



District of British Columbia  
Division No. 3 - Vancouver  
Court No. B240063  
Estate No. 11-3031837  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
LOTUS VENTURES INC.

*A WITHOUT NOTICE*

**NOTICE OF MOTION**

~~TAKE NOTICE~~ that an application will be made by Lotus Ventures Inc. ("**Lotus**") to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, British Columbia on February 15, 2024 at 9:45 a.m., for:

1. An order substantially in the form attached as Schedule "A" extending the time for filing a proposal with the Official Receiver in these proceedings to and including April 1<sup>st</sup>, 2024.

**FACTS**

***Background***

1. Lotus is a British Columbia corporation and publicly traded company.
2. Lotus is engaged in the business of the production, cultivation, and sale of cannabis products.
3. Lotus is also the owner of certain lands on which it engages in the above-noted businesses, located in Spallumcheen, British Columbia (the "**Lands**"), as well as the equipment used in the business (the "**Equipment**").
4. Over the course of the last three years, Lotus began having difficulty making payment of ongoing expenses in a timely manner. Although Lotus sought and received further shareholder loans, it appears Lotus cannot continue to operate as a going concern.
5. On or about January 17, 2024, Lotus filed a Notice of Intention to Make a Proposal (the "**NOI**"). The NOI stays all proceedings against Lotus pending the tendering of a proposal to creditors. MNP Ltd. has been appointed as proposal trustee (the "**Proposal Trustee**").

***Actions following the NOI***

6. Before and after the filing of the NOI, Lotus reorganized its affairs and investigated various options with a view to formulating and presenting a proposal to creditors.
7. Lotus has reduced operating costs as a means of continuing to operate as a going concern.

8. Lotus has continued its efforts to increase sales, particularly in respect of exporting cannabis products through bulk sales to international customers.

9. Lotus has transitioned from a sole wholesale business to a domestic retail business with listing in the British Columbia Liquor and Cannabis Stores and Ontario Cannabis Stores.

10. Lotus has obtained export accreditation and has commenced international sales to Australia, the United Kingdom, and certain countries in Eastern Europe for its dried flower product.

11. Lotus has assessed options for a sale of the business as a going concern.

12. Lotus has assessed the forced liquidation value of its property as it relates to putting forth a proposal that would provide a greater return to its creditors than would be received under a bankruptcy scenario.

***Disadvantages of forced liquidation***

13. The cannabis industry is a new, unique, and highly regulated industry. The industry provides challenges to liquidation not present in other commercial scenarios.

14. The Product, for example, cannot be sold by an insolvency trustee due to Health Canada restrictions. Rather, all inventory and genetics must be destroyed at a cost of approximately \$25,000 to \$32,000, resulting in a net loss to creditors of at least \$750,000.

15. There is currently a glut of cannabis production equipment in the market as numerous companies in the industry have been forced into liquidation and bankruptcy. As a result, the value of the Equipment is drastically reduced if it is not sold as part of a going concern.

16. If Lotus is forced into immediate liquidation, all operations will cease. Because cannabis facilities are required to maintain an extraordinarily high level of sanitation and hygiene, this forced-stoppage will lead to huge start-up costs to return the facility to an appropriate state.

17. Forced liquidation will also result in the destruction of the strains and seeds bought and developed by Lotus over the course of its operation, with an estimated lost value of \$250,000 as compared to allowing purchase of the business by way of Plan of Arrangement.

18. If Lotus were shuttered, in addition to a purchase price for land and facilities, a cannabis purchaser would require \$1,500,000 to \$1,700,000 of working capital to restart production. That sum would be discounted from potential returns to the estate.

***Extension***

19. Lotus requires more time to continue to restructure its business and to continue working towards a viable proposal. As described above, Lotus has taken steps to reduce expenses and refocus its business, and preliminary discussions have already been held with contractors. I believe

that with more time Lotus will be able to make a viable proposal to its creditors.

20. An accurate appraisal of the value of the Lands, Product and Equipment requires a knowledgeable appraiser with experience in the cannabis industry. This necessity makes it more difficult to obtain an accurate appraisal in a timely manner.

21. Lotus has acted in good faith and with due diligence in these proceedings.

22. If there is a liquidation of Lotus' assets in a bankruptcy, it is likely that the majority of Lotus' creditors will receive little return, particularly given Lotus' CRA debt, and all 34 of Lotus' permanent employees will lose their employment.

23. Lotus has greater potential value as a going concern and intends to file a proposal that will provide a greater return to its creditors.

24. No creditors would be materially prejudiced by an extension of the time to file a proposal to April 1, 2024.

25. The Proposal Trustee confirms that Lotus has acted in good faith and with due diligence, that a proposal is likely forthcoming, and that no creditor will be materially prejudiced by the extension sought.

## **LEGAL BASIS**

1. Under section 50.4(9) of the *BIA*, the Court may grant an extension of time for filing a proposal for a period not exceeding 45 days if satisfied that:

- a. the insolvent person has acted, and is acting, in good faith and with due diligence;
- b. the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- c. no creditor would be materially prejudiced if the extension being applied for were granted.

2. An objective standard is applied. The intent of the proposal provisions in the *BIA* is rehabilitation, so the section is to be judged on a "rehabilitation basis" rather than a "liquidation basis." It is important to take a broad approach and look at a number of interested and potentially affected parties, including employees, unsecured creditors, and secured creditors.

*In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, 2005 BCSC 351 at paras 11-12 [*Cantrail*];  
*Andover Mining Corp. (Re)*, 2013 BCSC 1833 at para 58 [*Andover*].

### ***Good faith and due diligence***

3. The Court must be satisfied that the debtor is not acting in bad faith and is making some initial steps towards forming a proposal in the form of "some diligence."

*Andover* at paras 64-65.

4. Lotus has acted in good faith and with due diligence by stabilizing and continuing its business affairs and operations, and working with the Proposal Trustee. Avoiding a liquidation in bankruptcy is a good faith effort to maximize return for creditors.

***Lotus is likely to make a viable proposal***

5. A viable proposal is one that is feasible, and practicable from an economic standpoint.

*Cantrail* at paras 19-20.

6. A viable proposal need not have materialized, or be a certainty, provided a proposal is likely “in the sense it might well happen.”

*Andover* at para 74.

7. Lotus is continuing to take steps to reduce costs, shift the focus of its business, and pursue a plan of arrangement that would allow the company to continue to operate as a going concern, thereby avoiding unnecessary losses for creditors.

***No creditor will be materially prejudiced***

8. Material prejudice is “substantial” or “considerable” prejudice beyond the normal prejudice caused to creditors by a proposal proceeding.

*Cantrail* at paras 21-22.

9. There will be a superior outcome for creditors through ongoing operations, continued restructuring of Lotus’ business, and a proposal. An extension is required to enable Lotus to make a proposal, which will benefit the stakeholders.


At the hearing of the application, the applicant will rely on the following:

1. Affidavit #1 of Dale McClanaghan, made on February 13, 2024.

This matter is within the jurisdiction of an associate judge (sitting as a Registrar in Bankruptcy)

The applicant estimates that the application will take 15 minutes.

Dated: February 13, 2024

  
Signature of Jacob J. Gehlen  
Lawyer for applicant Lotus Ventures Inc.

This Notice of Motion is delivered by Jacob J. Gehlen of the firm of Gehlen Dabbs Cash LLP, whose place of business and address for delivery is Suite 1201-1030 West Georgia Street, in the City of Vancouver, in the Province of British Columbia, V6E 2Y3, Telephone: 604.642.6422.

Schedule "A"

District of British Columbia  
Division No. 3 - Vancouver  
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**IN THE MATTER OF THE NOTICE OF INTENTION  
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LOTUS VENTURES INC.**

**ORDER**

BEFORE ) )  
 ) ) 15/FEB/2024  
 ) )

ON THE APPLICATION of Lotus Ventures Inc. coming on for hearing at Vancouver, British Columbia, on February 15, 2024 and on hearing Jacob J. Gehlen, counsel for Lotus Ventures Inc., and upon reading the material filed and no one else appearing although duly served;

THIS COURT ORDERS THAT:

1. The time for service of the Notice of Motion and supporting materials is abridged such that the Notice of Motion is properly returnable today.
2. Pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, the time for filing a proposal with the Official Receiver in these proceedings is extended to and includes April 1, 2024.
3. Endorsement of this Order by counsel appearing on this application, other than counsel for the applicant, is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Jacob J. Gehlen  
Lawyer for Lotus Ventures Inc.

By the Court

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Registrar in Bankruptcy