

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
Companies' Creditors Arrangement Act

No: 500-11-

**IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF:**

MEDXL INC. a legal person having an address at 285 Labrosse avenue, Pointe-Claire, Québec in the city and judicial district of Montreal, H8N 2J8

-and-

LIEBEL-FLARSHEIM CANADA INC., a legal person having an address at 7500 Transcanadienne route, Pointe-Claire, Québec in the city and judicial district of Montreal, H9R 5H8

-and-

9431-0091 QUÉBEC INC., a legal person having an address at 7500 Transcanadienne route, Pointe-Claire, Québec in the city and judicial district of Montreal, H9R 5H8

-and-

9190-2395 QUÉBEC INC., a legal person having an address at 35, rue St. Andrew's, Baie d'Urfée, Québec, in the city and judicial district of Montreal, H9X 2T9

Debtors

-and-

FTI CONSULTING CANADA INC. a legal person having an address at 1000 Sherbrooke St. W, Suite 915, Montréal, Québec, H3A 3G4

Proposed Monitor

APPLICATION FOR THE ISSUANCE OF AN (I) INITIAL ORDER (II) AN AMENDED AND RESTATED INITIAL ORDER AND (III) AN ORDER APPROVING A SALE AND INVESTMENT SOLICITATION PROCESS

(Sections 4, 6, 10, 11, 11.02, 11.03, 11.51, 11.52, 11.7 and 23 of the *Companies' Creditors Arrangement Act*)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE DEBTORS RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. The Debtors/Applicants, MedXL Inc. ("**MedXL**"), Liebel-Flarsheim Canada Inc. ("**LFC**"), 9190-2394 Québec inc. ("**9190**") and 9431-0091 Québec inc. ("**RealCo**") (collectively "**MedXL Group**" or the "**Debtors**") hereby seek relief under the *Companies Creditors Arrangement Act*, RSC 1985, c. C-36) (the "**CCAA**").
2. MedXL Group is a private Québec-based manufacturer of medical devices and pre-filled syringes based in Pointe-Claire, Québec. It has approximately 160 employees. Its ultimate clients are notably in the biomedical and pharmaceutical industry, as well as hospitals principally in North America.
3. The Debtors financial condition has significantly deteriorated over the past months, such that they did not make the two regular payrolls on June 27 and July 11, 2024, temporarily ceased their operations as of June 28, 2024 and laid off the majority of their employees on July 12, 2024.
4. Every day that passes reduces the chances of employees returning to work for the Debtors. Furthermore, with employees temporarily laid off, production has stopped and limited shipment of goods is being done.
5. It is urgent and imperative that the Debtors' operations resume for the benefit of all stakeholders, including, without limitation, the employees, the suppliers, creditors, and the Debtors' customers.
6. Faced with pressing liquidity crisis, the MedXL Group is now insolvent and seeks creditor protection under the CCAA in order to, *inter alia*, restructure its affairs and with a view to finding an investor or purchaser for MedXL Group's assets, business and/or shares, as the case may be.
7. More particularly, by the present *Application for the issuance of an (i) Initial Order, (ii) an Amended and Restated Initial Order and (iii) an Order approving a Sale and Investment Solicitation Process* (the "**Application**"), the Debtors seek the issuance of an initial order (the "**Proposed Initial Order**") providing for the following relief:

- a) Application of the CCAA: A declaration that the Debtors are “debtor companies” to which the CCAA applies, as contemplated by section 3(1) of the CCAA;
- b) Stay of Proceedings: a stay of all proceedings and remedies taken or that might be taken in respect of the Debtors and their respective directors and officers, or any of their property pursuant to *inter alia*, Sections 11, 11.02, and 11.03 of the CCAA, for an initial period of ten days (the “**Initial Stay Period**” and as it may be extended, the “**Stay Period**”);
- c) Debtor-in-possession: The authorization for the Debtors to continue to conduct their business activities and operations in order to preserve their assets and to make payments related to the conduct of their business activities and operations;
- d) Interim Financing: The authorization to borrow from Vaxiron Inc. and Briva Finance (Équité) S.E.C. (collectively the “**Interim Lender**”) from time to time, an initial sum not exceeding \$1,200,000 (“**Initial Advances**”), in accordance with the terms and conditions of an Interim Financing Term Sheet entered into between the Debtors and the Interim Lender (the “**Interim Financing Term Sheet**”), which Interim Advances are subject to, *inter alia*, the issuance by this Court of the Proposed Initial Order establishing in favour of the Interim Lender a charge in an initial amount of \$1,440,000 over all of the debtors’ assets, property and undertaking (the “**Property**”), in order to secure the repayment of the Interim Advances (the “**Interim Lender’s Charge**”). Following the priority set out in the Proposed Initial Order. The Interim Advances set out above are essential to finance the ongoing operations of the Debtors during the Initial Stay Period;
- e) Proposed Monitor: The appointment of FTI Consulting Canada Inc. (“**FTI**” or the “**Proposed Monitor**”) as the monitor of the Debtors in these proceedings;
- f) CCAA Charges: The granting of an administration charge in the initial amount of \$300,000 (the “**Administration Charge**”), a Director’s Charge (\$300,000) (the “**Director’s Charge**”) and an Interim Lender’s Charge over the Debtors’ Property, in amounts sufficient to cover the potential exposure of the beneficiaries of such charges for the initial Stay Period, and following the ranking set out in the Proposed Initial Order;
- g) Center of Main Interest: A declaration that Québec is the “center of main interest” of the Debtors and, accordingly, authorizing the Debtors or the Monitor to apply, as they may consider necessary or desirable, to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out the terms of the Initial Order and any subsequent Orders rendered by this Court in the context of the CCAA Proceedings, including, without limitations, orders under Chapter

15 of the *United States Bankruptcy Code* 11 USC §§ 101-1532 (the “**US Bankruptcy Code**”).

- h) Administrative Consolidation: The administrative consolidation of the present CCAA proceedings with respect to the Debtors;
- i) Sealing Order: A sealing order with regard to certain exhibits filed in support of this Application;

the whole in accordance with the Proposed Initial Order, communicated herewith as **Exhibit R-1**.

A copy of the redline document comparing the Proposed Initial Order to the model CCAA initial order is communicated herewith as **Exhibit R-2**.

- 8. At the comeback hearing, the Debtors intend to seek the issuance of an Amended and Restated Initial Order (the “**Proposed ARIO**”), providing for, *inter alia*, the following additional relief:
 - a) Stay of Proceedings: The extension of the Stay Period until **September 27, 2024**;
 - b) CCAA Charges: The increase of the quantum of certain CCAA Charges:
 - i) An increase of the Interim Lender’s Charge to \$4,800,000;
 - ii) An increase of the Directors’ Charge to \$600,000;
 - iii) An increase of the Administration Charge to \$750,000;

the whole in accordance with the Proposed ARIO communicated herewith as **Exhibit R-3**.

A copy of the redline documents comparing the Proposed ARIO to the model CCAA Initial Order, as well as to the Proposed Initial Order are respectively communicated herewith as **Exhibits R-4** and **R-5**.

- 9. The Debtors also intend to seek the issuance of a separate order approving a Sale and Investment Solicitation Process (the “**SISP**”) at the comeback hearing.
- 10. In support of the Application and the relief sought herein, the Proposed Monitor has prepared a report entitled *Pre-Filing Report to the Court Submitted by FTI Consulting Canada Inc.*, in its capacity as Proposed Monitor (the “**Report**”), a copy of which will be communicated to the service list prior to the hearing.
- 11. It is respectfully submitted that issuing the orders sought is necessary and appropriate in the circumstances of this case and in the best interests of the Debtors and their stakeholders.

II. COMPANY OVERVIEW

A. *MedXL Group's Business*

12. The MedXL Group is a Québec-based manufacturer of medical devices and pre-filled syringes based in Pointe-Claire, Québec. The company specializes in the designing, manufacturing and marketing of medical devices related to drug delivery.
13. More particularly, the MedXL Group specializes in the manufacturing of pre-filled syringes for vascular access device maintenance, used to flush and lock catheters and implantable ports on patients who require intravenous therapy as part of their treatments.
14. MedXL was founded by Mr. Paul Parisien who remains the Debtors' CEO and sole director.
15. The MedXL Group's has a production capacity of approximately 265 million syringes per year in its 6 lines of production:

Production line	Product type	Production capacity
Sterile Field Syringes (sterile inside and outside the syringes)		
L1	10cc syringe size with 3,5 & 10mL fill capabilities	20M per year
L2	5cc syringe size with 3 & 5 mL fill capabilities	5M per year
L3	10cc syringe size with 3,5 & 10mL fill capabilities	7M per year
L4	20cc syringe size with 20mL fill capabilities	6M per year
L5	10cc syringe size with 3,5 & 10mL fill capabilities	45M per year
Sterile Path Syringes (sterile inside the syringes)		
L6	10cc syringe size with 10mL fill capabilities	180M per year

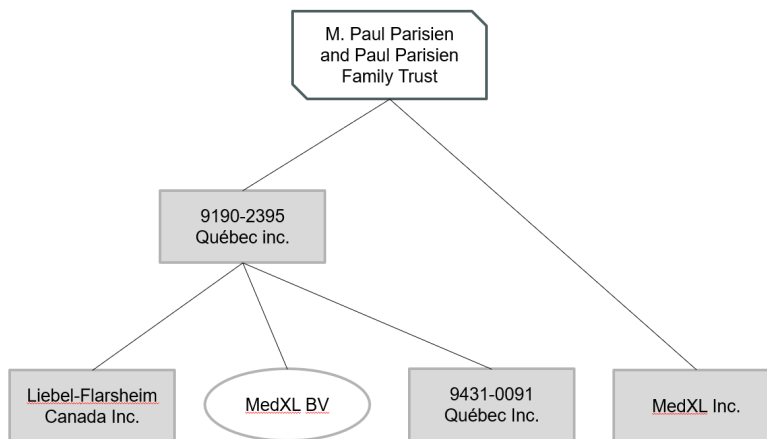
16. In order to carry out its operations, MedXL Group holds numerous Class II medical instruments licenses issued by Health Canada and as well as an establishment license. It also holds equivalent approvals from the United States Food and Drug Administration and CE Certification in the European Union.
17. As of July 11, 2024, the MedXL Group had approximately 160 employees in total, however, on June 28, 2024, the MedXL Group implemented a planned shutdown of its operations and on July 12, 2024, approximately 150 employees were temporarily laid-off due to the Debtors' financial difficulties. Approximately

10 employees remained on the payroll to assist with financial documentation and to maintain certifications.

18. None of the Debtors' employees are unionized and the Debtors do not maintain any pension plans.

B. Corporate structure

19. The corporate structure of the Debtors is as follows (only the entities identified in gray are Debtors in these proceedings):



i. MedXL

20. MedXL is a privately held corporation incorporated under the *Canada Business Corporations Act*, RSC (1985), c. C-44 (the “**CBCA**”), the whole as appears from the extract of the Québec Enterprise Registry communicated herewith as **Exhibit R-6**.
21. MedXL is in the business of designing, manufacturing and marketing medical devices related to drug delivery and more specifically, prefilled syringes used for vascular access device maintenance.
22. MedXL operates in a leased facility located at 285 Labrosse Avenue in Pointe-Claire, Québec and a warehousing facility located at 18101 Trans-Canada Highway in Kirkland, Québec.
23. MedXL has a production capacity of 40M syringes per year.
24. MedXL employed 95 employees prior to the planned shutdown (as further explained below), who were temporarily laid off on July 12, 2024.

ii. LFC

25. LFC is a privately held corporation incorporated under the CBCA and continued under the *Business Corporations Act* (Québec), RLRQ C. s-31.1 (the “**QBCA**”), the whole as appears from the extract of the Québec Enterprise Registry communicated herewith as **Exhibit R-7**.
26. LFC is a fill and finish contract manufacturing facility that specializes in manufacturing prefilled syringes of saline water-based products.
27. LFC operates out of a facility located at 7500 Trans-Canada Highway, Pointe-Claire, Québec (the “**Trans-Canada Highway Facility**”) and has a production capacity of 225M units per year and leases a warehousing facility located at 18101 Trans-Canada Highway in Kirkland, Québec.
28. LFC employed 65 employees prior to the planned shutdown (as further explained below), who were temporarily laid off on July 12, 2024.

iii. RealCo

29. RealCo is a privately held corporation incorporated under the QBCA, the whole as appears from a copy of the Québec Enterprise Registry communicated herewith as **Exhibit R-8**.
30. RealCo is the owner of the Trans-Canada Highway Facility in which LFC carries its operations.
31. RealCo has no employees or operations.

iv. 9190

32. 9190 is a privately held corporation incorporated under the QBCA, the whole as appears from a copy of the Québec Enterprise Registry communicated herewith as **Exhibit R-9**.
33. 9190 is the sole shareholder of LFC and Realco. It is also a partner in a European joint-venture, MedXL BV which operates as a distributor of LFC and MedXL’s products in Europe.
34. MedXL BV is not a party to these proceedings.

III. ASSETS AND INDEBTEDNESS

A. Assets

35. MedXL and LFC’s assets, on a consolidated basis, as of June 30, 2024, can be summarized as follows (the whole in Canadian dollars):
 - a) Cash: \$ 365,796

- b) Accounts receivables: \$ 1,806,582
- c) Intercompany receivable: \$ 0
- d) Inventory: \$ 9,442,728
- e) Deposits & prepaid expenses: \$ 726,558
- f) Property, plant & equipment: \$14,511,684; and
- g) Intangible assets: \$18,442.

B. *Indebtedness*

i. Overview

36. As further described below, the Debtors have outstanding liabilities on a consolidated basis of \$56,339,000.

ii. Secured Lenders

37. As described in more details below, as of June 30, 2024, the Debtors secured liabilities on a consolidated basis total approximately \$ 27,000,000 (the creditors identified in the following chart are hereinafter collectively defined as the “**Secured Lenders**”)

Secured Creditors as at June 30, 2024 (\$ 000)	Amount of indebtedness		
	MedXL	Liebel	9431
eCapital Commercial Finance (Canada) Corp.	1,083	-	-
Business Development Bank of Canada	150	-	-
On Deck Capital Canada Inc.	190	-	-
Mitsubishi HC Capital Canada, Inc.	-	3,513	-
Investissement Québec	-	2,093	-
Private Debt Partners Senior Opportunities Fund LP	-	-	20,000
	<u>1,423</u>	<u>5,606</u>	<u>20,000</u>

38. A summary report of the registrations on the Register of Personal and Movable Real Rights (the “**RPMRR**”) relating to the above secured debt is communicated herewith as **Exhibit R-10**.

a. Private Debt Partners Senior Opportunities Fund LP

39. Pursuant to a credit agreement entered into on March 15, 2024, Private Debt Partners Senior Opportunities Fund LP (“**PDP**”) granted a \$20 million facility to RealCo, guaranteed by MedXL and LFC (the “**PDP Loan**”), as appears from a copy of the credit agreement communicated herewith as **Exhibit R-11**.

40. The PDP Loan is secured *inter alia* by an immovable hypothec on the Trans-Canada Highway Facility and a universal movable hypothec on the Debtors' assets, for an amount of \$ 30,000,000.

41. As of the date hereof, under the PDP Loan, the MedXL Group owes approximately \$ 20,000,000.

b. **Mitsubishi HC Capital Canada Inc.**

42. Pursuant to a credit agreement between Mitsubishi HC Capital Canada Inc. ("**Mitsubishi**"), LFC, RealCo and MedXL, Mitsubishi granted a \$4 million facility to the Debtors (the "**Mitsubishi Loan**"), as appears from a copy of the credit agreement and amendment communicated herewith *en liasse* as **Exhibit R-12**.

43. The Mitsubishi Facility is secured *inter alia* by an immovable hypothec on the Trans-Canada Highway Facility and a universal movable hypothec on LFC, MedXL and RealCo's assets for an amount of \$ 6,500,000.

44. As of the date hereof, under the Mitsubishi Loan, the MedXL Group owes approximately \$ 3,513,000.

c. **eCapital**

45. Pursuant to a Master Purchase and Sale Agreement between eCapital Commercial Finance (Canada) Corp. ("**eCapital**") and MedXL and LFC, eCapital granted a factoring facility to MedXL and LFC, pursuant to which MedXL and LFC are entitled to collect up to 90% of their accounts receivables from eCapital upon shipping of the products, and additional percentage upon payment by the customer, up to the total maximum facility amount of \$5,000,000 (the "**eCapital Loan**"), as appears from a copy of said agreement communicated herewith as **Exhibit R-13**.

46. The eCapital Loan is secured by an immovable hypothec on the Trans-Canada Highway Facility and a universal movable hypothec on MedXL, LFC and RealCo's assets, for an amount of \$ 6,000,000.

47. As of June 30, 2024, under the eCapital Loan, MedXL and LFC owe approximately \$ 1,085,000.

48. On April 29, 2024, PDP, Mitsubishi, eCapital, the Debtors entered into an intercreditor agreement pursuant to which, *inter alia*, PDP, Mitsubishi and eCapital consented to their respective credit facilities and security and agreed on the ranking and priorities over the Debtors assets (the "**Intercreditor Agreement**"), as appears from a copy of the Intercreditor Agreement communicated herewith as **Exhibit R-14**.

d. **Business Development Bank of Canada**

49. Business Development Bank of Canada (“**BDC**”) granted two loans to MedXL (the “**BDC Loans**”) which total amount of \$150,000.
50. The BDC Loans are secured by movable hypothecs on the universality of MedXL’s equipment, machinery, tools, vehicles and intellectual property.
51. As of the date hereof, under the BDC Loans, MedXL owes approximately \$ 150,000.

e. **Investissement Québec**

52. Pursuant to a loan offer dated December 3, 2021 from Investissement Québec (“**IQ**”) to LFC, IQ has extended to LFC a loan in the amount of \$ 2,600,000, which was amended on February 28, 2023 and on March 21, 2024 (the “**IQ Loan**”). RealCo and MedXL have guaranteed the IQ Loan, as appears from a copy of the loan offer and amendments communicated herewith *en liasse* as **Exhibit R-15**.
53. The IQ Loan is secured by a universal movable hypothec on MedXL and LFC’s assets.
54. As of the date hereof, under the IQ Loan, the MedXL Group owes approximately \$ 2,093,000.

f. **OnDeck**

55. Pursuant to a *Business Loan and Security Agreement* entered into by OnDeck Capital Canada Inc. (“**OnDeck**”) and MedXL, OnDeck granted a loan to MedXL in the amount of \$ 300,000 (The “**OnDeck Loan**”) on February 16, 2024, as appears from a copy of the loan agreement communicated herewith as **Exhibit R-16**.
56. The OnDeck Loan is secured by a universal movable hypothec on MedXL’s assets.
57. As of the date hereof, under the OnDeck Loan, the MedXL Group owes an amount of \$ 190,000.

iii. *Unsecured creditors*

58. The amounts owed to unsecured creditors are summarized in the table below as of June 30, 2024:

Unsecured Creditors as at June 30, 2024 (\$ 000)	Amount of indebtedness		
	MedXL	Liebel	9431
Trade suppliers and accrued liabilities	4,924	4,690	-
Due to employees	609	797	-
Due to parent companies	3,729	12,583	-
Canada Economic Development	-	1,917	-
Due to third party	90	-	-
	<u>9,352</u>	<u>19,987</u>	<u>-</u>

IV. FINANCIAL DIFFICULTIES

59. Many factors contributed to the Debtors' current financial difficulties.
60. LFC was acquired to form part of the MedXL Group in July 2020. In July 2021, a significant product recall was issued for syringes produced on LFC's line 6 ("**Line 6**") due to issues relating to rubber gaskets. These syringes were provided by their Line 6 client to fill, label, package and ship back to the client as a finished product.
61. The recall placed LFC and MedXL in a precarious financial situation and severely impacted its profitability.
62. Following this recall, LFC invested in the development of a new product, Praxiject, upgraded its production and sought to obtain approvals from Health Canada ("**HC**"), CE Certification in the European Union ("**CE**") and the Food and Drug Administration (the "**FDA**") in the United States. The HC, CE and FDA approvals were obtained on February 2, 2022, November 3, 2023 and February 28, 2024, respectively.
63. However, at this point, LFC and MedXL were already facing cash flow issues and did not have sufficient liquidity in order to fund the raw material purchases required to launch operations on Line 6.
64. The Debtors' supply chain also puts significant stress on their cash flow as a large proportion of the Debtors' suppliers recently required payment for products at the time of the order.
65. This is primarily what lead the Debtors to a liquidity crisis and a shortage of raw materials.
66. The liquidity crisis was such that in the week of June 24, 2024, the Debtors were unable to pay their employees for their services.
67. During the two-week period from July 1, 2024 to July 12, 2024, the Debtors implemented a planned shutdown of their operations for a period of two weeks (the "**Planned Shutdown**").

68. During the Planned Shutdown, management determined that it was in the Debtors' best interests to retain minimal staff (a "skeleton crew") in order to ship out some of the Debtors' inventory and collect 90% of the accounts receivable under the eCapital Loan.
69. Towards the end of the Planned Shutdown, the Debtors:
- a) Informed the employees who had been identified to form part of the skeleton crew that they would be returning to work. Those employees received payment of their wages;
 - b) Announced temporary layoffs to the remainder of the employees. Unfortunately, due to the liquidity crisis, the Debtors were unable to make payroll for these employees in the week of July 8th, 2024.

V. RESTRUCTURING OBJECTIVES

70. Considering the foregoing challenges, it is clear that the Debtors are insolvent and that urgent relief is required. Every day that passes reduces the chances of the employees returning to the Debtors. With employees temporarily laid off, clients are not receiving their orders, such that there is a great risk that clients switch suppliers. It is urgent that operations resume to the benefit of all stakeholders.
71. As a result of these challenges, the Debtors are now at a crossroads: on the one hand, they manufacture a high-demand product in world-class facilities and have the capacity to significantly increase their production by re-opening Line 6. On the other hand, in order to be able to achieve this objective and return to viability and profitability, the Debtors need to restructure their balance sheet and receive capital injections.
72. In light of the above, the stay of proceedings provided by the CCAA will offer the Debtors a controlled and stable environment in which it can focus on its restructuring efforts.
73. The Debtors' management intends to focus its efforts on:
- a) Implementing an operational restructuring of its business and cost-cutting measures;
 - b) Maximizing and completing sales of inventory;
 - c) Conducting a SISP in accordance with the terms summarized below with a view to finding an investor in the Debtors' business or a purchaser for the assets, in accordance with the draft SISP approval order which will be communicated to the service list in anticipation of the comeback hearing; and
 - d) Submit a plan of arrangement to their creditors.

74. The purpose of these measures is to maximize the value of the Debtors' assets for the benefit of their stakeholders (including their employees and creditors) and to preserve the Debtors' business as a going concern through new investors or owners.
75. Furthermore, following the issuance of the Initial Order and the Court's approval of the Interim Financing Term Sheet, the Debtors will be in a position to progressively recall the majority of the temporarily laid off employees and resume production at MedXL and LFC's production plants.
76. The Interim Lender will provide significant support to the restructuring process by making additional financing available to the Debtors under the Interim Facility, ensuring that the process is fully-funded and can be implemented in accordance with the Proposed Initial Order, and permitting the continuation of the Debtors' core operations during this time, the whole as detailed below.
77. The relief contemplated in the present Application is necessary and appropriate given the circumstances leading up to this Application as well as the potential prejudice to the Debtors and their stakeholders in the absence of immediate relief being granted.
78. Furthermore, the integral role to be played by the Proposed Monitor, an officer of the Court, will contribute to the success of the Applicants' proposed restructuring and provide additional assurances that the process will be implemented in a transparent, fair, efficient and impartial manner and with consideration of the interests of all stakeholders.

VI. APPLICATION OF THE CCAA AND RELIEF SOUGHT

A. *Application of the CCAA*

79. As was more described above and in the Proposed Monitor's Report,
 - a) The Debtors are faced with a liquidity crisis and are insolvent; and
 - b) The aggregate amount of their outstanding indebtedness is significantly higher than 5,000,000\$.
80. As such, the Debtors meet the criteria set out at Subsection 3(1) of the CCAA and are debtor companies to which the CCAA applies.

B. *Appointment of the Monitor*

81. FTI has been retained by the Debtors to act as Monitor in these CCAA Proceedings, should this Court grant the present Application and issue the Proposed Initial Order.

82. FTI is a licensed insolvency trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* and is not subject to any of the restrictions on who may be appointed monitor set out in Subsection 11.7(2) of the CCAA.
83. FTI has already been engaged to assist the Debtors in their dealings with their Secured Lenders as well as the restructuring of their operations, and as such, already has extensive knowledge of the Debtors' operations and financials.
84. At no time during the past two years has FTI either been (i) a director, officer or employee of the Debtors; (ii) related to the Debtors or to any former director or officer of the Debtors; or (iii) the Debtors' auditor, accountant or legal counsel, or partner, employee of the auditor, accountant or legal counsel of the Debtors.
85. FTI has agreed to act as Monitor in these CCAA proceedings and is in an ideal position to supervise the implementation of the proposed restructuring by MedXL Group.
86. Therefore, the Debtors respectfully submit that FTI is qualified to act as Monitor and that it is appropriate in the circumstances to grant the Proposed Monitor the powers required to supervise in an appropriate manner the Debtors' affairs, the whole during the initial Stay Period sought pursuant to the Proposed Initial Order.

C. Stay of Proceedings

87. Unless a stay of proceedings is granted pursuant to the terms of the CCAA, certain suppliers, creditors and other stakeholders may attempt to take steps to try to take advantage of the Debtors' situation and realize on their assets.
88. The stay of proceedings will preserve the *status quo* and permit the Debtors to continue operating while establishing their restructuring plan.
89. The Debtors request that all proceedings against them as well as against their directors and officers and their property be stayed for an initial period of ten (10) days in order to preserve the status quo during the Stay Period.
90. At the comeback hearing, the Debtors will request a further extension of the Stay Period until September 27, 2024 to complete Phase 1 of the SISP without having to incur additional costs to return to Court solely to seek a stay extension during the SISP to fully complete the SISP without having to incur additional costs to return to Court solely to seek a stay extension during the SISP.
91. Based on the projections detailed in the Proposed Monitor's report, and subject to the approval of the Interim Financing and with the anticipated funding of Briva (\$2M), the Debtors expect to have sufficient funding and liquidity to cover anticipated post-filing costs and expenses during the Stay Period.

D. Interim Financing

92. The Interim Lender has agreed to make available to the Debtors, the Initial Advances, subject to the terms and conditions provided for under the Interim Financing Term Sheet dated July 25, 2024 and communicated herewith as **Exhibit R-17**, which terms and conditions can be summarized as follows:

Key Terms	Interim Financing Term Sheet
Financial Terms	
Availability following the issuance of the Initial Order	Up to \$1,200,000
Availability following the issuance of the Amended and Restated Initial Order	Up to \$4,000,000
Interim Lender	Briva Finance (Équité) S.E.C. (50% commitment) Vaxiron Inc. (50% commitment)
Fees	2% commitment fee (plus 2% fee upon exit) 5% standby fee on the aggregate non disbursed portion of the Interim Facility Prepayment fee for amounts prepaid prior to the maturity date
Interest rate	12,5%
Interim Lender's Charge	Priority over all movable and immovable property of the Debtors with the exception of the Administration Charge. For clarity, the Interim Lender's Charge shall not affect the receivables purchased by or assigned to eCapital prior to the date of the Initial Order pursuant to the Master Purchase and Sale Agreement dated as of April 26, 2024 and the applicable Blocked Account Agreement dated as of May 2024 (the " Pre-Filing eCapital Receivables ")

93. The terms and conditions of the Interim Financing Term Sheet are comparable to those generally available in the market for financing of this nature and will not be

prejudicial to stakeholders considering as it will ultimately allow the Proposed Monitor to maximize value of the Debtors' business and/or assets for the benefit of all of the Debtors stakeholders.

94. The rights and obligations of Briva Finance (Équité) S.E.C. ("**Briva**") under the Interim Financing Term Sheet are conditional upon the acceptance of the Interim Financing Term Sheet by Briva's credit committee, which is expected at the latest on July 30, 2024.
95. The purpose of the Interim Financing Term Sheet is to, among other things, fund the cost of these CCAA proceedings and the ongoing operations of the Debtors during same, which is essential to the Debtors' restructuring plan.
96. In light of the Debtors' cashflow forecast and the Proposed Monitor's Report, the Interim Financing Facility is not only necessary to ensure that the Debtors will have sufficient funds to implement the proposed restructuring but is also the only feasible financing alternative available. The Initial Advances are limited to what is necessary for the Debtors to "keep the lights on" during the initial "stay period".
97. It is respectfully submitted that it is appropriate for this Court to authorize the Interim Advances as contemplated under the Interim Financing Term Sheet (Exhibit R-17).

E. *SISP*

98. The Debtors, in consultation with the Proposed Monitor and the Secured Lenders, are developing a SISP to be approved at the comeback hearing.
99. The SISP, if approved by the Court, is to be conducted in accordance with the proposed bidding procedures and is intended to solicit interest in, and opportunities for investments in or sales in respect of the MedXL Group's assets, business, and/or shares.
100. A draft SISP order, setting out the bidding procedures in more details will be communicated to the service list prior to the comeback hearing.
101. It is anticipated that the SISP will provide for the following delays:

Event	Date
Approval of the SISP	(comeback hearing)
<u>Phase 1</u>	
1) Distribution of Solicitation Letter to potentially interested Parties	August [12], 2024
2) Access to CIM and VDR	August [12], 2024

3)	Vaxiron Offer Deadline	August [12], 2024
4)	Review by Monitor, Debtors and Secured Creditor and answer on Vaxiron Offer	August [16], 2024
5)	Phase 1 Bid Deadline (non-binding LOIs)	September [12], 2024 at 5:00 p.m.
6)	Identification and notification in respect of Phase 1 Successful Bids	September [16], 2024
<u>Phase 2</u>		
7)	Phase 2 Bid Deadline (firm offers)	October [10], 2024
8)	Selection of successful Bids or Auction (if multiple Phase 2 Bids)	October [17], 2024
9)	Definitive Documentation	October [24], 2024
10)	Approval Application	October [29], 2024
11)	Closing	October [30], 2024
12)	Outside Date	November [7], 2024

102. The proposed SISP approval order which will have been reviewed and approved by the Proposed Monitor and Secured Creditors will propose fair and reasonable terms for the SISP and should be approved as early as possible in order to advance the restructuring process for the benefit of all of the Debtors' stakeholders process for the benefit of all of the Debtors' stakeholders.
103. The Proposed Monitor will be ready to immediately begin the implementation of the SISP following the approval of the SISP.

F. Key Suppliers

104. The Debtors rely on the continued provision of raw materials and other supplies from foreign suppliers mainly in China, that may not consider themselves subject to the jurisdiction of this Court and who may refuse to continue to supply the Debtors if certain pre-filing obligations are not paid.
105. Similarly, the Debtors rely on the services of sterilisation service providers, customs brokers, freight-forwarders, transporters, logistics providers, and warehousemen benefiting from rights of retention over goods and assets in order to ensure, inter alia, that there is a continuous supply of those essential goods.
106. If these suppliers and service providers (the "**Critical Suppliers**") were to refuse to ship or release these goods to the Debtors, the Debtors' supply chain would be

significantly disrupted, thereby jeopardizing their operations and causing prejudice to creditors and other stakeholders.

107. The Debtors therefore submit that they should be authorized, but not required, with the consent of the Monitor, to continue making payments in the normal course of business to the Critical Suppliers as is required to ensure timely and supply and release of merchandise required for its ongoing operations, even if part of the payments would cover pre-filing liabilities.

G. CCAA Charges

i. Administration Charge

108. The Proposed Monitor, its counsel, and counsel for the Debtors and the Secured Lenders are essential to the successful restructuring efforts contemplated in these CCAA Proceedings efforts contemplated in these CCAA Proceedings, including the SISP
109. Moreover, the contemplated restructuring would not be possible without the continued collaboration of the Interim Lender, their counsel and financial advisor.
110. The above-mentioned professionals have advised that they are prepared to provide or continue to provide professional services to the Debtors only if they are protected by a charge over the assets of the Debtors, in accordance with the Proposed Initial Order.
111. It is contemplated that the Debtors will be invoiced and pay fees and expenses of the beneficiaries of the Administration Charge on a weekly basis.
112. It is respectfully submitted that the Administration Charge in the initial aggregate amount of \$300,000 will cover the work that was done in the context of the preparation of the present proceedings and the work required until the comeback hearing.
113. At the comeback hearing, the Debtors will seek an increase of the Administration Charge to \$750,000 to secure professional fees and disbursements in the context of the restructuring.
114. The Debtors believe that the amount of the Administration Charge is fair and reasonable in the circumstances.

ii. Director's Charge

115. The continued implication of the founder and sole director, Mr. Paul Parisien, is essential to the restructuring efforts of the Debtors. M. Parisien has expressed concern with respect to potential personal liability if he continues in his current capacity through the CCAA Proceedings.

116. The Debtors' directors' and officers' liability insurance policy the "**D&O Insurance**" expires on September 1st, 2024. The Debtors do not have sufficient liquidities to extend or renew the D&O Insurance.
117. In such circumstances, there is significant and legitimate concern with respect to Mr. Parisien's potential personal liability if he continues acting in his current capacity through the CCAA Proceedings.
118. The Debtors propose that a charge to guarantee the Debtors' indemnification obligations towards their directors and officers be granted over the assets of the Debtors, in accordance with the Proposed Initial Order in the amount of \$300,000 (the "**Director's Charge**") as set out in the Proposed Initial Order (Exhibit R-1), which is to be increased to \$600,000 at the comeback hearing, to the extent that such claims are not covered by the D&O Insurance or after its expiry, in order to provide a reasonable level of protection.
119. The proposed Director's Charge would rank junior to the Administration Charge and the Interim Lender's Charge, but senior to all other encumbrances and charges on the Debtors' property, the whole in accordance with the terms of the proposed Initial Order.
120. The Debtors submit that the approval and creation of the Director's Charge is necessary to the restructuring and that the amount sought is fair and reasonable.

iii. Interim Lender's Charge

121. To secure the Interim Advances, the Interim Lender have required that they be secured by a super-priority charge over the Debtors' property up to an initial amount of \$1,440,000 for the Initial Stay Period and then to an amount of \$4,800,000 at the comeback hearing.
122. The Interim Lender's Charge would rank junior to the Administration Charge, and senior to all other encumbrances and charges on the Debtors' property, including the Director's Charge. It would not charge the Pre-Filing eCapital Receivables, as defined above.

H. Administrative consolidation

123. Considering that the Debtors operate their business as a corporate group, it is appropriate and necessary to order the consolidation of the CCAA Proceedings for each company for administrative purposes.
124. The consolidation sought would be for administrative purposes only, with no substantive consolidation whatsoever.

I. Declaration that the Province of Québec is the Center of Main Interest

125. The Debtors seek a declaration that the province of Québec is the "center of main interest" in accordance with Subsection 45(2) of the CCAA given that:

- a) The Debtors' chief place of business is Montreal;
 - b) All of the Debtors' employees are based in Montreal;
 - c) All decisions are made in Canada by senior management in Canada;
 - d) The Debtors' most important assets are located in Canada.
126. This recognition could be required if the Debtors eventually seek recognition of these CCAA Proceedings in the United States under the US Bankruptcy Code. Such proceedings may be necessary insofar as the Debtors have equipment of substantial value located in the United States.
127. In order to ensure that the Debtors are appropriately protected in all relevant jurisdictions, the Debtors will seek an authorization that FTI or themselves may act as foreign representative, and apply to any other court, tribunal, regulatory, administrative or other body, wherever located, for orders to recognize and/or assist in carrying out terms of the Initial Order and any subsequent Orders rendered by this Court in the context of the CCAA Proceedings including, without limitation, orders under the US Bankruptcy Code.

J. *Sealing of confidential documents*

128. Certain appendices of the Proposed Monitor's Report contain commercially sensitive information related to the affairs of the Debtors. It is respectfully submitted that such information should be kept confidential and filed under seal until further order of this Court.
129. The sealing order sought for such sensitive financial information is necessary as the Debtors intend to implement a SISF. The disclosure of such information may adversely affect the Debtors' capacity to maximize the realization of its assets in the eventual SISF, the whole to the detriment of its stakeholders.
130. There exists no reasonable alternative to the sealing orders.
131. The Debtors undertake to provide a copy of the sealed documentation and information to any creditor who agrees to receive such documentation and information on a confidential basis.

K. *Execution notwithstanding appeal*

132. Given the urgency and severity of the circumstances confronting the Debtors, it is essential that execution of the order sought herein be granted notwithstanding appeal.

VII. CONCLUSION

133. In light of the foregoing, the Debtors believe that it is appropriate and necessary to grant the order sought pursuant to the present Application without further delay.

134. The Secured Lenders, namely Mitsubishi, PDP, BDC, IQ, eCapital and OnDeck as well as the Canada Revenue Agency and *Revenu Québec* who are likely affected by certain of the aforementioned charges, have received notice of the present Application.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present *Application for the issuance of (i) an Initial Order, (ii) an Amended and Restated Initial Order and (iii) an Order Approving a Sale and Investment Solicitation Process* (the “**Application**”);

ISSUE an order substantially in the form of the Proposed Initial Order communicated in support of the Application as Exhibit R-1;

AT THE COMEBACK HEARING ON THE APPLICATION:

ISSUE an order substantially in the form of the draft Amended and Restated Initial Order communicated in support of the Application as Exhibit R-3;

ISSUE an Order approving the sale and investment solicitation process substantially in the form of the draft order communicated prior to the hearing;

THE WHOLE WITHOUT COSTS, save and except in the event of contestation.

Montréal, this July 25, 2024

Fasken Martineau DuMoulin LLP

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Email: edtremblay@fasken.com

SWORN STATEMENT

I, the undersigned, Paul Parisien, having an address at 285 Labrosse Avenue in the city of Pointe-Claire, district of Montréal, Province of Quebec, H8N 2J8, do solemnly declare:

1. I am the President and sole director of MedXL Inc., Liebel-Flarsheim Canada Inc. and 9431-0091 Québec inc..
2. I have read the *Application for the issuance of (i) an Initial Order, (ii) an Amended and Restated Initial Order and (iii) an Order Approving a Sale and Investment Solicitation Process* (the “**Application**”);
3. All of the facts alleged in the Application of which I have personal knowledge are true;
4. Where the facts alleged in the Application have been obtained from others, I believe them to be true.
5. All the facts alleged in the present application are true.

AND I HAVE SIGNED :

DocuSigned by:

Paul Parisien

63A2B5849A0B40E...

Paul Parisien

Solemnly affirmed before me,
in Montréal, on July 25, 2024

DocuSigned by:

Claudia Vallée St-Pierre

6B5319659C2349C...

Commissioner for Oaths for Québec

DS



NOTICE OF PRESENTATION

ADDRESSEE(S):

SERVICE LIST

1. PRESENTATION OF THE APPLICATION

TAKE NOTICE that the present *Application for the issuance of (i) an Initial Order, (ii) an Amended and Restated Initial Order and (iii) an Order Approving a Sale and Investment Solicitation Process* will be presented for adjudication before one of the honourable judges of the Superior Court, sitting in commercial division for the district of Montréal on **July 26, 2024 at 10:30** or so soon thereafter as counsel may be heard, in **Room 16.04** of the Montréal courthouse, located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6.

Please contact **Me Marc-André Morin (514-397-5131 / mamorin@fasken.com)** or **Me Éliane Dupéré-Tremblay (514-397-7412 / edtremlay@fasken.com)** regarding this application.

Montréal, this July 25, 2024

Fasken Martineau DuMoulin LLP

Fasken Martineau DuMoulin LLP

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C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL**

**SUPERIOR COURT
(Commercial Division)
*Companies' Creditors Arrangement Act***

No: **500-11-**

**IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF:**

MEDXL INC. a legal person having an address at 285 Labrosse avenue, Pointe-Claire, Québec in the city and judicial district of Montreal, H8N 2J8

-and-

LIEBEL-FLARSHEIM CANADA INC., a legal person having an address at 7500 Transcanadienne route, Pointe-Claire, Québec in the city and judicial district of Montreal, H9R 5H8

-and-

9431-0091 QUÉBEC INC., a legal person having an address at 7500 Transcanadienne route, Pointe-Claire, Québec in the city and judicial district of Montreal, H9R 5H8

-and-

9190-2395 QUÉBEC INC., a legal person having an address at 35, rue St. Andrew's, Baie d'Urfée, Québec, in the city and judicial district of Montreal, H9X 2T9

Debtors

-and-

FTI CONSULTING CANADA INC. a legal person having an address at 1000 Sherbrooke St. W, Suite 915, Montréal, Québec, H3A 3G4

Proposed Monitor

LIST OF EXHIBITS

- EXHIBIT R-1:** Proposed Initial Order.
- EXHIBIT R-2:** Redline comparing the Proposed Initial Order to the model CCAA initial order.
- EXHIBIT R-3:** Proposed ARIO.
- EXHIBIT R-4:** Redline document comparing the Proposed ARIO to the model CCAA Initial Order.
- EXHIBIT R-5:** Redline document comparing the Proposed Initial Order and the Proposed ARIO.
- EXHIBIT R-6:** Extract of the Québec Enterprise Registry for MedXL Inc.
- EXHIBIT R-7:** Extract of the Québec Enterprise Registry for Liebel-Flarsheim Canada Inc.
- EXHIBIT R-8:** Extract of the Québec Enterprise Registry for 9431-0091 Québec inc.
- EXHIBIT R-9:** Extract of the Québec Enterprise Registry for 9190-2395 Québec Inc.
- EXHIBIT R-10:** Summary report of the registrations on the Register of Personal and Movable Real Rights.
- EXHIBIT R-11:** Credit agreement entered into on March 15, 2024, Private Debt Partners Senior Opportunities Fund LP
- EXHIBIT R-12:** *En liasse*, Credit agreement between Mitsubishi HC Capital Canada Inc. and Amendment.
- EXHIBIT R-13:** Master Purchase and Sale Agreement between eCapital Commercial Finance (Canada) Corp. (“**eCapital**”) and MedXL and LFC.
- EXHIBIT R-14:** Intercreditor Agreement.
- EXHIBIT R-15:** *En liasse*, IQ loan offer and amendments
- EXHIBIT R-16:** *On Deck Business Loan and Security Agreement.*
- EXHIBIT R-17:** Interim Financing Term Sheet.

Montréal, this July 25, 2024

Fasken Martineau DuMoulin LLP

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N° : 500-11

PROVINCE OF QUEBEC
SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

IN THE MATTER OF THE COMPROMISE
OR ARRANGEMENT OF:

MEDXL INC.

-and-

LIEBEL-FLARSHEIM CANADA INC.

-and-

9431-0091 QUÉBEC INC.

-and-

9190-2395 QUÉBEC INC.

Debtors

-and-

FTI CONSULTING CANADA INC.

Proposed Monitor

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BF1339

**APPLICATION FOR THE ISSUANCE OF AN
(I) INITIAL ORDER (II) AN AMENDED AND
RESTATED INITIAL ORDER AND (III) AN
ORDER APPROVING A SALE AND
INVESTMENT SOLICITATION PROCESS
AND BOOK OF EXHIBITS**

Presentation Date: July 26, 2024

ORIGINAL

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