into the Fifteenth Credit Agreement Amendment and the Sixteenth Credit Agreement and further amending the DIP Credit Agreement; (b) the Canadian Court, as the court of primary jurisdiction, has already reviewed the Fifteenth Credit Agreement Amendment and Sixteenth Credit Agreement and has determined that the terms and conditions thereof are fair and reasonable; (c) the relief requested herein is appropriate, authorized under the Bankruptcy Code, and in the best interests of the Debtor, its creditors, and other parties in interest; and (d) the relief requested herein is not manifestly contrary to United States public policy. Accordingly, section 1506 of the Bankruptcy Code presents no barrier to entry of the Proposed Order, and the Foreign Representative respectfully requests that this Court enter such order.

**REQUEST FOR WAIVER OF STAY**

29. The Foreign Representative respectfully requests a waiver of any stay of effectiveness imposed by the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) or the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) so that the relief requested herein can take effect immediately upon entry of the Proposed Order.

**NOTICE**

30. The Foreign Representative will provide notice of this Motion in accordance with Local Rule 9018-1(d) and this Court’s *Order Specifying Form and Manner of Service of Notice of: (I) Filing of (A) Petition Pursuant to Chapter 15 of the Bankruptcy Code, and (B) Motion for Provisional and Final Relief in Aid of Foreign Proceeding Pursuant to Sections 105(a), 1519, 1520, and 1521 of the Bankruptcy Code; (II) Entry of Provisional Relief Order; (III) Deadline to Object to Entry of Recognition Order; and (IV) Hearing for the Court to Consider Chapter 15 Petition and Entry of Recognition Order* [Docket No. 21]. The Foreign Representative submits that no other or further notice of this Motion is necessary or required.

**CONCLUSION**

WHEREFORE, the Foreign Representative respectfully requests that this Court enter the Proposed Order, substantially in the form annexed hereto as **Exhibit I**.

Dated: January 21, 2022  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Matthew B. Lunn

Matthew B. Lunn (No. 4119)

Shane M. Reil (No. 6195)

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Telephone: (302) 571-6600

*Counsel to the Foreign Representative*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----	X	
In re	:	Chapter 15
	:	
Crystallex International Corporation <sup>1</sup>	:	Case No. 11-14074 (LSS)
	:	
Debtor in a Foreign Proceeding.	:	<u>Hearing Date:</u> February 8, 2022 at 11:30 a.m. (ET)
	:	<u>Objection Deadline:</u> February 1, 2022 at 4:00 p.m. (ET)
	:	
	:	
-----	X	

**NOTICE OF 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**

**PLEASE TAKE NOTICE** that Crystallex International Corporation, in its capacity as the court-appointed foreign representative (the “Foreign Representative”) for the above-captioned debtor (the “Debtor”) in a proceeding under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List), has filed the attached *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* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that objections and responses, if any, to the relief requested in the Motion be filed on or before **4:00 p.m. (ET) on February 1, 2022** (the “Objection Deadline”) with the Court at 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection or response upon: (a) the undersigned counsel to the Foreign Representative and (b) Karen S. Park, Shulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, so as to be actually received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider the Motion will be held on **February 8, 2022 at 11:30 a.m. (ET)** before the Honorable Laurie Selber Silverstein in the Court, 824 North Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801.

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<sup>1</sup> The last four digits of the Debtor’s United States taxpayer identification number are 2628. The Debtor’s executive headquarters are located at 8 King Street East, Suite 1201, Toronto, Ontario, M5C 1B5, Canada.

**PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THEN THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: January 21, 2022  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Matthew B. Lunn

Matthew B. Lunn (No. 4119)

Shane M. Reil (No. 6195)

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Telephone: (302) 571-6600

*Counsel to the Foreign Representative*

**EXHIBIT I**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----	X	
In re	:	Chapter 15
	:	
Crystallex International Corporation <sup>1</sup>	:	Case No. 11-14074 (LSS)
	:	
Debtor in a Foreign Proceeding.	:	Ref. Docket Nos. _____
-----	X	

**ORDER RECOGNIZING AND ENFORCING (I) THE CCAA ELEVENTH EXTENSION  
AND FIFTEENTH AMENDMENT ORDER; AND (II) THE CCAA TWELFTH  
EXTENSION AND SIXTEENTH AMENDMENT ORDER**

Upon consideration of 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* (the “Motion”)<sup>2</sup> of the Foreign Representative, pursuant to sections 105, 1507, 1521, 1525, and 1527 of the Bankruptcy Code, seeking entry of an order recognizing and giving full force and effect to the CCAA Orders; and upon all evidence adduced before this Court by the Foreign Representative; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and the Court having determined that granting the relief requested by the Motion is in the best interests of the Debtor, the Debtor’s creditors, and other parties in interest; and adequate notice of the Motion and opportunity for objection having been given under the

<sup>1</sup> The last four digits of the Debtor’s United States taxpayer identification number is 2628. The Debtor’s executive headquarters are located at 8 King Street East, Suite 1201, Toronto, Ontario, M5C 1B5, Canada.

<sup>2</sup> Capitalized terms used herein, but not otherwise defined, have the meanings given to them in the Motion.



circumstances; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

1. The Motion is granted, as set forth herein.
2. Pursuant to sections 105, 1507, 1521, 1525, and 1527 of the Bankruptcy Code, the CCAA Orders, including any amendments thereto, are fully recognized and given full force and effect in the United States.
3. Subject to the terms and conditions of the (i) DIP Credit Agreement (as amended) and the other Credit Documents (as defined in the DIP Credit Agreement); (ii) the CCAA Financing Order, (iii) the First through Third Additional CCAA Financing Orders, (iv) the CCAA Extension and Amendment Order, (v) the CCAA Second Extension and Amendment Order, (vi) the CCAA Fifth Extension and Ninth Amendment Order, (vii) the CCAA Sixth Extension and Tenth Amendment Order, (viii) the CCAA Seventh Extension and Eleventh Amendment Order, (ix) the CCAA Eighth Extension and Twelfth Amendment Order (x) the CCAA Ninth Extension and Thirteenth Amendment Order; and (xi) the CCAA Tenth Extension and Fourteenth Amendment Order, each of the DIP Charge and the Lender Additional Compensation Charge granted to the DIP Lender by the Canadian Court and previously recognized by this Court shall remain in full force and effect.
4. The U.S. Financing Order, as well as the First through Third Additional U.S. Financing Orders, the U.S. Extension and Amendment Order, the U.S. Second Extension and Amendment Order, the U.S. Bridge Loan Order, the U.S. Fifth Extension and Ninth Amendment Order, the U.S. Sixth Extension and Tenth Amendment Order, the U.S. Seventh Extension and Eleventh Amendment Order, the U.S. Eighth Extension and Twelfth Amendment Order and the

U.S. Tenth Extension and Thirteenth Amendment Order shall continue in full force and effect, and all protections and other provisions of those orders shall continue to apply to all amounts owing to the DIP Lender under the DIP Credit Agreement, as amended by the Fourteenth Credit Agreement Amendment.

5. Notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon its entry; (b) neither the Debtor, the Foreign Representative, nor the DIP Lender is subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Foreign Representative, the Debtor, and the DIP Lender are authorized and empowered, and may in their discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

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

**EXHIBIT II**

**CCAA Eleventh Extension and Fifteenth Amendment Order**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

MR. JUSTICE HAINEY

)  
)  
)

TUESDAY THE 4th DAY

OF MAY, 2021



**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**ORDER**

**THIS MOTION**, made by the Applicant proceeded by way of judicial videoconference due to the COVID-19 crisis via Zoom at Toronto, Ontario.

**ON READING** the Affidavit of Robert Fung, sworn April 27, 2021 (the "**Fung Affidavit**"), the Thirty-Sixth Report of the Monitor, Ernst & Young Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Tenor Special Situation I, LP, in its capacity as the debtor-in-possession lender of the Applicant (the "**DIP Lender**"), and counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011 issued by the Applicant (the "**Senior Notes**") and the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto):

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**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the "**CCAA Financing Order**") or in the Credit Agreement, as applicable.

**EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including November 5, 2021 (the "**Stay Extension**").

**EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. ("**Tenor KRY**") on such date, subsequently assigned by Tenor KRY to Luxembourg Investment Company 31 S.a.r.l. ("**Tenor Luxco**") and ultimately assigned to the DIP Lender, as previously amended by the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment agreement dated June 5, 2013, the third credit agreement

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amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018, the ninth credit agreement amendment dated as of May 9, 2018, the tenth credit agreement amendment dated as of October 31, 2018, the eleventh credit agreement amendment dated as of May 6, 2019, the twelfth credit agreement amendment dated as of November 6, 2019, the thirteenth credit agreement amendment dated October 28, 2020 and effective as of May 6, 2020, the fourteenth credit agreement amendment dated April 14, 2021 and effective as of November 6, 2020 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the fifteenth credit agreement amendment between the DIP Lender and the Applicant (the "**Fifteenth Credit Agreement Amendment**") attached as Exhibit "D" to the Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Fifteenth Credit Agreement Amendment, provided that any date references therein to May 7, 2021 shall be changed to November 5, 2021.

5. **THIS COURT ORDERS** that the provisions and terms of the Fifteenth Credit Agreement Amendment, the Credit Agreement as amended by the Fifteenth Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant is hereby authorized and directed to pay and perform all of its principal indebtedness, interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Fifteenth Credit

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Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

6. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Fifteenth Credit Agreement Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment.

7. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;
- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation

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Amount in accordance with the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment; and

- (c) the DIP Charge and the Lender Additional Compensation Charge shall continue to have the priority set out in paragraph 17 of the CCAA Financing Order.

8. **THIS COURT ORDERS** that the Credit Agreement, the Fifteenth Credit Agreement Amendment, the other Credit Documents, the DIP Charge and the Lender Additional Compensation Charge, any advances made in good faith by the DIP Lender under the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment, and the Applicant's agreement to pay (and the payment of) Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount to the DIP Lender are fair, reasonable and appropriate and shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes or any common law; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement (an "**Agreement**") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:



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- (a) none of the execution, delivery or performance of the Credit Agreement, the Fifteenth Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Fifteenth Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

9. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as applicable,

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shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

### **CONFIDENTIALITY**

10. **THIS COURT ORDERS** that subject to paragraph 12 of this Order, the following materials in connection with this motion (the "**Confidential Materials**") shall be sealed and filed under a protective order and not form any part of the public record in this proceeding:

- (a) the Confidential Motion Record of the Applicant, which includes the unredacted Fung Affidavit; and
- (b) the Confidential Unredacted Thirty-Sixth Report of Ernst & Young Inc. in its Capacity as Monitor.

11. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

12. **THIS COURT ORDERS** that the Financial Information (as defined in the Fung Affidavit) contained in the Confidential Materials shall remain sealed pending determination, at a motion to be scheduled (the "**Sealing Motion**"), whether all, or any

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part of, the Financial Information should remain sealed pursuant to this Order and nothing in this Order shall be deemed to prejudice any party's rights or positions with respect to that issue at such Sealing Motion, the appropriate date for such a Sealing Motion, the ability of any party to file additional materials in connection with the Sealing Motion or to cross-examine in advance of such Sealing Motion on those aspects of the Fung Affidavit or other materials filed related to the sealing of the Financial Information.

### **TOLLING**

13. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

### **GENERAL**

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant

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representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

A handwritten signature in cursive script, appearing to read "Haining", is written over a horizontal line.

**SCHEDULE "A"**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Ravensource Fund
5. Stornoway Recovery Fund LP

**IN THE MATTER OF** a Plan of Compromise or Arrangement of Crystallex International Corporation

**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

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Lawyers for the Applicant

**EXHIBIT III**

**CCAA Twelfth Extension and Sixteenth Amendment Order**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THURSDAY THE 18th DAY
	)	
JUSTICE CONWAY	)	OF NOVEMBER, 2021

**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**ORDER**

**THIS MOTION**, made by the Applicant, Crystallex International Corporation (“**Crystallex**” or the “**Company**”), proceeded by way of judicial videoconference due to the COVID-19 crisis via Zoom at Toronto, Ontario.

**ON READING:** (i) the Motion Record of Crystallex dated October 28, 2020; (ii) the Motion Record of Crystallex dated May 21, 2021; (iii) the Responding and Cross-Motion Record of Computershare Trust Company of Canada in its Capacity as Trustee (the “**Trustee**”) for the Holders of Crystallex 9.375% Senior Notes due December 23, 2011 (the “**Senior Notes**”) and the Ad Hoc Committee of Beneficial Owners of the Senior Notes (as specified on Schedule "A" hereto) (the “**Ad Hoc Committee**” and with the Trustee, the “**Noteholders**”) dated May 28, 2021; (iv) the Responding Motion Record of Crystallex dated July 9, 2021; (v) the Reply Motion Record of Crystallex dated July 9,



2021; (vi) the Reply Cross-Motion Record of the Noteholders dated July 19, 2021; (vii) the Supplementary Motion Record of Crystallex dated September 3, 2021, including the transcript of the cross-examination of Scott Reid held August 6, 2021 and the exhibits thereto; (viii) the Transcript Brief of the Noteholders dated September 3, 2021, including the transcript of the cross-examination of Robert Fung held August 5, 2021 and the exhibits thereto and the transcripts of the cross-examination of Scott Reid held August 6, 2021 and the exhibits thereto; (ix) the Document Brief of Crystallex dated September 28, 2021; (x) the Document Brief of the Noteholders dated October 6, 2021; (xi) the Motion Record of Crystallex dated October 25, 2021; (xii) the Responding Motion Record of the Noteholders dated October 29, 2021; (xiii) the Supplemental Affidavit of Robert Fung sworn October 28, 2021 (the **"Supplemental Fung Affidavit"**); (xiv) the Transcript Brief of the Noteholders dated November 15, 2021, including the transcript of the cross-examination of Robert Fung held November 4, 2021 and the exhibits thereto and the transcript of the cross-examination of Scott Reid held November 4, 2021 and the exhibits thereto; (xv) the Transcript Brief of Crystallex dated November 16, 2021, including the transcript of the cross-examination of Scott Reid held November 4, 2021 and the exhibits thereto; (xvi) the Joint Compendium of the Applicant and Tenor Special Situation I, LP, in its capacity as the debtor-in-possession lender of the Applicant (the **"DIP Lender"**) dated November 16, 2021; (xvii) the Compendium of the Noteholders dated November 18, 2021; (xviii) the factums of each of Crystallex, the DIP Lender and the Noteholders; and (xix) the Thirty-Fifth, Thirty-Sixth, Thirty-Seventh and Thirty-Eighth Reports (collectively, the **"Reports"**) of Ernst & Young Inc. (the **"Monitor"**).

**AND ON HEARING** the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the DIP Lender, counsel for Robert Fung and Marc Oppenheimer, and counsel for the Noteholders:

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the October Fung Affidavit (as defined below), the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the "**CCAA Financing Order**") or in the Credit Agreement, as applicable.

## **EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including November 18, 2022 (the "**Stay Extension**").

4. **THIS COURT ORDERS** that during the Stay Extension period:

- (a) the Applicant or the Monitor shall provide regular public reporting to the Court and the stakeholders of the Applicant's then-current cash balance and the DIP balance and updates of public information with respect to the

Applicant and its enforcement activities, with such reporting to occur no less frequently than every six months;

- (b) the Applicant or the Monitor shall report on a timely basis to the Court and the Applicant's stakeholders on any material changes to the business or affairs of Crystallex, which reports may be confidential or public depending on the nature of the material change (it being understood that the rights of any party to oppose any redaction or sealing are hereby reserved);
- (c) the Applicant or the Monitor shall report, on a confidential basis every six months, the then-current Cash Flow Variance for the prior six-month period and the Cash Flow Forecast for the upcoming six-month period;
- (d) the Monitor shall, on a no less than quarterly basis, hold a meeting among the Applicant, the DIP Lender, representatives of the Ad Hoc Committee and representatives of any of the Applicant's other stakeholders that indicate to the Monitor in writing that they wish to participate to provide updates of public information concerning the Applicant, including its enforcement activities; and
- (e) subject to the prior orders and endorsements of this Court including the endorsement dated June 7, 2016, any party may come back to the Court to address any issues which arise during the Stay Extension period.

5. **THIS COURT ORDERS** that during the Stay Extension period and any future stay extension period, the Applicant shall, subject to further order of the Court, make public its six-month Cash Flow Variances (on the same line item basis as Appendix

D to the Thirty-Eighth Report and without redactions) on the date that is six months after the end of the relevant reporting period in the Cash Flow Variance by causing them to be posted on the Monitor's Website. By way of illustration of the foregoing, the Cash Flow Variance at Appendix D to the Thirty-Eighth Report will be made publicly available without redactions on the Monitor's Website on March 30, 2022.

### **CONFIDENTIALITY**

6. **THIS COURT ORDERS** that, subject to paragraphs 5 and 9 hereof, as applicable, the following information (the "**Confidential Materials**") shall be sealed and filed under a protective order and not form any part of the public record in this proceeding except as otherwise provided herein:

- (a) Confidential Motion Record of Crystallex dated October 28, 2020, including the Affidavit of Robert Fung sworn October 28, 2020;
- (b) Confidential Motion Record of the Applicant dated May 21, 2021, including the Affidavit of Robert Fung sworn May 21, 2021;
- (c) Confidential Reply Motion Record of the Applicant dated July 9, 2021 including the Affidavit of Robert Fung sworn July 9, 2021;
- (d) Confidential Responding Motion Record of the Applicant dated July 9, 2021 and the Affidavit of Robert Fung dated July 9, 2021;
- (e) Confidential Reply Cross-Motion Record of the Noteholders dated July 19, 2021;

- (f) Confidential Supplementary Motion Record of the Applicant dated September 3, 2021;
- (g) Confidential Document Brief of the Noteholders dated October 6, 2021;
- (h) Confidential Motion Record of the Applicant dated October 25, 2021 including the Affidavit of Robert Fung dated October 25, 2021 (the “**October Fung Affidavit**”);
- (i) Confidential version of the Thirty-Seventh and Thirty-Eighth Reports of the Monitor;
- (j) Confidential Transcripts of the Cross-Examination of Robert Fung held on August 5, 2021 and November 4, 2021 and the Confidential Transcript and Exhibit Briefs of the Noteholders dated September 3, 2021 and November 15, 2021, respectively;
- (k) Confidential Transcript and Exhibit Brief of the Cross-Examination of Scott Reid held on November 4, 2021;
- (l) Confidential Joint Compendium of the DIP Lender and the Applicant dated November 16, 2021;
- (m) Confidential Compendium of the Noteholders dated November 18, 2021;
- (n) Confidential versions of the facts of the Applicant, DIP Lender and Noteholders served in connection with this Motion;

- (o) Portions of the explanatory notes to the cash flows in the Reports (with related text in the body of the Reports), as outlined in Schedule “D” in the Confidential Factum of the Applicant dated November 10, 2021;
- (p) The following cash flow information:
  - (i) the line item details in the Company’s Cash Flow Forecast for the period from April 2021 to November 2021 contained in Confidential Appendix C to the Thirty-Sixth Report; and
  - (ii) Confidential Appendix E to the Thirty-Eighth Report containing the Cash Flow Forecast for the period October 1, 2021 to November 30, 2022; and
- (q) Confidential Appendix D to the Thirty-Eighth Report containing the Cash Flow Variance for the period April 1, 2021 to September 30, 2021, until March 30, 2022.

7. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

8. **THIS COURT ORDERS** that the Cash Flow Forecasts and Cash Flow Variances shall be made available to any of the Company's stakeholders upon the signing of a confidentiality agreement on terms acceptable to the Company, or such other terms or conditions as the Court considers appropriate upon a motion on proper notice to all parties in interest that is in compliance with the terms of the endorsement of this Court dated June 7, 2016. For the avoidance of doubt, nothing in this paragraph 8 shall limit or supersede the Noteholders’ and the Company’s other stakeholders’ rights under paragraph 9 of the Approval Order of this Court dated December 18, 2014.

9. **THIS COURT ORDERS** that, subject to the endorsement of this court dated June 7, 2016, any party may apply to the Court on proper notice to all parties in interest to seek to vary the provisions in paragraphs 6 and 7 of this Order and nothing in this Order shall be deemed to prejudice their rights to bring a motion to seek such variation or to vary the finding that the Confidential Materials are confidential, provided that for certainty, a moving party shall have the onus on such motion(s) to justify any variation(s) sought.

### **PUBLICLY AVAILABLE MATERIALS**

10. **THIS COURT ORDERS** that the public, redacted versions of the materials listed in paragraph 6 shall remain public in these proceedings and be filed with the Court and uploaded to CaseLines.

### **CROSS-MOTION**

11. **THIS COURT ORDERS** that the Cross-Motion of the Noteholders to unseal the compensation amounts transferred by the DIP Lender to Robert Fung and Marc Oppenheimer in the Net Arbitration Proceeds Transfer Agreement approved and sealed by Order of this Court dated December 18, 2014 is dismissed.

### **EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

12. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. ("**Tenor KRY**") on such date, subsequently assigned by Tenor KRY to Luxembourg Investment Company 31 S.a.r.l. ("**Tenor Luxco**") and ultimately assigned to the DIP Lender, as previously amended by

the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment agreement dated June 5, 2013, the third credit agreement amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018, the ninth credit agreement amendment dated as of May 9, 2018, the tenth credit agreement amendment dated as of October 31, 2018, the eleventh credit agreement amendment dated as of May 6, 2019, the twelfth credit agreement amendment dated as of November 6, 2019, the thirteenth credit agreement amendment dated October 28, 2020 and effective as of May 6, 2020, the fourteenth credit agreement amendment dated April 14, 2021 and effective as of November 6, 2020, the fifteenth credit agreement amendment dated October 21, 2021, 2021 and effective as of May 7, 2021 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the sixteenth credit agreement amendment between the DIP Lender and the Applicant (the "**Sixteenth Credit Agreement Amendment**") attached as Exhibit "A" to the Supplemental Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Sixteenth Credit Agreement Amendment.

13.           **THIS COURT ORDERS** that the provisions and terms of the Sixteenth Credit Agreement Amendment, the Credit Agreement as amended by the Sixteenth Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant



is hereby authorized and directed to pay and perform all of its principal indebtedness, interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

14. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Sixteenth Credit Agreement Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment.

15. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;
- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional

Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount in accordance with the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment; and

- (c) the DIP Charge and the Lender Additional Compensation Charge shall continue to have the priority set out in paragraph 17 of the CCAA Financing Order.

16. **THIS COURT ORDERS** that the Credit Agreement, the Sixteenth Credit Agreement Amendment, the other Credit Documents, the DIP Charge and the Lender Additional Compensation Charge, any advances made in good faith by the DIP Lender under the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, and the Applicant's agreement to pay (and the payment of) Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount to the DIP Lender are fair, reasonable and appropriate and shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (1) the pendency of these proceedings and the declarations of insolvency made herein; (2) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (3) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (4) the provisions of any federal or provincial statutes or any common law; or (5) any negative covenants, prohibitions or other similar provisions

with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement (an "**Agreement**") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:

- (a) none of the execution, delivery or performance of the Credit Agreement, the Sixteenth Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Sixteenth Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

17. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these

proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as applicable, shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

#### **TOLLING**

18. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

#### **GENERAL**

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor

and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

**SCHEDULE “A”**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund L.P.
3. QVT Family Office Fund LP
4. Greywolf Loan Participation LLC
5. Ravensource Fund
6. Stornoway Recovery Fund LP

**IN THE MATTER OF** a Plan of Compromise or Arrangement of Crystallex International Corporation

**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

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Lawyers for the Applicant



**EXHIBIT IV**

**Fifteenth Credit Agreement Amendment**

**THIS FIFTEENTH CREDIT AGREEMENT AMENDMENT** is dated as of October 21, 2021 and effective as of May 7, 2021.

B E T W E E N:

**CRYSTALLEX INTERNATIONAL CORPORATION**

(the "**Borrower**")

- and -

**TENOR SPECIAL SITUATION I, LP**

A Cayman Island Exempted Limited Partnership

(the "**Lender**") (sometimes called "**Tenor Cayman**")

**WHEREAS** the Borrower and Tenor Special Situation I, LLC (known and referred to in the Credit Agreement (as that term is defined below) as Tenor Special Situation Fund I, LLC ("**Tenor Situation I**")) entered into a credit agreement dated as of April 23, 2012, which was assigned by Tenor Special Situation I, LLC to Tenor KRY Cooperatief U.A. ("**KRY Coop**") on such date (as so assigned and as amended by the first credit agreement amending and confirming agreement dated as of May 15, 2012, the second credit agreement amendment agreement dated as of June 5, 2013 (the "**Second Credit Agreement Amendment**"), the third credit agreement amendment agreement dated as of April 16, 2014 (the "**Third Credit Agreement Amendment**"), each of such amending agreements between the Borrower and KRY Coop, and as further amended, amended and restated, supplemented, converted or otherwise modified from time to time prior to the date hereof (the "**KRY Coop Credit Agreement**"));

**WHEREAS** subject to the provisions of the KRY Coop Credit Agreement, KRY Coop made a term loan to the Borrower, in accordance with Section 2.2 of the KRY Coop Credit Agreement and the other provisions thereof, in an aggregate principal amount not exceeding US\$62,533,333.33;

**WHEREAS** pursuant to an assignment agreement dated as of December 30, 2014 between KRY Coop and Tenor Capital Management Company, L.P. ("**Tenor Management**"), as assignors, and Luxembourg Investment Company 31 S.a.r.l., a private limited liability company registered with the Luxembourg Register of Commerce and Companies ("**Luxco 31**"), as assignee, and the "Borrower Agreement" attached thereto and executed by and delivered by the Borrower on December 30, 2014 (the "**2014 Assignment Agreement**") (a) KRY Coop assigned to the Luxco 31 all of KRY Coop's rights, obligations and interests in and to (i) the KRY Coop Credit Agreement, (ii) all Obligations now or hereafter owing by the Borrower under the KRY Coop Credit Agreement or any of the other Credit Documents, (iii) all of the other Credit Documents and any other documents, agreements, assignments, instruments, registrations or filings delivered to or for the benefit of Tenor Situation I (in its capacity as the original lender under the Credit Agreement (as that term is hereinafter defined)) or to or for the benefit of KRY Coop by the Borrower pursuant to or in connection with the Credit Agreement and (iv) the CCAA Financing Orders and the U.S. Financing Orders including without limitation the Third Additional CCAA Financing Order and the NAP Transfer Order (collectively, the "**KRY Coop Assigned Assets**") and Luxco 31 agreed to assume all obligations of KRY Coop and under and in respect of the KRY Coop Assigned Assets and (b) Tenor Management assigned to Luxco 31 all of Tenor Management's rights, obligations and interests in and to (i) the December 2014 Commitment and (ii) the December 2014 Additional Financing Order and the NAP Transfer Order (collectively, the "**Tenor Management Assigned Assets**") and Luxco 31 agreed to assume all obligations of Tenor Management under and in respect of the Tenor Management Assigned Assets;

**WHEREAS** as a result of the assignments and assumptions made in the 2014 Assignment Agreement, Luxco 31 became the “the Lender” under the Credit Agreement and all other Credit Documents (the KRY Coop Credit Agreement, as assigned by KRY Coop to Luxco 31 and assumed by Luxco 31 in accordance with the terms of the 2014 Assignment Agreement is hereinafter called the “**Luxco 31 Credit Agreement**”);

**WHEREAS** Luxco 31 and the Borrower entered into the fourth credit agreement amendment agreement dated as of March 12, 2015 (the “**Fourth Credit Agreement Amendment**”) whereby Luxco 31 agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, to lend an additional amount to the Borrower, and Luxco 31 did advance and lend such additional amount to the Borrower;

**WHEREAS** Luxco 31 and the Borrower entered into the extension and amendment agreement dated as of December 31, 2016 (the “**Fifth Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment and the Fifth Credit Agreement Amendment, to (i) extend the Maturity Date as specifically set out therein and (ii) certain amendments to the Credit Agreement as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the extension and amendment agreement dated as of June 30, 2017 (the “**Sixth Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment and the Sixth Credit Agreement Amendment, to extend the Maturity Date as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the seventh credit agreement amendment dated as of December 27, 2017 (the “**Seventh Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment and the Seventh Credit Agreement Amendment, to (i) extend the Maturity Date as specifically set out therein and (ii) certain amendments to the Credit Agreement as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the eighth credit agreement amendment dated as of February 28, 2018 (the “**Eighth Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment and Eighth Credit Agreement Amendment, to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein;

**WHEREAS** pursuant to an endorsement of the CCAA Court issued on April 26, 2018 and confirming email correspondence between counsel for each of the Borrower and Luxco 31 on April 27, 2018, the Maturity Date was extended as specifically set out therein (such CCAA Court endorsement and confirming email correspondence are collectively called the “**April 2018 Amendment**”), and whereas Luxco 31 and the Borrower entered into the ninth credit agreement amendment dated as of May 9, 2018 (the “**Ninth Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, the Eighth Credit Agreement Amendment, and the Ninth Credit Agreement

Amendment to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the tenth credit agreement amendment dated as of October 31, 2018 (the **"Tenth Credit Agreement Amendment"**) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, Eighth Credit Agreement Amendment, the April 2018 Amendment, and the Ninth Credit Agreement Amendment to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the eleventh credit agreement amendment dated as of May 6, 2019 (the **"Eleventh Credit Agreement Amendment"**) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, Eighth Credit Agreement Amendment, the April 2018 Amendment, the Ninth Credit Agreement Amendment, and the Tenth Credit Agreement Amendment to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the twelfth credit agreement amendment dated as of November 6, 2019 (the **"Twelfth Credit Agreement Amendment"**) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, Eighth Credit Agreement Amendment, the April 2018 Amendment, the Ninth Credit Agreement Amendment, the Tenth Credit Agreement Amendment and the Eleventh Credit Agreement Amendment to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein (the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, the Eighth Credit Agreement Amendment, the April 2018 Amendment, the Ninth Credit Agreement Amendment, the Tenth Credit Agreement Amendment, the Eleventh Credit Agreement Amendment, and the Twelfth Credit Agreement Amendment are collectively called the **"Pre-2020 Assignment Credit Agreement"**);

**WHEREAS** pursuant to an assignment agreement dated and effective as of March 30, 2020 between Luxco 31, as assignor, and the Lender, as assignee, and the "Agreement of Borrower" attached thereto and executed by and delivered by the Borrower on March 30, 2020 (the **"2020 Assignment Agreement"**) (a) Luxco 31 assigned to the Lender all of Luxco 31's rights, obligations and interests in and to (i) the Pre-2020 Assignment Credit Agreement, (ii) all Obligations now or hereafter owing by the Borrower under the Pre-2020 Assignment Credit Agreement or any of the other Credit Documents, (iii) all of the other Credit Documents and any other documents, agreements, assignments, instruments, registrations or filings delivered to or for the benefit of Tenor Situation I (in its capacity as the original lender under the Credit Agreement (as that term is hereinafter defined)) or to or for the benefit of KRY Coop by the Borrower pursuant to or in connection with the Pre-2020 Assignment Credit Agreement or to or for the benefit of Luxco 31 by the Borrower pursuant to or in connection with the Pre-2020 Assignment Credit Agreement and (iv) the CCAA Financing Orders and the U.S. Financing Orders including without limitation the Third Additional CCAA Financing Order and the NAP Transfer Order (collectively, the **"Luxco 31 Assigned Assets"**) and the Lender agreed to assume all obligations of Luxco 31 under and in respect of the Luxco 31 Assigned Assets;

**WHEREAS** as a result of the assignments and assumptions made in the 2020 Assignment Agreement, Tenor Cayman is the “the Lender” under the Pre-2020 Assignment Credit Agreement and all other Credit Documents (the Pre-2020 Assignment Credit Agreement, as assigned by Luxco 31 to Tenor Cayman and assumed by Tenor Cayman in accordance with the terms of the 2020 Assignment Agreement, is hereinafter called the “**Post-2020 Assignment Credit Agreement**”);

**WHEREAS** the Lender and the Borrower entered into the thirteenth credit agreement amendment dated as of October 28, 2020 and effective as of May 6, 2020 (the “**Thirteenth Credit Agreement Amendment**”) whereby the Lender and the Borrower agreed, subject to the terms and conditions of the Thirteenth Credit Agreement Amendment, to extend the Maturity Date as specifically set out therein;

**WHEREAS** the Lender and the Borrower entered into the fourteenth credit agreement amendment dated as of April 14, 2021 and effective as of November 6, 2020 (the “**Fourteenth Credit Agreement Amendment**”) whereby the Lender and the Borrower agreed, subject to the terms and conditions of the Fourteenth Credit Agreement Amendment, to extend the Maturity Date as specifically set out therein (the Post-2020 Assignment Credit Agreement as amended by the Thirteenth Credit Agreement Amendment and the Fourteenth Credit Agreement Amendment is collectively called the “**Credit Agreement**”);

**WHEREAS** the Lender (and prior to the 2020 Assignment Agreement, the prior lenders under the Credit Agreement) made a series of credit decisions to (i) enter into the Credit Agreement and thereafter advance substantial credit to the Borrower and (ii) to extend the Maturity Date of the Obligations, in each case on a number of occasions, over extended periods of time and in direct reliance on the Financing Order, the other Orders, the other orders of the CCAA Court in the CCAA Case including without limitation the findings of fact and prior determinations by the CCAA Court that all terms and conditions of the Credit Agreement, the advances made thereunder to the Borrower, and the Obligations owing to the Lender are fair, reasonable and appropriate;

**WHEREAS** the Maturity Date under the Credit Agreement is currently May 7, 2021 (being the “**Eleventh Extended Maturity Date**”);

**WHEREAS** the Borrower has requested the Lender to agree to further extend the Maturity Date to the “Twelfth Extended Maturity Date” (as that term is defined below) (the “**Maturity Date Extension**”);

**WHEREAS** the Lender is prepared, subject to the provisions of this fifteenth credit agreement amendment (“**this agreement**”) and in reliance on the Financing Order, other Orders, and other orders of the CCAA Court as well as the findings of fact and prior determinations by the CCAA Court that all terms and conditions of the Credit Agreement, the advances made thereunder to the Borrower, and the Obligations owing to the Lender are fair, reasonable and appropriate, to agree to the Maturity Date Extension set out herein; and

**WHEREAS** capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them in the Credit Agreement.

**NOW THEREFORE**, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties), the Borrower and the Lender hereby agree as follows:

1. The definition of the defined term “Maturity Date” in Section 1.1 of the Credit Agreement (Defined Terms) is hereby deleted and the following phrase is inserted in its place:

"the earlier to occur of (i) November 5, 2021 and (ii) the date of the expiry of the stay of proceedings in the CCAA Case, as such earlier date may be extended by the Lender in its sole discretion and without further action by the Borrower or any other approvals, consents or orders of any court including the CCAA Court (the earlier to occur of such dates, as same may be extended being called the "**Twelfth Extended Maturity Date**")".

2. The Borrower represents and warrants that each of the representations and warranties made in or pursuant to Article IV of the Credit Agreement, to the extent, if any, hereby amended, or which are contained in any other Credit Document, as corrected from time to time pursuant to Section 4.15 of the Credit Agreement (if applicable), are true and correct in all material respects immediately after the execution and delivery of this agreement by the Borrower and the Lender.
3. Except as amended by this agreement, all provisions of the Credit Agreement and the other Credit Documents shall remain unchanged.
4. This agreement and the amendments to the Credit Agreement set out herein, are and shall be conditional on each of the following conditions being satisfied or the Lender receiving, as applicable, each such delivery and court order in form and substance satisfactory to the Lender, in each case in the Lender's sole and absolute discretion (unless any such conditions are waived by the Lender in its sole and absolute discretion in writing):
  - (a) a certificate of status with respect to the Borrower;
  - (b) a certificate by an officer of the Borrower containing *inter alia*:
    - (i) a statement confirming that the copies of the Borrower's articles and the amendments thereto attached as a schedule to the Borrower's officer's certificates to the Lender dated December 31, 2016 are true and complete copies of such articles and have not been further amended;
    - (ii) a resolution by the board of directors of the Borrower authorizing the execution and delivery of this agreement and the performance by the Borrower of its obligations under this agreement; and
    - (iii) an incumbency certificate in respect of the Borrower with applicable specimen signatures;
  - (c) the following court orders:
    - (i) an order by the CCAA Court approving the terms of this agreement and the execution and delivery of this agreement by the Borrower and the other documents contemplated hereby and ordering the Borrower to comply with its obligations under the Credit Agreement as amended by this agreement and the other documents contemplated hereby in the form of the order attached hereto as Schedule "A" (the "**DIP Financing Extension and Amendment Order**", which DIP Financing Extension and Amendment Order shall constitute a CCAA Financing Order);

- (ii) an order of the CCAA Court extending the stay of proceedings in the CCAA Case, without any conditions, to and including November 5, 2021; and
- (iii) a U.S. recognition order issued by the U.S. Bankruptcy Court in the Chapter 15 Case with respect to items (i) and (ii) immediately above,

and this agreement shall be further conditional on all applicable periods to seek a stay, leave and/or appeal with respect to such orders referred to in this Section 4 having expired without (x) any further right of any Person to seek any of the foregoing relief or (y) any of the foregoing relief having been sought, and none of such orders having been reversed, stayed, vacated or, unless otherwise agreed by the Lender in writing, amended or modified in any manner;

- (d) all accrued and unpaid fees and disbursements of the Lender to the date of this agreement shall have been paid in full;
- (e) no motion, action, application, or any other form of court process seeking any order, direction or other relief from the CCAA Court, U.S. Bankruptcy Court or any other court of competent jurisdiction has been filed, threatened in writing or is otherwise pending that, if the requested relief is granted, could reasonably be expected to (i) adversely affect, impact or impair, directly or indirectly, the Lender's rights, remedies and/or entitlements under any Credit Document, any CCAA Financing Order, any other Order, or any other endorsement or direction of the CCAA Court or the U.S. Bankruptcy Court, (ii) cause an Event of Default under the Credit Agreement, (iii) adversely affect, impact or impair, directly or indirectly, the Borrower's rights and/or entitlements to pursue or monetize the Arbitration Entitlement and Arbitration Proceeding Rights, under any Order, endorsement or direction of the CCAA Court or U.S. Bankruptcy Court, or (iv) interfere in any manner, directly or indirectly, with the Borrower's actions, efforts, strategies or process to monetize the Arbitration Entitlement and Arbitration Proceeding Rights, including pursuant to the Venezuela Settlement and all rights to enforcement and payments of all amounts when due thereunder; and
- (f) the Borrower shall have acknowledged and agreed to the budget CP extension notice delivered by the Lender to the Borrower in respect of the replacement Budget.

5. Until such time as a replacement Budget has been agreed to between the Borrower and the Lender and such replacement Budget is satisfactory to the Lender in its sole and absolute discretion, the second sentence in Section 11 of the Seventh Credit Agreement Amendment shall not be effective and the Borrower covenants and agrees that it shall not use any monies hereafter received by it or by any other Person on its behalf from any source (including without limitation the Venezuela Settlement Payments, the Ingalls Settlement Payments, or any other Arbitration Proceeds) for any purposes whatsoever without the prior written consent of the Lender and such use of monies being in compliance with the terms of the Credit Agreement as amended by this agreement and without limitation specifically in accordance with Section 3.3 and Exhibit F thereof. For certainty and in furtherance of the covenant by the Borrower contained in the second sentence of section 5 of the Eighth Credit Agreement Amendment regarding use of monies by the Borrower, the Borrower represents and warrants to the Lender that from and after February 28, 2018 (being the date of the Eighth Credit Agreement Amendment), the Borrower has not used any monies received by it or by any other Person on its

behalf from any source (including without limitation the Venezuela Settlement Payments, the Ingalls Settlement Payments, or any other Arbitration Proceeds) for any purposes whatsoever without the prior written consent of the Lender and in compliance with the terms of the Credit Agreement. The Borrower acknowledges and agrees that the Lender has no obligation, and has made no agreement whatsoever to permit any deviation from the terms and conditions of the Credit Agreement, as amended by this agreement, regarding the Borrower's use and application of the Arbitration Proceeds. For certainty, the Borrower confirms and agrees that any such cash flow or cash flow projections attached to or forming part of any motion record filed by the Borrower with the Court or any report issued by the Monitor and/or filed with the Court does not and shall not be deemed to constitute a Budget or a replacement Budget satisfactory to the Lender for the purposes of the Credit Agreement.

6. For certainty, all Security Documents do and shall secure payment of all Obligations including without limitation all interest accruing thereon.
7. None of the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount, the Fourth Additional Principal Compensation Amount, or any shares of the Borrower into which any one or more of them is hereafter converted shall, under any circumstances, be diluted in any manner.
8. The Borrower shall, promptly on request by the Lender at any time and from time to time, and at the expense of the Borrower, make, execute, endorse, acknowledge, file and/or deliver any and all such documents, instruments, agreements and other items, and take such further steps relating to this agreement, the Credit Documents or any of the transactions contemplated hereunder or thereby and without limitation, the Borrower shall deliver such agreements to the Lender, enter into such agreements with the Lender, or seek to obtain court orders or amendments to any court orders from the CCAA Court or the U.S. Bankruptcy Court, in each case relating in any way to this agreement or the transactions contemplated hereby and as the Lender may require.
9. Despite any other provision of this agreement or any other document, this agreement and the amendments to the Credit Agreement contained herein shall not be effective unless and until the Lender delivers to the Borrower a written notice by the Lender that all conditions precedent contained in Section 4 of this agreement have been satisfied (or have been waived by the Lender in writing) (the "**Extension CP Satisfaction Notice**"). The Lender may at any time and for any reason unilaterally waive the requirement for delivery of the foregoing written notice.
10. This agreement supersedes all prior term sheets and commitment agreements and prior negotiations relating to the amendments contained herein.
11. This agreement shall be governed by and shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
12. This agreement may be executed in counterparts and both such counterparts shall constitute one and the same agreement. A counterpart may be executed and circulated by fax or other method of direct electronic transmission (including pdf email) and any such counterpart so executed and circulated shall be deemed to be an original of this agreement.



*[remainder of page deliberately left blank]*

**IN WITNESS WHEREOF** the parties have executed this agreement as of the date first above written.

**CRYSTALLEX INTERNATIONAL CORPORATION**

By:   
\_\_\_\_\_  
Name: Robert A. Fung  
Title: Chairman & CEO

**TENOR SPECIAL SITUATION I, LP**  
**by its General Partner,**  
**TENOR OPPORTUNITY ASSOCIATES, LLC**


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IN WITNESS WHEREOF** the parties have executed this agreement as of the date first above written.

**CRYSTALLEX INTERNATIONAL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**TENOR SPECIAL SITUATION I, LP  
by its General Partner,  
TENOR OPPORTUNITY ASSOCIATES, LLC**

By:  \_\_\_\_\_  
Name: Daniel H. Kochav  
Title: Member

**Schedule "A"**

**DIP Financing Extension and Amendment Order**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE  
MR. JUSTICE HAINEY

)  
)  
)

TUESDAY THE 4th DAY  
OF MAY, 2021



**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**ORDER**

**THIS MOTION**, made by the Applicant proceeded by way of judicial videoconference due to the COVID-19 crisis via Zoom at Toronto, Ontario.

**ON READING** the Affidavit of Robert Fung, sworn April 27, 2021 (the "**Fung Affidavit**"), the Thirty-Sixth Report of the Monitor, Ernst & Young Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Tenor Special Situation I, LP, in its capacity as the debtor-in-possession lender of the Applicant (the "**DIP Lender**"), and counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011 issued by the Applicant (the "**Senior Notes**") and the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto):

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**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the "**CCAA Financing Order**") or in the Credit Agreement, as applicable.

**EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including November 5, 2021 (the "**Stay Extension**").

**EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. ("**Tenor KRY**") on such date, subsequently assigned by Tenor KRY to Luxembourg Investment Company 31 S.a.r.l. ("**Tenor Luxco**") and ultimately assigned to the DIP Lender, as previously amended by the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment agreement dated June 5, 2013, the third credit agreement

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amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018, the ninth credit agreement amendment dated as of May 9, 2018, the tenth credit agreement amendment dated as of October 31, 2018, the eleventh credit agreement amendment dated as of May 6, 2019, the twelfth credit agreement amendment dated as of November 6, 2019, the thirteenth credit agreement amendment dated October 28, 2020 and effective as of May 6, 2020, the fourteenth credit agreement amendment dated April 14, 2021 and effective as of November 6, 2020 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the fifteenth credit agreement amendment between the DIP Lender and the Applicant (the "**Fifteenth Credit Agreement Amendment**") attached as Exhibit "D" to the Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Fifteenth Credit Agreement Amendment, provided that any date references therein to May 7, 2021 shall be changed to November 5, 2021.

5. **THIS COURT ORDERS** that the provisions and terms of the Fifteenth Credit Agreement Amendment, the Credit Agreement as amended by the Fifteenth Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant is hereby authorized and directed to pay and perform all of its principal indebtedness, interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Fifteenth Credit

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Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

6. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Fifteenth Credit Agreement Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment.

7. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;
- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation



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Amount in accordance with the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment; and

- (c) the DIP Charge and the Lender Additional Compensation Charge shall continue to have the priority set out in paragraph 17 of the CCAA Financing Order.

8. **THIS COURT ORDERS** that the Credit Agreement, the Fifteenth Credit Agreement Amendment, the other Credit Documents, the DIP Charge and the Lender Additional Compensation Charge, any advances made in good faith by the DIP Lender under the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment, and the Applicant's agreement to pay (and the payment of) Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount to the DIP Lender are fair, reasonable and appropriate and shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes or any common law; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement (an "**Agreement**") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:

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- (a) none of the execution, delivery or performance of the Credit Agreement, the Fifteenth Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Fifteenth Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

9. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as applicable,

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shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by the Fifteenth Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

### **CONFIDENTIALITY**

10. **THIS COURT ORDERS** that subject to paragraph 12 of this Order, the following materials in connection with this motion (the "**Confidential Materials**") shall be sealed and filed under a protective order and not form any part of the public record in this proceeding:

- (a) the Confidential Motion Record of the Applicant, which includes the unredacted Fung Affidavit; and
- (b) the Confidential Unredacted Thirty-Sixth Report of Ernst & Young Inc. in its Capacity as Monitor.

11. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

12. **THIS COURT ORDERS** that the Financial Information (as defined in the Fung Affidavit) contained in the Confidential Materials shall remain sealed pending determination, at a motion to be scheduled (the "**Sealing Motion**"), whether all, or any

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part of, the Financial Information should remain sealed pursuant to this Order and nothing in this Order shall be deemed to prejudice any party's rights or positions with respect to that issue at such Sealing Motion, the appropriate date for such a Sealing Motion, the ability of any party to file additional materials in connection with the Sealing Motion or to cross-examine in advance of such Sealing Motion on those aspects of the Fung Affidavit or other materials filed related to the sealing of the Financial Information.

### **TOLLING**

13. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

### **GENERAL**

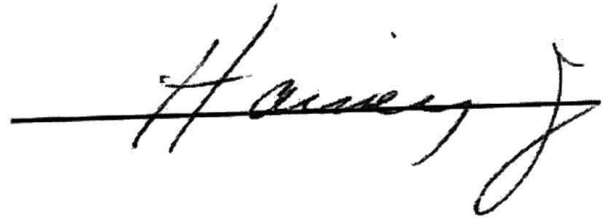
14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant

- 9 -

representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

A handwritten signature in black ink, appearing to read "Haining", is written over a horizontal line.

**SCHEDULE "A"**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Ravensource Fund
5. Stornoway Recovery Fund LP

IN THE MATTER OF a Plan of Compromise or Arrangement of Crystallex International Corporation

**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
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Toronto, ON M5V 3J7

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Lawyers for the Applicant

**EXHIBIT V**

**Sixteenth Credit Agreement Amendment**



**THIS SIXTEENTH CREDIT AGREEMENT AMENDMENT** is dated as of ●, 202● and effective as of November 5, 2021.

B E T W E E N:

**CRYSTALLEX INTERNATIONAL CORPORATION**  
(the "**Borrower**")

- and -

**TENOR SPECIAL SITUATION I, LP**  
A Cayman Island Exempted Limited Partnership  
(the "**Lender**") (sometimes called "**Tenor Cayman**")

**WHEREAS** the Borrower and Tenor Special Situation I, LLC (known and referred to in the Credit Agreement (as that term is defined below) as Tenor Special Situation Fund I, LLC ("**Tenor Situation I**")) entered into a credit agreement dated as of April 23, 2012, which was assigned by Tenor Special Situation I, LLC to Tenor KRY Cooperatief U.A. ("**KRY Coop**") on such date (as so assigned and as amended by the first credit agreement amending and confirming agreement dated as of May 15, 2012, the second credit agreement amendment agreement dated as of June 5, 2013 (the "**Second Credit Agreement Amendment**"), the third credit agreement amendment agreement dated as of April 16, 2014 (the "**Third Credit Agreement Amendment**"), each of such amending agreements between the Borrower and KRY Coop, and as further amended, amended and restated, supplemented, converted or otherwise modified from time to time prior to the date hereof (the "**KRY Coop Credit Agreement**"));

**WHEREAS** subject to the provisions of the KRY Coop Credit Agreement, KRY Coop made a term loan to the Borrower, in accordance with Section 2.2 of the KRY Coop Credit Agreement and the other provisions thereof, in an aggregate principal amount not exceeding US\$62,533,333.33;

**WHEREAS** pursuant to an assignment agreement dated as of December 30, 2014 between KRY Coop and Tenor Capital Management Company, L.P. ("**Tenor Management**"), as assignors, and Luxembourg Investment Company 31 S.a.r.l., a private limited liability company registered with the Luxembourg Register of Commerce and Companies ("**Luxco 31**"), as assignee, and the "**Borrower Agreement**" attached thereto and executed by and delivered by the Borrower on December 30, 2014 (the "**2014 Assignment Agreement**") (a) KRY Coop assigned to the Luxco 31 all of KRY Coop's rights, obligations and interests in and to (i) the KRY Coop Credit Agreement, (ii) all Obligations now or hereafter owing by the Borrower under the KRY Coop Credit Agreement or any of the other Credit Documents, (iii) all of the other Credit Documents and any other documents, agreements, assignments, instruments, registrations or filings delivered to or for the benefit of Tenor Situation I (in its capacity as the original lender under the Credit Agreement (as that term is hereinafter defined)) or to or for the benefit of KRY Coop by the Borrower pursuant to or in connection with the Credit Agreement and (iv) the CCAA Financing Orders and the U.S. Financing Orders including without limitation the Third Additional CCAA Financing Order and the NAP Transfer Order (collectively, the "**KRY Coop Assigned Assets**") and Luxco 31 agreed to assume all obligations of KRY Coop and under and in respect of the KRY Coop Assigned Assets and (b) Tenor Management assigned to Luxco 31 all of Tenor Management's rights, obligations and interests in and to (i) the December 2014 Commitment and (ii) the December 2014 Additional Financing Order and the NAP Transfer Order (collectively, the "**Tenor Management Assigned Assets**") and Luxco 31 agreed to assume all obligations of Tenor Management under and in respect of the Tenor Management Assigned Assets;

**WHEREAS** as a result of the assignments and assumptions made in the 2014 Assignment Agreement, Luxco 31 became the “the Lender” under the Credit Agreement and all other Credit Documents (the KRY Coop Credit Agreement, as assigned by KRY Coop to Luxco 31 and assumed by Luxco 31 in accordance with the terms of the 2014 Assignment Agreement is hereinafter called the “**Luxco 31 Credit Agreement**”);

**WHEREAS** Luxco 31 and the Borrower entered into the fourth credit agreement amendment agreement dated as of March 12, 2015 (the “**Fourth Credit Agreement Amendment**”) whereby Luxco 31 agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, to lend an additional amount to the Borrower, and Luxco 31 did advance and lend such additional amount to the Borrower;

**WHEREAS** Luxco 31 and the Borrower entered into the extension and amendment agreement dated as of December 31, 2016 (the “**Fifth Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment and the Fifth Credit Agreement Amendment, to (i) extend the Maturity Date as specifically set out therein and (ii) certain amendments to the Credit Agreement as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the extension and amendment agreement dated as of June 30, 2017 (the “**Sixth Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment and the Sixth Credit Agreement Amendment, to extend the Maturity Date as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the seventh credit agreement amendment dated as of December 27, 2017 (the “**Seventh Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment and the Seventh Credit Agreement Amendment, to (i) extend the Maturity Date as specifically set out therein and (ii) certain amendments to the Credit Agreement as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the eighth credit agreement amendment dated as of February 28, 2018 (the “**Eighth Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment and Eighth Credit Agreement Amendment, to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein;

**WHEREAS** pursuant to an endorsement of the CCAA Court issued on April 26, 2018 and confirming email correspondence between counsel for each of the Borrower and Luxco 31 on April 27, 2018, the Maturity Date was extended as specifically set out therein (such CCAA Court endorsement and confirming email correspondence are collectively called the “**April 2018 Amendment**”), and whereas Luxco 31 and the Borrower entered into the ninth credit agreement amendment dated as of May 9, 2018 (the “**Ninth Credit Agreement Amendment**”) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement

Amendment, the Seventh Credit Agreement Amendment, the Eighth Credit Agreement Amendment, and the Ninth Credit Agreement Amendment to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the tenth credit agreement amendment dated as of October 31, 2018 (the **“Tenth Credit Agreement Amendment”**) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, Eighth Credit Agreement Amendment, the April 2018 Amendment, and the Ninth Credit Agreement Amendment to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the eleventh credit agreement amendment dated as of May 6, 2019 (the **“Eleventh Credit Agreement Amendment”**) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, Eighth Credit Agreement Amendment, the April 2018 Amendment, the Ninth Credit Agreement Amendment, and the Tenth Credit Agreement Amendment to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein;

**WHEREAS** Luxco 31 and the Borrower entered into the twelfth credit agreement amendment dated as of November 6, 2019 (the **“Twelfth Credit Agreement Amendment”**) whereby Luxco 31 and the Borrower agreed, subject to the terms and conditions of the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, Eighth Credit Agreement Amendment, the April 2018 Amendment, the Ninth Credit Agreement Amendment, the Tenth Credit Agreement Amendment and the Eleventh Credit Agreement Amendment to (i) extend the Maturity Date as specifically set out therein and (ii) certain other matters as specifically set out therein (the Luxco 31 Credit Agreement as amended by the Fourth Credit Agreement Amendment, the Fifth Credit Agreement Amendment, the Sixth Credit Agreement Amendment, the Seventh Credit Agreement Amendment, the Eighth Credit Agreement Amendment, the April 2018 Amendment, the Ninth Credit Agreement Amendment, the Tenth Credit Agreement Amendment, the Eleventh Credit Agreement Amendment, and the Twelfth Credit Agreement Amendment are collectively called the **“Pre-2020 Assignment Credit Agreement”**);

**WHEREAS** pursuant to an assignment agreement dated and effective as of March 30, 2020 between Luxco 31, as assignor, and the Lender, as assignee, and the **“Agreement of Borrower”** attached thereto and executed by and delivered by the Borrower on March 30, 2020 (the **“2020 Assignment Agreement”**) (a) Luxco 31 assigned to the Lender all of Luxco 31’s rights, obligations and interests in and to (i) the Pre-2020 Assignment Credit Agreement, (ii) all Obligations now or hereafter owing by the Borrower under the Pre-2020 Assignment Credit Agreement or any of the other Credit Documents, (iii) all of the other Credit Documents and any other documents, agreements, assignments, instruments, registrations or filings delivered to or for the benefit of Tenor Situation I (in its capacity as the original lender under the Credit Agreement (as that term is hereinafter defined)) or to or for the benefit of KRY Coop by the Borrower pursuant to or in connection with the Pre-2020 Assignment Credit Agreement or to or for the benefit of Luxco 31 by the Borrower pursuant to or in connection with the Pre-2020 Assignment Credit Agreement and (iv) the CCAA Financing Orders and the U.S. Financing Orders including without limitation the Third Additional CCAA Financing Order and the NAP Transfer Order

(collectively, the "**Luxco 31 Assigned Assets**") and the Lender agreed to assume all obligations of Luxco 31 under and in respect of the Luxco 31 Assigned Assets;

**WHEREAS** as a result of the assignments and assumptions made in the 2020 Assignment Agreement, Tenor Cayman is the "the Lender" under the Pre-2020 Assignment Credit Agreement and all other Credit Documents (the Pre-2020 Assignment Credit Agreement, as assigned by Luxco 31 to Tenor Cayman and assumed by Tenor Cayman in accordance with the terms of the 2020 Assignment Agreement, is hereinafter called the "**Post-2020 Assignment Credit Agreement**");

**WHEREAS** the Lender and the Borrower entered into the thirteenth credit agreement amendment dated as of October 28, 2020 and effective as of May 6, 2020 (the "**Thirteenth Credit Agreement Amendment**") whereby the Lender and the Borrower agreed, subject to the terms and conditions of the Thirteenth Credit Agreement Amendment, to extend the Maturity Date as specifically set out therein;

**WHEREAS** the Lender and the Borrower entered into the fourteenth credit agreement amendment dated as of April 14, 2021 and effective as of November 6, 2020 (the "**Fourteenth Credit Agreement Amendment**") whereby the Lender and the Borrower agreed, subject to the terms and conditions of the Fourteenth Credit Agreement Amendment, to extend the Maturity Date as specifically set out therein;

**WHEREAS** the Lender and the Borrower entered into the fifteenth credit agreement amendment dated as of October 21, 2021 and effective as of May 7, 2021 (the "**Fifteenth Credit Agreement Amendment**") whereby the Lender and the Borrower agreed, subject to the terms and conditions of the Fifteenth Credit Agreement Amendment, to extend the Maturity Date as specifically set out therein (the Post-2020 Assignment Credit Agreement as amended by the Thirteenth Credit Agreement Amendment, the Fourteenth Credit Agreement Amendment and the Fifteenth Credit Agreement Amendment is collectively called the "**Credit Agreement**");

**WHEREAS** the Lender (and prior to the 2020 Assignment Agreement, the prior lenders under the Credit Agreement) made a series of credit decisions to (i) enter into the Credit Agreement and thereafter advance substantial credit to the Borrower and (ii) to extend the Maturity Date of the Obligations, in each case on a number of occasions, over extended periods of time and in direct reliance on the Financing Order, the other Orders, the other orders of the CCAA Court in the CCAA Case including without limitation the findings of fact and prior determinations by the CCAA Court that all terms and conditions of the Credit Agreement, the advances made thereunder to the Borrower, and the Obligations owing to the Lender are fair, reasonable and appropriate;

**WHEREAS** the Maturity Date under the Credit Agreement is currently November 5, 2021 (being the "**Twelfth Extended Maturity Date**");

**WHEREAS** the Borrower requested the Lender to agree to further extend the Maturity Date to the "Thirteenth Extended Maturity Date" (as that term is defined below) (the "**Maturity Date Extension**");

**WHEREAS** the DIP Lender has advised the Borrower that an Event of Default occurred pursuant to Section 8.1(y) of the Credit Agreement as a result of the September 10, 2021 decision by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**") to deny the Borrower's application for a license necessary to sell the PDVH Shares (as that term is defined in the Borrower's notice of motion filed for a hearing with the CCAA Court on November 18, 2021) (the "**September 2021 Section 8.1(y) Event of Default**"; for certainty, the September 2021 Section 8.1(y) Event of Default as defined herein is the event described in this recital only, and not any other Event of Default under Section 8.1(y));

of the Credit Agreement which may hereafter occur including without limitation any other decision which may hereafter be issued by OFAC);

**WHEREAS** the Borrower has requested that the Lender waive the September 2021 Section 8.1(y) Event of Default, and the Lender has agreed to ~~conditionally~~ waive such September 2021 Section 8.1(y) Event of Default on and subject to the terms and conditions herein;

**WHEREAS** the Lender is prepared, subject to the provisions of this sixteenth credit agreement amendment ("**this agreement**") and in reliance on the Financing Order, other Orders, and other orders of the CCAA Court as well as the findings of fact and prior determinations by the CCAA Court that all terms and conditions of the Credit Agreement, the advances made thereunder to the Borrower, and the Obligations owing to the Lender are fair, reasonable and appropriate, to agree to (i) agree to the Maturity Date Extension and (ii) conditionally waive the Section 8.1(y) Event of Default, in each case as specifically set out and subject to the terms and conditions herein; and

**WHEREAS** capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them in the Credit Agreement.

**NOW THEREFORE**, for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties), the Borrower and the Lender hereby agree as follows:

1. The definition of the defined term "Maturity Date" in Section 1.1 of the Credit Agreement (Defined Terms) is hereby deleted and the following phrase is inserted in its place:

"the earlier to occur of (i) November 18, 2022 and (ii) the date of the expiry of the stay of proceedings in the CCAA Case, as such earlier date may be extended by the Lender in its sole discretion and without further action by the Borrower or any other approvals, consents or orders of any court including the CCAA Court (the earlier to occur of such dates, as same may be extended being called the "**Thirteenth Extended Maturity Date**")".
2. The Borrower represents and warrants that each of the representations and warranties made in or pursuant to Article IV of the Credit Agreement, to the extent, if any, hereby amended, or which are contained in any other Credit Document, as corrected from time to time pursuant to Section 4.15 of the Credit Agreement (if applicable), are true and correct in all material respects immediately after the execution and delivery of this agreement by the Borrower and the Lender.
3. Except as amended by this agreement, all provisions of the Credit Agreement and the other Credit Documents shall remain unchanged.
4. This agreement and the amendments to the Credit Agreement set out herein, are and shall be conditional on each of the following conditions being satisfied or the Lender receiving, as applicable, each such delivery and court order in form and substance satisfactory to the Lender, in each case in the Lender's sole and absolute discretion (unless any such conditions are waived by the Lender in its sole and absolute discretion in writing):
  - (a) a certificate of status with respect to the Borrower;
  - (b) a certificate by an officer of the Borrower containing *inter alia*:

- (i) a statement confirming that the copies of the Borrower's articles and the amendments thereto attached as a schedule to the Borrower's officer's certificates to the Lender dated December 31, 2016 are true and complete copies of such articles and have not been further amended;
  - (ii) a resolution by the board of directors of the Borrower authorizing the execution and delivery of this agreement and the performance by the Borrower of its obligations under this agreement; and
  - (iii) an incumbency certificate in respect of the Borrower with applicable specimen signatures;
- (c) the following court orders:
- (i) an order by the CCAA Court approving the terms of this agreement and the execution and delivery of this agreement by the Borrower and the other documents contemplated hereby and ordering the Borrower to comply with its obligations under the Credit Agreement as amended by this agreement and the other documents contemplated hereby in form and substance satisfactory to the Lender (the "**DIP Financing Extension and Amendment Order**"), which DIP Financing Extension and Amendment Order shall constitute a CCAA Financing Order;
  - (ii) an order of the CCAA Court extending the stay of proceedings in the CCAA Case to and including November 18, 2022 in form and substance satisfactory to the Lender (the CCAA Court ~~orders~~ order referred to in this clause (ii) and the ~~immediately preceding clause (i)~~ DIP Financing Extension and Amendment Order are collectively called the "**November 2021 CCAA Court Orders**"); and
  - (iii) a U.S. recognition order issued by the U.S. Bankruptcy Court in the Chapter 15 Case with respect to items (i) and (ii) immediately above,

and this agreement shall be further conditional on all applicable periods to seek a stay, leave and/or appeal with respect to such orders referred to in this Section 4 having expired without (x) any further right of any Person to seek any of the foregoing relief or (y) any of the foregoing relief having been sought, and none of such orders having been reversed, stayed, vacated or, unless otherwise agreed by the Lender in writing, amended or modified in any manner;

- (d) all accrued and unpaid fees and disbursements of the Lender to the date of this agreement shall have been paid in full;
- (e) no motion, action, application, or any other form of court process seeking any order, direction or other relief from the CCAA Court, U.S. Bankruptcy Court or any other court of competent jurisdiction has been filed, threatened in writing or is otherwise pending that, if the requested relief is granted, could reasonably be expected to (i) adversely affect, impact or impair, directly or indirectly, the Lender's rights, remedies and/or entitlements under any Credit Document, any CCAA Financing Order, any other Order, or any other endorsement or direction of the CCAA Court or the U.S. Bankruptcy Court, (ii) cause an Event of Default under the Credit Agreement, (iii) adversely affect, impact



or impair, directly or indirectly, the Borrower's rights and/or entitlements to pursue or monetize the Arbitration Entitlement and Arbitration Proceeding Rights, under any Order, endorsement or direction of the CCAA Court or U.S. Bankruptcy Court, or (iv) interfere in any manner, directly or indirectly, with the Borrower's actions, efforts, strategies or process to monetize the Arbitration Entitlement and Arbitration Proceeding Rights, including pursuant to the Venezuela Settlement and all rights to enforcement and payments of all amounts when due thereunder; and

- (f) the Borrower shall have acknowledged and agreed to the budget CP extension notice delivered by the Lender to the Borrower in respect of the replacement Budget; and

~~(g) — an extension, amendment and waiver fee equal to 100 basis points of the principal amount of the Loan shall be deemed to be fully earned and non-refundable and added to the principal amount of the Loan on the date on which the November 2021 CCAA Court Orders are issued, and the amount of such fee shall constitute Obligations and interest shall accrue thereon.~~

5. Until such time as a replacement Budget has been agreed to between the Borrower and the Lender and such replacement Budget is satisfactory to the Lender in its sole and absolute discretion, the second sentence in Section 11 of the Seventh Credit Agreement Amendment shall not be effective and the Borrower covenants and agrees that it shall not use any monies hereafter received by it or by any other Person on its behalf from any source (including without limitation the Venezuela Settlement Payments, the Ingalls Settlement Payments, or any other Arbitration Proceeds) for any purposes whatsoever without the prior written consent of the Lender and such use of monies being in compliance with the terms of the Credit Agreement as amended by this agreement and without limitation specifically in accordance with Section 3.3 and Exhibit F thereof. For certainty and in furtherance of the covenant by the Borrower contained in the second sentence of section 5 of the Eighth Credit Agreement Amendment regarding use of monies by the Borrower, the Borrower represents and warrants to the Lender that from and after February 28, 2018 (being the date of the Eighth Credit Agreement Amendment), the Borrower has not used any monies received by it or by any other Person on its behalf from any source (including without limitation the Venezuela Settlement Payments, the Ingalls Settlement Payments, or any other Arbitration Proceeds) for any purposes whatsoever without the prior written consent of the Lender and in compliance with the terms of the Credit Agreement. The Borrower acknowledges and agrees that the Lender has no obligation, and has made no agreement whatsoever to permit any deviation from the terms and conditions of the Credit Agreement, as amended by this agreement, regarding the Borrower's use and application of the Arbitration Proceeds. For certainty, the Borrower confirms and agrees that any such cash flow or cash flow projections attached to or forming part of any motion record filed by the Borrower with the Court or any report issued by the Monitor and/or filed with the Court does not and shall not be deemed to constitute a Budget or a replacement Budget satisfactory to the Lender for the purposes of the Credit Agreement.
6. For certainty, all Security Documents do and shall secure payment of all Obligations including without limitation all interest accruing thereon.
7. None of the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal

Compensation Amount, the Fourth Additional Principal Compensation Amount, or any shares of the Borrower into which any one or more of them is hereafter converted shall, under any circumstances, be diluted in any manner.

8. The Borrower shall, promptly on request by the Lender at any time and from time to time, and at the expense of the Borrower, make, execute, endorse, acknowledge, file and/or deliver any and all such documents, instruments, agreements and other items, and take such further steps relating to this agreement, the Credit Documents or any of the transactions contemplated hereunder or thereby and without limitation, the Borrower shall deliver such agreements to the Lender, enter into such agreements with the Lender, or seek to obtain court orders or amendments to any court orders from the CCAA Court or the U.S. Bankruptcy Court, in each case relating in any way to this agreement or the transactions contemplated hereby and as the Lender may require.
9. Despite any other provision of this agreement or any other document, this agreement and the amendments to the Credit Agreement contained herein shall not be effective unless and until the Lender delivers to the Borrower a written notice by the Lender that all conditions precedent contained in Section 4 of this agreement have been satisfied (or have been waived by the Lender in writing) (the “**Extension CP Satisfaction Notice**”). The Lender may at any time and for any reason unilaterally waive the requirement for delivery of the foregoing written notice.
10. The Lender agrees to ~~conditionally~~ waive the September 2021 Section 8.1(y) Event of Default on and subject to the following terms and conditions (the “~~Section 8.1(y) Conditional~~September 2021 Waiver”):
  - (a) The ~~Section 8.1(y) Conditional~~September 2021 Waiver ~~is and shall only~~ become effective if and when the Lender executes and delivers the Extension CP Satisfaction Notice to the Borrower and the Borrower executes and acknowledges same (and for certainty and without limitation the CCAA Court shall have issued the November 2021 CCAA Court Orders). The September 2021 Waiver is solely in respect of the September 2021 Section 8.1(y) Event of Default, and not any other future Event of Default, and except as specifically set out in this Section 10, nothing in this agreement is intended to or shall be deemed to constitute a waiver of any other terms, conditions or covenants under the Credit Agreement or any other Credit Document, or of any rights and remedies of the Lender thereunder or under applicable law, and the Lender specifically reserves all of such rights and remedies.
  - (b) Concurrently with the Lender and the Borrower executing and delivering the Extension CP Satisfaction Notice, the Lender agrees to ~~permanently~~ waive the requirement for the Borrower to pay default interest to the Lender on account of the September 2021 Section 8.1(y) Event of Default ~~as contemplated by~~pursuant to Section 3.6 of the Credit Agreement (“**Default Interest**”) from and after the date on which the September 2021 Section 8.1(y) Event of Default occurred; ~~provided that if the Lender or its counsel subsequently delivers the Section 8.1(y) Conditional Waiver Revocation Notice (as that term is defined below), Default Interest shall accrue from and after the date on which such Section 8.1(y) Conditional~~ to and including the date on which the September 2021 Waiver ~~Revocation Notice is delivered to the Borrower or its counsel~~ is terminated in accordance with the provisions of this Section 10 of this agreement.



(c) ~~The Lender has, and shall at all times retain, the right in its sole discretion to revoke the Section 8.1(y) Conditional Waiver by the Lender or its counsel delivering a written notice of the revocation of the Section 8.1(y) Conditional Waiver to the Borrower or its counsel (which notice may be in the form of and circulated by email) (the "Section 8.1(y) Conditional Waiver Revocation Notice").~~ September 2021 Waiver shall automatically terminate and be of no further force or effect on the Maturity Date (as that term is defined as of the date of this agreement) without any further action required by the Lender unless the September 2021 Waiver is extended by the Lender in its sole discretion.

11. This agreement supersedes all prior term sheets and commitment agreements and prior negotiations relating to the amendments contained herein.
12. This agreement shall be governed by and shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
13. This agreement may be executed in counterparts and both such counterparts shall constitute one and the same agreement. A counterpart may be executed and circulated by fax or other method of direct electronic transmission (including pdf email) and any such counterpart so executed and circulated shall be deemed to be an original of this agreement.

*[remainder of page deliberately left blank]*

**IN WITNESS WHEREOF** the parties have executed this agreement as of the date first above written.

**CRYSTALLEX INTERNATIONAL CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**TENOR SPECIAL SITUATION I, LP  
by its General Partner,  
TENOR OPPORTUNITY ASSOCIATES, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Schedule "A"**

**DIP Financing Extension and Amendment Order**

Document comparison by Workshare 9.5 on Wednesday, October 27, 2021  
10:31:45 AM

Input:	
Document 1 ID	interwovenSite://CASSELS-DMS3/LEGAL/54351434/3
Description	#54351434v3<LEGAL> - Credit Agt Amendment (16th) (KRY Nov 2021)
Document 2 ID	interwovenSite://CASSELS-DMS3/LEGAL/54351434/4
Description	#54351434v4<LEGAL> - Credit Agt Amendment (16th) (KRY Nov 2021)
Rendering set	Standard

Legend:	
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<u>Moved to</u>	
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Split/Merged cell	
Padding cell	

Statistics:	
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Insertions	22
Deletions	23
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	49

**EXHIBIT VI**

**Endorsement**

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

**Superior Court of Justice**  
**Commercial List**

**FILE/DIRECTION/ORDER**

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-3 as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement of Crystallex International Corporation

Counsel	Telephone No:	Email/Facsimile No:
As per participant slip attached		

Heard: November 18, 2021

**Conway J. - Endorsement**

1. Crystallex has been in CCAA proceedings for years. It is a liquidating CCAA. It is a unique CCAA as the company's sole objective is to maximize its recovery on a \$1.4 billion (USD) arbitration award against the government of Venezuela. Its enforcement efforts are primarily in the U.S. through the "CITGO Litigation". It has obtained a Writ with respect to key Venezuelan assets located in the U.S. and is trying to obtain a license from OFAC to be able to sell the assets that are subject to the Writ.
2. On this motion, Crystallex, supported by the DIP lender, seeks to extend the stay period for 12 months, approve the 16<sup>th</sup> amendment to the DIP credit agreement and seal certain information from the public version of the Monitor's reports, in particular the 36<sup>th</sup> and 38<sup>th</sup> reports (and the related information in the materials filed on this motion).
3. The Ad Hoc Committee of the Noteholders (Committee) opposes the relief on the motion, except for the sealing of certain strategic information related to the U.S. litigation. It seeks a stay extension of only 3 months. It also brings a cross-motion to disclose the CVR information with respect to Messrs. Fung and Oppenheimer, the key executives that are pursuing the litigation and recovery efforts by Crystallex. It argues that the sealing of the

information in question obscures its window into the financial performance of the company.

4. The Monitor recommends the stay extension of 12 months and the 16<sup>th</sup> amendment to the DIP agreement. The Monitor has offered to meet with stakeholders (including the Committee representatives) every 3 months to keep them up to date on the company's operations and financial position.
5. The Monitor says that there is a benefit to the company of Messrs. Fung and Oppenheimer going to Venezuela. That will be lost to the company if the CVRs are disclosed due to concerns about their personal safety.
6. The Monitor makes no recommendations about the requested sealing order as it is a legal matter for me to determine. However, it notes that the Noteholders have been actively participating in the company's CCAA proceedings even with the sealing that has been in place over the years. It also notes that the Committee's counsel has signed a non-disclosure agreement and can obtain any of this information from the company. The Committee can also have access to this information if it signs an NDA.
7. At the conclusion of argument, I told counsel that I was granting the relief sought by Crystallex and the DIP lender and dismissing the cross-motion of the Committee to unseal the CVRs. I provided brief oral reasons and now provide them in writing.
8. I am granting the 12 month extension. The evidence of Mr. Fung is that no material steps will be occurring in the U.S. until late 2022. There will be no distributions in the meantime. The Monitor confirms that the company has sufficient liquidity for 12 months. The company is acting in good faith and with due diligence, as supported by the Monitor's report
9. Significantly, if this stay extension motion is any indication, these motions are battlefields for all sorts of issues that are time consuming and costly. Three months intervals will only consume additional resources and detract from the company's main focus, which is to secure recovery for stakeholders through the US enforcement proceedings.
10. The extension is subject to the condition that the Monitor conduct quarterly update sessions for stakeholders.
11. I approve the 16<sup>th</sup> amendment to the DIP credit agreement to provide additional funding to the company. I note that the waiver of default re the OFAC decision and related default interest are positive outcomes for the company.
12. The proposed redactions to the Monitor's reports relate to line items on cash flow variances and cash flow forecasts, explanatory notes with respect to the cash flows, and information on Crystallex's litigation strategy.
13. The cash flow information essentially provides details of Crystallex's litigation spend. It proposes to disclose these figures on a six month lag basis. Cash and DIP balances will be disclosed on a current basis.

14. There is very detailed evidence before me from Mr. Fung as to the reasons for the requested redactions. All of it relates to the litigation and the perils of this information getting into the wrong hands, which threaten to disadvantage Crystallex in its enforcement proceedings. He explains quite thoroughly in his affidavit evidence the enforcement process, the steps taken by Crystallex, and the professional advice it has been following in the U.S.
15. Crystallex is fully prepared to make all of this information available to all stakeholders, including the Committee, on a confidential basis. However, the Committee is not prepared to sign a confidentiality agreement and takes the position that the information must be made public.
16. I have considered the test for sealing in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 and *Sherman Estate v. Donovan*, 2021 SCC 25. In my view, the sealing of this information meets the test. There is serious risk to an important public interest if this information is publicly disclosed. Crystallex is engaged in intensive protracted enforcement efforts to seek enforcement of a huge award, all for the benefit of its stakeholders in this CCAA proceeding. The information in question is commercially sensitive, is related directly to these enforcement efforts, and could seriously compromise Crystallex's position in the pursuit of those efforts. As noted by Chief Justice Morawetz in *Cash Store Financial Services Inc.*, 2021 ONSC 7143, at para. 19 and 25, there is a public interest in not placing a CCAA debtor at a tactical disadvantage in its litigation. That applies with equal force here.
17. I have considered the probability and magnitude of the potential harm. This is the one avenue of recovery for Crystallex's stakeholders. The harm in jeopardizing that recovery effort is self-evident.
18. This is the least restrictive alternative. The sealing will consist of only redacting very specific line items (cash flow variations, cash flow forecasts) and only for a period of six months. That period has been selected because the disclosure of that information after six months will be less damaging to the company.
19. As a matter of proportionality, the benefits of this order outweigh its negative effects. As noted, anyone can obtain this information via its counsel or by signing an NDA. The Monitor will be providing regular updates. And most importantly, the information will become public in six months.
20. I also agree that the strategic information should be sealed. That goes to the core of how the company is trying to enforce its award. The Committee raises an issue with paragraph 13 of the Monitor's 38<sup>th</sup> report that it says is a factual matter. I find it integrally related to the litigation strategy pursued by Crystallex.
21. The Committee raised an issue with respect to the aggregation of certain line items in the Monitor's 38<sup>th</sup> Report. It did not bring a motion to challenge this format but said I can take it into account on the motions before me today. The Monitor explains that while it received this information from the company, it was done in this fashion since the information will become public after six months. One of those aggregations is CCAA costs and arbitration

costs, which are integrally related since the purpose of the CCAA is to recover the arbitration award. I do not view this as a reason to refuse the relief sought today.

22. Finally, I am not prepared to unseal the CVR information with respect to Messrs. Fung and Oppenheimer. This information has been sealed for years. There is no compelling reason to unseal them now and far more compelling evidence that their lives could be in danger should the amounts now become public. That would in turn obviously disadvantage the company. The Committee's cross-motion is dismissed.
23. I direct counsel to prepare and send me a form of order consistent with these reasons. They may email it to me directly with a copy to the Commercial List office.'
24. Finally, counsel for Crystallex (or the Monitor) is directed to file a hard copy of the unredacted version of the Monitor's reports and all related motion materials. These materials shall be filed in a sealed envelope with a copy of this endorsement and the signed order.



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Justice Conway

Released: November 18, 2021



## Participant Information

### CASE INFORMATION

<b>Court File Number</b>	CV-11-9532-00CL
<b>Court Location (e.g. Hamilton)</b>	Toronto
<b>Case Name</b>	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
<b>Date of Hearing</b>	November 18, 2021

### PARTICIPANT INFORMATION

**For the Applicant:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number<sup>2</sup></b>	<b>Email Address</b>
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Maureen Littlejohn	Crystallex International Corporation	416.367.6916	mlittlejohn@dpwpv.com

**For the For Court-Appointed Monitor:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number<sup>2</sup></b>	<b>Email Address</b>
David Byers	Ernst & Young Inc.	416.869.5697	dbyers@stikeman.com
Maria Konyukhova	Ernst & Young Inc.	416.869.5230	mkonyukhova@stikeman.com

**For the Ad Hoc Committee:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number<sup>2</sup></b>	<b>Email Address</b>
Robert Chadwick	Computershare Trust Company of Canada, in its capacity as Trustee for the holders of 9.375% holders of unsecured Notes of Crystallex International Corporation and the Ad Hoc Committee of holders of the Notes (the “ <b>Ad Hoc Committee</b> ”)	416.597.4285	rchadwick@goodmans.ca
Peter Ruby	Ad Hoc Committee	416.597.4814	pruby@goodmans.ca
Chris Armstrong	Ad Hoc Committee	416.849.6013	carmstrong@goodmans.ca
Carlie Fox	Ad Hoc Committee	416.849.6907	cfox@goodmans.ca

**For DIP Lender:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number2</b>	<b>Email Address</b>
Tim Pinos	DIP Lender	416.869.5784	tpinos@cassels.com
Shayne Kukulowicz	DIP Lender	416.860.6463	skukulowicz@cassels.com
Ryan C Jacobs	DIP Lender	416.860.6465	rjacobs@cassels.com

**Counsel for Robert Fung and Marc Oppenheimer:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
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**Monitor:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
Brian M. Denega	Ernst & Young Inc.	416.943.3058	brian.m.denega@ca.ey.com
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**Other:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
Scott Reid	Ad Hoc Committee		
Adrian Weisberg	Ad Hoc Committee		
Carlo Mattoni	Ad Hoc Committee		

Nick Brumm	Ad Hoc Committee		
Robert Fung	Crystallex Corporation		
Brennan Caldwell	N/A	416.849.6896	bcaldwell@goodmans.ca
Emily Windrim	N/A	N/A	ewindrim@goodmans.ca

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<sup>1</sup> The Participant information Form replaces the Counsel Slip.

<sup>2</sup> Please provide a phone number where you can be reached during the hearing, if necessary

**TAB B**  
**Exhibit B - January**  
**28, 2022 Adrianza**  
**Objection**

This is Exhibit "B" referred to in the Affidavit of Robert Fung sworn August 9, 2023.



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*Commissioner for Taking Affidavits (or as may be)*

Alexander Gregory Barnes, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law,  
Expires June 28, 2024.

**IN THE UNITED STATES BANKRUPTCY COURT FOR  
THE DISTRICT OF DELAWARE**

**FILED**  
2022 FEB -1 AM 10:54

----- X -----  
In re

: Chapter 15

**CRYSTALLEX INTERNATIONAL CORP.**

: **Case No. 11-14074 (LSS)**

Debtor in a Foreign Proceeding.

: Hearing Date:  
: February 8, 2022, at 11:30 a.m. (ET)  
:  
: Objection Deadline:  
: February 1, 2022, at 4:00 p.m. (ET)  
X -----

CLERK  
US BANKRUPTCY COURT  
DISTRICT OF DELAWARE

**OBJECTION TO THE FOREIGN REPRESENTATIVE'S MOTION FOR AN ORDER  
RECOGNIZING AND ENFORCING (I) THE CCAA ELEVENTH EXTENSION AND  
FIFTEENTH AMENDMENT ORDER; AND (II) THE CCAA TWELFTH EXTENSION  
AND SIXTEENTH AMENDMENT ORDER**

Adelso Adrianza ("Movant"), a shareholder of the debtor (the "Debtor"), Pro Se and on behalf of similarly situated U.S. shareholders (the "Shareholders") respectfully submits this objection (the "Objection") to the Foreign Representative's request for relief in the *Motion for an Order Recognizing and Enforcing (I) The CCAA Eleventh Extension and Fifteenth Amendment Order; and (II) The CCAA Twelfth Extension And Sixteenth Amendment Order* (the "Motion For Relief") [Docket No. 363]. In support of the Objection, the Movant respectfully represents as follows.

**PRELIMINARY STATEMENT**

1. The Movant filed a motion for an *Order Directing the Appointment of An Examiner and Independent Counsel for The Shareholders* [Docket No. 328] heard by this Court on August 20, 2021, in which he alleged harm to the Estate and the Shareholders perpetrated by the Self-Interested DIP/BOD and the Controlling DIP Lender as a result of actions and omissions particularized in the Motion as well as in prior and subsequent filings in this Court (see D.I. Nos. 313, 314, 326, 337 and 362). The actions and omissions particularized in the Motion involve:

- a) Fraudulent Transfer of Tax Benefits,
- b) Misappropriation, Misuse and Waste of Estate Property,
- c) Illegal Post-petition Interest Payment on Unsecured Debt
- d) Breach of The Loyalty and Care Duties by a Self-interested BOD,
- e) Fraudulent Misrepresentations,
- f) Distribution of the Estate's property using the MOD, which is in essence a structured dismissal that is not permissible under precedential U.S. case law (see *Czyzewski v. Jevic Holding Corp.*, No. 15 -649, S. Ct., 2017 WL 1066259) and the Model Law.

3. To the above list of acts and omissions we now need to add additional harm to the Estate and the Shareholders through the Self-interested DIP/BOD's failure to pursue the full collection of the arbitration award and the costs incurred in legal actions in U.S. Courts pursuing the collection of the award and the judgement against Venezuela. The latest breach of the duties of care and loyalty on the part of the Self-interested DIP/BOD is particularized in the Movant's legal action in the District Court pursuing an independent determination of the amount the Foreign Representative needs to collect to satisfy its judgement [D.I. No. 362]. In summary, the Self-interested DIP/BOD has claimed an amount to be collected that excludes a) post-award interest, b) the recovery of the legal and professional fees and costs the Estate has incurred in pursuing the collection and c) payment for US\$ 375 million in unsellable Venezuelan Securities the Company received at the end of 2018 as advanced payment on the failed Amended Settlement Agreement.

4. It seems illogical that a judgement creditor would decide to leave plenty of money on the table after spending ten years in insolvency, arbitration and collection proceedings that has cost it a pretty penny on debt service and a platoon of lawyers; its own and everybody else's. Yet, it is beyond question that the Estate is entitled to post-award interest and the recovery of the costs imposed on it by a judgement debtor required to meet its obligation by two ICSID arbitration panels and U.S. Courts all the way to the Supreme Court and, nonetheless, has used and abused the judicial



process to evade and delay meeting its responsibility. Why this is the case is but one more of the nested secrets the Foreign Representative has managed to wrap around the CCAA proceeding to advance the interests of the self-interested DIP/BOD and the Controlling DIP Lender.

5. The Motion taken under advisement by this Court involves direct and derivative claims against the Self-interested DIP/BOD for injuries to the Estate, the Movant and the Shareholders that sound in tort and represent violations of personal and constitutional rights. In addition, core and related-to issues that need to be addressed and reported by this Court require it to exercise its fact-finding authority to establish an independent basis of the facts in dispute and to reach a decision on the merits, the law and the equities involved.

6. The Motion for Relief pursues the Court's approval of extensions of the DIP Financing Agreement (the "Contract") that is one of the bases for the claims in the Motion, given that it is one of the means that the Self-interested DIP/BOD and the DIP Lender leveraged to harm the Movant and the Shareholders. Specifically, the Contract includes a distribution scheme (the Mechanics of Distribution, MOD) that misappropriates, misuses and wastes Estate property for the sole benefit of the Self-interested DIP/BOD and the DIP Lender. Further, it violates U.S. controlling law by imposing a structured dismissal and violating the Absolute Priority Rule (APR). In fact, the Contract, and its MOD stand for the absurd proposition that the Self-interested DIP/BOD, the DIP Lender and the CCAA Court can dispose of personal and constitutional rights of U.S. citizens by ignoring the protections the Constitution and its laws guarantee its citizens.

7. Left to their own devices, a company under the control of self-interested directors and a controlling DIP lender can have different goals and interests versus the bankruptcy estate, as is the case in this proceeding. Here, the Company, the DIP Lender and the Trustee are one and the same, since they all are present in and represented by the Company's Board of Directors and officers; two of whom are the DIP Lender's nominee Directors and leading partners - the CEO and

the COO, and two Interested Directors who are company insiders, whose interest in the outcome of the bankruptcy proceeding are closely tied to those of the DIP Lender.

8. The Contract between the Company and the DIP Lender is a financing contract that binds them to its terms and conditions, provided they do not breach applicable law. The Contract gives the DIP Lender the right to file a claim against the Estate for value bargained with the Self-interested Directors under contract law, but it does not control the operation of a bankruptcy proceeding under the Bankruptcy Code or any legitimate 21<sup>st</sup>. century insolvency law by any stretch of the imagination. Hence, the use of the MOD to allocate, distribute and dispose of the Estate's property as a proxy for a plan of liquidation is impermissible to the extent that it is not the result of a collective process and fails to meet the fair and reasonable standard required by law. Hence, it runs counter to the purpose and objectives Congress enacted the Bankruptcy Code for. The day that persons are allowed to bypass statutes such as the Code, enacted to ensure the protection of personal and constitutional rights of parties in interest, through contracts will be the day these statutes become superfluous.

### **JURISDICTION**

9. This Court has authority to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding under 28 U.S.C. § 157(b)(2) and a non-core proceeding pursuant to 28 U.S.C. § 157(b)(5) and § 157(d). Venue is proper in this Court and in this District pursuant to 28 U.S.C. § 1410. The statutory predicates for the relief requested herein are the Bankruptcy Code Sections 105(a), 1501, 1506, 1507, 1522.

### **LEGAL AND FACTUAL GROUNDS FOR OPPOSITION**

10. The Motion for Relief seeks to perpetuate the harm to the Estate and the Shareholders and is therefore impermissible. The Foreign Representative obtained this Court's approval on prior



Contract extensions and amendments through lack of transparency and reliance on the paramountcy of comity, which per the Foreign Representative, requires great deference to the CCAA Court's order independent of the facts of the case at any point in time. The reliance on prior order recognition is grossly misplaced given the issues and facts that this Court has become aware of over the last few months documented by substantial records on the case docket.

11. Independent of prior CCAA Court orders this court has recognized on the premise that the Foreign Representative was acting in good faith and honestly, the court cannot stand idle when that premise may no longer be taken at face value. In equity and at law, a court faced with facts that contradict the bases for previous CCAA Court order recognition through allegations of breaches of §§ 1501, 1506, 1507, and the parties harmed by the underlying acts and omissions request relief under § 1522, is required to pause and reassess the merits of continued recognition and additional relief. Persuasive caselaw points to this requirement (see *In re Vitro S.A.B. de C.V.*, 701 F.3d 1031, 1054 (5th Cir.2012) and *In re Cozumel Caribe, S.A. de C.V.* 508 B.R. 330 (Bankr. S.D.N.Y. 2014).

12. The case records (see D.I. Nos. 313, 314, 326, 337 and 362), point to the need for this Court to ensure adequate protection for the Estate and the Shareholders as required by §§ 1501, 1507 and 1522. Additional relief to the Foreign Representative is unwarranted before this Court has completed its fact-finding requirements and reached its conclusions of law thereon.<sup>1</sup> Persuasive caselaw underscores this requirement.

13. In *Jaffé v. Samsung Elecs. Co.*, the Fourth Circuit ruled that the bankruptcy court was required to ensure the interests of the debtor and other interested parties were sufficiently protected,

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<sup>1</sup> In this context, the Court has yet to be provided some the information it required from the Foreign Representative as follows:

a) The notices served on the shareholders regarding the DIP orders and the proposed recognition order,  
b) The NAP transfer agreement between the Board of Directors members and the DIP Lender,

as a prerequisite to awarding any relief under § 1521. The Court concluded as follows:

"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 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')."

#### **Public Policy v. Comity: The U.S. Experience**

14. Congress adopted in Section 1506 the qualifier "manifestly" from the Public Policy Exception Article 6 of the Model Law but left open-ended the determination as to when this section should be invoked and applied. U.S. Bankruptcy Courts generally adopted the Model Law's guidance as to "to be interpreted restrictively" [versus domestic public policy] and its applicability as to "only intended to be invoked under exceptional circumstances" [to avoid hampering international cooperation unduly]. However, the Model Law provides no guidance on what "concerning matters of fundamental importance for the enacting State" encompasses, other than when recognition or relief "would contravene fundamental principles of law."<sup>2</sup> And so, U.S. Courts have developed a frame of reference through caselaw.

15. In re Vitro, S.A.B. de C.V., Case No. 11-33335-HDH-15 (Bankr. N.D. Tex. Jun. 21,

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<sup>2</sup> Legislative Guide on Insolvency Law – UNICITRAL, 2005, para. 86-89.



2012), the Court framed the applicability of § 1506 by defining its contours in reference to comity considerations, as follows:

“Vitro SAB urges the Court to defer in favor of the Enforcement Motion in the interests of comity. However, “The principle of comity has never meant categorical deference to foreign proceedings. It is implicit in the concept that deference should be withheld where appropriate to avoid the violation of the laws, public policies, or rights of the citizens of the United States.” In re Treco, 240 F.3d 148, 157 (2d Cir.2001); see also, Overseas Inns S.A., P.A. v. United States, 911 F.2d 1146 (5th Cir.1990) (comity was not accorded to Luxembourg bankruptcy plan that treated IRS as general, rather than priority, creditor); In re Schimmelpenninck, 183 F.3d 347, 365 (5th Cir.1999) (“foreign laws ... must not be repugnant to our laws and policies”).

[Emphasis added.]

16. *In re Qimonda AG Bankruptcy Litigation*, 433 B.R. 547 (E.D.Va. 2010), 1:10cv26, in the appeal to the Bankruptcy Court decision, the District Court reviewed applicable caselaw and found three guiding principles for analyzing whether an action taken in a Chapter 15 proceeding is manifestly contrary to the public policy of the United States:

- 1) The mere fact of conflict between foreign law and U.S. law, absent other considerations, is insufficient to support the invocation of the public policy exception.
- 2) Deference to a foreign proceeding should not be afforded in a Chapter 15 proceeding where the procedural fairness of the foreign proceeding is in doubt or cannot be cured by the adoption of additional protections.
- 3) An action should not be taken in a Chapter 15 proceeding where taking such action would frustrate a U.S. court's ability to administer the Chapter 15 proceeding and/or would impinge severely a U.S. constitutional or statutory right, particularly if a party continues to enjoy the benefits of the Chapter 15 proceeding.

[Emphasis added.]

17. *In re Cozumel Caribe, S.A. de C.V.*, 482 B.R. 96 (Bankr. S.D.N.Y. 2012), the Court was asked to rule on a motion to vacate the recognition of a Mexican insolvency proceeding that raised “troubling questions about the conduct of a foreign representative in this chapter 15 case and in the ongoing Mexican proceeding and requires consideration of the Court’s role in protecting U.S. creditors.” In its opinion, the Court denied the motion despite the troubling facts of the case

by concluding that the creditors were sufficiently protected as a temporary matter as long as an US\$ eight million bank deposit under their control remain in the United States. The Court thereby postponed a decision on vacating its recognition order or denying additional relief as follows:

“If and when an order or judgment is entered in the Concurso Proceeding for which the Foreign Representative seeks recognition and enforcement, this Court can decide then whether to grant comity to the order or judgment.” [p. 3].

“CTIM also takes issue with actions of the Guarantors and the Foreign Representative seeking to invalidate or evade enforcement of the Guarantee Agreement. These issues do not implicate the Court’s Recognition Order and are not properly before the Court. Although the *Foreign Representative* appeared in the District Court Action, the District Court’s decision to extend comity to the Concurso Court’s May 27 Order, and to continue to do so now, should not be controlled by the status of recognition in this chapter 15 case. Neither the Recognition Order nor the Stay Decision in this case compels the District Court or any other court to extend comity to any decision or order in the Concurso Proceeding. See Cozumel Caribe, 482 B.R. at 108–11 (holding that a grant of recognition does not mandate the extension of comity to a foreign law, court order, or judgment). Likewise, any other proceedings in Mexican courts seeking to invalidate the Guarantee Agreement do not bear on this Court’s recognition of the Concurso Proceeding.” [p. 11].

[Emphasis added.]

18. *In re ABC Learning Centres Limited*, 728 F.3d 301 (3d Cir. 2013), the Third Circuit Court of Appeals analyzed the applicability of § 1506 in reference to an Australian insolvency proceeding seeking recognition as a Foreign Main Proceeding opposed by unsecured creditors on public policy grounds. In its analysis, the Third Circuit concluded that § 1506 is the exception, rather than the rule, as follows:

a) It can be invoked only under "exceptional circumstances concerning matters of fundamental importance for the enacting state", given the presence of the word “Manifestly” in its text, which connotes its exceptional nature (Citing the UNICITRAL *Guide to Enactment of the*



*UNCITRAL Model Law on Cross-Border Insolvency*, ¶ 89, U.N. Doc A/CN.9/442 (1997)).

b) It applies "where the procedural fairness of the foreign proceeding is in doubt or cannot be cured by the adoption of additional protections", (citing *In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 570 (E.D.Va.2010)),

c) It applies where recognition "would impinge severely a U.S. constitutional or statutory right." *Id.*

19. *In re Ephedra Products Liability Litigation* 349 B.R. 333 (S.D.N.Y. 2006), four individual claimants challenged the Canadian CCAA proceeding under the public policy exception because the Canadian Court did not afford them the right to a jury trial. The Court ruled against the objectors as follows:

"The historic function of the jury to stand as a bulwark against government abuse plainly has limited application in the civil arena, and it is \*<sup>9</sup> difficult to detect what unfairness a plaintiff suffers from having a civil case decided by a judge rather than a jury. Here, the objectors' primary claim of "prejudice" from the absence of a right to jury trial is simply that it will give them less of a bargaining position in negotiating a settlement of their claims than they would have if a jury — which, unlike the Claims Officer, would have no knowledge of competing claims — were asked to value their claims. See Tr., 7/6/2006, at 37, 40. Deprivation of such bargaining advantage hardly rises to the level of imposing on plaintiffs some fundamental unfairness.

In any event, the Procedure here in issue, as amended, plainly affords claimants a fair and impartial proceeding. Nothing more is required by § 1506 or any other law."

The Court's reasons for denying the relief requested were then a) a jury by trial vs. by a judge did not rise to the level of procedural unfairness requiring the invocation and application of § 1506, and b) "... the Court granted the Monitor's motion, contingent on the Ontario Court's approving certain amendments to the Procedure designed to assure greater clarity and procedural fairness."

### **Public Policy v. Comity: The Canadian Experience**

20. In Canada, caselaw on the public police exception is limited, despite the fact the Canadian Parliament did not adopt the Model Law's "manifestly" qualifier in the corresponding

CCAA article (Art. 61(2)). Nonetheless, two court decisions shed good light on how courts north of the border approach the application of the public policy exception.

21. In *Actava TV, Inc. v. Matvil Corp.*, 2021 ONCA 105, the Ontario Court of Appeal (ONCA) refused to give effect to a letter of request ("LoR") from a U.S. court on the grounds of public policy and sovereignty. The ONCA undertook an extensive analysis of the importance of public policy and sovereignty when remedies available in a foreign jurisdiction exceed those that would be available in Canada and concluded as follows:

[57] Given the vastly more permissive rules governing discovery in the U.S., it is fair to conclude that reciprocity is not an even balance. However, as this court observed in *Appeal Enterprises Ltd. v. First National Bank of Chicago* (1984), 10 D.L.R. (4th) 317 (Ont. C.A.), at p. 319, "the comity of nations upon which international legal assistance rests does not require precise reciprocity" between the laws of Canada and the laws of the requesting state: see also Perlmutter, at para. 63. That said, differences in discovery between Canada and the U.S. highlight the need to be attentive to all of the elements in the LoR analysis including sovereignty and the justice of the request.

[41] The statutory requirements for enforcing LoRs have been augmented by jurisprudence. The leading decision on LoRs in Canada is the 1981 decision of the Supreme Court in *R. v. Zingre*, [1981] 2 S.C.R. 392, a case involving a request for assistance from Switzerland. There, at pp. 400-1, Dickson J. (as he then was), wrote:

"As that great jurist, U.S. Chief Justice Marshall, observed in *The Schooner Exchange v. M'Faddon & Others* [(1812), 7 Cranch's Reports 116], at pp. 136-37, *the jurisdiction of a nation within its own territory is necessarily exclusive and absolute, susceptible of no limitation not imposed by itself, but common interest impels sovereigns to mutual intercourse and an interchange of good offices with each other.*

It is upon this comity of nations that international legal assistance rests. Thus, the courts of one jurisdiction will give effect to the laws and judicial decisions of another jurisdiction, not as a matter of obligation but out of mutual deference and respect. *A foreign request is given full force and effect unless it be contrary to the public policy of the jurisdiction to which the request is directed (see *Gulf Oil Corporation v. Gulf Canada Limited et al.* [[1980] 2 S.C.R. 39]) or otherwise prejudicial to the sovereignty or the citizens of the latter jurisdiction.*"

[Emphasis added.]



22. In *Payless Holdings Inc. LLC*, Re, 2017 ONSC 2321, in a CCAA proceeding, The Ontario Superior Court (ONSC) refused to recognize a U.S. Interim DIP Order because the DIP credit agreement required the Canadian *Payless* entities to be guarantors and employ their assets as collateral for the indebtedness under the DIP facility. This was the case even though the Canadian entities were not borrowers under the pre-filing credit facility or the DIP facility and would not receive any advances under the DIP facility, and the *Payless* Canada Group assets were unencumbered. The recognition order was opposed by a group of landlords that faced material prejudice. The Court's view was that:

[43] In my view, the grant of the DIP ABL Charge in exchange for benefits flowing to the parent company alters the status quo. *This would only be acceptable in a CCAA proceeding if arrangements were made to ensure that all affected creditor groups of the Payless Canada Group were protected to the extent that they could be no worse off if the Recognition Order is granted.*

[48] Accordingly, I have not been persuaded that it is not appropriate to recognize the Interim DIP Order. I have not been satisfied that recognition of the Interim DIP Order and the granting of the DIP ABL Lenders' Charge is necessary for the protection of the property of the *Payless* Canada Group or the interest of the landlords of the *Payless* Canada Group.

[Emphasis added.]

23. The foregoing provides the bases for four main inferences:

- a) Like beauty, breaches of public policy are in the eyes of the beholder,
- b) Courts reach a public policy exception issue as a last resort. Applicability of the local statutes is the starting point and comity considerations are only reached if not precluded by the courts' statutory or public policy conclusions of law,
- c) Perfect is the enemy of good when considering extending comity to a foreign proceeding,
- d) Comity considerations are hence tantamount to tightrope walking with weighty

loads on both side of the pole.

**The Approval of Continued Case Record Sealing is Impermissible**

24. The Motion for Relief also seeks this Court's approval of continued sealing and redaction of case records the Foreign Representative deems "confidential." This request represents yet another demonstration of the contradictions posed by the CCAA proceedings. This is because:

a) The Foreign Representative asked the Delaware District Court the same relief based on the same arguments, which the Court denied, given the requirements for such an extraordinary relief:

"The Court further believes that the public should have access to all information in the Proposed Order and Report. Crystallex brought its dispute with the Republic in a court of law, which is funded by the public and operates for the public's benefit. Maintaining the Court's integrity in the eyes of the public is of paramount importance. See, e.g., *Littlejohn v. BIC Corp.*, 851 F.2d 673,678 (3d Cir. 1988) ("The public's exercise of its common law access right in civil cases promotes .and the quality of justice dispensed by the court."); see also *Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161 (3d Cir. 1993) ("[T]he very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness.") (Internal quotation marks omitted). Accordingly, the strong presumption is that court filings -especially those necessary to and affecting the Court's exercise of judicial power -will be available to the public. See, e.g., *LEAP Sys., Inc. v. 8 Case 1:17-mc-00151-LPS Document 337 Filed 09/08/21 Page 9 of 11 Page ID #: 8852 MoneyTrax, Inc.*, 638 F.3d 216, 220 (3d Cir. 2011) ("[A] strong presumption in favor of accessibility attaches to almost all documents created in the course of civil proceedings.") (Internal quotation marks omitted)."

*Crystallex International Corporation v. Bolivarian Republic of Venezuela*, 1:17-mc-00151-LPS, D.I. 337.

b) The CCAA Court under Justice Hainey and with the Monitor's support denied the Company's request for continued case record sealing and redactions on the grounds that the bases for the request did not pass the test required by controlling Canadian caselaw (the *Sierra Club v. Canada* decision by the Supreme Court). The Company and the DIP Lender appealed the CCAA Court's decision to the Ontario Court of Appeals, which confirmed the decision of the court below.

c) A few months later, the CCAA Court under Justice Conway, who replaced Justice



Hainey following his death, with the Monitor's support approved the continued sealing and redaction of "confidential" information based on the same facts and arguments. In the Court's reasons (see <https://documentcentre.ey.com/#/detail-engmt?eid=166>, CCAA Orders: *The Endorsement of the Honorable Justice Conway* – 08 Oct. 2021) it concluded as follows:

"I have considered the test for sealing in *Sierra Club of Canada v. Canada* (Minister of Finance), 2002 SCC 41 and *Sherman Estate v. Donovan*, 2021 SCC 25. In my view, the sealing of this information meets the test. There is serious risk to an important public interest if this information is publicly disclosed. Crystallex is engaged in intensive protracted enforcement efforts to seek enforcement of a huge award, all for the benefit of its stakeholders in this CCAA proceeding. The information in question is commercially sensitive, is related directly to these enforcement efforts, and could seriously compromise Crystallex's position in the pursuit of those efforts. As noted by Chief Justice Morawetz in *Cash Store Financial Services Inc.*, 2021 ONSC 7143, at para. 19 and 25, there is a public interest in not placing a CCAA debtor at a tactical disadvantage in its litigation. That applies with equal force here."

Oddly enough, the decision by a Justice sitting in a case in the same Superior Court dealing with a case that turned on different facts was more persuasive than that of the Justice that had presided over the actual proceeding and the court above (the ONCA) that endorsed it.

25. Notably, much of the "confidential" information the Foreign Representative sought then and seeks now to seal on the grounds that it could curtail the efforts to collect the award have been made public by the Foreign Representative, save for two key exceptions: 1) the NAP Sharing Agreement between the Directors and the DIP Lender, and 2) the justification for spending close to US\$ 200 million of the Estate's property for the sole benefit of the Self-interested DIP/BOD and the Controlling DIP Lender. Not surprisingly, the much-hyped harm the company anticipated would befall it once the "confidential" information became public knowledge has seemingly passed unnoticed.

26. The fact that the same court can reach different conclusions at law under the same circumstances and facts, in which the court above concurred with the initial decision should not be set aside as an infrequent event. As a matter of fact, such contradictions are not few and far in-

between in the CCAA proceeding. As an example, one other relevant contradiction will make this clear: the protection of the Shareholders' interests, or lack thereof, as follows.

27. The Company's CCAA filing was predicated on the need to protect the Estate and its shareholders. The CCAA Court under Justice Newbould endorsed the purpose and objectives of the case by reaching the conclusion that with a US\$ 3.8 billion arbitration claim and total debt just over US\$ 120 million required the Court to protect the interests of the shareholders. The Court based its decision on information provided in sworn affidavits by R. Fung, the Company's President and Chairman of the Board. One particular quotation drove this conclusion:

"[24] Crystallex has spent over \$500 million on the project. In the event that Crystallex only recovered that amount without interest and without any compensation for the loss of the ability to develop the project, Crystallex would still have more than enough to pay all of its debts and have substantial value left over for its shareholders."

(See <https://documentcentre.ey.com/#/detail-engmt?eid=166>, CCAA Orders: Reasons of Justice Newbould re: Initial Order – 27 Dec. 2011).

28. A request in Oct. 2015 by nine shareholders that sought the appointment of a Shareholders' Committee (the "Committee") was never heard formally and, therefore, unappealable. Despite his previous conclusion about the need to protect the shareholders' interests, in the Reasons of Justice Newbould re: Initial Order – 27 Dec. 2011, Justice Newbould blocked the appointment of the Shareholders' Committee that sought to advance the shareholders' interests. This despite the by then self-evident inadequate representation by a self-interested DIP/BOD under the control of the DIP lender, with four out of five Directors on the Company's BOD, whose economic interests were intertwined with those of the DIP Lender's. The fifth Director is appointed with the DIP Lender's approval as a condition sine qua non and both share the same legal counsel. The DIP Lender's control of the Self-Interested DIP/BOD is made self-evident by the terms of the Credit Agreement, its representatives on the BOD (Mr. Shah, Tenor CEO and founding partner, and Mr. D. Kochav, Tenor's COO and senior partner) and the contingent compensation to two legacy Directors (Mr. R.



Fung and Mr. M. Oppenheimer) through a CCAA Court-approved US\$ 100 million NAP Sharing Agreement dated Dec. 18, 2014.

29. Incontrovertible evidence of the inadequate representation of the Shareholders' interests by the Self-interested DIP/BOD were self-evident. First, the Controlling DIP Lender had by then been granted a share of the NAP above 80%. This was the case despite two undisputable facts:

a) The CCAA Court had endorsed the Company's insolvency filing on the grounds that it was necessary to protect the interests of the shareholders and later approved a motion by the DIP/BOD that proposed the terms and conditions of the DIP financing auction that expressly provided that:

"In no circumstance shall the Lender Back-End Entitlement involve, or contemplate directly or indirectly, either (i) an acquisition of control of Crystallex, (ii) an acquisition of any interest in the Arbitration Proceeding, or (iii) a receipt of value exceeding a minority of the Arbitration Proceed s" were made after the BOD and the DIP Lender had negotiated and agreed on the terms under which the DIP loan would be made."

[Emphasis added.]

b) The Self-Interested DIP/ BOD had misrepresented its funding requirements and misguided the CCAA Court and the Shareholders by seeking the approval of the US\$ 35 million DIP Loan as the amount required to pursue the arbitration award, which per ICSID and specialized arbitration publications takes on average four to five years and five million dollars per year. The Self-interested DIP/BOD spent the US\$ 35 million loan in just over a year and obtained three additional loans over the next three years that increased the total DIP Loan to over US\$ 76 million and the DIP Lender's share of the NAP to over 80%.

c) To advance their own interests, the Self-Interested DIP/BOD and the Controlling DIP Lender relied on wholesale court records sealing and redaction approved by the CCAA Court based on the same argument used since the filing: that the Company would be severely prejudiced by the

disclosure of its arbitration and collection efforts if such “confidential” information became public.

30. The process followed by the CCAA Court leading to the denial of the motionless request to appoint a court-sanction Committee was odd, to say the least. The CCAA Court had previously issued an order directing that no party was to bring a motion in the CCAA proceedings without leave of the Court after consultation with the Monitor. Hence, legal counsel for the nine shareholders asked the Court to consider a to-be proposed motion to approve the Committee. The first in-chambers hearing took place with the Monitor and legal counsel for the DIP/BOD, the DIP Lender, and other interested parties, including counsel for Mr. Tony Reyes, a Canadian shareholder. No opposition was put forward, which seemingly left the door open for the to-be proposed motion.

31. A second in-chambers hearing, with the same counsel and the Monitor in attendance, was held to present the motion with an opt-out approach to seek the shareholders’ representation. All present, including the Justice Newbould, opposed the motion for various reasons that can be summarized as the Committee representing an unnecessary nuisance. In denying the Court’s leave to file the Shareholders’ Committee motion, in Apr. 2016, Justice Newbould justified the decision as follows:

“The Applicants state in their Factum that the order sought ‘will legitimize the purpose for which the committee has been formed.’ I agree with Crystallex, the DIP Lender and Mr. Reyes, a shareholder that opposes the motion, that the court at this stage should remain neutral as to the prospects of any litigation that the committee might see fit to bring, and that to make the order sought will be used by the committee to legitimize its purpose in the eyes of the shareholders by referring to the order made establishing the committee. The court should avoid that if at all possible and be completely neutral on the prospect of future litigation that would have to be decided by the court.”

(See <https://documentcentre.ey.com/#/detail-engmt?eid=166>, CCAA Orders: Endorsement of Justice Newbould – 10 Apr. 2016, p. 5).

32. Notably, the shareholder that sided with the Self-interested DIP/BOD and the Controlling DIP Lender in opposing the establishment of the Shareholders’ Committee, Mr. Tony Reyes, is a Canadian Bankruptcy lawyer who endorsed all of the Company’s and the DIP Lenders’



motions until he was required to disclose that he was an investor in Tenor Capital Management's funds. Mr. Reyes has not participated in the CCAA proceeding ever since. Additionally, the CCAA Court failed miserably in its pursuit to remaining neutral by taking the side of the Self-interested DIP/BOD and the Controlling DIP Lender.

33. A third and final in-chambers hearing was held in which Gowling WLG presented a motion to appoint the Committee as an ad hoc committee, with Gowling WLG as legal counsel on a contingent fee basis, on an opt-in basis (to counter strong opposition to an opt-out approach), which was never approved.

34. The foregoing is but one example of the several procedural issues allowed by the CCAA Court that have denied the Shareholders the statutorily required protection of their interests and the opportunity to protect their personal rights. The procedural issues, the supporting facts, and the supporting facts have been particularized in several case docket entries (see D.I. Nos. 313, 314, 326, 337 and 362).

35. There can be no doubt about the Self-interested DIP/BOD's responsibility and legal requirement to protect the interests of the Estate and the Shareholders, and that their failure to do so impinges on personal rights that sound in tort redressable through legal action. It is highly unlikely that the Self-interested DIP/BOD will pursue the required remedies and, therefore, this task will be left for the Liquidation Trustee or the Shareholders, as residual owners of the Estate, to do. Relatedly, *In re Wilton Armetale, Inc.*, 968 F.3d 273 (3d Cir. 2020) (the "Third Circuit Opinion"), the Court reached the following conclusion of law:

*"AHR has statutory authority to bring the claims at issue in the North Mill Adversary because the causes of action were both pursued by AHR pre-petition and abandoned post-petition by the Trustee. Once abandoned, the causes of action ceased to be property of the estate and thus may be pursued by AHR on its own behalf."*

36. The grounds for such an action have been made clear in controlling and persuasive

caselaw, as follows:

*"A bankruptcy or reorganization trustee has a duty to exercise that measure of care and diligence that an ordinary prudent person would exercise under similar circumstances."* In re Ridgen, 795 F.2d 727 (9th Cir. 1986), (citing In re Cochise College Park, Inc., 703 F.2d 1339, 1357 (9th Cir. 1983))."

*"Beyond the statutory duties, bankruptcy trustees owe to the beneficiaries of the estate the usual common law trust duties, such as the duty of loyalty, which proscribes self-dealing."* In re Markos Gurnee P'ship, 182 B.R. 211, 219 (Bankr. N.D. Ill.1995), (citing Mosser v. Darrow, 341 U.S. 267, 271, 71 S.Ct. 680, 682, 95 L.Ed. 927 (1951) ("*Equity tolerates in bankruptcy trustees no interest adverse to the trust.*"))."

*"Respondents also ignore that, if a debtor remains in possession -- that is, if a trustee is not appointed -- the debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would the trustee for a debtor out of possession."* CFTC v. Weintraub, 471 U.S. 343 (1985), (citing Wolfv. Weinstein, 372 U.S. 633, 372 U.S. 649-652 (1963))."

[Emphasis Added.]

### **OBJECTION**

37. The Movant respectfully puts forward the following objections to the Motion for Relief:

#### **A. Recognition of the CCAA Orders Is Inappropriate Under Sections 105, 1501, 1506, 1507, and 1522**

27. The relief sought is unwarranted before the Court has the opportunity to complete its fact-finding requirements and established the bases at law or in equity to properly issue a decision on the facts and the merits. The Motion for Relief pursues the continued recognition of Foreign Main Proceeding court orders approving extensions of a DIP financing contract that is planned to be but cannot be the bases for the Estate's property distribution under the Bankruptcy Code and the Model Law.

28. Section 1522 requires this Court to deny or modify the relief requested by the Foreign Representative when the interests of the Estate and stakeholders are not sufficiently protected, as is the case here:



1522(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.

1522(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.

Any modification to the Motion for Relief would be misplaced as it would involve changes to the Contract's MOD, which is purported to control the operation of the bankruptcy proceedings on both sides of the border, which cannot be allowed without breaching the Bankruptcy Code, binding U.S. caselaw (see *Czyzewski v. Jevic Holding Corp.*, No. 15-649, S. Ct., 2017 WL 1066259) and injuring the U.S. shareholders' personal and constitutional rights.

**B. Recognition of the CCAA Orders Is Inconsistent with Public Policy**

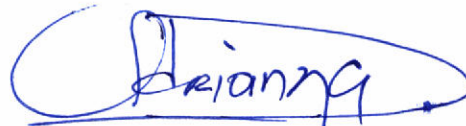
29. The procedural issues in the CCAA proceedings and the breaches of law and prejudice against the Shareholders allowed by the CCAA Court further negate the recognition of the Motion for Relief and its lineage under § 1506 as they breach fundamental rights protected by the Constitution and unwaivable statutory rules and requirements that are conditions sine qua non at law and in equity.

**CONCLUSION**

For all the reasons set forth herein, the Movant respectfully requests that the Court deny the Motion for Relief and grant such other and further relief as it deems just and proper.

Respectfully submitted,

Dated: January 28, 2022,  
Newton, Massachusetts



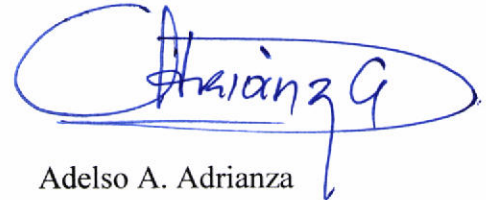
Adelso Adrianza, Pro Se  
113 Washington Street  
Newton, MA 02458  
aaadrianza@gmail.com  
(859) 803-2279

**CERTIFICATE OF SERVICE**

I, Adelso Adrianza, hereby certify that on this 28<sup>th</sup>. Day of January 2022, I caused copies of the Objection to The Foreign Representatives' Motion for An Order Recognizing and Enforcing (I) The CCAA Eleventh Extension and Fifteenth Amendment Order; And (II) The CCAA Twelfth Extension and Sixteenth Amendment Order Pursuant to Sections 11 U.S.C. §§ 105(a), 1501, 1506, 1507, 1522, respectively, to be served on the parties listed below by courier or otherwise indicated:

**Via UPS Delivery:**

Matthew Barry Lunn, Esq. Young, Conaway, Stargatt & Taylor  
1000 West Street, Fl. 17, P.O. Box 391  
Wilmington, DE 19899



Adelso A. Adrianza

**FILED**  
2022 FEB - 1 AM 10:54  
CLERK  
US BANKRUPTCY COURT  
DISTRICT OF DELAWARE

TAB C

Exhibit C - November  
28, 2022 Order of  
Judge Silverstein

This is Exhibit "C" referred to in the Affidavit of Robert Fung sworn August 9, 2023.



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*Commissioner for Taking Affidavits (or as may be)*

Alexander Gregory Barnes, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires June 28, 2024.

**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.<sup>1</sup>

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.

---

<sup>1</sup> 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

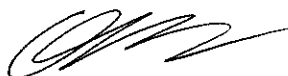


Laurie Selber Silverstein  
United States Bankruptcy Judge

TAB D  
Exhibit D - November  
28, 2022  
Memorandum of  
Judge Silverstein



This is Exhibit "D" referred to in the Affidavit of Robert Fung sworn August 9, 2023.



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*Commissioner for Taking Affidavits (or as may be)*

Alexander Gregory Barnes, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires June 28, 2024.

**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")<sup>1</sup> 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").<sup>2</sup> 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.<sup>3</sup> Both matters are ripe for decision.

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<sup>1</sup> 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.

<sup>2</sup> Dkt. No. 363.

<sup>3</sup> 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 Adelso 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

*Background<sup>4</sup>*

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.<sup>5</sup>

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,

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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].

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

<sup>5</sup> 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”).<sup>6</sup>

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 *fierei 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.

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<sup>6</sup> 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 <sup>A</sup>	4/16/2012	4/26/2012 [Docket No. 111]	US\$36 million	10% per annum, compounded semi-annually	35% of Net Arbitration Proceeds <sup>B</sup>
Second Amendment Agreement <sup>C</sup>	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 <sup>D</sup>	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 <sup>E</sup>	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 <sup>F</sup>

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.

<sup>A</sup> Senior Secured Credit Agreement, dated as of April 23, 2012 (the “DIP Credit Agreement”).

<sup>B</sup> 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, (ii) 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.
- <sup>C</sup> Second Credit Agreement Amendment Agreement, dated as of June 5, 2013.
- <sup>D</sup> Third Credit Agreement Amendment Agreement, dated as of April 16, 2014.
- <sup>E</sup> Fourth Credit Agreement Amendment Agreement, dated as of March 12, 2015.
- <sup>F</sup> 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.<sup>7</sup> 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.<sup>8</sup> Gowlings also asserted that

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

<sup>8</sup> 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.”<sup>9</sup>

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***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.

\* \* \*

<sup>9</sup> 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*, § 1522<sup>10</sup>

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<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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

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<sup>11</sup> *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’).”).

<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> Section § 1520(a)(2) provides:

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

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

<sup>14</sup> Aug. 20, 2021 Hr'g Tr. 4: 12-19.

<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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*.<sup>18</sup>

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

<sup>16</sup> 11 U.S.C. § 1520(a)(2) (emphasis supplied).

<sup>17</sup> *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]).

<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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

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<sup>19</sup> 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.").

<sup>20</sup> 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

**TAB E**  
**Exhibit E - January**  
**27, 2023 Continued**  
**Sealing Motion**



This is Exhibit "E" referred to in the Affidavit of Robert Fung sworn August 9, 2023.



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*Commissioner for Taking Affidavits (or as may be)*

Alexander Gregory Barnes, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires June 28, 2024.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

Crystallex International Corporation,<sup>1</sup>

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 11-14074 (LSS)

Hearing Date: February 15, 2023, at 10:00 a.m. (ET)

Objection Deadline: February 8, 2023, at 4:00 p.m. (ET)

**MOTION OF FOREIGN REPRESENTATIVE FOR ENTRY OF  
AN ORDER AUTHORIZING THE CONTINUED SEALING OF  
CERTAIN CONFIDENTIAL INFORMATION**

Crystallex International Corporation, in its capacity as the court-appointed foreign representative (the “Foreign Representative”) for the above-captioned debtor (the “Debtor” or “Crystallex”) in a proceeding (the “Canadian Proceeding”) under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”), respectfully submits this motion (this “Motion”), for the entry of an order substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 107(b), 107(c), 1521, 1525(a), and 1527(3) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1(d) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the continued sealing of certain of the confidential information that has been redacted in Docket Nos. 128-2, 132-1, 264, 264-5, 284-5, 299-5, and 316-5, and the filing of redacted versions of Docket Nos. 97, 151-1, 151-3, 151-4, 166, 172, and 353 (collectively, the “Sealed Material”) pursuant to prior orders of this Court and the Canadian Court. In support of this Motion, the Foreign Representative

<sup>1</sup> The last four digits of the Debtor’s United States federal tax identification number are 2628. The Debtor’s executive headquarters are located at 8 King Street East, Suite 1401, Toronto, Ontario, M5C 1B5, Canada.

relies on the *Declaration of Robert A. Fung in Support of the Motion of Foreign Representative for Entry of an Order Authorizing the Continued Sealing of Certain Confidential Information*, attached hereto as **Exhibit B**. In further support of the Motion, the Foreign Representative respectfully represents as follows:

**PRELIMINARY STATEMENT**<sup>2</sup>

1. On November 28, 2022, this Court entered an order requiring the Foreign Representative to file unredacted versions of all of the documents currently under seal in this proceeding or file a motion seeking continued sealing by no later than January 27, 2023. *See* Docket No. 373 ¶ 7 (the “November 28 Order”). In the intervening period, the Foreign Representative has carefully reviewed the documents currently under seal and analyzed whether, and to what extent, continued sealing is necessary.

2. Following this review, the Foreign Representative determined that portions of the previously sealed information should be unsealed, and—contemporaneously herewith—has made the following filings:

Docket Filing (Unsealing)	Document Unsealed	Docket Fully Unsealed? (Y/N)	Category of Information Remaining Sealed
<b>Docket No. 383</b>	<b>Docket No. 97</b> DIP Credit Agreement ( <i>Only to the Extent Unredacted in Docket No. 383</i> )	N	Strategic Information
<b>Docket No. 384</b>	<b>Docket No. 131-2</b> Third Amendment to DIP Credit Agreement	Y	N/A
<b>Docket No. 385</b>	<b>Docket Nos. 151-1; 166</b> Motion for Order Recognizing Transfer Agreement Order ( <i>Only to the Extent Unredacted in Docket No. 385</i> )	N	Strategic Information CVR Information
<b>Docket No. 386</b>	<b>Docket Nos. 151-2; 167</b> Motion for Order Recognizing Approval Order	Y	N/A

<sup>2</sup> Capitalized terms used in this Preliminary Statement have the meanings ascribed to such terms elsewhere in this Motion.

Docket Filing (Unsealing)	Document Unsealed	Docket Fully Unsealed? (Y/N)	Category of Information Remaining Sealed
<b>Docket No. 387</b>	<b>Docket Nos. 151-3</b> Thirteenth Report of the Monitor ( <i>Only to the Extent Unredacted in Docket No. 387</i> )	N	Strategic Information CVR Information
<b>Docket No. 388</b>	<b>Docket Nos. 151-4; 172</b> Affidavit of Harry Near dated Dec. 15, 2014 ( <i>Only to the Extent Unredacted in Docket No. 388</i> )	N	Strategic Information CVR Information
<b>Docket No. 389</b>	<b>Docket No. 161-1</b> Transfer Agreement Order	Y	N/A
<b>Docket No. 390</b>	<b>Docket Nos. 353; 354</b> Supplemental Objection to Examiner Motion ( <i>Only to the Extent Unredacted in Docket No. 390</i> )	N	Strategic Information CVR Information

3. The information previously sealed (and now unsealed in the contemporaneously filed unsealing papers) related predominantly to certain terms of the DIP Credit Agreement and the Debtor's financial affairs. After internal review, the Debtor has determined that such information likely no longer qualifies for protection under Bankruptcy Code section 107(b).

4. By contrast, the remaining sealed documents (detailed below) include two categories of information that would be devastating to the Debtor and its principals if unsealed. The first category of information is the litigation strategy of the Debtor with respect to its pursuit of the Award against Venezuela (the "Strategic Information"). As described further below, the Award is the *only* material asset of the Debtor, and revealing such litigation strategy is tantamount to disclosing the "secret ingredient" for an operating company. If Venezuela were to have access to this information, the likelihood of Crystallex being able to collect on the Award would be greatly diminished.

5. The second category of information is related to the amount of contingent value rights ("CVRs") that have been transferred from the DIP Lender to the two remaining

principals of the Debtor, Messrs. Fung and Oppenheimer (the “CVR Information”). The CVRs were initially provided by the Debtor to the DIP Lender as a form of consideration, and entitle the holder to receive a percentage share in the proceeds of the Award payable in accordance with the waterfall and terms set forth in the DIP Credit Agreement. The DIP Lender subsequently assigned a portion of its CVRs to Messrs. Fung and Oppenheimer pursuant to an agreement that was approved by the Canadian Court. While the total amount of CVRs provided to the DIP Lender has been made public, the portion afforded to Messrs. Fung and Oppenheimer has not been disclosed. Messrs. Fung and Oppenheimer are the primary negotiators with respect to the Debtor’s attempts to monetize the Award, negotiations that have required, and will likely continue to require, travel to Venezuela for meetings. As explained further below, information regarding the wealth of individuals (such as the expected proceeds from the CVRs) is often utilized in Venezuela to target such individuals for kidnapping and other harm. If the CVR information were to be publicly disclosed, not only would the personal welfare of Messrs. Fung and Oppenheimer be compromised, the ability to monetize the Award would additionally be put at risk. Following any public disclosure of this information, Messrs. Fung and Oppenheimer would be unwilling to travel to Venezuela, making negotiations, political efforts and litigation efforts with respect to the Award much more difficult, if not impossible.

6. Importantly, the limited information that the Foreign Representative is seeking to continue to protect pursuant to this Motion has already been ordered to remain sealed by the Canadian Court. In December 2022, the Canadian Court expressly ruled that the Strategic Information must remain sealed. The Canadian Court similarly ruled in November 2021 that the CVR Information must remain sealed, denying a request by an ad hoc committee of Crystallex’s noteholders who were seeking the unsealing and public disclosure of this information previously sealed by the Canadian Court.

7. As a court presiding over a Chapter 15 case where the Canadian Proceeding has been recognized as a foreign main proceeding, deference should be given to the rulings of the Canadian Court. The Canadian Court has determined, under Canada's own rigid sealing laws,<sup>3</sup> that the sealing of the information is necessary and appropriate to protect Crystallex and its stakeholders, and the principles of international comity underlying Chapter 15 cases should be endorsed by this Court to follow the rulings of the main proceeding with respect to the sealing of documents. To order the public disclosure of the information at issue would have the effect of undoing the Canadian Court's sealing orders, which have been recognized by this Court and by their own terms permit parties to return before that court and seek to modify the sealing granted. Moreover, there is no public policy benefit to disclosure of the Strategic Information or the CVR Information, as such information would fall under the categories of information to be protected under sections 107(b) and 107(c) of the Bankruptcy Code, even if the principles of international comity were not applicable. Finally, all of the information that would remain sealed has already been provided to the parties who have signed a non-disclosure agreement with the Debtor.

8. For these reasons and the reasons argued below, this Court should order the continued sealing of the Strategic Information and the CVR Information.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P), and, pursuant to Rule 9013-1(f) of the Local Rules of

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<sup>3</sup> Under controlling Canadian case law, a party seeking to seal information to be filed with a court must prove that the disclosure of the information poses a risk to an important public interest, the sealing order is necessary to prevent this risk (and reasonably alternative measures will not prevent it) and the benefits of sealing outweigh any negative effects. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41; *Sherman Estate v. Donovan*, 2021 SCC 25. One such public interest is in the protection of restructuring proceedings so as to enable a debtor to maximize its assets and, thereby, creditor recoveries. *In Re Nortel Networks*, [2009] O.J. No. 3169.

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Foreign Representative consents to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in this Court and district under 28 U.S.C. § 1410.

10. The statutory and legal predicates for the relief sought herein are sections 105(a), 107(b), 107(c), 1521, 1525(a), and 1527(3) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d).

### **BACKGROUND**

#### **A. General Background**

11. On December 23, 2011 (the “Petition Date”), the Debtor commenced the Canadian Proceeding, and the Canadian Court entered an initial order, pursuant to the CCAA, providing various forms of relief thereunder (the “Initial Order”). Also on the Petition Date, the Foreign Representative commenced this proceeding by filing a verified petition on behalf of the Debtor, pursuant to sections 1504 and 1515 of the Bankruptcy Code, seeking recognition by this Court of the Canadian Proceeding as a “foreign main proceeding” under Chapter 15.

12. On January 20, 2012, this Court entered the *Order Granting Final Relief in Aid of Canadian Proceeding Pursuant to Section 105(a), 1517, 1520, and 1521 of the Bankruptcy Code* [Docket No. 44] (the “Recognition Order”). Pursuant to the Recognition Order, this Court: (a) granted recognition of the Canadian Proceeding as a “foreign main proceeding” under section 1517; and (b) enforced in full the Initial Order on a permanent basis in the United States, including, without limitation, any extensions of the stay granted by the Canadian Court.

13. The Debtor, as borrower, entered into that certain *Senior Secured Credit Agreement*, dated as of April 23, 2012 (the “DIP Credit Agreement”), with Tenor Special

Situations I, LP, in its capacity as successor lender through assignment by Luxembourg Investment Company 31 S.à.r.l., which, in turn, was the assignee of Tenor KRY Coöperatief U.A., which, in turn, was the assignee of Tenor Special Situation Fund I, LLC, the original lender (the “DIP Lender”). As part of its consideration package, the DIP Lender received certain CVRs, which entitle the holder to receive a percentage share in the proceeds of the Award (defined below), payable in accordance with the waterfall and terms set forth in the DIP Credit Agreement. The Debtor’s principals, Messrs. Fung and Oppenheimer, were subsequently granted a portion of the CVRs from the DIP Lender pursuant to a Net Arbitration Proceeds Transfer Agreement (the “NAP Agreement”), which was approved by the Canadian Court on December 18, 2014, and recognized by this Court on February 3, 2015. *See* Docket No. 161. The NAP Agreement sets forth the amount and terms of the CVRs transferred by the DIP Lender to Messrs. Fung and Oppenheimer, which specific amounts have never been made public.

14. The Debtor asserted a claim against the Government of Venezuela, under which the Debtor claimed damages in the approximate amount of \$3.8 billion (the “Arbitration Claim”). The Arbitration Claim was pursued in a proceeding before the Additional Facility of the International Centre for the Settlement of Investment Disputes of the World Bank (the “Arbitral Tribunal”) against Venezuela pursuant to a bilateral investment treaty between Canada and Venezuela. On April 4, 2016, the Arbitral Tribunal issued an award to the Debtor against Venezuela in the amount of US \$1.202 billion, plus interest thereon calculated from April 13, 2008 (the “Award”).

15. On March 25, 2017, the United States District Court for the District of Columbia confirmed the Award. Formal judgment was entered in the Debtor’s favor in the amount of approximately \$1.4 billion (the “Judgment”).



16. In November 2017, the Debtor and Venezuela settled all of the outstanding issues between the parties, which settlement was approved by the Canadian Court (the “Settlement Agreement”). While the Debtor received certain payments under the Settlement Agreement, the terms of the Settlement Agreement were not fulfilled by Venezuela. As a result, the parties entered into the *Amended and Restated Settlement Agreement* dated September 10, 2018 (the “Amended Settlement Agreement”), which was approved by the Canadian Court on September 17, 2018.

17. Pursuant to the Amended Settlement Agreement, Venezuela agreed to make an initial payment in cash or securities with a market value equal to \$425,000,000, which was received in full by November of 2018. However, none of the additional payments required under the Amended Settlement Agreement have been received, and Venezuela remains in breach of the Amended Settlement Agreement. As a result, the Debtor has continued to pursue its enforcement strategy against Venezuela.

18. The Debtor’s enforcement efforts in the United States involved obtaining a writ of attachment against key assets of Venezuela located in the United States, most notably the equity of PDV Holding, Inc. (the “PDVH Shares”), which is held through Venezuela’s adjudicated alter ego Petróleos de Venezuela, S.A. and constitutes the indirect 100% ownership in CITGO Petroleum – a major U.S. oil company valued at over \$8 billion. The Award, and the funds previously received in connection with the Award, are the only assets of the Debtor.

19. Additional information about the Debtor’s business and operations, the events leading up to the Petition Date, and the facts and circumstances surrounding the Canadian Proceeding and this Chapter 15 case are set forth in the *Declaration of Robert A. Fung in Support of: (I) Verified Petition Under Chapter 15; (II) Motion for Provisional and Final Relief in Aid of Foreign Proceeding; and (III) Motion to Establish Certain Procedures in Connection with Filing of Verified Petition Under Chapter 15*, dated December 23, 2011 [Docket No. 2].

**B. Background Specific to the Relief Requested**

20. Throughout the Canadian Proceeding, the Canadian Court has found cause to grant Crystallex's requests to seal certain confidential information. Indeed, the Canadian Court previously ordered the sealing of the same materials the Foreign Representative seeks to maintain under seal in this Court through the following orders: *April 16, 2012 Order of Justice Newbould*, Fung Decl. Ex. 1, *April 14, 2014 Endorsement of Justice Newbould*, *id.* Ex. 2, *December 18, 2014 Order of Justice Newbould*, *id.* Ex. 3, *October 29, 2018 Order of Justice Hainey*, *id.* Ex. 4, *May 3, 2019 Order of Justice Hainey*, *id.* Ex. 5, *November 4, 2019 Order of Justice Hainey*, *id.* Ex. 6, *November 3, 2020 Order of Justice Hainey*, *id.* Ex. 7, *November 18, 2021 Endorsement of Justice Conway*, *id.* Ex. 8, *November 18, 2021 Order of Justice Conway*, *id.* Ex. 9, and *December 12, 2022 Order of Justice Conway*, *id.* Ex. 10.

21. Similarly, throughout the course of this Chapter 15 case, this Court has granted requests to seal certain confidential information in connection with prior motions and related pleadings (the "Sealing Orders"). The Sealing Orders, in effect, have approved the sealing of materials that have been sealed by the Canadian Court. The Sealing Orders and a description of the materials that have been sealed are set forth below:

Sealing Motion, Sealing Order, and Affected Docket Nos.	Description of Sealed Materials
<b>Motion:</b> D.I. 83 <b>Order:</b> D.I. 96 <b>Docket Nos. Affected:</b> D.I. 84, 97	Certain provisions of the DIP Credit Agreement relating to both financial and Strategic Information were sealed. The revised, more limited redactions relate only to Strategic Information.
<b>Motion:</b> D.I. 129 <b>Order:</b> D.I. 141 <b>Docket Nos. Affected:</b> D.I. 128, 131	Docket No. 131 includes certain exhibits that contain confidential information concerning the Arbitration Claim. The Canadian Court allowed substantially similar relief in its <i>Second Additional CCAA Financing Order</i> dated April 14, 2014.
<b>Motion:</b> D.I. 150, 157 <b>Order:</b> D.I. 160, 161, 162 <b>Docket Nos. Affected:</b> D.I. 151, 166, 167, 172	Docket No. 151 includes two confidential motions and certain related documents, as exhibits, which contain confidential commercial information. The Canadian Court provided for the confidential treatment of the same in its <i>Approval Order</i> dated December 18, 2014.

Sealing Motion, Sealing Order, and Affected Docket Nos.	Description of Sealed Materials
<b>Motion:</b> D.I. 265 <b>Order:</b> D.I. 274 <b>Docket Nos. Affected:</b> D.I. 263	Docket No. 263 contains information the Debtor is required to keep confidential. The Canadian Court provided for the confidential treatment of the same in its <i>Order</i> dated October 29, 2018.
<b>Motion:</b> D.I. 285 <b>Order:</b> D.I. 295 <b>Docket Nos. Affected:</b> D.I. 283, 284	Docket Nos. 283 and 284 contain confidential information, specifically certain parts of the Fung Affidavit dated April 23, 2019. The Canadian Court provided for the confidential treatment of the same in its <i>Order</i> dated May 3, 2019.
<b>Motion:</b> D.I. 300 <b>Order:</b> D.I. 307 <b>Docket Nos. Affected:</b> D.I. 298, 299	Docket Nos. 289 and 299 contain confidential information, specifically certain parts of the Fung Affidavit dated October 25, 2019. The Canadian Court provided for the confidential treatment of the same in its <i>Order</i> dated November 4, 2019.
<b>Motion:</b> D.I. 317 <b>Order:</b> D.I. 321 <b>Docket Nos. Affected:</b> D.I. 315, 316	Docket Nos. 315 and 316 contain confidential information, specifically certain parts of the Fung Affidavit dated October 28, 2020. The Canadian Court provided for the confidential treatment of the same in its <i>Order</i> dated November 3, 2020.

22. On November 28, 2022, this Court entered a *Memorandum* [Docket No. 372] and *Order* [Docket No. 373] that together constitute the November 28 Order.

23. Concurrently herewith, in accordance with the November 28 Order, the Foreign Representative is filing publicly viewable, unredacted versions of certain documents, or in some instances redacted versions of previously sealed documents (all unsealed information contained therein, the “Unsealed Material”). The Unsealed Material includes the following:

- a. Docket No. 97 (DIP Credit Agreement) (*unsealed with Strategic Information redacted*);
- b. Docket No. 131-2 (Third Amendment to DIP Credit Agreement);
- c. Docket Nos. 151-1; 166 (Motion for Order Recognizing Transfer Agreement Order) (*unsealed with CVR Information redacted*);
- d. Docket Nos. 151-2; 167 (Motion for Order Recognizing Approval Order);
- e. Docket Nos. 151-3 (Thirteenth Report of the Monitor) (*unsealed with Strategic Information and CVR Information redacted*);

- f. Docket Nos. 151-4; 172 (Affidavit of Harry Near dated Dec. 15, 2014) (*unsealed with Strategic Information and CVR Information redacted*);
- g. Docket No. 161-1 (Transfer Agreement Order); and
- h. Docket Nos. 353; 354 (Supplemental Objection to Examiner Motion) (*unsealed with Strategic Information and CVR Information redacted*).

### **RELIEF REQUESTED**

24. By this Motion, the Foreign Representative seeks entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, authorizing the continued sealing of the Sealed Material, in comity with the Canadian Court's prior determinations that the Strategic Information and CVR Information are protected.

25. The Sealed Material that the Foreign Representative requests remain sealed is the following:

<b>Sealed Filing</b>	<b>Redacted Version</b>	<b>Category of Information</b>	<b>Related Canadian Court Order</b>
<b>Docket No. 97</b> DIP Credit Agreement ( <i>Only to the Extent Redacted in Docket No. 383</i> )	<b>Docket No. 383</b>	Strategic Information	April 16, 2012 Order of Justice Newbould
<b>Docket No. 131-1</b> Affidavit of Robert Fung dated Apr. 9, 2014 ( <i>Only to the Extent Redacted in Docket No. 128-2</i> )	<b>Docket No. 128-2</b>	Strategic Information	April 14, 2014 Endorsement of Justice Newbould
<b>Docket No. 131-3</b> Eleventh Report of the Monitor ( <i>Only to the Extent Redacted in Docket No. 132-1</i> )	<b>Docket No. 132-1</b>	Strategic Information	April 14, 2014 Endorsement of Justice Newbould
<b>Docket Nos. 151-1; 166</b> Motion for Order Recognizing Transfer Agreement Order ( <i>Only to the Extent Redacted in Docket No. 385</i> )	<b>Docket No. 385</b>	CVR Information	December 18, 2014 Order of Justice Newbould; November 18, 2021 Order of Justice Conway
<b>Docket Nos. 151-3</b> Thirteenth Report of the Monitor ( <i>Only to the Extent Redacted in Docket No. 387</i> )	<b>Docket No. 387</b>	Strategic Information CVR Information	December 18, 2014 Order of Justice Newbould; November 18, 2021 Order of Justice Conway

Sealed Filing	Redacted Version	Category of Information	Related Canadian Court Order
<b>Docket Nos. 151-4; 172</b> Affidavit of Harry Near dated Dec. 15, 2014 ( <i>Only to the Extent Redacted in Docket No. 388</i> )	<b>Docket No. 388</b>	Strategic Information CVR Information	December 18, 2014 Order of Justice Newbould; November 18, 2021 Order of Justice Conway
<b>Docket No. 263</b> Motion re CCAA Sixth Extension and Tenth Amendment Order ( <i>Only to the Extent Redacted in Docket No. 264</i> )	<b>Docket No. 264</b>	Strategic Information	October 29, 2018 Order of Justice Hainey
<b>Docket No. 263-5</b> Affidavit of Robert Fung dated Oct. 23, 2018 ( <i>Only to the Extent Redacted in Docket No. 264-5</i> )	<b>Docket No. 264-5</b>	Strategic Information	October 29, 2018 Order of Justice Hainey
<b>Docket No. 283-5</b> Affidavit of Robert Fung dated Apr. 23, 2019 ( <i>Only to the Extent Redacted in Docket No. 284-5</i> )	<b>Docket No. 284-5</b>	Strategic Information	May 3, 2019 Order of Justice Hainey
<b>Docket No. 298-5</b> Affidavit of Robert Fung dated Oct. 25, 2019 ( <i>Only to the Extent Redacted in Docket No. 299-5</i> )	<b>Docket No. 299-5</b>	Strategic Information	November 4, 2019 Order of Justice Hainey
<b>Docket No. 315-5</b> Affidavit of Robert Fung dated Oct. 2, 2020 ( <i>Only to the Extent Redacted in Docket No. 316-5</i> )	<b>Docket No. 316-5</b>	Strategic Information	November 3, 2020 Order of Justice Hainey
<b>Docket Nos. 353; 354</b> Supplemental Objection to Examiner Motion ( <i>Only to the Extent Redacted in Docket No. 390</i> )	<b>Docket No. 390</b>	Strategic Information CVR Information	December 18, 2014 Order of Justice Newbould; November 18, 2021 Order of Justice Conway

### **BASIS FOR RELIEF REQUESTED**

#### **A. International Comity**

26. Cases under Chapter 15 are ancillary proceedings. Section 1521(a) of the Bankruptcy Code provides, in relevant part, that “[u]pon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of [Chapter 15 of the Bankruptcy Code] and to protect the assets of the debtor or the interests of the creditors, the court

may, at the request of the foreign representative, grant any appropriate relief, including granting any . . . relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).” 11 U.S.C. § 1521(a)(7). The Foreign Representative submits that, for the reasons described herein, entry of the Proposed Order in accordance with sections 107(b) and 107(c) of the Bankruptcy Code is “appropriate,” as such term is used in section 1521(a) of the Bankruptcy Code.

27. As described above, the Canadian Court has already expressly ruled—in some cases quite recently—that the categories of information at issue should remain under seal. Where the issue of “whether to keep [a] document sealed is . . . under advisement by” an international court, then “as a matter of international comity,” the international court “should be allowed to rule on the issue in the first instance.” *Accent Delight Int’l Ltd. v. Sotheby’s*, 394 F. Supp. 3d 399, 417 (S.D.N.Y. 2019). *See also Lloyd v. Am. Exp. Lines, Inc.*, 580 F.2d 1179, 1189 (3d Cir. 1978) (“The test of acceptance . . . of foreign judgments for which domestic recognition is sought, is whether the foreign proceedings accord with civilized jurisprudence, and are stated in a clear and formal record.”); *In re Vitro S.A.B. de CV*, 701 F.3d 1031, 1043 (5th Cir. 2012) (“Central to Chapter 15 is comity.”). Here, rather than merely taking the matter under advisement, the Canadian Court has *granted* the relief sought by this Motion after determining that (1) disclosure of the information would pose a risk to an important public interest, (2) the sealing order is necessary to prevent this risk (and reasonably alternative measures will not prevent it), and (3) the benefits of sealing outweigh any negative effects.

28. And while granting comity is not appropriate “when doing so would contravene fundamental U.S. public policy,” *In re Qimonda AG Bankr. Litig.*, 433 B.R. 547, 565 (E.D. Va. 2010), there is no such public policy that would be disturbed by maintaining the Sealed Filings under seal, *see In re Fairfield Sentry Ltd.*, 2011 WL 4357421, at \*9 (S.D.N.Y. Sept. 16,

2011), *aff'd*, 714 F.3d 127 (2d Cir. 2013) (“Though the sealing here may be broader than specifically provided by the Code or other United States statutory authority, ‘[t]he mere fact of conflict between foreign law and U.S. law, absent other considerations, is insufficient to support the invocation of the public policy exception.’”) (quoting *Qimonda*, 433 B.R. at 570)).

29. Indeed, as discussed further below, the limited categories of information that the Debtor seeks to maintain as confidential here are of the type that would be protected under U.S. law pursuant to Bankruptcy Code sections 107(b) and 107(c), and thus cannot violate fundamental U.S. public policies. Moreover, any party who has signed a non-disclosure agreement with the Debtor is already in possession of the Sealed Material on a confidential basis.

**B. Section 107 of the Bankruptcy Code**

30. Even if the Court disregards the Canadian Court’s sealing orders and underlying findings on the importance of maintaining the information under seal, the Bankruptcy Code independently supports maintaining the confidentiality of the Sealed Material. Section 107(b) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may —

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

31. Once the court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994). Courts have found that such relief should be granted if the

information sought to be protected is “commercial information.” *See In re Global Crossing*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (finding the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See Orion*, 21 F.3d at 28 (finding that section 107(b)(1) of the creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is “confidential and commercial” in nature). Indeed, material is protected by section 107(b) if it “explains the proposed litigation strategy of the [estate], contains information that is privileged or constitutes work product, and which, if not sealed, could (1) constitute a waiver of the privilege and (2) undermine the value of estate assets (the claims) by disclosing the [estate’s] evaluation of the merits and litigation strategy to the target defendants.” *In re 4 Front Petroleum, Inc.*, 2007 WL 3005183, at \*1 (Bankr. N.D. Okla. Oct. 11, 2007).

32. Pursuant to section 107(c) of the Bankruptcy Code, the Court may order that information remain under seal to “protect an individual, . . . to the extent the court finds that disclosure of such information would create undue risk of . . . unlawful injury to the individual or the individual’s property.” 11 U.S.C. § 107(c). Section 107(c) grants the Court “broad discretion to protect an individual with respect to any information, including identifying information, in a paper filed or to be filed with the court to the extent that the court finds that disclosure of the information would create an undue risk of identity theft or unlawful injury to the individual or the individual's property.” 2 COLLIER ON BANKRUPTCY ¶ 107.04 (16th ed.). Accordingly, “[t]he types of information that can be protected by the court are unlimited.” *Id.*



(i) **The Strategic Information**

33. Historically, a critical component of Crystallex's enforcement strategy and a key to its success thus far has been its ability to maintain the confidentiality of the strategies employed in attempting to monetize the Award. The Strategic Information reveals important details about the approach that the Debtor is taking in the U.S. enforcement proceedings, including discussions of the Debtor's ongoing enforcement planning and its deliberative process including legal and other analyses and evaluations of its adversaries, competing creditors and other relevant entities. *See* Fung Decl. ¶ 10. There can be no doubt that revealing these views and strategies publicly would harm Crystallex in its enforcement efforts against Venezuela, to the detriment of all of the Debtor's stakeholders. *Id.*

34. As noted above, courts have interpreted the litigation strategy of an estate as commercial information that should appropriately be protected under section 107(b) of the Bankruptcy Code. But here, the Strategic Information effectively rises to the level of a trade secret given the fact that the Award is the *only* material asset of the Debtor. Crystallex has no means to satisfy creditor claims other than through the successful monetization of the Award. Unlike operating debtors—where litigation strategy may be one part of an overall business plan—the Strategic Information here is all encompassing; it is the “secret sauce” for the Debtor's one “product.” *See id.* ¶ 11. Disclosing the methodology behind the Debtor's efforts to monetize the Award would jeopardize the recovery for the Debtor's stakeholders. Accordingly, the Strategic Information is a trade secret of Crystallex that must be protected. *Id.*

(ii) **The CVR Information**

35. With respect to the CVR Information, the confidentiality of this personal financial information is justified under section 107(c) of the Bankruptcy Code and is necessary at this time to protect the safety of the beneficiaries, Messrs. Fung and Oppenheimer. Given their

involvement in the prior settlement negotiations and their historical knowledge and relationships, they are expected to be involved in any future direct discussions and negotiations with Venezuela, including, in certain cases, in-country. *See* Fung Decl. ¶ 12. Public disclosure of the amount of CVRs paid to Messrs. Fung and Oppenheimer would increase the risks that they will be targeted for kidnapping-for-ransom, or other harm, in Venezuela. *Id.* The risk to human life and welfare by itself outweighs any purported public policy benefit of disclosing this information. Indeed, the Canadian Court, recognizing such risk, ordered that this information be kept under seal in 2014 and again in a contested matter in 2021. *Id.*

36. In addition, given the risk to their personal safety that the disclosure of the CVR Information poses, Messrs. Fung and Oppenheimer would be unwilling to attend any in-person negotiations with Venezuela if this information was made public. *See* Fung Decl. ¶ 13. This, in turn, would impact the Debtor's ability to monetize the Award, as Messrs. Fung and Oppenheimer have served as the primary negotiators for the Debtor over the past decade and are critical elements of the Debtor's litigation strategy. *Id.* As such, disclosing such information would negatively impact a trade secret of the Debtor.

37. Moreover, the CVRs that were transferred to Messrs. Fung and Oppenheimer are merely one portion of the total CVRs paid by the Debtor to the DIP Lender—which total amount has been publicly disclosed. Because the total amount of CVRs have been publicly disclosed, any impact that the CVRs have on other beneficiaries of the estate can be quantified, without the need to specifically determine how many CVRs are held by Messrs. Fung and Oppenheimer. On that basis, there is no justification to require public disclosure of the amounts of the CVR transferred to Mr. Fung and Mr. Oppenheimer in light of the safety risk such disclosure would pose, and the resultant effects on the Debtor's litigation strategy.

**C. Procedural Concerns**

38. In addition to the foregoing concerns, unsealing the Sealed Material would potentially disrupt the foreign main proceeding and the Debtor's attempts to administer the Canadian Proceeding in an orderly fashion. As an initial matter, and as noted above, the Canadian Court has recently determined that sealing was necessary to protect the interests of all stakeholders and ordered that all of the Sealed Material remain sealed. If the Debtor were to publicly file these materials on the Chapter 15 docket, it would be in direct violation of orders of the Canadian Court.

39. Moreover, public disclosure in violation of the Canadian Court orders would potentially constitute a default under the Debtor's DIP Loan, leading to a potential exercise of remedies by the DIP Lender that could unravel the stability of the foreign main proceeding and thrust it into chaos. For the last several years, the DIP Lender has agreed to repeatedly extend the maturity of the DIP Credit Agreement without any fee or other compensation to keep the DIP financing in good standing for the benefit of all stakeholders. For this reason, this Court should endorse the rulings of the Canadian Court and order the continued sealing of the Sealed Material.

**NOTICE**

40. The Foreign Representative will provide notice of this Motion to Seal in accordance with this Court's *Order Specifying Form and Manner of Service of Notice of: (I) Filing of (A) Petition Pursuant to Chapter 15 of the Bankruptcy Code, and (B) Motion for Provisional and Final Relief in Aid of Foreign Proceeding Pursuant to Sections 105(a), 1519, 1520, and 1521 of the Bankruptcy Code; (II) Entry of Provisional Relief Order; (III) Deadline to Object to Entry of Recognition Order; and (IV) Hearing for the Court to Consider Chapter 15 Petition and Entry of Recognition Order* [Docket No. 21]; and also in accordance with this Court's *Memorandum* [Docket No. 372] and *Order* [Docket No. 373] dated November 28, 2022. The Foreign

Representative submits that no other or further notice of this Motion to Seal is necessary or required.

### **CONCLUSION**

For the foregoing reasons, the Foreign Representative submits that it is appropriate for this Court to continue sealing the Sealed Material. In the event that the Canadian Court subsequently determines that any or all of the Sealed Material need not remain under seal and should be publicly disclosed, the Foreign Representative would, under such circumstances, file a publicly viewable and unredacted version of the information contained within the Sealed Material which need no longer remain sealed.

*[Remainder of this page intentionally left blank]*

WHEREFORE, the Foreign Representative respectfully requests that this Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**.

Dated: January 27, 2023  
Wilmington, Delaware

/s/ Shane M. Reil

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*Counsel to the Foreign Representative*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re	:	Chapter 15
	:	
Crystallex International Corporation <sup>1</sup>	:	Case No. 11-14074 (LSS)
	:	
Debtor in a Foreign Proceeding.	:	<b><u>Hearing Date:</u></b>
	:	<b>February 15, 2023, at 10:00 a.m. (ET)</b>
	:	
	:	<b><u>Objection Deadline:</u></b>
	:	<b>February 8, 2023, at 4:00 p.m. (ET)</b>
-----	X	

**NOTICE OF MOTION OF FOREIGN REPRESENTATIVE  
FOR ENTRY OF AN ORDER AUTHORIZING THE CONTINUED  
SEALING OF CERTAIN CONFIDENTIAL INFORMATION**

**PLEASE TAKE NOTICE** that Crystallex International Corporation, in its capacity as the court-appointed foreign representative (the “Foreign Representative”) for the above-captioned debtor (the “Debtor”) in a proceeding under Canada’s *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, pending before the Ontario Superior Court of Justice (Commercial List), has filed the attached *Motion for Foreign Representative for Entry of an Order Authorizing the Continued Sealing of Certain Confidential Information* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that objections and responses, if any, to the relief requested in the Motion be filed by on or before **4:00 p.m. (ET) on February 8, 2023** (the “Objection Deadline”) with the Court at 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection or response upon: (a) the undersigned counsel to the Foreign Representative and (b) Karen S. Park, Shulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, so as to be actually received on or before the Objection Deadline.

**PLEASE TAKE FURTHER NOTICE** that a hearing to consider the Motion will be held on **February 15, 2023 at 10:00 a.m. (ET)** before the Honorable Laurie Selber Silverstein in the Court, 824 North Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801.

<sup>1</sup> The last four digits of the Debtor’s United States taxpayer identification number are 2628. The Debtor’s executive headquarters are located at 8 King Street East, Suite 1201, Toronto, Ontario, M5C 1B5, Canada.

**PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THEN THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.**

Dated: January 27, 2023  
Wilmington, Delaware

/s/ Shane M. Reil

YOUNG CONAWAY STARGATT & -and-  
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*Counsel to the Foreign Representative*

**EXHIBIT A**

**Proposed Order**



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

Crystallex International Corporation,<sup>1</sup>

Debtor in a Foreign Proceeding.

Chapter 15

Case No. 11-14074 (LSS)

Ref. Docket Nos. \_\_\_\_

**ORDER AUTHORIZING THE CONTINUED SEALING  
OF CERTAIN CONFIDENTIAL INFORMATION**

Upon the motion (the “Motion”)<sup>2</sup> of the Foreign Representative for the entry of an order (this “Order”), pursuant to sections 105(a), 107(b), 107(c), 1521, 1525(a), and 1527(3) of the Bankruptcy Code, Bankruptcy Rule 9019, and Local Rule 9018-1(d), authorizing the continued sealing of the Sealed Material; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. § 1410; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and upon consideration of the Sealed Material as well as the facts and circumstances of the Canadian Proceeding and this Chapter 15 case, including the *Declaration of Robert A. Fung in Support of the Motion of Foreign Representative for Entry of an Order Authorizing the Continued Sealing of Certain Confidential Information*; and adequate notice of the Motion and opportunity for objection having been given; and it appearing that no other notice need

<sup>1</sup> The last four digits of the Debtor’s United States federal tax identification number are 2628. The Debtor’s executive headquarters are located at 8 King Street East, Suite 1401, Toronto, Ontario, M5C 1B5, Canada.

<sup>2</sup> Capitalized terms used, but not otherwise defined herein, have the meaning given to them in the Motion.

be given; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is GRANTED as set forth herein.
2. The Sealed Material is confidential and is hereby authorized to remain under seal pursuant to sections 105(a), 107(b), 107(c), 1521, 1525(a), and 1527(3) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d).
3. The Sealed Material, and the corresponding redacted filings, are as follows:

Sealed Filing	Redacted Version	Category of Information	Related Canadian Court Order
<b>Docket No. 97</b> DIP Credit Agreement ( <i>Only to the Extent Redacted in Docket No. 383</i> )	<b>Docket No. 383</b>	Strategic Information	April 16, 2012 Order of Justice Newbould
<b>Docket No. 131-1</b> Affidavit of Robert Fung dated Apr. 9, 2014 ( <i>Only to the Extent Redacted in Docket No. 128-2</i> )	<b>Docket No. 128-2</b>	Strategic Information	April 14, 2014 Endorsement of Justice Newbould
<b>Docket No. 131-3</b> Eleventh Report of the Monitor ( <i>Only to the Extent Redacted in Docket No. 132-1</i> )	<b>Docket No. 132-1</b>	Strategic Information	April 14, 2014 Endorsement of Justice Newbould
<b>Docket Nos. 151-1; 166</b> Motion for Order Recognizing Transfer Agreement Order ( <i>Only to the Extent Redacted in Docket No. 385</i> )	<b>Docket No. 385</b>	CVR Information	December 18, 2014 Order of Justice Newbould; November 18, 2021 Order of Justice Conway
<b>Docket Nos. 151-3</b> Thirteenth Report of the Monitor ( <i>Only to the Extent Redacted in Docket No. 387</i> )	<b>Docket No. 387</b>	Strategic Information CVR Information	December 18, 2014 Order of Justice Newbould; November 18, 2021 Order of Justice Conway

<b>Sealed Filing</b>	<b>Redacted Version</b>	<b>Category of Information</b>	<b>Related Canadian Court Order</b>
<b>Docket Nos. 151-4; 172</b> Affidavit of Harry Near dated Dec. 15, 2014 ( <i>Only to the Extent Redacted in Docket No. 388</i> )	<b>Docket No. 388</b>	Strategic Information CVR Information	December 18, 2014 Order of Justice Newbould; November 18, 2021 Order of Justice Conway
<b>Docket No. 263</b> Motion re CCAA Sixth Extension and Tenth Amendment Order ( <i>Only to the Extent Redacted in Docket No. 264</i> )	<b>Docket No. 264</b>	Strategic Information	October 29, 2018 Order of Justice Hailey
<b>Docket No. 263-5</b> Affidavit of Robert Fung dated Oct. 23, 2018 ( <i>Only to the Extent Redacted in Docket No. 264-5</i> )	<b>Docket No. 264-5</b>	Strategic Information	October 29, 2018 Order of Justice Hailey
<b>Docket No. 283-5</b> Affidavit of Robert Fung dated Apr. 23, 2019 ( <i>Only to the Extent Redacted in Docket No. 284-5</i> )	<b>Docket No. 284-5</b>	Strategic Information	May 3, 2019 Order of Justice Hailey
<b>Docket No. 298-5</b> Affidavit of Robert Fung dated Oct. 25, 2019 ( <i>Only to the Extent Redacted in Docket No. 299-5</i> )	<b>Docket No. 299-5</b>	Strategic Information	November 4, 2019 Order of Justice Hailey
<b>Docket No. 315-5</b> Affidavit of Robert Fung dated Oct. 2, 2020 ( <i>Only to the Extent Redacted in Docket No. 316-5</i> )	<b>Docket No. 316-5</b>	Strategic Information	November 3, 2020 Order of Justice Hailey
<b>Docket Nos. 353; 354</b> Supplemental Objection to Examiner Motion ( <i>Only to the Extent Redacted in Docket No. 390</i> )	<b>Docket No. 390</b>	Strategic Information CVR Information	December 18, 2014 Order of Justice Newbould; November 18, 2021 Order of Justice Conway

4. Except as otherwise provided herein, all prior Sealing Orders shall remain in full force and effect.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

**EXHIBIT B**

**Declaration**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

Chapter 15

Crystallex International Corporation,<sup>1</sup>

Case No. 11-14074 (LSS)

Debtor in a Foreign Proceeding.

**DECLARATION OF ROBERT A. FUNG IN SUPPORT OF  
MOTION OF FOREIGN REPRESENTATIVE FOR ENTRY OF  
AN ORDER AUTHORIZING THE CONTINUED SEALING OF  
CERTAIN CONFIDENTIAL INFORMATION**

I, Robert A. Fung, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Chairman and Chief Executive Officer (“CEO”) of Crystallex International Corporation, the court-appointed foreign representative (the “Foreign Representative”) for the above-captioned debtor (the “Debtor” or “Crystallex”) in a proceeding (the “Canadian Proceeding”) under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), pending before the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”). I have also been a director of Crystallex since 1996, Chairman of the Board of Directors of Crystallex since 1998, and CEO since June 2008. In such capacity, I am familiar with the day-to-day operations, business, and financial affairs of the Debtor.

2. I submit this Declaration in support of the *Motion of the Foreign Representative for Entry of an Order Authorizing the Continued Sealing of Certain Confidential Information* (the “Motion”), filed concurrently herewith.<sup>2</sup>

<sup>1</sup> The last four digits of the Debtor’s United States federal tax identification number are 2628. The Debtor’s executive headquarters are located at 8 King Street East, Suite 1401, Toronto, Ontario, M5C 1B5, Canada.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Motion.

3. On November 28, 2022, this Court entered an order requiring the Foreign Representative to file unredacted versions of all of the documents currently under seal in this proceeding or file a motion seeking continued sealing by no later than January 27, 2023. *See* Docket No. 373 ¶ 7 (the “November 28 Order”). In the intervening period, the Foreign Representative has carefully reviewed the documents currently under seal and analyzed whether, and to what extent, continued sealing is necessary.

4. Following this review, the Foreign Representative determined that portions of the previously sealed information should be unsealed, and—contemporaneously herewith—has filed either fully unsealed or partially redacted versions of such filings, as set forth in the Motion.

5. The information previously sealed (and now unsealed in the contemporaneously filed unsealing papers) related predominantly to certain terms of the DIP Credit Agreement and the Debtor’s financial affairs. After internal review, the Debtor has determined that such information likely no longer qualifies for protection under Bankruptcy Code section 107(b).

6. By contrast, the remaining sealed documents (detailed in the Motion) include two categories of information that would be devastating to the Debtor and its principals if unsealed. The first category of information is the litigation strategy of the Debtor with respect to its pursuit of the Award against Venezuela (the “Strategic Information”). The Award is the *only* material asset of the Debtor, and revealing such litigation strategy is tantamount to disclosing the “secret ingredient” for an operating company. If Venezuela were to have access to this information, the likelihood of Crystallex being able to collect on the Award would be greatly diminished.

7. The second category of information is related to the amount of contingent value rights (“CVRs”) that have been transferred from the DIP Lender to the two remaining principals of the Debtor, me and Marc Oppenheimer (the “CVR Information”). The CVRs were initially provided by the Debtor to the DIP Lender as a form of consideration, and entitle the holder to receive a percentage share in the proceeds of the Award payable in accordance with the Court-approved waterfall and terms set forth in the DIP Credit Agreement. The DIP Lender subsequently assigned a portion of its CVRs to me and Mr. Oppenheimer pursuant to an agreement that was approved by the Canadian Court. While the total amount of CVRs provided to the DIP Lender has been made public, the portion afforded to me and Mr. Oppenheimer has not been disclosed. Mr. Oppenheimer and I are the primary negotiators with respect to the Debtor’s attempts to monetize the Award, negotiations that have required, and will likely continue to require, travel to Venezuela for meetings. As explained further below, information regarding the wealth of individuals (such as the expected proceeds from the CVRs) is often utilized in Venezuela to target such individuals for kidnapping and other harm. If the CVR information were to be publicly disclosed, not only would our personal welfare be compromised, the ability to monetize the Award would additionally be put at risk. Following any public disclosure of this information, Mr. Oppenheimer and I would be unwilling to travel to Venezuela, making negotiations, political efforts and litigation efforts with respect to the Award much more difficult, if not impossible.

8. Importantly, the limited information that the Foreign Representative is seeking to continue to protect pursuant to the Motion has already been ordered to remain sealed by the Canadian Court. In December 2022, the Canadian Court expressly ruled that the Strategic Information must remain sealed. The Canadian Court similarly ruled in November 2021 that the CVR Information must remain sealed, denying a request by an ad hoc committee of Crystallex’s

noteholders who were seeking the unsealing and public disclosure of this information previously sealed by the Canadian Court.

9. Throughout the Canadian Proceeding, the Canadian Court has found cause to grant Crystallex's requests to seal certain confidential information. Indeed, the Canadian Court previously ordered the sealing of the same materials the Foreign Representative seeks to maintain under seal in this Court through the following orders:

a. The *April 16, 2012 Order of Justice Newbould*, a true and correct copy of which is attached hereto as **Exhibit 1**;

b. The *April 14, 2014 Endorsement of Justice Newbould*, a true and correct copy of which is attached hereto as **Exhibit 2**;

c. The *December 18, 2014 Order of Justice Newbould*, a true and correct copy of which is attached hereto as **Exhibit 3**;

d. The *October 29, 2018 Order of Justice Hainey*, a true and correct copy of which is attached hereto as **Exhibit 4**;

e. The *May 3, 2019 Order of Justice Hainey*, a true and correct copy of which is attached hereto as **Exhibit 5**;

f. The *November 4, 2019 Order of Justice Hainey*, a true and correct copy of which is attached hereto as **Exhibit 6**;

g. The *November 3, 2020 Order of Justice Hainey*, a true and correct copy of which is attached hereto as **Exhibit 7**;

h. The *November 18, 2021 Endorsement of Justice Conway*, a true and correct copy of which is attached hereto as **Exhibit 8**;



i. The *November 18, 2021 Order of Justice Conway*, a true and correct copy of which is attached hereto as **Exhibit 9**; and

j. The *December 12, 2022 Order of Justice Conway*, a true and correct copy of which is attached hereto as **Exhibit 10**.

***(i) The Strategic Information***

10. Historically, a critical component of Crystallex's enforcement strategy and a key to its success thus far has been its ability to maintain the confidentiality of the strategies employed in attempting to monetize the Award. The Strategic Information reveals important details about the approach that the Debtor is taking in the U.S. enforcement proceedings, including discussions of the Debtor's ongoing enforcement planning and its deliberative process including legal and other analyses and evaluations of its adversaries, competing creditors and other relevant entities. I am certain that revealing these views and strategies publicly would harm Crystallex in its enforcement efforts against Venezuela, to the detriment of all of the Debtor's stakeholders.

11. Unlike operating debtors—where litigation strategy may be one part of an overall business plan—the Strategic Information here is all encompassing; it is the “secret sauce” for the Debtor's one “product.” Disclosing the methodology behind the Debtor's efforts to monetize the Award would jeopardize the recovery for the Debtor's stakeholders.

***(ii) The CVR Information***

12. With respect to the CVR Information, the confidentiality of this personal financial information is necessary at this time to protect the safety of Mr. Oppenheimer and me, and given our involvement in the prior settlement negotiations and our historical knowledge and relationships, we would expect to be involved in any future direct discussions and negotiations with Venezuela, including, in certain cases, in-country. Public disclosure of the amount of CVRs

paid to us would increase the risks that we will be targeted for kidnapping-for-ransom, or other harm, in Venezuela. Indeed, the Canadian Court, recognizing such risk, ordered that this information be kept under seal in 2014 and again in a contested matter in 2021. *See* Exhibits 2, 3, 8, and 9.

13. In addition, given the risk to our personal safety that the disclosure of the CVR Information poses, Mr. Oppenheimer and I would be unwilling to attend any in-person negotiations with Venezuela if this information was made public. This, in turn, would impact the Debtor's ability to monetize the Award, as Mr. Oppenheimer and I have served as the primary negotiators for the Debtor over the past decade and are critical elements of the Debtor's litigation strategy. As such, disclosing such information would negatively impact a trade secret of the Debtor.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 27, 2023  
Toronto, Ontario, Canada

/s/ Robert A. Fung

Robert A. Fung

## **EXHIBIT 1**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR	)	MONDAY, THE 16th
	)	
JUSTICE NEWBOULD	)	DAY OF APRIL, 2012



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 (the "Applicant")

**CCAA FINANCING ORDER**

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard on Thursday April 5, 2012 at the offices of Stikeman Elliott LLP at 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario with Judgment being reserved to this day.

ON READING the motion record of the Applicant, the responding records of Computershare Trust Company of Canada and Juan Antonio Reyes and on reading the report of the Monitor, Ernst & Young Inc. dated April 3, 2012 and on hearing the submissions of counsel for the Applicant, counsel for Computershare Trust Company of Canada, counsel for the DIP Lender (as defined below), the Monitor, Forbes & Manhattan, Inc. and Aberdeen International Inc., and Juan Antonio Reyes,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**DEFINITIONS**

2. THIS COURT ORDERS that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meaning given to them in the Initial Order of this Court granted in these proceedings on December 23, 2011 (the "Filing Date") as amended pursuant to the Order of this Court granted in these proceedings on January 20, 2012 (the "Initial Order"), or in the Credit Agreement, as applicable.

**DIP FINANCING**

3. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender (as hereinafter defined) pursuant to a credit agreement ("Credit Agreement") between the Applicant and Tenor Special Situation Fund I, LLC (together with any and all successors, assigns and transferees, each as permitted under the Credit Agreement, as applicable) (the "DIP Lender") in order to finance the Applicant's working capital requirements and other general corporate purposes, including without limitation in order to continue to manage, prosecute, pursue and pay the fees and disbursements of counsel and experts in connection with the Arbitration Proceedings (the "Financing"), provided that the principal amount borrowed under such credit facility shall not exceed US\$36,000,000 unless permitted by further Order of this Court.

4. THIS COURT ORDERS THAT the Credit Agreement referred to in Paragraph 3 hereof shall be substantially on the terms and subject to the conditions set forth in the draft senior secured credit agreement between the Applicant and DIP Lender dated as of April 5, 2012 attached to the Commitment Letter dated March 19, 2012 filed, which terms and conditions and Credit Agreement are hereby approved.

5. THIS COURT ORDERS that the provisions of the Credit Documents (and for greater certainty including the Security Documents) contemplated by the Credit Agreement are hereby

approved, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Credit Agreement and the Credit Documents as and when the same become due and are to be performed.

6. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted:

- (a) a charge (the “DIP Charge”) on all Property (other than Excluded Property), which DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement or any other Credit Document (including all principal, interest and fees) except for any obligation of the Applicant to pay Lender Additional Compensation to the DIP Lender; and
- (b) a charge (the “Lender Additional Compensation Charge”) on all Property (other than Excluded Property), which Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay the Lender Additional Compensation to the DIP Lender in accordance with the Credit Agreement.

Neither the DIP Charge nor the Lender Additional Compensation Charge shall secure any obligation that existed before the Initial Order was made. The DIP Charge and the Lender Additional Compensation Charge shall have the priority set out in paragraph 17 hereof.

7. THIS COURT ORDERS that, notwithstanding any provision of the Initial Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge, the Lender Additional Compensation Charge or any of the Credit Documents;
- (b) upon the occurrence of an Event of Default under the Credit Agreement, the Credit Documents, the DIP Charge or the Lender Additional Compensation Charge, the DIP Lender may exercise any and all of the following rights and remedies against the Applicant or the Property (other than Excluded Property and, except to the extent permitted by the Credit Agreement, the Arbitration Proceeding Rights) under or pursuant to the Credit Agreement, Credit Documents, the DIP Charge or the Lender

Additional Compensation Charge: (i) to cease making advances to the Applicant; and (ii) upon seven days notice to the Applicant and the Monitor, (A) to set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the Credit Agreement, the Credit Documents, the DIP Charge or the Lender Additional Compensation Charge; (B) to make demands, accelerate payment and give other notices; or (C) to apply to this Court for the enforcement of the DIP Charge or the Lender Additional Compensation Charge or any of the security provided for in either the Credit Agreement or any of the Credit Documents (in each case subject to the limitations on enforcement of the remedies set forth in such agreement) or of any other rights or remedies provided for in the Credit Agreement or any Credit Document; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or any Property.

8. THIS COURT ORDERS AND DECLARES that the DIP Lender, its rights under the Credit Documents, and the Obligations shall be treated as unaffected in any plan of compromise or arrangement approved under the CCAA, or any proposal approved under the BIA.

9. THIS COURT ORDERS that, notwithstanding any other provision of this order, sections 6.13, 6.14, 6.15 and 6.16 of the Credit Agreement shall not come into force until any applicable appeal period arising from the decision underlying this order to the Ontario Court of Appeal has expired or, if a motion for leave to appeal has been filed, until such motion and any appeal for which leave is granted shall have been dismissed by the Ontario Court of Appeal.

10. THIS COURT ORDERS that, notwithstanding any other provision of this Order, the Applicant shall not borrow the Final Order Loan (as defined in the Credit Agreement) before any applicable appeal period arising from the decision underlying this order to the Ontario Court of Appeal has expired or, if a motion for leave to appeal has been filed, until such motion and any appeal for which leave is granted shall have been dismissed by the Ontario Court of Appeal, without two weeks prior written notice to counsel for Computershare Trust Company of Canada, Forbes & Manhattan, Inc., Aberdeen International Inc., and Juan Antonio Reyes, in order to permit those parties to move for a stay if so advised.

11. THIS COURT ORDERS that, if the Applicant borrows the first tranche of the loan under the Credit Agreement and this Court's approval of the Credit Agreement is set aside in its entirety by the Ontario Court of Appeal, then the undertaking that the noteholders listed in Schedule A hereto (the "Noteholders") gave to this Court to advance US \$10,000,000 to the Applicant at interest of 1% per annum shall be deemed to be immediately called upon and such Noteholders shall be required and are ordered to forthwith lend to the Applicant US \$10,000,000 at an interest rate of 1% per annum in the proportions set out in Schedule A hereto and pursuant to a credit agreement substantially in the form of the credit agreement proposed by the Noteholders in their DIP bid on February 6, 2012 (the "Noteholder Credit Agreement") but amended to the extent necessary to reflect the approval of the MIP (if not set aside on appeal) and the requirement in this paragraph that the Applicant use such funds to pay to the DIP Lender all amounts then owing to the DIP Lender (such loan by the Noteholders to be made regardless of whether or not (i) any representations or warranties in the Noteholder Credit Agreement are untrue, (ii) any Defaults or Events of Default (as defined in the Noteholder Credit Agreement) have occurred, or (iii) any other conditions precedent contained in the Noteholder Credit Agreement have not been satisfied). The Applicant shall use such funds to immediately pay the DIP Lender all amounts then owing to the DIP Lender pursuant to the terms of the Credit Agreement, provided that in such circumstance and upon such payment by the Noteholders, interest on the Financing shall accrue at 1% per annum calculated half-yearly not in advance and the DIP Lender shall have no right to any commitment fee which, if already paid, shall be deducted from the repayment of the loan to the DIP Lender at which point the Financing and the Credit Agreement shall be terminated. The Applicant shall be entitled to retain any balance remaining from the \$10,000,000 loan from the Noteholders to be used for operational purposes in accordance with the Noteholder Credit Agreement. Upon the making of such advance by the Noteholders and payment to the DIP Lender, the Noteholders shall be automatically entitled to the benefit of the DIP Charge. This paragraph is without prejudice to the right of the Noteholders to return to this Court in the event leave to appeal from this Order is granted and before the hearing of any appeal to seek the benefit of further rights and benefits bestowed upon the DIP Lender under this Order.



12. If the Applicant, the DIP Lender or the Noteholders encounter any difficulties in the implementation of paragraph 11 above, any such parties may apply to this Court for further directions.

### **PREFILING UNSECURED CREDITORS' CHARGE**

13. THIS COURT ORDERS that the creditors of the Applicant (the "Prefiling Unsecured Creditors") that hold Unsecured Prefiling Claims (as defined below) shall be entitled to the benefit of and are hereby granted a passive, silent charge (the "Prefiling Unsecured Creditors' Charge") on the Property (other than Excluded Property), which Prefiling Unsecured Creditors' Charge shall secure the payment by the Applicant of the Unsecured Prefiling Claims with the same relative priority as among themselves as such Prefiling Unsecured Claims had immediately prior to the Filing Date. The Prefiling Unsecured Creditors' Charge shall have the priority set out in paragraph 17 hereof. In this Order, "Unsecured Prefiling Claims" means unsecured claims against the Applicant that may be dealt with in these proceedings by a plan of compromise or arrangement pursuant to Section 19 of the CCAA to the extent that such claims have been duly filed and finally determined to be valid, proven claims pursuant to Section 20 of the CCAA.

14. THIS COURT ORDERS that, notwithstanding any provision of the Initial Order the Applicant may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Prefiling Unsecured Creditors' Charge.

15. THIS COURT ORDERS that the Prefiling Unsecured Creditors' Charge is intended solely to preserve the relative priority of claims to payment following any recoveries in the Arbitration Proceeding and, accordingly, is a passive lien with no enforcement rights.

### **MONITOR POWERS**

16. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and remedies under the CCAA and under the Initial Order, is hereby directed and empowered to:

- (a) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a periodic basis of financial and other information

as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender; and

- (b) advise the Applicant in its preparation of the Applicant's cash flow statements, budgets and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis as agreed to between the Applicant and the DIP Lender.

### **VALIDITY AND PRIORITY OF CHARGE CREATED BY THIS ORDER**

17. THIS COURT ORDERS that notwithstanding any provision in the Initial Order, from and after the date hereof, the priorities of the Directors' Charge, the Administration Charge, the DIP Charge, the Prefiling Unsecured Creditors' Charge, the MIP Charge (as defined in the MIP Approval Order of Mr. Justice Newbould dated as of the date hereof) and the Lender Additional Compensation Charge, as among them, shall be as follows:

- (a) First – the Administration Charge in an amount not exceeding \$3,000,000;
- (b) Second – the DIP Charge;
- (c) Third – any future charge granted by order of this Court to secure supplemental loans made by a lender (other than the DIP Lender) after the date hereof in compliance with the Credit Agreement and with the prior permission of this Court;
- (d) Fourth – the Directors' Charge in an amount not exceeding \$10,000,000;
- (e) Fifth – the Prefiling Unsecured Creditors' Charge; and
- (f) Sixth – on a *pari passu* basis, the MIP Charge and the Lender Additional Compensation Charge,

except that the DIP Charge and the Lender Additional Compensation Charge shall have priority over all other charges with respect to the Principal Cash Collateral Account and the Additional Compensation Cash Collateral Account, respectively.

18. THIS COURT ORDERS that each of the DIP Charge, the Prefiling Unsecured Creditors' Charge, and the Lender Additional Compensation Charge (each as constituted and defined

herein) shall constitute a charge on all Property (other than the Excluded Property) and such Charges shall rank senior in priority to all other Encumbrances in favour of any Person except as expressly set out in Paragraph 17 hereof.

19. THIS COURT ORDERS that the filing, registration or perfection of the DIP Charge, the Prefiling Unsecured Creditors' Charge and the Lender Additional Compensation Charge shall not be required, and that the DIP Charge, the Prefiling Unsecured Creditors' Charge and the Lender Additional Compensation Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to such charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

20. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the DIP Charge, Prefiling Unsecured Creditors' Charge or the Lender Additional Compensation Charge, unless the Applicant also obtains the prior written consent of the beneficiaries of such charges or further Order of this Court but, despite the foregoing, the Applicant shall not grant any Encumbrance over any Property that is prohibited by the provisions of the Credit Agreement and ranks in priority to or *pari passu* with the DIP Charge or the Lender Additional Compensation Charge.

21. THIS COURT ORDERS that the Credit Agreement, the Credit Documents, the DIP Charge, the Prefiling Unsecured Creditors' Charge and the Lender Additional Compensation Charge and any advances made under the Credit Agreement by the DIP Lender in good faith shall not be rendered invalid or unenforceable and the rights and remedies of the beneficiaries of the charges created by this Order shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing Agreement which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) none of the creation of the DIP Charge, the Prefiling Unsecured Creditors' Charge or the Lender Additional Compensation Charge nor the execution, delivery, perfection, registration or performance of the Credit Agreement or the Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) neither the beneficiaries of the charges created by this Order nor the Applicant shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the DIP Charge, the Prefiling Unsecured Creditors' Charge or the Lender Additional Compensation Charge or the execution, delivery or performance of the Credit Agreement or the Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement or the Credit Documents, and the granting of the DIP Charge, the Prefiling Unsecured Creditors' Charge and the Lender Additional Compensation Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

22. THIS COURT ORDERS that the charges created by this Order over leases of real property in Canada shall only be a charge in the Applicant's interest in such real property leases.

#### **STAY EXTENSION**

23. THIS COURT ORDERS that the Stay Period in paragraph 16 of the Initial Order, be and hereby is extended to and including July 30, 2012.

#### **APPROVAL OF MONITOR'S SECOND AND THIRD REPORTS**

24. THIS COURT ORDERS that the Second and Third Reports of the Monitor and the activities as set out therein be and are hereby approved.

#### **CONFIDENTIALITY**

25. **THIS COURT ORDERS** that all affidavits, motion records, transcripts, facts or any other materials that have been labelled as "Confidential" (the "Confidential Information") in these proceedings shall not form any part of the public record in this proceeding.

26. **THIS COURT ORDERS** that all material labelled as "Confidential" shall not be copied or disseminated beyond counsel or client representatives or experts previously authorized in this proceeding or to be authorized by the Applicant or by further order of this Court and that the contents of such material shall be used only for purposes of this proceeding.

27. **THIS COURT ORDERS** that the determination of whether any client representatives who have received the confidential materials shall destroy such materials after the expiry of all applicable appeal periods relating to this motion is subject to further order.

28. **THIS COURT ORDERS** that the parties may apply to the Court to modify the provisions in paragraphs 25 to 27 of this Order and nothing in this Order shall be deemed to prejudice their rights to seek such modification or to assert that the materials designated as Confidential are not confidential.

#### **GENERAL**

29. **THIS COURT ORDERS AND DECLARES** that the charge in favour of the Bridge Lender in the order of this Court dated January 20, 2012 be and hereby is released and discharged upon payment in full to the Bridge Lender of all amounts outstanding under the Bridge Facility (including all principal, interest and other amounts owing to the Bridge Lender with respect thereto) approved by that order.

30. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Financing, the DIP Charge or the Lender Additional Compensation Charge shall subsequently be stayed, modified, varied, amended, reversed or vacated in whole or in part (collectively a "Variation") whether by subsequent order of this Court or on or pending an appeal from this Order, such Variation shall not, subject to paragraphs 11 and 12 herein, in any way impair, limit or lessen the protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation) or under any of the documentation delivered pursuant hereto, with respect to any advances made prior to the DIP Lender being given notice of the Variation.

31. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

32. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders, including an order of the Bankruptcy Court granting the DIP Lender the protections afforded by section 364 of title 11 of the United States Code, and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

33. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

34. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO  
CN / BOOK NO:  
LE / DANS LE REGISTRE NO.:

APR 20 2012



**SCHEDULE A****Pro Rata Shares of Noteholder US\$10 million Commitment**

Commitment	US\$10,000,000.00		
	Bonds \$	Bridge %	Amounts \$
Quintessence Fund L.P.	3,497,000	4.2%	424,213.02
QVT Fund LP	32,532,000	39.5%	3,946,382.00
Outrider Master Fund LP	20,275,000	24.6%	2,459,513.56
Greywolf Capital Partners II LP	6,282,490	7.6%	762,114.39
Greywolf Capital Overseas Master Fund	12,320,510	14.9%	1,494,572.69
Stornoway Recovery Fund LP	5,278,000	6.4%	640,262.02
Ravensource Fund	2,250,000	2.7%	272,942.32
Committee	82,435,000	100.0%	10,000,000.00

IN MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, 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

**CCAA FINANCING ORDER**

**McMILLAN LLP**  
Brookfield Place  
181 Bay Street, Suite 4400  
Toronto, ON M5J 2T3

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**Jeffrey Levine** LSUC#: 55582H  
jeffrey.levine@mcmillan.ca  
Tel: (416) 865-7791 / Fax: (416) 865-7048

Lawyers for Crystallex International Corporation



## **EXHIBIT 2**

April 14-14<sup>233</sup>

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

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

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD  
(Motion returnable April 14, 2014)

Davies Ward Phillips & Vineberg LLP  
155 Wellington Street West  
Toronto, ON M5V 3J7

Jay Swartz (LSUC #15417L)  
Natalie Renner (LSUC #55954A)  
Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for Crystallex International Corporation

April 14, 2014

The relief sought is ~~unopposed~~,  
subject to the trustee for the bondholders  
confirming it is not opposing the  
relief sought. The minutes support  
the relief sought, including  
the additional \$50,000 to be added to  
the second additional principal amount.  
I am satisfied that the requirements  
of the CCAA for the additional DIB  
loan + security have been met,  
and that the extensions sought  
are appropriate (subject to any  
agreement that the trustee may make).  
The order have been signed. The

Monitor will hold them in abeyance pending information that the Trustee does not agree the relief sought.

The documents be sealed until the test of time.

Done J.

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

**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**

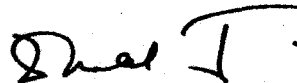
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF CRYSTALLEX INTERNATIONAL  
CORPORATION**

Applicant

**Supplemental Endorsement**

The Applicant advises that it urgently requires an advance of U.S. \$300,000 to pay expenses due and owing by the Applicant. The Monitor supports such interim advance. The Lender has agreed to make a partial advance of Supplemental Loan Tranche A in the amount of U.S. \$300,000. The Court approves such interim advance of Supplemental Loan Tranche A and the third amendment to the DIP credit agreement may be amended accordingly to permit and reflect such partial advance. For certainty, the partial advance shall be deemed to be "Obligations" under the DIP Credit Agreement, as amended, and the partial advance shall be secured by the "Security Documents" and the applicable court ordered charges in favour of the Lender.

April 15, 2014

A handwritten signature in black ink, appearing to be "D. J. T.", is written over the date.

### **EXHIBIT 3**



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.  
JUSTICE NEWBOULD

)  
)

THURSDAY, THE 18th  
DAY OF DECEMBER, 2014

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 (the "**Applicant**")

## NET ARBITRATION PROCEEDS TRANSFER AGREEMENT ORDER

**THIS MOTION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the motion record of the Applicant, the affidavit of Harry Near dated December 15, 2014, the supplementary affidavit of Harry Near dated December 16, 2014, the Thirteenth Report of the Monitor, Ernst & Young Inc. (the "**Monitor**") dated December 13, 2014, and on hearing the submissions of counsel for the Applicant, counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011, issued by the Applicant (the "**Senior Notes**"), counsel for the Ad Hoc Committee (as defined below) and each beneficial owner of the Senior Notes that is part of the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto) (the "**Ad Hoc Committee**") in all capacities, including, without limitation, as beneficial owners of the Senior Notes and, to the extent applicable, shareholders or holders of other equity interests of the Applicant, counsel for the Lender (as defined below), counsel for Greywolf Loan Participation LLC, as the holder of equity interests of the Applicant ("**Greywolf**"), counsel for the Monitor, and counsel for Juan Antonio Reyes:

## SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## DEFINITIONS

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the NAP Transfer Agreement (as defined below).

## LEAVE

3. **THIS COURT ORDERS** that the Applicant is granted leave to bring this motion.

## NET ARBITRATION PROCEEDS TRANSFER AGREEMENT

4. **THIS COURT ORDERS** that the Net Arbitration Proceeds Transfer Agreement among Crystallex International Corporation, Tenor KRY Cooperatief U.A. (the "**Lender**"), Robert Fung, and Marc Oppenheimer (the "**NAP Transfer Agreement**") and all transactions contemplated thereby are fair, reasonable and appropriate and are hereby approved and authorized in their entirety.

5. **THIS COURT ORDERS** that the parties to the NAP Transfer Agreement (the "**NAP Agreement Parties**") are hereby authorized and directed to execute and deliver the NAP Transfer Agreement in substantially the form filed with the Court and any and all documents contemplated or required by the parties thereto in connection with the NAP Transfer Agreement. The NAP Agreement Parties (as may be applicable) are hereby authorized and directed to take such additional steps without further Court approval, as may be necessary or desirable for the completion of the transactions described in the NAP Transfer Agreement.

6. **THIS COURT ORDERS AND DECLARES** that the provisions of the NAP Transfer Agreement shall not be rendered invalid or unenforceable and shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the Bankruptcy and Insolvency Act, R.S.C. 1985, C. B-3 (the "**BIA**"), or any bankruptcy order made

pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes or any common law; or (e) any negative covenants, prohibitions or other similar provisions contained in any existing agreement (an "**Agreement**") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:

- (a) none of the execution, delivery or performance of the NAP Transfer Agreement shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the NAP Transfer Agreement; and
- (c) the transactions approved and made by the NAP Agreement Parties pursuant to the NAP Transfer Agreement and this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

## CONFIDENTIALITY

7. **THIS COURT ORDERS** that all materials filed in connection with this motion that have been labeled as "Confidential" (the "**Sealed Materials**") shall be sealed and not form any part of the public record in this proceeding.

8. **THIS COURT ORDERS** that the Sealed Materials shall not be copied or disseminated beyond counsel or experts previously authorized in this proceeding or to be authorized by the Applicant or by further order of this Court.

9. **THIS COURT ORDERS** that any party may apply to the Court on proper notice to all parties in interest to modify the provisions in paragraphs 7 and 8 of this Order and nothing in this Order shall be deemed to prejudice their rights to seek such modification or to assert that the Sealed Materials are not confidential.



**GENERAL**

**10. THIS COURT ORDERS** this Order and its terms shall only become effective upon entry of a Final Order of the Court approving the Approval Order. "Final Order" shall mean an Order of this Court from which all applicable appeal periods have expired and the Order is not subject to an application for leave to appeal, appeal, or further right of appeal or any stay, and the Order shall not have been reversed, vacated, or unless agreed by the Lender in writing, amended or modified in any manner.

**11. THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

**12. THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

**13. THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

DEC 19 2014

MB



## **SCHEDULE "A"**

### **BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Outrider Master Fund, LP
5. Ravensource Fund
6. Stornoway Recovery Fund LP

IN MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, 1985, c.0-36  
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**

Proceeding commenced at Toronto

**SUPERIOR COURT OF JUSTICE —  
COMMERCIAL LIST**

**NET ARBITRATION PROCEEDS TRANSFER AGREEMENT  
ORDER**

**Davies Ward Phillips & Vineberg LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

Jay Swartz (LSUC #15417L)  
Bryan D. McLeese (LSUC #55607C)  
Tel 416.863.0900  
Fax: 416.863.0871

Lawyers for Crystallex International Corporation

## **EXHIBIT 4**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**



THE HONOURABLE

MR. JUSTICE HAINEY

)  
)  
)

MONDAY THE 29TH DAY

OF OCTOBER, 2018

**IN THE MATTER OF** the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C36 as amended

**AND IN THE MATTER OF** a Plan of Compromise or Arrangement of Crystallex International Corporation

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**ORDER**

**THIS MOTION**, made by the Applicant was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Robert Fung, sworn October 23, 2018 (the "**Fung Affidavit**"), the Twenty-Eighth Report of the Monitor, Ernst & Young Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Luxembourg Investment Company 31 S.à.r.l., in its capacity as the debtor-in-possession lender of the Applicant (the "**DIP Lender**"), counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011 issued by the Applicant (the "**Senior Notes**") and the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto), and counsel for the *ad hoc* committee of

shareholders or holders of other equity interests of the Applicant (the "**Ad Hoc Committee**"):

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the "**CCAA Financing Order**") or in the Credit Agreement, as applicable.

## **EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including May 6, 2019 (the "**Stay Extension**").

## **EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. on such date and subsequently assigned to the DIP Lender, as previously amended by the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment

agreement dated June 5, 2013, the third credit agreement amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018 and the ninth credit agreement amendment dated as of May 9, 2018 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the tenth credit agreement amendment between the DIP Lender and the Applicant (the "**Tenth Credit Agreement Amendment**") attached as Exhibit "A" to the Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Tenth Credit Agreement Amendment, provided that any date references therein to October 31, 2018 shall be changed to May 6, 2019.

5. **THIS COURT ORDERS** that the provisions and terms of the Tenth Credit Agreement Amendment, the Credit Agreement as amended by the Tenth Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant is hereby authorized and directed to pay and perform all of its principal indebtedness, interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Tenth Credit Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

6. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Tenth Credit Agreement

Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Tenth Credit Agreement Amendment.

7. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Tenth Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;
- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount in accordance with the Credit Agreement, as amended by the Tenth Credit Agreement Amendment; and
- (c) the DIP Charge and the Lender Additional Compensation Charge shall continue to have the priority set out in paragraph 17 of the CCAA Financing Order.



8. **THIS COURT ORDERS** that the Credit Agreement, the Tenth Credit Agreement Amendment, the other Credit Documents, the DIP Charge and the Lender Additional Compensation Charge, any advances made in good faith by the DIP Lender under the Credit Agreement, as amended by the Tenth Credit Agreement Amendment, and the Applicant's agreement to pay (and the payment of) Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount to the DIP Lender are fair, reasonable and appropriate and shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes or any common law; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement (an "**Agreement**") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:

- (a) none of the execution, delivery or performance of the Credit Agreement, the Tenth Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Tenth Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Tenth Credit Agreement Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

9. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as applicable, shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by

the Tenth Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

#### **APPOINTMENT OF CLAIMS OFFICER**

10. **THIS COURT ORDERS** that the Honourable Frank Newbould shall be appointed as the claims officer for the purposes of the general claims procedure described in the General Claims Procedure Order dated November 30, 2012

#### **CONFIDENTIALITY**

11. **THIS COURT ORDERS** that the following materials in connection with this motion (the "**Confidential Materials**") shall be filed under a protective order and not form any part of the public record in this proceeding:

- (a) the Confidential Motion Record of the Applicant, which includes the unredacted Fung Affidavit and the unredacted notice of motion; and
- (b) the Confidential Unredacted Twenty-Eighth Report of Ernst & Young Inc. in its Capacity as Monitor.

12. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

13. **THIS COURT ORDERS** that, subject to the endorsement of this court dated June 7, 2016, any party may apply to the Court on proper notice to all parties in interest to modify the provisions in paragraphs 11 and 12 of this Order and nothing in

this Order shall be deemed to prejudice their rights to seek such modification or to assert that the Confidential Materials are not confidential.

## **TOLLING**

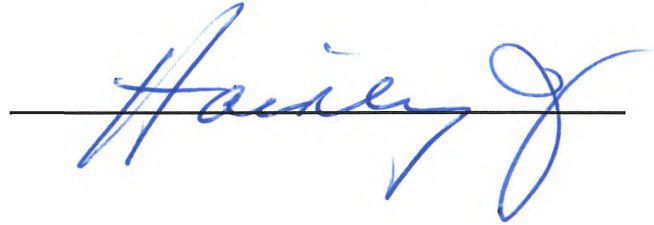
14. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

## **GENERAL**

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 29 2018

PER / PAR:



**SCHEDULE "A"**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Ravensource Fund
5. Stornoway Recovery Fund LP

**IN THE MATTER OF** a Plan of Compromise or Arrangement of Crystallex International Corporation

**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
Toronto, ON M5V 3J7

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Fax: 416.863.0871

Lawyers for the Applicant



## **EXHIBIT 5**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY THE 3rd DAY  
MR. JUSTICE HAINEY ) OF MAY, 2019

**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant



**ORDER**

**THIS MOTION**, made by the Applicant was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Robert Fung, sworn April 23, 2019 (the "**Fung Affidavit**"), the Thirty-First Report of the Monitor, Ernst & Young Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Luxembourg Investment Company 31 S.à.r.l., in its capacity as the debtor-in-possession lender of the Applicant (the "**DIP Lender**"), counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011 issued by the Applicant (the "**Senior Notes**") and the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto), and counsel for the *ad hoc* committee of

- 2 -

shareholders or holders of other equity interests of the Applicant (the "**Ad Hoc Committee**"):

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the "**CCAA Financing Order**") or in the Credit Agreement, as applicable.

### **EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including November 6, 2019 (the "**Stay Extension**").

### **EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. on such date and subsequently assigned to the DIP Lender, as previously amended by the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment

- 3 -

agreement dated June 5, 2013, the third credit agreement amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018, the ninth credit agreement amendment dated as of May 9, 2018 and the tenth credit agreement amendment dated as of October 31, 2018 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the eleventh credit agreement amendment between the DIP Lender and the Applicant (the "**Eleventh Credit Agreement Amendment**") attached as Exhibit "A" to the Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Eleventh Credit Agreement Amendment, provided that any date references therein to May 6, 2019 shall be changed to November 6, 2019.

5. **THIS COURT ORDERS** that the provisions and terms of the Eleventh Credit Agreement Amendment, the Credit Agreement as amended by the Eleventh Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant is hereby authorized and directed to pay and perform all of its principal indebtedness, interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Eleventh Credit Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

6. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Eleventh Credit Agreement Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Eleventh Credit Agreement Amendment.

7. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Eleventh Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;
- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount in accordance with the Credit Agreement, as amended by the Eleventh Credit Agreement Amendment; and

- 6 -

- (a) none of the execution, delivery or performance of the Credit Agreement, the Eleventh Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Eleventh Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Eleventh Credit Agreement Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

9. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as

applicable, shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by the Eleventh Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

### **CONFIDENTIALITY**

10. **THIS COURT ORDERS** that the following materials in connection with this motion (the "**Confidential Materials**") shall be filed under a protective order and not form any part of the public record in this proceeding:

- (a) the Confidential Motion Record of the Applicant, which includes the unredacted Fung Affidavit and the unredacted notice of motion; and
- (b) the Confidential Unredacted Thirty-First Report of Ernst & Young Inc. in its Capacity as Monitor.

11. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

12. **THIS COURT ORDERS** that, subject to the endorsement of this court dated June 7, 2016, any party may apply to the Court on proper notice to all parties in interest to modify the provisions in paragraphs 10 and 11 of this Order and nothing in

this Order shall be deemed to prejudice their rights to seek such modification or to assert that the Confidential Materials are not confidential.

### **TOLLING**

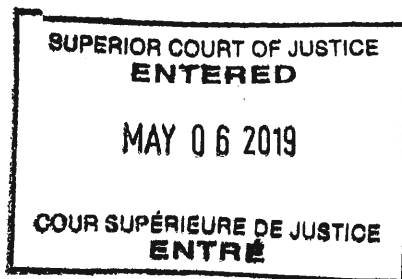
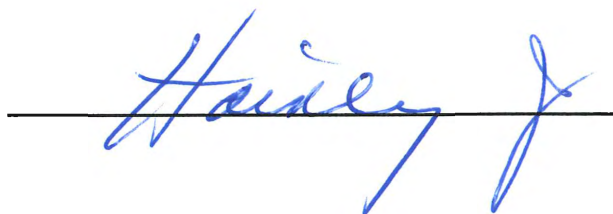
13. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

### **GENERAL**

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.



15. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.
16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.



**SCHEDULE "A"**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Ravensource Fund
5. Stornoway Recovery Fund LP

**IN THE MATTER OF** a Plan of Compromise or Arrangement of Crystallex International Corporation

**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
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Fax: 416.863.0871

Lawyers for the Applicant

## **EXHIBIT 6**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY THE 4th DAY
	)	
MR. JUSTICE HAINEY	)	OF NOVEMBER, 2019



**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**ORDER**

**THIS MOTION**, made by the Applicant was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Affidavit of Robert Fung, sworn October 25, 2019 (the "**Fung Affidavit**"), the Thirty-Second Report of the Monitor, Ernst & Young Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Luxembourg Investment Company 31 S.à.r.l., in its capacity as the debtor-in-possession lender of the Applicant (the "**DIP Lender**"), counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011 issued by the Applicant (the "**Senior Notes**") and the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto), and counsel for the *ad hoc* committee of

shareholders or holders of other equity interests of the Applicant (the "**Ad Hoc Committee**"):

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the "**CCAA Financing Order**") or in the Credit Agreement, as applicable.

### **EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including May 6, 2020 (the "**Stay Extension**").

### **EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. on such date and subsequently assigned to the DIP Lender, as previously amended by the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment

agreement dated June 5, 2013, the third credit agreement amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018, the ninth credit agreement amendment dated as of May 9, 2018, the tenth credit agreement amendment dated as of October 31, 2018 and the eleventh credit agreement amendment dated as of May 6, 2019 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the twelfth credit agreement amendment between the DIP Lender and the Applicant (the "**Twelfth Credit Agreement Amendment**") attached as Exhibit "A" to the Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Twelfth Credit Agreement Amendment, provided that any date references therein to November 6, 2019 shall be changed to May 6, 2020.

5. **THIS COURT ORDERS** that the provisions and terms of the Twelfth Credit Agreement Amendment, the Credit Agreement as amended by the Twelfth Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant is hereby authorized and directed to pay and perform all of its principal indebtedness, interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Twelfth Credit Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

6. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Twelfth Credit Agreement Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Twelfth Credit Agreement Amendment.

7. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Twelfth Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;
- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount in accordance with the Credit Agreement, as amended by the Twelfth Credit Agreement Amendment; and



- (c) the DIP Charge and the Lender Additional Compensation Charge shall continue to have the priority set out in paragraph 17 of the CCAA Financing Order.

8. **THIS COURT ORDERS** that the Credit Agreement, the Twelfth Credit Agreement Amendment, the other Credit Documents, the DIP Charge and the Lender Additional Compensation Charge, any advances made in good faith by the DIP Lender under the Credit Agreement, as amended by the Twelfth Credit Agreement Amendment, and the Applicant's agreement to pay (and the payment of) Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount to the DIP Lender are fair, reasonable and appropriate and shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes or any common law; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement (an "**Agreement**") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:

- (a) none of the execution, delivery or performance of the Credit Agreement, the Twelfth Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Twelfth Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Twelfth Credit Agreement Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

9. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as

applicable, shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by the Twelfth Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

### **CONFIDENTIALITY**

10. **THIS COURT ORDERS** that the following materials in connection with this motion (the "**Confidential Materials**") shall be filed under a protective order and not form any part of the public record in this proceeding:

- (a) the Confidential Motion Record of the Applicant, which includes the unredacted Fung Affidavit and the unredacted notice of motion; and
- (b) the Confidential Unredacted Thirty-Second Report of Ernst & Young Inc. in its Capacity as Monitor.

11. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

12. **THIS COURT ORDERS** that, subject to the endorsement of this court dated June 7, 2016, any party may apply to the Court on proper notice to all parties in interest to modify the provisions in paragraphs 10 and 11 of this Order and nothing in

this Order shall be deemed to prejudice their rights to seek such modification or to assert that the Confidential Materials are not confidential.

#### **TOLLING**

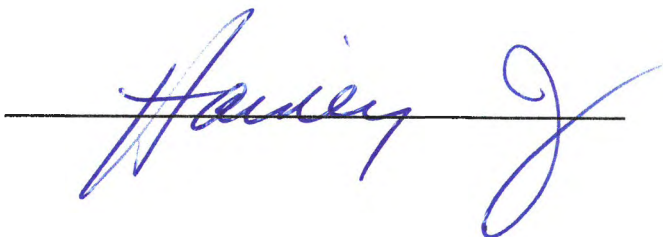
13. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

#### **GENERAL**

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

NOV 04 2019

PER / PAR:



**SCHEDULE "A"**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Ravensource Fund
5. Stornoway Recovery Fund LP

IN THE MATTER OF a Plan of Compromise or Arrangement of Crystallex International Corporation

**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
155 Wellington Street West  
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Fax: 416.863.0871

Lawyers for the Applicant

## **EXHIBIT 7**



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

TUESDAY THE 3<sup>rd</sup> DAY

MR. JUSTICE HAINEY

)

OF NOVEMBER, 2020

)



**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**ORDER**

**THIS MOTION**, made by the Applicant proceeded by way of judicial videoconference due to the COVID-19 crisis via Zoom at Toronto, Ontario.

**ON READING** the Affidavit of Robert Fung, sworn October 28, 2020 (the "**Fung Affidavit**"), the supplemental Affidavit of Robert Fung, sworn November 2, 2020 (the "**Supplemental Fung Affidavit**"), the Thirty-Fifth Report of the Monitor, Ernst & Young Inc. (the "**Monitor**"), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Tenor Special Situation I, LP, in its capacity as the debtor-in-possession lender of the Applicant (the "**DIP Lender**"), and counsel for Computershare Trust Company of Canada in its capacity as Trustee (the "**Trustee**") for the holders of Senior 9.375% Notes due December 23, 2011 issued by the Applicant (the

"**Senior Notes**") and the *ad hoc* committee of beneficial owners of the Senior Notes (as specified on Schedule "A" hereto):

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the "**CCAA Financing Order**") or in the Credit Agreement, as applicable.

### **EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including May 7, 2021 (the "**Stay Extension**").

### **EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

4. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. ("**Tenor KRY**") on such date, subsequently assigned by Tenor KRY to Luxembourg Investment Company 31 S.a.r.l. ("**Tenor Luxco**") and ultimately assigned to the DIP Lender, as previously amended by

- 3 -

the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment agreement dated June 5, 2013, the third credit agreement amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018, the ninth credit agreement amendment dated as of May 9, 2018, the tenth credit agreement amendment dated as of October 31, 2018, the eleventh credit agreement amendment dated as of May 6, 2019, the twelfth credit agreement amendment dated as of November 6, 2019 and the thirteenth credit agreement amendment dated October 28, 2020 and effective as of May 6, 2020 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the fourteenth credit agreement amendment between the DIP Lender and the Applicant (the "**Fourteenth Credit Agreement Amendment**") attached as Exhibit "A" to the Supplemental Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Fourteenth Credit Agreement Amendment, provided that any date references therein to November 6, 2020 shall be changed to May 7, 2021.

5.           **THIS COURT ORDERS** that the provisions and terms of the Fourteenth Credit Agreement Amendment, the Credit Agreement as amended by the Fourteenth Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant is hereby authorized and directed to pay and perform all of its principal indebtedness,

interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Fourteenth Credit Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

6. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Fourteenth Credit Agreement Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Fourteenth Credit Agreement Amendment.

7. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Fourteenth Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;
- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal

Compensation Amount and the Fourth Additional Principal Compensation Amount in accordance with the Credit Agreement, as amended by the Fourteenth Credit Agreement Amendment; and

- (c) the DIP Charge and the Lender Additional Compensation Charge shall continue to have the priority set out in paragraph 17 of the CCAA Financing Order.

8. **THIS COURT ORDERS** that the Credit Agreement, the Fourteenth Credit Agreement Amendment, the other Credit Documents, the DIP Charge and the Lender Additional Compensation Charge, any advances made in good faith by the DIP Lender under the Credit Agreement, as amended by the Fourteenth Credit Agreement Amendment, and the Applicant's agreement to pay (and the payment of) Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount to the DIP Lender are fair, reasonable and appropriate and shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes or any common law; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement (an

"Agreement") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:

- (a) none of the execution, delivery or performance of the Credit Agreement, the Fourteenth Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Fourteenth Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Fourteenth Credit Agreement Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

9. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing**

**Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as applicable, shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by the Fourteenth Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

#### **CONFIDENTIALITY**

10. **THIS COURT ORDERS** that subject to paragraph 12 of this Order, the following materials in connection with this motion (the "**Confidential Materials**") shall be sealed and filed under a protective order and not form any part of the public record in this proceeding:

- (a) the Confidential Motion Record of the Applicant, which includes the unredacted Fung Affidavit and Confidential Appendix "I" thereto; and
- (b) the Confidential Unredacted Thirty-Fifth Report of Ernst & Young Inc. in its Capacity as Monitor.

11. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

12. **THIS COURT ORDERS** that the Confidential Materials shall remain sealed pending determination, at a motion to be scheduled (the "**Sealing Motion**"), whether all, or any part of, the Confidential Materials should remain sealed pursuant to this Order and nothing in this Order shall be deemed to prejudice any party's rights or positions with respect to that issue at such Sealing Motion, the appropriate date for such a Sealing Motion, the ability of any party to cross-examine in advance of such Sealing Motion on those aspects of the Fung Affidavit related to the sealing of the Confidential Materials or to file additional materials in connection with the Sealing Motion.

#### **TOLLING**

13. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

#### **GENERAL**

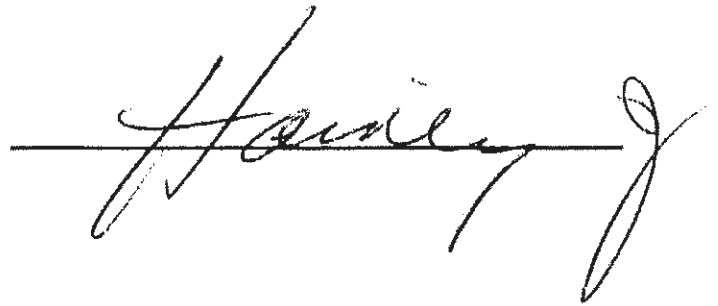
14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders



and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

A handwritten signature in black ink, appearing to read "Haring", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

NOV 03 2020

PER / PAR: 

**SCHEDULE "A"**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund LP
3. Greywolf Loan Participation LLC
4. Ravensource Fund
5. Stornoway Recovery Fund LP

ER OF a Plan of Compromise or Arrangement of Crystallex International

Crystallex International Corporation

Applicant

Commercial List File No: CV-11-953

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

Proceeding commenced at T

ORDER

DAVIES WARD PHILLIPS & VIN  
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Lawyers for the Applicant

## **EXHIBIT 8**

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

**Superior Court of Justice**  
**Commercial List**

**FILE/DIRECTION/ORDER**

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-3 as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement of Crystallex International Corporation

Counsel	Telephone No:	Email/Facsimile No:
As per participant slip attached		

Heard: November 18, 2021

**Conway J. - Endorsement**

1. Crystallex has been in CCAA proceedings for years. It is a liquidating CCAA. It is a unique CCAA as the company's sole objective is to maximize its recovery on a \$1.4 billion (USD) arbitration award against the government of Venezuela. Its enforcement efforts are primarily in the U.S. through the "CITGO Litigation". It has obtained a Writ with respect to key Venezuelan assets located in the U.S. and is trying to obtain a license from OFAC to be able to sell the assets that are subject to the Writ.
2. On this motion, Crystallex, supported by the DIP lender, seeks to extend the stay period for 12 months, approve the 16<sup>th</sup> amendment to the DIP credit agreement and seal certain information from the public version of the Monitor's reports, in particular the 36<sup>th</sup> and 38<sup>th</sup> reports (and the related information in the materials filed on this motion).
3. The Ad Hoc Committee of the Noteholders (Committee) opposes the relief on the motion, except for the sealing of certain strategic information related to the U.S. litigation. It seeks a stay extension of only 3 months. It also brings a cross-motion to disclose the CVR information with respect to Messrs. Fung and Oppenheimer, the key executives that are pursuing the litigation and recovery efforts by Crystallex. It argues that the sealing of the

information in question obscures its window into the financial performance of the company.

4. The Monitor recommends the stay extension of 12 months and the 16<sup>th</sup> amendment to the DIP agreement. The Monitor has offered to meet with stakeholders (including the Committee representatives) every 3 months to keep them up to date on the company's operations and financial position.
5. The Monitor says that there is a benefit to the company of Messrs. Fung and Oppenheimer going to Venezuela. That will be lost to the company if the CVRs are disclosed due to concerns about their personal safety.
6. The Monitor makes no recommendations about the requested sealing order as it is a legal matter for me to determine. However, it notes that the Noteholders have been actively participating in the company's CCAA proceedings even with the sealing that has been in place over the years. It also notes that the Committee's counsel has signed a non-disclosure agreement and can obtain any of this information from the company. The Committee can also have access to this information if it signs an NDA.
7. At the conclusion of argument, I told counsel that I was granting the relief sought by Crystallex and the DIP lender and dismissing the cross-motion of the Committee to unseal the CVRs. I provided brief oral reasons and now provide them in writing.
8. I am granting the 12 month extension. The evidence of Mr. Fung is that no material steps will be occurring in the U.S. until late 2022. There will be no distributions in the meantime. The Monitor confirms that the company has sufficient liquidity for 12 months. The company is acting in good faith and with due diligence, as supported by the Monitor's report
9. Significantly, if this stay extension motion is any indication, these motions are battlefields for all sorts of issues that are time consuming and costly. Three months intervals will only consume additional resources and detract from the company's main focus, which is to secure recovery for stakeholders through the US enforcement proceedings.
10. The extension is subject to the condition that the Monitor conduct quarterly update sessions for stakeholders.
11. I approve the 16<sup>th</sup> amendment to the DIP credit agreement to provide additional funding to the company. I note that the waiver of default re the OFAC decision and related default interest are positive outcomes for the company.
12. The proposed redactions to the Monitor's reports relate to line items on cash flow variances and cash flow forecasts, explanatory notes with respect to the cash flows, and information on Crystallex's litigation strategy.
13. The cash flow information essentially provides details of Crystallex's litigation spend. It proposes to disclose these figures on a six month lag basis. Cash and DIP balances will be disclosed on a current basis.

14. There is very detailed evidence before me from Mr. Fung as to the reasons for the requested redactions. All of it relates to the litigation and the perils of this information getting into the wrong hands, which threaten to disadvantage Crystallex in its enforcement proceedings. He explains quite thoroughly in his affidavit evidence the enforcement process, the steps taken by Crystallex, and the professional advice it has been following in the U.S.
15. Crystallex is fully prepared to make all of this information available to all stakeholders, including the Committee, on a confidential basis. However, the Committee is not prepared to sign a confidentiality agreement and takes the position that the information must be made public.
16. I have considered the test for sealing in *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 and *Sherman Estate v. Donovan*, 2021 SCC 25. In my view, the sealing of this information meets the test. There is serious risk to an important public interest if this information is publicly disclosed. Crystallex is engaged in intensive protracted enforcement efforts to seek enforcement of a huge award, all for the benefit of its stakeholders in this CCAA proceeding. The information in question is commercially sensitive, is related directly to these enforcement efforts, and could seriously compromise Crystallex's position in the pursuit of those efforts. As noted by Chief Justice Morawetz in *Cash Store Financial Services Inc.*, 2021 ONSC 7143, at para. 19 and 25, there is a public interest in not placing a CCAA debtor at a tactical disadvantage in its litigation. That applies with equal force here.
17. I have considered the probability and magnitude of the potential harm. This is the one avenue of recovery for Crystallex's stakeholders. The harm in jeopardizing that recovery effort is self-evident.
18. This is the least restrictive alternative. The sealing will consist of only redacting very specific line items (cash flow variations, cash flow forecasts) and only for a period of six months. That period has been selected because the disclosure of that information after six months will be less damaging to the company.
19. As a matter of proportionality, the benefits of this order outweigh its negative effects. As noted, anyone can obtain this information via its counsel or by signing an NDA. The Monitor will be providing regular updates. And most importantly, the information will become public in six months.
20. I also agree that the strategic information should be sealed. That goes to the core of how the company is trying to enforce its award. The Committee raises an issue with paragraph 13 of the Monitor's 38<sup>th</sup> report that it says is a factual matter. I find it integrally related to the litigation strategy pursued by Crystallex.
21. The Committee raised an issue with respect to the aggregation of certain line items in the Monitor's 38<sup>th</sup> Report. It did not bring a motion to challenge this format but said I can take it into account on the motions before me today. The Monitor explains that while it received this information from the company, it was done in this fashion since the information will become public after six months. One of those aggregations is CCAA costs and arbitration

costs, which are integrally related since the purpose of the CCAA is to recover the arbitration award. I do not view this as a reason to refuse the relief sought today.

22. Finally, I am not prepared to unseal the CVR information with respect to Messrs. Fung and Oppenheimer. This information has been sealed for years. There is no compelling reason to unseal them now and far more compelling evidence that their lives could be in danger should the amounts now become public. That would in turn obviously disadvantage the company. The Committee's cross-motion is dismissed.
23. I direct counsel to prepare and send me a form of order consistent with these reasons. They may email it to me directly with a copy to the Commercial List office.'
24. Finally, counsel for Crystallex (or the Monitor) is directed to file a hard copy of the unredacted version of the Monitor's reports and all related motion materials. These materials shall be filed in a sealed envelope with a copy of this endorsement and the signed order.



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Justice Conway

Released: November 18, 2021



## Participant Information

### CASE INFORMATION

<b>Court File Number</b>	CV-11-9532-00CL
<b>Court Location (e.g. Hamilton)</b>	Toronto
<b>Case Name</b>	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
<b>Date of Hearing</b>	November 18, 2021

### PARTICIPANT INFORMATION

**For the Applicant:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number<sup>2</sup></b>	<b>Email Address</b>
Robin B. Schwill	Crystallex International Corporation	416.863.5502	rschwill@dpwpv.com
Natalie Renner	Crystallex International Corporation	416.367.7489	nrenner@dpwpv.com
Maureen Littlejohn	Crystallex International Corporation	416.367.6916	mlittlejohn@dpwpv.com

**For the For Court-Appointed Monitor:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number<sup>2</sup></b>	<b>Email Address</b>
David Byers	Ernst & Young Inc.	416.869.5697	dbyers@stikeman.com
Maria Konyukhova	Ernst & Young Inc.	416.869.5230	mkonyukhova@stikeman.com

**For the Ad Hoc Committee:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number<sup>2</sup></b>	<b>Email Address</b>
Robert Chadwick	Computershare Trust Company of Canada, in its capacity as Trustee for the holders of 9.375% holders of unsecured Notes of Crystallex International Corporation and the Ad Hoc Committee of holders of the Notes (the “ <b>Ad Hoc Committee</b> ”)	416.597.4285	rchadwick@goodmans.ca
Peter Ruby	Ad Hoc Committee	416.597.4814	pruby@goodmans.ca
Chris Armstrong	Ad Hoc Committee	416.849.6013	carmstrong@goodmans.ca
Carlie Fox	Ad Hoc Committee	416.849.6907	cfox@goodmans.ca

**For DIP Lender:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number2</b>	<b>Email Address</b>
Tim Pinos	DIP Lender	416.869.5784	tpinos@cassels.com
Shayne Kukulowicz	DIP Lender	416.860.6463	skukulowicz@cassels.com
Ryan C Jacobs	DIP Lender	416.860.6465	rjacobs@cassels.com

**Counsel for Robert Fung and Marc Oppenheimer:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
Aubrey E. Kauffman	Robert Fung and Marc Oppenheimer	416.868.3538	akauffman@fasken.com

**Monitor:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
Brian M. Denega	Ernst & Young Inc.	416.943.3058	brian.m.denega@ca.ey.com
Fiona Han	Ernst & Young Inc.	416.943.3739	Fiona.Han@ca.ey.com

**Other:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Phone Number</b>	<b>Email Address</b>
Scott Reid	Ad Hoc Committee		
Adrian Weisberg	Ad Hoc Committee		
Carlo Mattoni	Ad Hoc Committee		

Nick Brumm	Ad Hoc Committee		
Robert Fung	Crystallex Corporation		
Brennan Caldwell	N/A	416.849.6896	bcaldwell@goodmans.ca
Emily Windrim	N/A	N/A	ewindrim@goodmans.ca

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<sup>1</sup> The Participant information Form replaces the Counsel Slip.

<sup>2</sup> Please provide a phone number where you can be reached during the hearing, if necessary

## **EXHIBIT 9**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THURSDAY THE 18th DAY
	)	
JUSTICE CONWAY	)	OF NOVEMBER, 2021

**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**ORDER**

**THIS MOTION**, made by the Applicant, Crystallex International Corporation (**"Crystallex"** or the **"Company"**), proceeded by way of judicial videoconference due to the COVID-19 crisis via Zoom at Toronto, Ontario.

**ON READING:** (i) the Motion Record of Crystallex dated October 28, 2020; (ii) the Motion Record of Crystallex dated May 21, 2021; (iii) the Responding and Cross-Motion Record of Computershare Trust Company of Canada in its Capacity as Trustee (the **"Trustee"**) for the Holders of Crystallex 9.375% Senior Notes due December 23, 2011 (the **"Senior Notes"**) and the Ad Hoc Committee of Beneficial Owners of the Senior Notes (as specified on Schedule "A" hereto) (the **"Ad Hoc Committee"** and with the Trustee, the **"Noteholders"**) dated May 28, 2021; (iv) the Responding Motion Record of Crystallex dated July 9, 2021; (v) the Reply Motion Record of Crystallex dated July 9,

2021; (vi) the Reply Cross-Motion Record of the Noteholders dated July 19, 2021; (vii) the Supplementary Motion Record of Crystallex dated September 3, 2021, including the transcript of the cross-examination of Scott Reid held August 6, 2021 and the exhibits thereto; (viii) the Transcript Brief of the Noteholders dated September 3, 2021, including the transcript of the cross-examination of Robert Fung held August 5, 2021 and the exhibits thereto and the transcripts of the cross-examination of Scott Reid held August 6, 2021 and the exhibits thereto; (ix) the Document Brief of Crystallex dated September 28, 2021; (x) the Document Brief of the Noteholders dated October 6, 2021; (xi) the Motion Record of Crystallex dated October 25, 2021; (xii) the Responding Motion Record of the Noteholders dated October 29, 2021; (xiii) the Supplemental Affidavit of Robert Fung sworn October 28, 2021 (the **"Supplemental Fung Affidavit"**); (xiv) the Transcript Brief of the Noteholders dated November 15, 2021, including the transcript of the cross-examination of Robert Fung held November 4, 2021 and the exhibits thereto and the transcript of the cross-examination of Scott Reid held November 4, 2021 and the exhibits thereto; (xv) the Transcript Brief of Crystallex dated November 16, 2021, including the transcript of the cross-examination of Scott Reid held November 4, 2021 and the exhibits thereto; (xvi) the Joint Compendium of the Applicant and Tenor Special Situation I, LP, in its capacity as the debtor-in-possession lender of the Applicant (the **"DIP Lender"**) dated November 16, 2021; (xvii) the Compendium of the Noteholders dated November 18, 2021; (xviii) the factums of each of Crystallex, the DIP Lender and the Noteholders; and (xix) the Thirty-Fifth, Thirty-Sixth, Thirty-Seventh and Thirty-Eighth Reports (collectively, the **"Reports"**) of Ernst & Young Inc. (the **"Monitor"**).

**AND ON HEARING** the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the DIP Lender, counsel for Robert Fung and Marc Oppenheimer, and counsel for the Noteholders:

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the October Fung Affidavit (as defined below), the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the "**CCAA Financing Order**") or in the Credit Agreement, as applicable.

## **EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including November 18, 2022 (the "**Stay Extension**").

4. **THIS COURT ORDERS** that during the Stay Extension period:

- (a) the Applicant or the Monitor shall provide regular public reporting to the Court and the stakeholders of the Applicant's then-current cash balance and the DIP balance and updates of public information with respect to the



Applicant and its enforcement activities, with such reporting to occur no less frequently than every six months;

- (b) the Applicant or the Monitor shall report on a timely basis to the Court and the Applicant's stakeholders on any material changes to the business or affairs of Crystallex, which reports may be confidential or public depending on the nature of the material change (it being understood that the rights of any party to oppose any redaction or sealing are hereby reserved);
- (c) the Applicant or the Monitor shall report, on a confidential basis every six months, the then-current Cash Flow Variance for the prior six-month period and the Cash Flow Forecast for the upcoming six-month period;
- (d) the Monitor shall, on a no less than quarterly basis, hold a meeting among the Applicant, the DIP Lender, representatives of the Ad Hoc Committee and representatives of any of the Applicant's other stakeholders that indicate to the Monitor in writing that they wish to participate to provide updates of public information concerning the Applicant, including its enforcement activities; and
- (e) subject to the prior orders and endorsements of this Court including the endorsement dated June 7, 2016, any party may come back to the Court to address any issues which arise during the Stay Extension period.

5. **THIS COURT ORDERS** that during the Stay Extension period and any future stay extension period, the Applicant shall, subject to further order of the Court, make public its six-month Cash Flow Variances (on the same line item basis as Appendix

D to the Thirty-Eighth Report and without redactions) on the date that is six months after the end of the relevant reporting period in the Cash Flow Variance by causing them to be posted on the Monitor's Website. By way of illustration of the foregoing, the Cash Flow Variance at Appendix D to the Thirty-Eighth Report will be made publicly available without redactions on the Monitor's Website on March 30, 2022.

## **CONFIDENTIALITY**

6. **THIS COURT ORDERS** that, subject to paragraphs 5 and 9 hereof, as applicable, the following information (the "**Confidential Materials**") shall be sealed and filed under a protective order and not form any part of the public record in this proceeding except as otherwise provided herein:

- (a) Confidential Motion Record of Crystallex dated October 28, 2020, including the Affidavit of Robert Fung sworn October 28, 2020;
- (b) Confidential Motion Record of the Applicant dated May 21, 2021, including the Affidavit of Robert Fung sworn May 21, 2021;
- (c) Confidential Reply Motion Record of the Applicant dated July 9, 2021 including the Affidavit of Robert Fung sworn July 9, 2021;
- (d) Confidential Responding Motion Record of the Applicant dated July 9, 2021 and the Affidavit of Robert Fung dated July 9, 2021;
- (e) Confidential Reply Cross-Motion Record of the Noteholders dated July 19, 2021;

- (f) Confidential Supplementary Motion Record of the Applicant dated September 3, 2021;
- (g) Confidential Document Brief of the Noteholders dated October 6, 2021;
- (h) Confidential Motion Record of the Applicant dated October 25, 2021 including the Affidavit of Robert Fung dated October 25, 2021 (the “**October Fung Affidavit**”);
- (i) Confidential version of the Thirty-Seventh and Thirty-Eighth Reports of the Monitor;
- (j) Confidential Transcripts of the Cross-Examination of Robert Fung held on August 5, 2021 and November 4, 2021 and the Confidential Transcript and Exhibit Briefs of the Noteholders dated September 3, 2021 and November 15, 2021, respectively;
- (k) Confidential Transcript and Exhibit Brief of the Cross-Examination of Scott Reid held on November 4, 2021;
- (l) Confidential Joint Compendium of the DIP Lender and the Applicant dated November 16, 2021;
- (m) Confidential Compendium of the Noteholders dated November 18, 2021;
- (n) Confidential versions of the facts of the Applicant, DIP Lender and Noteholders served in connection with this Motion;

- (o) Portions of the explanatory notes to the cash flows in the Reports (with related text in the body of the Reports), as outlined in Schedule “D” in the Confidential Factum of the Applicant dated November 10, 2021;
- (p) The following cash flow information:
  - (i) the line item details in the Company’s Cash Flow Forecast for the period from April 2021 to November 2021 contained in Confidential Appendix C to the Thirty-Sixth Report; and
  - (ii) Confidential Appendix E to the Thirty-Eighth Report containing the Cash Flow Forecast for the period October 1, 2021 to November 30, 2022; and
- (q) Confidential Appendix D to the Thirty-Eighth Report containing the Cash Flow Variance for the period April 1, 2021 to September 30, 2021, until March 30, 2022.

7. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

8. **THIS COURT ORDERS** that the Cash Flow Forecasts and Cash Flow Variances shall be made available to any of the Company's stakeholders upon the signing of a confidentiality agreement on terms acceptable to the Company, or such other terms or conditions as the Court considers appropriate upon a motion on proper notice to all parties in interest that is in compliance with the terms of the endorsement of this Court dated June 7, 2016. For the avoidance of doubt, nothing in this paragraph 8 shall limit or supersede the Noteholders’ and the Company’s other stakeholders’ rights under paragraph 9 of the Approval Order of this Court dated December 18, 2014.

9. **THIS COURT ORDERS** that, subject to the endorsement of this court dated June 7, 2016, any party may apply to the Court on proper notice to all parties in interest to seek to vary the provisions in paragraphs 6 and 7 of this Order and nothing in this Order shall be deemed to prejudice their rights to bring a motion to seek such variation or to vary the finding that the Confidential Materials are confidential, provided that for certainty, a moving party shall have the onus on such motion(s) to justify any variation(s) sought.

### **PUBLICLY AVAILABLE MATERIALS**

10. **THIS COURT ORDERS** that the public, redacted versions of the materials listed in paragraph 6 shall remain public in these proceedings and be filed with the Court and uploaded to CaseLines.

### **CROSS-MOTION**

11. **THIS COURT ORDERS** that the Cross-Motion of the Noteholders to unseal the compensation amounts transferred by the DIP Lender to Robert Fung and Marc Oppenheimer in the Net Arbitration Proceeds Transfer Agreement approved and sealed by Order of this Court dated December 18, 2014 is dismissed.

### **EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

12. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. ("**Tenor KRY**") on such date, subsequently assigned by Tenor KRY to Luxembourg Investment Company 31 S.a.r.l. ("**Tenor Luxco**") and ultimately assigned to the DIP Lender, as previously amended by

the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment agreement dated June 5, 2013, the third credit agreement amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018, the ninth credit agreement amendment dated as of May 9, 2018, the tenth credit agreement amendment dated as of October 31, 2018, the eleventh credit agreement amendment dated as of May 6, 2019, the twelfth credit agreement amendment dated as of November 6, 2019, the thirteenth credit agreement amendment dated October 28, 2020 and effective as of May 6, 2020, the fourteenth credit agreement amendment dated April 14, 2021 and effective as of November 6, 2020, the fifteenth credit agreement amendment dated October 21, 2021, 2021 and effective as of May 7, 2021 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the sixteenth credit agreement amendment between the DIP Lender and the Applicant (the "**Sixteenth Credit Agreement Amendment**") attached as Exhibit "A" to the Supplemental Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Sixteenth Credit Agreement Amendment.

13. **THIS COURT ORDERS** that the provisions and terms of the Sixteenth Credit Agreement Amendment, the Credit Agreement as amended by the Sixteenth Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant

is hereby authorized and directed to pay and perform all of its principal indebtedness, interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

14. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Sixteenth Credit Agreement Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment.

15. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;
- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional

Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount in accordance with the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment; and

- (c) the DIP Charge and the Lender Additional Compensation Charge shall continue to have the priority set out in paragraph 17 of the CCAA Financing Order.

16. **THIS COURT ORDERS** that the Credit Agreement, the Sixteenth Credit Agreement Amendment, the other Credit Documents, the DIP Charge and the Lender Additional Compensation Charge, any advances made in good faith by the DIP Lender under the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, and the Applicant's agreement to pay (and the payment of) Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount to the DIP Lender are fair, reasonable and appropriate and shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (1) the pendency of these proceedings and the declarations of insolvency made herein; (2) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (3) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (4) the provisions of any federal or provincial statutes or any common law; or (5) any negative covenants, prohibitions or other similar provisions



with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement (an "**Agreement**") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:

- (a) none of the execution, delivery or performance of the Credit Agreement, the Sixteenth Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Sixteenth Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

17. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these

proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as applicable, shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by the Sixteenth Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

#### **TOLLING**

18. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

#### **GENERAL**

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor

and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

**SCHEDULE "A"**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund L.P.
3. QVT Family Office Fund LP
4. Greywolf Loan Participation LLC
5. Ravensource Fund
6. Stornoway Recovery Fund LP

**IN THE MATTER OF** a Plan of Compromise or Arrangement of Crystallex International Corporation

**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

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Lawyers for the Applicant

## **EXHIBIT 10**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY THE 12th DAY
JUSTICE CONWAY	)	OF DECEMBER, 2022
	)	

**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

**CRYSTALLEX INTERNATIONAL CORPORATION**

Applicant

**ORDER**

**THIS MOTION**, made by the Applicant, Crystallex International Corporation ("**Crystallex**" or the "**Company**"), proceeded by way of judicial videoconference due to the COVID-19 crisis via Zoom at Toronto, Ontario.

**ON READING** the Motion Record of Crystallex dated November 18, 2022, the factum of Crystallex, and the Fortieth Report (the "**Report**") of Ernst & Young Inc. (the "**Monitor**").

**AND ON HEARING** the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Tenor Special Situation I, LP, in its capacity as the debtor-in-possession lender of the Applicant (the "**DIP Lender**") and counsel for Computershare Trust Company of Canada in its Capacity as Trustee (the "**Trustee**") for the Holders of



Crystallex 9.375% Senior Notes due December 23, 2011 (the “**Senior Notes**”) and the Ad Hoc Committee of Beneficial Owners of the Senior Notes (as specified on Schedule "A" hereto) (the “**Ad Hoc Committee**” and with the Trustee, the “**Noteholders**”) and no one else appearing although duly served as appears from the Affidavits of Service filed;

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

## **DEFINITIONS**

2. **THIS COURT ORDERS** that unless otherwise defined in this Order, capitalized terms used in this Order shall have the meanings given to them in the November Fung Affidavit (as defined below), the CCAA Financing Order this Court granted in these proceedings on April 16, 2012 (the “**CCAA Financing Order**”) or in the Credit Agreement, as applicable.

## **EXTENSION OF STAY PERIOD**

3. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order of the Honourable Justice Newbould made December 23, 2011) be and is hereby extended to and including December 12, 2023 (the “**Stay Extension**”).

4. **THIS COURT ORDERS** that during the Stay Extension period:

- (a) the Applicant or the Monitor shall provide regular public reporting to the Court and the stakeholders of the Applicant's then-current cash balance and the DIP balance and updates of public information with respect to the

Applicant and its enforcement activities, with such reporting to occur no less frequently than every six months;

- (b) the Applicant or the Monitor shall report on a timely basis to the Court and the Applicant's stakeholders on any material changes to the business or affairs of Crystallex, which reports may be confidential or public depending on the nature of the material change (it being understood that the rights of any party to oppose any redaction or sealing are hereby reserved);
- (c) the Applicant or the Monitor shall report, every six months, the then-current Cash Flow Variance for the prior six-month period and the Cash Flow Forecast for the upcoming six-month period;
- (d) the Monitor shall, on a no less than quarterly basis, hold a meeting among the Applicant, the DIP Lender, representatives of the Ad Hoc Committee and representatives of any of the Applicant's other stakeholders that indicate to the Monitor in writing that they wish to participate to provide updates of public information concerning the Applicant, including its enforcement activities; and
- (e) subject to the prior orders and endorsements of this Court including the endorsement dated June 7, 2016, any party may come back to the Court to address any issues which arise during the Stay Extension period.

## **CONFIDENTIALITY**

5. **THIS COURT ORDERS** that, subject to paragraph 6 hereof, as applicable, the following information (the "**Confidential Materials**") shall be sealed and filed under a

protective order and not form any part of the public record in this proceeding except as otherwise provided herein:

- (a) Confidential Motion Record of Crystallex dated November 18, 2022, including the Affidavit of Robert Fung sworn November 18, 2022 (the **“November Fung Affidavit”**);
- (b) Confidential version of the Report of the Monitor; and
- (c) Confidential version of the factum of Crystallex served in connection with this Motion.

6. **THIS COURT ORDERS** that the public, redacted versions of the materials listed in paragraph 5 shall remain public in these proceedings and be filed with the Court and uploaded to CaseLines.

7. **THIS COURT ORDERS** that the Confidential Materials shall not be copied or disseminated beyond counsel except as authorized by the Applicant or by further order of this Court.

8. **THIS COURT ORDERS** that, subject to the endorsement of this court dated June 7, 2016, any party may apply to the Court on proper notice to all parties in interest to seek to vary the provisions in paragraphs 5 and 7 of this Order and nothing in this Order shall be deemed to prejudice their rights to bring a motion to seek such variation or to vary the finding that the Confidential Materials are confidential, provided that for certainty, a moving party shall have the onus on such motion(s) to justify any variation(s) sought.

**EXTENSION AND AMENDMENT OF THE DIP CREDIT AGREEMENT**

9. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to enter into an amendment to the credit agreement dated as of April 23, 2012 between the Applicant and Tenor Special Situation Fund I, LLC ("**Tenor**"), which was assigned by Tenor to Tenor KRY Cooperatief U.A. ("**Tenor KRY**") on such date, subsequently assigned by Tenor KRY to Luxembourg Investment Company 31 S.a.r.l. ("**Tenor Luxco**") and ultimately assigned to the DIP Lender, as previously amended by the first credit agreement amending and confirming agreement dated May 15, 2012, the second amendment agreement dated June 5, 2013, the third credit agreement amendment agreement dated as of April 16, 2014, the fourth credit amendment agreement dated March 12, 2015, the fifth extension amendment agreement dated as of December 31, 2016, the sixth extension and amendment agreement dated as of June 30, 2017, the seventh credit agreement amendment dated as of December 27, 2017, the eighth credit agreement amendment dated as of February 28, 2018, the ninth credit agreement amendment dated as of May 9, 2018, the tenth credit agreement amendment dated as of October 31, 2018, the eleventh credit agreement amendment dated as of May 6, 2019, the twelfth credit agreement amendment dated as of November 6, 2019, the thirteenth credit agreement amendment dated October 28, 2020 and effective as of May 6, 2020, the fourteenth credit agreement amendment dated April 14, 2021 and effective as of November 6, 2020, the fifteenth credit agreement amendment dated October 21, 2021, 2021 and effective as of May 7, 2021, the sixteenth credit agreement amendment dated January 24, 2022 and effective as of November 5, 2021 (collectively, the "**Credit Agreement**"), pursuant to and substantially in the form of the seventeenth credit agreement amendment between the DIP Lender and the Applicant (the

"**Seventeenth Credit Agreement Amendment**") attached as an exhibit to the November Fung Affidavit, and all other documents contemplated or required by the DIP Lender in connection with the Seventeenth Credit Agreement Amendment.

10. **THIS COURT ORDERS** that the provisions and terms of the Seventeenth Credit Agreement Amendment, the Credit Agreement as amended by the Seventeenth Credit Agreement Amendment, and the other Credit Documents (including the Security Documents) are proper, fair and reasonable, and are hereby approved, and the Applicant is hereby authorized and directed to pay and perform all of its principal indebtedness, interest, expenses, fees, liabilities and other compensation and obligations to the DIP Lender under and pursuant to the Credit Agreement, as amended by the Seventeenth Credit Agreement Amendment, and the other Credit Documents, as and when the same become due and are to be performed.

11. **THIS COURT ORDERS** that the DIP Lender is entitled, in accordance with the provisions of the DIP Credit Agreement as amended by the Seventeenth Credit Agreement Amendment, to all fees, interest, compensation and other amounts paid or payable under the Credit Agreement, as amended by the Seventeenth Credit Agreement Amendment.

12. **THIS COURT ORDERS** that:

- (a) the DIP Charge shall secure all Obligations outstanding from time to time under the Credit Agreement, as amended by the Seventeenth Credit Agreement Amendment, or under any other Credit Document except for any obligation of the Applicant to pay Lender Additional Compensation, the

Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount or the Fourth Additional Principal Compensation Amount to the DIP Lender;

- (b) the Lender Additional Compensation Charge shall secure the obligation of the Applicant to pay to the DIP Lender the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount in accordance with the Credit Agreement, as amended by the Seventeenth Credit Agreement Amendment; and
- (c) the DIP Charge and the Lender Additional Compensation Charge shall continue to have the priority set out in paragraph 17 of the CCAA Financing Order.

13. **THIS COURT ORDERS** that the Credit Agreement, the Seventeenth Credit Agreement Amendment, the other Credit Documents, the DIP Charge and the Lender Additional Compensation Charge, any advances made in good faith by the DIP Lender under the Credit Agreement, as amended by the Seventeenth Credit Agreement Amendment, and the Applicant's agreement to pay (and the payment of) Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount to the DIP Lender are

fair, reasonable and appropriate and shall not be rendered invalid or unenforceable and the rights and remedies of the DIP Lender shall not otherwise be limited or impaired in any way by: (1) the pendency of these proceedings and the declarations of insolvency made herein; (2) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (3) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (4) the provisions of any federal or provincial statutes or any common law; or (5) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances contained in any existing agreement (an "**Agreement**") which binds the Applicant and, notwithstanding any provision to the contrary in any Agreement:

- (a) none of the execution, delivery or performance of the Credit Agreement, the Seventeenth Credit Agreement Amendment or the other Credit Documents shall create nor be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) the Applicant shall not have any liability to any Person (as defined by the Initial Order) whatsoever as a result of any breach of any Agreement caused by or resulting from the execution, delivery or performance of the Credit Agreement, the Seventeenth Credit Agreement Amendment or the other Credit Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the Credit Agreement, as amended by the Seventeenth Credit Agreement

Amendment, or the other Credit Documents, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law including common law.

14. **THIS COURT ORDERS** that each of the CCAA Financing Order and the Additional CCAA Financing Order issued by this Court in these proceedings on June 5, 2013, the Second Additional CCAA Financing Order issued by this Court in these proceedings on April 14, 2014, and the Approval Order issued by this Court in these proceedings on December 18, 2014 (collectively, the "**Additional CCAA Financing Orders**") shall continue in full force and effect and that all protections and other provisions of the CCAA Financing Order and the Additional CCAA Financing Orders, as applicable, shall apply *mutatis mutandis* to all principal amounts, interest thereon, the Lender Additional Compensation, the Additional Principal Compensation Amount, the Second Additional Principal Compensation Amount, the Third Additional Principal Compensation Amount and the Fourth Additional Principal Compensation Amount and all other amounts owing to the DIP Lender under the Credit Agreement, as amended by the Seventeenth Credit Agreement Amendment, and the other Credit Documents and to all charges and other security therefor.

#### **TOLLING**

15. **THIS COURT ORDERS** that by agreement of the Applicant, the Trustee and the DIP Lender, the tolling of limitation periods provided for in paragraph 26 of the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**") shall continue until the date that is thirty (30) days following the expiration of the

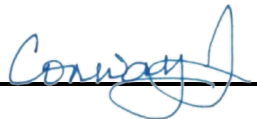


Stay Extension, provided that any limitation period applicable to a Claim (as defined in the Standstill Order) released pursuant to paragraph 29 of the Standstill Order shall not be tolled.

## GENERAL

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, Tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, including the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make orders and to provide such assistance to the Applicant and to the Monitor, as an Officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicant in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, including the Bankruptcy Court, for the recognition of this Order and for assistance in carrying out the terms of this Order.



**SCHEDULE "A"**

**BENEFICIAL OWNERS OF SENIOR NOTES PART OF AD HOC COMMITTEE**

1. QVT Fund LP
2. Quintessence Fund L.P.
3. QVT Family Office Fund LP
4. Greywolf Loan Participation LLC
5. Ravensource Fund
6. Stornoway Recovery Fund LP

**IN THE MATTER OF** a Plan of Compromise or Arrangement of Crystallex International Corporation

**Crystallex International Corporation**

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO  
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Proceeding commenced at Toronto

**ORDER**

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