

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)  
(Sitting as a court designated pursuant to the  
*Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3)

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No.: 500-11-031719-079

**IN THE MATTER OF THE PROPOSAL OF:**

**PRIVA INC.;**

**Debtor/Petitioner**

- and -

**RSM RICHTER INC.;**

**Trustee/Interim Receiver**

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**MOTION TO APPROVE THE DEBTOR'S PROPOSAL  
(SECTIONS 58 FF. OF THE *BANKRUPTCY AND INSOLVENCY ACT*  
("BIA"))**

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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OR THE REGISTRAR, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE DEBTOR RESPECTFULLY SUBMITS THE FOLLOWING:

1. On October 26, 2007, Priva Inc. ("**Priva**" or the "**Debtor**") filed a Notice of Intention to File a Proposal pursuant to Section 50.4 of the BIA with the Official Receiver (the "**NOI**"), and RSM Richter Inc. ("**Richter**") was named trustee thereunder (the "**Trustee**"), the whole as appears from the record of this Honourable Court.
2. The Debtor hereby requests this Honourable Court's approval of its proposal to its creditors dated November 23, 2007, same having been duly accepted by its creditors on December 12, 2007 (the "**Proposal**");
3. In support of the present Motion, the Debtor hereby files the Trustee's Report on the Proposal, as well as the documents annexed thereto (the "**Trustee's Report**"), as Exhibit **P-1**.

### Background

4. Priva's business was the manufacture, distribution and marketing of absorbent, waterproof, protective textile products for adults and children, for sale by retailers and catalogue companies in Canada, the U.S., the U.K., Australia and Spain. Exports represented approximately 67% of Priva's sales.
5. In the Fall of 2005, Priva completed a transaction whereby it had acquired the assets of Philmont Manufacturing, a division of The Strongwater Group, an American company that designed, manufactured and distributed similar products to those of Priva, primarily to U.S. based retailers (the "**Philmont Transaction**").
6. Priva incorporated a subsidiary, Priva (USA) Inc. ("**Priva USA**"), in order to acquire said assets and operate the business related thereto, out of an office and a warehouse located in the State of New York.
7. At the time of the Philmont Transaction, Priva anticipated generating growth, profitability and synergies, however, it quickly became apparent that the business of Priva USA could not be profitably operated.
8. Over the course of 2006, Priva struggled in its attempts to integrate the new business being operated by Priva USA and to achieve the synergies that were anticipated at the time of the Philmont Transaction, which unfortunately, were never achieved.
9. Priva ultimately was forced to sell Priva USA, as the anticipated synergies were taking too long to materialize, and the process was too costly. The proceeds of the sale were used to reduce Priva's liabilities and to strengthen its balance sheet.
10. Notwithstanding the steps that Priva took to improve its performance, the strengthening dollar and the structural effects of the Philmont Transaction, in the opinion of Priva's management, continued to hinder Priva's ability to return to sustained profitability as well as its ability to operate a solvent business.
11. In particular, due to the financial difficulties discussed hereinabove, Priva's continued operation has been dependent upon the favourable credit terms granted by its majority shareholder and critical supplier, Med-I-Pant Inc. ("**MIP**"), which had indicated that it does not wish to continue financing the ongoing operations of the Debtor.

### Asset Sale

12. In connection with the filing of its NOI, on October 26, 2007, Priva obtained an order from this Honourable Court (the "**Approval Order**") providing for, *inter alia*:
  - a) The approval, confirmation and ratification of the sale of the majority of its assets to Fiberlinks Textiles Inc. ("**Fiberlinks**"), one of its creditors (the "**Fiberlinks Transaction**");
  - b) The appointment of Richter as Interim Receiver for the sole purpose of completing the Fiberlinks Transaction; and

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- c) The filing of articles of amendment by Priva or Richter in order to change Priva's name;

the whole as appears from the record of this Honourable Court.

13. The salient features of the Fiberlinks Transaction can be summarized as follows:

- a) Fiberlinks purchased all of Priva's inventories of finished goods, work in progress, raw materials and other materials and supplies owned by Priva and used in connection with its business for a total purchase price of \$988,010;
- b) Fiberlinks also purchased Priva's goodwill, intellectual property, furniture and fixtures for a total purchase price of \$300,000;
- c) Fiberlinks retained 11 out of Priva's 15 employees; and
- d) Fiberlinks agreed to collect Priva's accounts receivable and to remit the proceeds to Priva for the benefit of its secured creditors, namely, the Toronto Dominion Bank and MIP, and the balance of such proceeds, if any, to the ultimate benefit of Priva's unsecured creditors.

the whole as appears from the record of this Honourable Court, and from the Trustee's Report on the Financial Situation of the Debtor and on the Proposal, Annexe F of Exhibit P-1.

14. The Fiberlinks Transaction closed on November 1, 2007.

15. Forthwith after this Honourable Court renders judgment on the present Motion, Priva will file articles of amendment to change its name in accordance with the terms of the Approval Order;

### **The Proposal**

16. On November 23, 2007, Priva filed its Proposal with the Trustee, the whole as appears from the Trustee's Report on the Financial Situation of the Debtor and on the Proposal, Annexe F of Exhibit P-1.

17. The Proposal provides for, *inter alia*:

- a) The payment of preferred claims in priority to all other unsecured claims;
- b) The payment in full, immediately following Proposal Approval (as defined in the Proposal):
- (i) Of amounts owing to her Majesty in Right of Canada or a province, as enumerated in Section 60(1.1) of the BIA, if any; and
  - (ii) Of amounts owing to employees and former employees, that they would have been entitled to receive under Section 136(1d) of the BIA if the Priva became bankrupt on the date of the Proposal Approval, if any;

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- c) The payment of Post-Filing Obligations (as defined in the Proposal) in the ordinary course of business and on regular trade terms, or as may be arranged by Priva;
- d) The deposit by Priva of the sum of \$150,000 with the Trustee on the date of Proposal Approval (the "Proposal Fund"), to be distributed by the Trustee in accordance with the terms of the Proposal;
- e) As a condition of Proposal Approval, and conditional upon Proposal Approval, MIP's consent to the deposit of the Proposal Fund with the Trustee for distribution as provided for in the Proposal, which Proposal Fund would otherwise be subject to MIP's security; and
- f) The payment to the Affected Ordinary Creditors (as defined in the Proposal) of:
  - (i) the lesser of \$1,000 or the amount of its Ordinary Claim (as defined in the Proposal), payable out of the Proposal Fund within THIRTY (30) days of Proposal Approval; and
  - (ii) with respect to the balance of its Ordinary Claim, if any, its *pro rata* share of the balance of the Proposal Fund, as soon as reasonably possible.

The whole as appears from the Proposal, Annexe D of Exhibit P-1.

- 18. The Trustee duly informed Priva's creditors of the filing of the Proposal in accordance with the applicable provisions of the BIA and called a general meeting of creditors, which took place on December 12, 2007 (the "**Creditors' Meeting**"), the whole as appears from the Notice of Proposal to Creditors, Annexe E of Exhibit P-1.
- 19. The Trustee recommended the approval of the Proposal, the whole as appears from the Trustee's Report on the Financial Situation of the Debtor and on the Proposal, Annexe F of Exhibit P-1.
- 20. At the Creditors' Meeting, Priva's creditors unanimously, and thus, by the majorities required in accordance with the BIA, approved the Proposal, the whole as appears from the minutes of the Creditors' Meeting, Annexe G of Exhibit P-1.
- 21. On December 21, 2007, the Trustee duly notified Priva, Priva's creditors and the Official Receiver, that Priva would seek this Honourable Court's approval of the Proposal, the whole as appears from the Trustee's Report, Exhibit P-1.
- 22. On December 21, 2007, the Trustee sent a copy of the Trustee's Report to the Superintendent of Bankruptcy, the whole as appears from the Trustee's Report, Exhibit P-1.

### Conclusions

- 23. The terms of the Proposal are reasonable and are beneficial to the mass of creditors.
- 24. Priva hereby asks this Honourable Court to:

- a) Grant the present Motion;
- b) Approve its Proposal;

25. The present motion is well founded in fact and in law.

**WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the present Motion to Approve the Debtor's Proposal ("**Motion**") and the remedies and relief sought by Priva Inc. ("**Priva**") therein;

**DECLARE** that the time for service of the Motion is hereby abridged such that the Motion is properly presentable;

**DECLARE** that the service of the Motion constitutes good and sufficient service on all persons and further **DECLARE** that Priva is relieved of any other requirements for service of the Motion;

**DECLARE** that Priva's proposal to its creditors, dated November 23, 2007 (the "**Proposal**") was validly approved by Priva's creditors.

**APPROVE** the Proposal.

**APPROVE** the change of name of Priva to AXQP Inc., as may be required.

**DECLARE** that this Court seeks and requests the aid and recognition of any Court or administrative body in any province of Canada, and any Canadian Federal Court or administrative body, as well as any Court or administrative body in any of the States of the United States of America or any other jurisdiction and any Federal Court or administrative body of the United States of America or any other jurisdiction, to assist Priva and Richter, in its capacity of Trustee, to carry out the terms of the conclusions of the present Motion;

**THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

MONTREAL, January 8, 2008

*(SGD) Osler, Hoskin & Harcourt LLP*

**TRUE COPY**

*Osler, Hoskin & Harcourt LLP*  
**Osler, Hoskin & Harcourt LLP**

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**OSLER, HOSKIN & HARCOURT L.L.P.**  
Attorneys for the Debtor  
PRIVA INC.

**AFFIDAVIT**

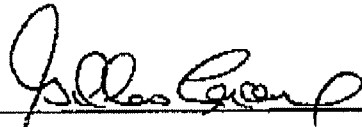
I, the undersigned, Danielle Lefort, business person, domiciled and residing at 1895 De la Rousselière Blvd., city and district of Montréal, Province of Québec, H1A 2X6, solemnly declare the following:

1. I am the Chief Financial Officer of the Debtor and I am duly authorized for purposes hereof;
2. I have taken cognizance of the present Motion to Approve the Debtor's Proposal;
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED

  
 \_\_\_\_\_  
 Danielle Lefort

SOLEMNLY AFFIRMED BEFORE ME IN MONTRÉAL  
on the 8<sup>th</sup> day of January 2008

  
 \_\_\_\_\_

COMMISSIONER OF OATHS  
FOR THE JUDICIAL DISTRICT OF MONTRÉAL



**TRUE COPY**

  
 \_\_\_\_\_  
 Osler, Hoskin & Harcourt LLP

**NOTICE OF PRESENTATION**

**TO: The Toronto Dominion Bank**  
C/O Mtre Guy St-Germain  
Sternthal Katznelson Montigny  
Place du Canada  
1010 de La Gauchetière Street West  
Suite 1020  
Montréal QC H3B 2N2

**RSM Richter Inc.,**  
C/O Mr. Yves Vincent  
2 Place Alexis-Nihon  
3500 de Maisonneuve Blvd. West, 22<sup>nd</sup> Floor,  
Montréal, Québec, H3Z 3C2

**Med-I-Pant Inc.**  
C/O Mtres. Neil Kravitz and Denis  
Ferland  
Davies Ward Phillips & Vineberg  
1501 McGill College Avenue  
26th Floor  
Montréal QC H3A 3N9

**Fiberlinks Textiles Inc.**  
C/O Mtre. Alwynn Gillett  
Spiegel Sohmer  
5 Place Ville Marie  
Suite 1203  
Montréal QC H3B 2G2

**RSM Richter Inc.**  
C/O Mtre. Michel La Roche  
La Roche Rocheleau  
1155 René-Lévesque Blvd. West  
Suite 2660  
Montréal QC H3B 4S5

**TAKE NOTICE** that the attached *Motion to Approve the Debtor's Proposal* will be presented for hearing and allowance in room 16.10 at 9:00 a.m. at the Montreal Courthouse, 1 Notre-Dame Street East, Montreal, on January 11, 2008, or so soon thereafter as Counsel may be heard.

**DO GOVERN YOURSELF ACCORDINGLY.**

MONTREAL, January 8, 2008

(SGD) *Osler, Hoskin & Harcourt LLP*

**TRUE COPY**

**OSLER, HOSKIN & HARCOURT L.L.P.**  
Attorneys for the Debtor  
PRIVA INC.

*Osler, Hoskin & Harcourt LLP*  
Osler, Hoskin & Harcourt LLP

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
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R.S.C. 1985, c. B-3)

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No.: 500-11-

**IN THE MATTER OF THE PROPOSAL OF:**

**PRIVA INC.;**

**Debtor/Petitioner**

- and -

**RSM RICHTER INC.;**

**Trustee/Interim Receiver**

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**NOTICE OF DENUNCIATION OF EXHIBITS**

**TAKE NOTICE** that in support of its Motion, Petitioner intends to introduce as evidence the following Exhibits:

P-1 Trustee's Report on the Proposal, as well as the documents annexed thereto

MONTREAL, January 8, 2008

(SGD) *Osler, Hoskin & Harcourt LLP*

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**OSLER, HOSKIN & HARCOURT L.L.P.**  
Attorneys for the Debtor  
Priva Inc.

**TRUE COPY**

*Osler, Hoskin & Harcourt LLP*  

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Osler, Hoskin & Harcourt LLP



No: 500-11-031719-079

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**SUPERIOR COURT**  
*Commercial Division*  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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IN THE MATTER OF THE PROPOSAL OF:

PRIVA INC.,

Debtor/Petitioner

and

RSM RICHTER INC.,

Trustee/Interim Receiver

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**MOTION TO APPROVE THE DEBTOR'S  
PROPOSAL (Sections 58 ff. of the BIA),  
AFFIDAVIT, NOTICE OF PRESENTATION AND  
NOTICE OF DENUNCIATION OF EXHIBITS**

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**COPY**

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**M<sup>c</sup> Allon Pollak**  
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**(Interim Receiver/Monitor)**  
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