

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
R.S.C. 1985, c. C-36)

No.: 500-11-031896-075

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

SR TELECOM INC., a legal person duly constituted under the *Canada Business Corporations Act*, having its head office and principal place of business at 8150 Trans-Canada Highway, in the city of Saint Laurent, district of Montréal, Province of Québec, H4S 1M5;

Petitioner

- and -

RSM RICHTER INC., a legal person duly incorporated having a place of business at 2 Place Alexis Nihon, 3500 de Maisonneuve Blvd West, 22nd floor, in the city and district of Montreal, H3Z 3C2,

Monitor

**MOTION FOR THE APPROVAL OF A KEY EMPLOYEE RETENTION
PROGRAM AND FOR THE APPROVAL OF AN AGREEMENT**

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

PETITIONER AND PROCEEDINGS

1. SR Telecom Inc. ("SRT" or "Petitioner") was incorporated under the *Canada Business Corporations Act* on February 17, 1981;

2. In 1986, SRT completed an initial public offering in Canada. Its common shares trade on the Toronto Stock Exchange under the symbol "SRX". As at today's date, SRT has 754,992,769 common shares issued and outstanding;
3. SRT is a reporting issuer, or its equivalent, in all Canadian Provinces and the Northwest Territories and is a registrant with the United States Securities and Exchange Commission ("SEC"). However, on November 6, 2007, SRT commenced the process to terminate the registration of its common shares with the SEC;
4. SRT's head office and principal place of business are located at 8150 Trans-Canada Highway, in the city of Saint Laurent;
5. On November 19, 2007, an initial Order ("**Initial Order**") was rendered by Honourable Justice Chantal Corriveau, J.C.S., pursuant to the *Companies Creditors Arrangement Act* in relation to SRT;
6. Any capitalized terms that are not defined herein shall have the meanings ascribed in the Initial Order;
7. A detailed description of the circumstances of Petitioner and the reasons for requesting the Initial Order are set out in the Motion for an initial order pursuant to Sections 4, 5 and 11 of the *Companies Creditors Arrangement Act* dated November 18, 2007 (the "Initial Motion");
8. Section 18 of the Initial Order authorizes the Petitioner, subject to the approval of the Monitor, to establish a plan for the retention of key employees and the making of retention payments or bonuses in connection therewith;
9. Section 17(b) of the Initial Order authorizes the Petitioner, subject to approval of the Monitor or further order of the Court, to pursue all avenues to market and sell its property, in whole or in part, and Section 24(f) of the Initial Order allowed the Monitor to assist the Petitioner with the conduct of any sale process to sell the Petitioner's assets or business;

PURPOSE OF THIS MOTION

10. The purpose of this Motion is to seek approval and authorization of this Court:
 - (a) for Petitioner to enter into a key employee retention program ("**KERP**");
 - (b) for the establishment of a trust in order to support the KERP; and
 - (c) for Petitioner to enter into an agreement with Lazard Frères & Co. LLC ("**Lazard**");

THE KERP

11. Petitioner, as of the date hereof, has approximately 198 employees, including, *inter alia*, approximately 80 highly specialized engineers and technicians dedicated to research and development (“R&D”);
12. As set out in the Initial Motion:
 - (a) Petitioner has been focussing its resources on developing, delivering and deploying WiMAX certified broadband wireless access systems, to which most of the R&D has been dedicated; and
 - (b) the core of SRT’s restructuring plan is to capitalize on the upcoming opportunities that WiMAX presents including through a sale of its assets or business on a going concern basis to a strategic purchaser, who will be able to provide continued employment for the employees, and preserve customer and supplier relationships;
13. For the last number of years, Petitioner has incurred significant losses from its operations. During the last twelve months, Petitioner has been forced to reduce its labour force significantly and since the rendering of the Initial Order, Petitioner has eliminated or transferred approximately 44 positions;
14. Petitioner’s board of directors has expressed concern that the remaining employees, including and especially the senior management and engineering teams, may not remain with Petitioner during its restructuring efforts because of the uncertainty of their continued long-term employment, and Petitioner’s financial situation;
15. The intrinsic value of the assets/business of Petitioner lies primarily in product offerings, especially as they relate to its WiMAX technology for which substantial investments have been made over the years. An important component of this new technology consists of the intellectual property related thereto and the “know-how” of Petitioner’s employees in respect thereof;
16. A number of key employees (“**Key Employees**”) have been identified who possess unique professional skills and knowledge of the WiMAX technology as well as experience with and knowledge of Petitioner’s business and operations and who are and will continue to be important contributors to Petitioner’s successful restructuring;
17. It is believed that in view of the specific skillset and experience of the Key Employees many of them have already or will likely receive competitive employment offers;
18. Petitioner requires the continued service and assistance of the Key Employees in order to maintain its assets and business and to complete its restructuring process;
19. After extensive discussions with the Monitor, Petitioner formulated a KERP designed to address the necessity of the continued employment of the Key Employees, a copy of which will be filed under seal at the hearing of the present Motion as Exhibit P-1;
20. The KERP provides for the following:

- (a) a retention bonus (the "**Retention Bonus**") payable to the 40 Key Employees, totalling in the aggregate approximately \$1,450,000, and payable upon the earlier of either, *inter alia*, termination without cause, the consummation of a sale transaction of all or substantially all of Petitioner's assets or the implementation of a plan of arrangement by Petitioner; and
- (b) a sale bonus payable to certain members (9) of the management team upon the sale of all or substantially all of the assets/business of Petitioner. This sale bonus will be calculated on the basis of a percentage of the sale proceeds relating thereto;

the whole as provided for in the KERP;

- 21. The KERP is designed to provide the necessary incentive for the Key Employees to remain with Petitioner throughout the restructuring with a view to preserving value for the stakeholders through positive contributions to the restructuring and sale process while taking into account Petitioner's financial constraints;
- 22. The benefits provided by the KERP were established after taking into consideration, *inter alia*, the relevance of the Key Employees to a successful restructuring, the nature of their employment and functions, and the risk that the Key Employees would seek alternate employment in the absence of the incentive set out in the KERP;
- 23. Payments provided for under the KERP will only be made to the Key Employees who have fulfilled their employment obligations to Petitioner throughout the restructuring process, who have not resigned or been terminated for cause;
- 24. It is believed the terms of the KERP are reasonable and essential to ensure the retention of the Key Employees and the completion of the Petitioner's restructuring to the benefit of its stakeholders;
- 25. The terms of the KERP have been developed in consultation with and have been approved by the Monitor;
- 26. Petitioner's secured lenders have been informed of and have indicated, through their legal counsel, that they have no objection to the terms of the KERP;
- 27. In view of the sensitive and confidential nature of the KERP and the fact that disclosure of its specific terms may negatively affect and be detrimental to the outcome of Petitioner's restructuring, and thereby cause prejudice to Petitioner and to its stakeholders, Petitioner hereby requests an order that Exhibit P-1 remain under seal;
- 28. In order to ensure that the Retention Bonus provided under the KERP will be paid, particularly in view of the Petitioner's current circumstances and financial situation, Petitioner hereby requests:
 - (a) an order for the establishment of a trust pursuant to which Petitioner will immediately deposit an amount equivalent to the Retention Bonus in trust with the Monitor RSM Richter Inc., acting as agent of the trust (the "**Trust Funds**"),

which amount will be disbursed by the Monitor to the beneficiaries of the Retention Bonus in accordance with the terms of the KERP;

- (b) a declaration that the establishment of such a trust, the deposit by Petitioner of amounts therein and the disbursements made by the Monitor in relation thereto or made by Petitioner in relation to the KERP, shall be binding on any trustee in bankruptcy that may be appointed in respect of Petitioner and shall not be void or voidable and shall not be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act*, Section 1631 and following of the *Civil Code of Quebec* or any other applicable federal or provincial legislation; and
- (c) a declaration that, to the extent that one or more Key Employees fails to meet the conditions precedent to the payment of a Retention Bonus pursuant to the terms of the KERP, any Trust Funds not used for the payment of the Retention Bonus to the Key Employees shall be remitted to Petitioner and remain subject to the security held by Petitioner's secured lenders;

ALLEGATIONS RELATING TO LAZARD

- 29. As appears in the Initial Motion, in August 2007, Petitioner embarked upon a process to identify a strategic purchaser for its business and/or assets and retained the services of Lazard in connection therewith, pursuant to an agreement dated September 27, 2007 (the "**September Agreement**");
- 30. Since their engagement, Lazard has been actively canvassing the market for a potential purchaser;
- 31. It has been determined by management and the board of directors of Petitioner that it would be to the benefit of the stakeholders that Lazard pursue its sale initiatives in the context of the Petitioner's CCAA proceedings;
- 32. Lazard and Petitioner, in consultation with the Monitor, have agreed to amend the terms of the Lazard engagement set out in the September Agreement, to reflect the current CCAA context and financial situation of Petitioner, the whole in accordance with the terms set forth in the amendment letter (the "**Amendment**") dated November 22, 2007. The September Agreement and the Amendment (collectively, the "**Lazard Agreement**") will be filed en liasse under seal as Exhibit P-2;
- 33. The Amendment has been approved by the Monitor;
- 34. Petitioner's secured lenders have been informed of, and have provided their consent to the execution by Petitioner of the Amendment;
- 35. Petitioner hereby requests that this Honourable Court authorize it to enter into the Amendment and perform its obligations under the Lazard Agreement, including the making of any and all payments provided thereunder in accordance with the terms thereof;

36. In view of the sensitive and confidential commercial nature of the information contained in the September Agreement and the Amendment and the fact that disclosure of its terms may negatively affect and be detrimental to the outcome of Petitioner's restructuring, and thereby cause prejudice to Petitioner and to its stakeholders, Petitioner hereby requests an order that Exhibit P-2 remain under seal;

MONITOR'S REPORT

37. Petitioner will file under seal as Exhibit P-3 the report of the Monitor on the amendment to the investment banker's contract and the key employee retention plan (the "**Monitor's Report**"), which contains the Monitor's analysis and recommendations in relation to the KERP and the Lazard Agreement;
38. The Monitor's Report deals with and refers to the KERP, Exhibit P-1, and the Lazard Agreement, Exhibit P-2, which will be filed under seal and which are subject to a request that they remain under seal. In light of the foregoing, Petitioner also requests that the Monitor's Report remain under seal;
39. The KERP and the Lazard Agreement are both essential to the success of Petitioner's efforts to restructure under the CCAA;
40. In view of the urgent nature of the orders sought herein, Petitioner hereby requests provisional execution of the order to be rendered pursuant hereto notwithstanding any appeal therefrom;
41. The present Motion is well founded in fact and in law.

WHEREFORE MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT this Motion;

DECLARE that the time for service of the present Motion is hereby abridged such that the Motion is properly presentable, and further the Petitioner is dispensed from any requirements for further service of the Motion;

APPROVE the key employee retention program (KERP), Exhibit P-1;

AUTHORIZE Petitioner to enter into the KERP and to perform its obligations thereunder, including the making of any and all payments provided therein in accordance with the terms thereof;

AUTHORIZE Petitioner to execute and deliver any such additional or ancillary documents as may be necessary to give effect to the KERP;

ESTABLISH a trust pursuant to which Petitioner will immediately deposit an amount equivalent to the Retention Bonus portion of the KERP in trust with the Monitor RSM Richter Inc., acting as trustee of the trust (the "**Trust Funds**"), which amount will be

disbursed by the Monitor to the beneficiaries of the Retention Bonus in accordance with the terms of the KERP;

DECLARE that the establishment of such a trust, the deposit by Petitioner of amounts therein and the disbursements made by the Monitor in relation thereto or made by Petitioner in relation to the KERP, shall be binding on any trustee in bankruptcy that may be appointed in respect of Petitioner and shall not be void or voidable and shall not be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the *Bankruptcy and Insolvency Act*, Section 1631 and following of the *Civil Code of Quebec* or any other applicable federal or provincial legislation;

DECLARE that, to the extent that one or more Key Employees fails to meet the conditions precedent to the payment of a Retention Bonus pursuant to the terms of the KERP, any Trust Funds not used for the payment of the Retention Bonus to the Key Employees shall be remitted to Petitioner and remain subject to the security held by Petitioner's secured lenders

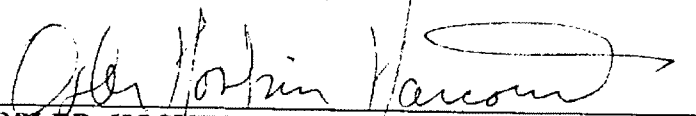
AUTHORIZE Petitioner to enter into the amendment letter dated November 22, 2007 to the agreement dated September 27, 2007, entered into with Lazard Frères & Co. LLC, Exhibit P-2 (collectively, the "**Lazard Agreement**") and to perform its obligations under the Lazard Agreement, including the making of any and all payments provided therein in accordance with the terms thereof;

ORDER the sealing of Exhibits P-1, P-2 and P-3;

ORDER provisional execution of the order to be rendered pursuant hereto notwithstanding any appeal therefrom;

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

MONTREAL, December 7, 2007

(SGA) 

OSLER, HOSKIN & HARCOURT L.L.P.

Attorneys for the Petitioner

SR TELECOM INC.

TRUE COPY


Osler, Hoskin & Harcourt LLP

AFFIDAVIT

I, the undersigned, Marc Girard, business person, domiciled and residing at 392 Des Roselins, city of Verdun, district of Montréal, Province of Québec, H3E 1X8, solemnly declare the following:

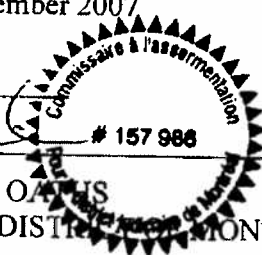
1. I am the Chief Financial Officer of Petitioner and I am duly authorized for purposes hereof;
2. I have taken cognizance of the present Motion for the Approval of a Key Employee Retention Program and for the Approval of an Agreement;
3. All the facts alleged in the said motion are true.

AND I HAVE SIGNED

(SGD) *Marc Girard*
Marc Girard

SOLEMNLY AFFIRMED BEFORE ME IN MONTRÉAL
on the 7th day of December 2007

(SGD) *[Signature]*
COMMISSIONER OF OATHS
FOR THE JUDICIAL DISTRICT OF MONTRÉAL



TRUE COPY

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

NOTICE OF PRESENTATION

**TO: DDJ CAPITAL MANAGEMENT, LLC
GUARDIAN CAPITAL L.P.
GREYWOLF LOAN PARTICIPATION
LLC
NORTH POLE CAPITAL MASTER
FUND
MORGAN STANLEY & Co.
INTERNATIONAL PLC
MORGAN STANLEY PRINCIPAL
STRATEGIES, INC.
THALES HOLDINGS LTD.
BNY TRUST COMPANY OF CANADA**

C/O S. Richard Orzy
BENNETT JONES LLP
3400 One First Canadian Place
PO Box 130
Toronto, Ontario, M5X 1A4

-and-

C/O Me Gerald F. Kandestin
KUGLER KANDESTIN
1 Place Ville-Marie
Suite 2101
Montreal, Quebec, H3B 2C6

**Attorneys for the above noted
parties**

**TO: Mtre. Bertrand Giroux
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Attorney for Triton Électronique
inc.**

TO: Me Jean Fontaine
STIKEMAN ELLIOTT LLP
1155 René-Lévesque Blvd. West
Suite 4000
Montreal, Quebec, H3B 3V2

- and -

Me Philippe Buist
STIKEMAN ELLIOTT LLP
1155 René-Lévesque Blvd. West
Suite 4000
Montreal, Quebec, H3B 3V2

Attorneys for the Monitor

TAKE NOTICE that the attached *Motion for the Approval of a Key Employee Retention Program and for the Approval of an Agreement* will be presented for hearing and allowance in room 15.11 at 9:30 a.m. at the Montreal Courthouse, 1 Notre-Dame Street East, Montreal, on December 10, 2007, or so soon thereafter as Counsel may be heard.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, December 7, 2007

(s.e.d.) Osler, Hoskin & Harcourt L.L.P.

OSLER, HOSKIN & HARCOURT L.L.P.

Attorneys for the Petitioner
SR TELECOM INC.

TRUE COPY

Osler, Hoskin & Harcourt L.L.P.
Osler, Hoskin & Harcourt LLP

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
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R.S.C. 1985, c. C-36)

No.: 500-11-031896-075

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

SR TELECOM INC.;

Petitioner

- and -

RSM RICHTER INC.;

Monitor

NOTICE OF DENUNCIATION OF EXHIBITS

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

- P-1 Petitioner's Key Employee Retention Program (filed under seal)
- P-2 Lazard Agreement, *en liasse* (filed under seal)
- P-3 Report of the Monitor on the amendment to the investment bankers contract and the key employee retention plan (filed under seal)

MONTREAL, December 7, 2007

(SGD) Osler, Hoskin & Harcourt L.L.P.
OSLER, HOSKIN & HARCOURT L.L.P.
Attorneys for the Petitioner
SR TELECOM INC.

TRUE COPY

Osler, Hoskin & Harcourt L.L.P.
Osler, Hoskin & Harcourt LLP

No: 500-11-031896-075

S U P E R I O R C O U R T

Commercial Division

PROVINCE OF QUEBEC

DISTRICT OF MONTREAL

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

SR TELECOM INC.,

Petitioner

and

RSM RICHTER INC.,

Monitor

**MOTION FOR THE APPROVAL OF A KEY
EMPLOYEE RETENTION PROGRAM AND FOR
THE APPROVAL OF AN AGREEMENT,
AFFIDAVIT, NOTICE OF PRESENTATION AND
NOTICE OF DENUNCIATION OF EXHIBITS**

COPY

M^c Martin Desrosiers

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Code : BO 0323n/d: **MD4746-1106255**

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