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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Comsale Group Inc., *et al.*,[1] Debtors in a Foreign Proceeding.	Chapter 15 Case No. 19-13625 (JLG) Joint Administration Requested

VERIFIED PETITION UNDER CHAPTER 15 FOR
RECOGNITION OF A FOREIGN MAIN PROCEEDING AND RELATED RELIEF

Grant Thornton Limited, solely in its capacity as court-appointed receiver and manager and not in its personal or corporate capacity, (the "Receiver") and authorized foreign representative (the "Foreign Representative") of Comsale Group Inc. ("CGI"), Comsale Computer Inc. ("CCI" or the "Borrower") and Comsale Inc. ("CI" and together with CGI and CCI, the "Debtors"), each of which was placed in a receivership on November 5, 2019 by order (the "Receivership Order") of the Superior Court of Justice (Commercial List) in Ontario, Canada (the "Canadian Court"), Court File No.: CV-19-630501-00CL (the "Canadian

[1] The Debtors in these chapter 15 cases, along with the last four digits of each Debtor's U.S. Federal Tax Identification Number or other unique identifier are: Comsale Group Inc. (7355) (Ontario Corporation Number); Comsale Computer Inc. (7508) (Ontario Corporation Number); and Comsale Inc. (0354) (FEIN). The Receiver and Foreign Representative is Grant Thornton Limited, located at 200 King St. W. 11th Floor, Toronto, Ontario, Canada M5H 3T4.

Proceeding"), respectfully submits this verified petition (the "Verified Petition" and together with the Forms of Voluntary Petition [Dkt. No. 1], collectively, the "Petition") seeking entry of an order pursuant to sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code"), substantially in the form annexed hereto as **Exhibit A**, granting recognition of the Canadian Proceeding as a foreign main proceeding and related relief.

In support of the Petition, the Receiver respectfully submits the (a) *Declaration of Rob Stelzer in Support of (I) Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief and (II) Motion of the Receiver for Provisional Relief in Aid of a Foreign Main Proceeding* (the "Stelzer Declaration"),[2] which has been filed contemporaneously herewith and is incorporated herein by reference as if fully set forth herein. In support of the relief requested, the Receiver respectfully represents as follows:

BACKGROUND

1. Prior to the commencement of the Canadian Proceeding, the Debtors repaired and refurbished used electronic equipment and accessories, including desktop and laptop computers and tablets. The Debtors managed their businesses primarily from Canada and maintained facilities and operations in the United States, Malaysia and Hong Kong. The Debtors own substantial assets located within the territorial jurisdiction of the United States, including in New York, Tennessee and Nevada. Those assets consist of, among other things, bank accounts, inventory, equipment and receivables.

[2] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Stelzer Declaration.

2. Beginning in August 2019, the Borrower was in default under the terms of the Credit Agreement, which was continuing, as a result of, among other things, failure to deliver timely reporting and comply with certain financial covenants. In October 2019, the Debtors advised that they experienced a cyber-attack that caused extreme disruption to the Debtors' day to day business. The Borrower's lender, HSBC Bank Canada ("HSBC Canada"), issued demands and notices of intention to enforce its security under the BIA (as defined below) to the Debtors on November 4, 2019. Later on the same date, the Debtors advised HSBC Canada that they would immediately cease operations. In light of their financial and operational challenges, the Debtors advised HSBC Canada that they would consent to the immediate appointment of a receiver in Canada.

3. On November 5, 2019, the Canadian Court entered the Receivership Order, appointing the Receiver as receiver and manager of all assets, undertakings and properties of the Debtors pursuant to section 101 of the *Courts of Justice Act* of the Province of Ontario and section 243(1) of the *Bankruptcy and Insolvency Act* of Canada (the "BIA"). The Receivership Order vests the Receiver with broad power and control over the Debtors' assets and businesses, including by granting the Receiver express and sole authority to control the Debtors' businesses and administer the Debtors' assets. The Receivership Order also provides that the Debtors' creditors are enjoined from taking action against the Debtors and their assets, wherever located.

4. Notwithstanding the worldwide application of the stay imposed by the Receivership Order, the Debtors' creditors may attempt to take enforcement actions against the Debtors' assets located within the territorial jurisdiction of the United States or refuse to recognize (or interfere with) the Receiver's authority to control the Debtors' businesses and administer their assets. That risk is enhanced here because the Debtors (i) have ceased

operations and the Receiver needs to take control of, and ensure appropriate measures are taken to protect, the Debtors' properties and assets and (ii) are parties to at least one ongoing litigation in the U.S. in connection with a dispute over lease payments.

5. Accordingly, the Receiver is seeking recognition of the Canadian Proceeding and enforcement of the Receivership Order to obtain the benefit of the automatic stay and other protections afforded under chapter 15 of the Bankruptcy Code in relation to the Debtors' assets located within the territorial jurisdiction of the United States.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference to Bankruptcy Judges of the District Court for the Southern District of New York, dated January 31, 2012 (Preska, C.J.). Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core proceedings under 28 U.S.C. § 157(b)(2)(P).

7. The Receiver, solely in its capacity as authorized foreign representative, and not in its personal or corporate capacity, consents to the entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1410(1) and (3). Each of the Debtors has property located in New York consisting of a retainer deposited with counsel to the Foreign Representative that is being held in a New York bank account for the benefit of all of the Debtors. *See* Stelzer Declaration ¶ 10. CGI owns 100% of the equity interests in CI, which is a New York entity.

9. In addition, CI owns a bank account at HSBC Bank USA located in New York. CI also issued a guarantee in favor of HSBC Canada pursuant to an agreement that is governed by New York law and contains a New York forum selection clause. Stelzer Declaration ¶ 10. *See In re Inversora Eléctrica de Buenos Aires S.A.*, 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016) (holding that deposits in a New York bank account, an attorney retainer on deposit in New York, and New York law-governed debt containing a New York forum selection clause "whether considered alone or together … provide a sufficient basis for jurisdiction and venue in New York"); *In re Suntech Power Holdings Co., Ltd.*, 520 B.R. 399, 413-416 (Bankr. S.D.N.Y. 2014) (holding that a New York bank account over which a chapter 15 debtor possessed power to direct disbursement of funds was property sufficient to establish venue for chapter 15 case in New York).[3]

10. This case has been properly commenced pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code by the filing of the Petition seeking recognition of the Canadian Proceeding as a foreign main proceeding under section 1515 of the Bankruptcy Code. The statutory predicates for the relief requested herein are sections 105(a), 365, 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of the Bankruptcy Code.

RELIEF REQUESTED

11. The Foreign Representative respectfully requests entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**:

[3] The Borrower's U.S. assets also include inventory and equipment located in Nevada and Tennessee. Given that the Debtors' U.S. assets are located across multiple states, the Foreign Representative submits that the venue in this District is also consistent with the interests of justice and the convenience of the parties pursuant to 28 U.S.C. § 1410(3).

(a) finding that (i) each of the Debtors is eligible to be a "debtor" under chapter 15 of the Bankruptcy Code, (ii) the Canadian Proceeding is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code, (iii) the Receiver satisfies the requirements of a "foreign representative" under section 101(24) of the Bankruptcy Code, and (iv) the Petition was properly filed and meets the requirements of section 1515 of the Bankruptcy Code;

(b) granting recognition of the Canadian Proceeding as a "foreign main proceeding" under sections 1517 and 1520 of the Bankruptcy Code;

(c) granting all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code;

(d) recognizing, granting comity to, and giving full force and effect within the territorial jurisdiction of the United States to the Receivership Order, including any extensions or amendments thereof authorized by the Canadian Court;

(e) granting additional relief under sections 1521 and 1507 of the Bankruptcy Code, including for purposes of applying section 365 of the Bankruptcy Code in these chapter 15 cases; and

(f) granting related relief.

12. The Foreign Representative submits that the relief requested herein should be granted, as "[c]ourts in the United States uniformly grant comity to Canadian proceedings". *In re Davis*, 191 B.R. 577, 587 (Bankr. S.D.N.Y. 1996), *corrected* (Feb. 20, 1996) (granting recognition of proceedings under the BIA in ancillary cases under former section 304 of the Bankruptcy Code).

I. <u>The Canadian Proceeding should be recognized as a foreign main proceeding.</u>

13. The Canadian Proceeding is entitled to recognition as a "foreign main proceeding" under chapter 15 of the Bankruptcy Code because, among other things:

a. the Canadian Proceeding is a "foreign proceeding" within the meaning of section 101(23) of the Bankruptcy Code;

b. the Receiver is a "foreign representative" within the meaning of section 101(24) of the Bankruptcy Code;

c. the Petition was filed in accordance with sections 1504 and 1509 of the Bankruptcy Code and meets the requirements of sections 1504 and 1515 of the Bankruptcy Code; and

d. the Canadian Proceeding is a "foreign main proceeding" because the Debtors' center of main interests is in Canada.

A. The Canadian Proceeding is a foreign proceeding.

14. To be recognized under chapter 15 of the Bankruptcy Code, a proceeding must qualify as a "foreign proceeding." *See* 11 U.S.C. § 1517(a). Section 101(23) of the Bankruptcy Code defines "foreign proceeding" as:

> a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

11 U.S.C. § 101(23). The Canadian Proceeding satisfies this definition. The Canadian Proceeding is a collective judicial proceeding brought in a foreign country (Canada) under the BIA (a federal Canadian statute relating to insolvency, similar to the Bankruptcy Code) that is supervised by a foreign court (the Canadian Court) for the purpose of liquidation. The Canadian Proceeding is similar to a chapter 7 case under the Bankruptcy Code, as both statutory regimes are designed to facilitate the orderly liquidation of a debtor, stay individual creditor collection efforts, create a centralized proceeding to assert and resolve claims against the debtors and their property, and provide a fair and equitable process for distribution to creditors.

15. United States bankruptcy courts have recognized the comprehensive and collective nature of BIA proceedings, as well as their striking similarity to chapter 7 cases under the Bankruptcy Code:

> The BIA contains a comprehensive procedure for the orderly marshalling and equitable distribution of a Canadian debtor's assets which closely resembles that available under the [Bankruptcy] Code. For example, the principal duties of a trustee under the BIA mirror those imposed upon a chapter 7 or 11 trustee under the [Bankruptcy] Code. Likewise, the automatic stay under the BIA § 69 is similar to that imposed by § 362 of the

> [Bankruptcy] Code. Like the [Bankruptcy] Code, the BIA recognizes the rights of secured creditors to realize on their collateral, protects that collateral from the claims of unsecured creditors and preserves the right of an undersecured creditor to assert a deficiency claim. It makes provision for the avoidance of fraudulent transfers or preferential payments, *see* BIA §§ 95, 96, and contains a comprehensive distribution scheme similar to that under the [Bankruptcy] Code.

In re Davis, 191 B.R. at 587. *See also In re Fracmaster, Ltd.*, 237 B.R. 627, 632 n.5 (Bankr. E.D. Tex. 1999) ("The Bankruptcy and Insolvency Act is the primary federal statute which deals with insolvency issues under Canadian law. It provides a system under which the creditors of a bankrupt can pursue their claims by collective action through a trustee, so that the bankrupt's assets can be administered and distributed on an equitable basis, subject to the priorities of the preferred creditors and the rights of secured creditors.").

16. Given the extensive similarities between BIA proceedings and chapter 7 cases, United States bankruptcy courts in this District and others routinely recognize BIA proceedings as "foreign proceedings" under section 101(23) of the Bankruptcy Code. *See, e.g., In re Sherson Group Inc.*, Case No. 15-11765 (SHL) (Bankr. S.D.N.Y. July 27, 2015); *In re Mundo Media Ltd., et al.*, Case No. 19-11365 (KBO) (Bankr. D. Del. July 11, 2019); *In re Unique Broadband Systems Ltd.*, Case No. 19-11321 (KG) (Bankr. D. Del. July 8, 2019); *In re Axios Logistics Solutions, Inc.*, Case No. 17-10438 (BLS) (Bankr. D. Del. Mar. 28, 2017).[4]

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[4] *See also In re Thane Int'l, Inc.*, Case No. 15-12186 (KG) (Bankr. D. Del. Dec. 1, 2015); *In re Calmena Energy Servs. Inc., et al.*, Case No. 15-30786 (KKB) (Bankr. S.D. Tex. Mar. 5, 2015); *In re Talon Sys. Inc., et al.*, Case No. 13-11811 (KJC) (Bankr D. Del. Aug. 30, 2013); *In re Tercon Inv. Ltd.*, Case No. 13-00015 (HAR) (Bankr. D. Alaska Feb. 19, 2013); *In re Wellpoint Sys., Inc., et al.*, Case No. 11-10423 (MFW) (Bankr. D. Del. Feb. 25, 2011); *In re EarthRenew IP Holdings LLC, et al.*, Case No. 10-13363 (CSS) (Bankr. D. Del. Nov. 10, 2010); *In re Innua Canada Ltd., et al.*, Case No. 09-16362 (DHS) (Bankr. D.N.J. Apr. 15, 2009); *In re CPI Plastics Grp. Ltd.*, Case No. 09-20175 (JES) (Bankr. E.D. Wis. Feb. 10, 2009).

B. The Receiver is the authorized foreign representative.

17. The chapter 15 petition for recognition of a foreign proceeding must be filed by a foreign representative that is a person or body. *See* 11 U.S.C. § 1517(a)(2). Section 101(24) of the Bankruptcy Code provides that:

> The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24). Under the Bankruptcy Code, the term "person" includes any "individual, partnership, and corporation" that is not a governmental unit. *See* 11 U.S.C. § 101(41).

18. These chapter 15 cases were commenced by the duly-appointed "foreign representative" of the Debtors within the meaning of the Bankruptcy Code. First, the Receiver is a limited company organized under the laws of Canada, and is not a governmental unit, and therefore is a "person" within the meaning of the Bankruptcy Code. Second, the Receiver is authorized in the Canadian Proceeding both to administer the liquidation of the Debtors' assets and affairs and to "apply to any court . . . wherever located, for the recognition of [the Receivership Order] and for assistance in carrying out the terms of [the Receivership Order] . . . ." Receivership Order ¶ 33.

19. For these reasons, the Receiver qualifies as a "foreign representative" within the meaning of the Bankruptcy Code.

C. The Petition was properly filed and meets all applicable requirements of the Bankruptcy Code.

20. To properly commence a chapter 15 case, a foreign representative must file a petition for recognition of a foreign proceeding under section 1515 of the Bankruptcy Code, *see*

11 U.S.C. §§ 1504, 1509(a) & 1515(a), and the petition must be accompanied by (i) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative, (ii) a certificate from the foreign court affirming such order exists, or (iii) other acceptable evidence that the foreign proceeding exists and the foreign representative has been duly appointed. *See id.* § 1515(b). The petition must also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative. *Id.* § 1515(c). All documents must be in English or translated into English. *See id.* § 1515(d).

21. As required by sections 1504 and 1509 of the Bankruptcy Code, the Foreign Representative duly and properly commenced these chapter 15 cases by filing the Petition under section 1515(a) accompanied by all documents and information required by sections 1515(b)–(d). The Foreign Representative attached to the Petition a certified copy of the Receivership Order, which is the decision of the Canadian Court commencing the Canadian Proceeding and appointing the Receiver as foreign representative, thereby satisfying section 1515(b). The Form Petition includes a verified statement certifying that the only foreign proceeding of which the Receiver is aware is the Canadian Proceeding,[5] thereby satisfying section 1515(c). Finally, the Receivership Order is in English, thereby satisfying section 1515(d).

22. Accordingly, the Petition was properly filed and satisfies all applicable requirements of the Bankruptcy Code.

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[5] The Receiver intends to commence a proceeding in Malaysia seeking recognition of the Canadian Proceeding with respect to CCI and Comsale Malaysia Sdn. Bhd.

D. The Canadian Proceeding should be recognized as a foreign main proceeding.

23. The Canadian Proceeding should be recognized as a "foreign main proceeding," as defined in sections 101(23) and 1502(4) of the Bankruptcy Code. A foreign proceeding will be recognized as a foreign main proceeding if "it is pending in the country where the debtor has the center of its main interests." 11 U.S.C. § 1517(b)(1). Section 1516(c) of the Bankruptcy Code establishes a rebuttable presumption that the debtor's registered office is the debtor's center of main interests ("COMI"). *See* 11 U.S.C. § 1516(c). When considering a debtor's COMI, courts may consider the analogous concept of an entity's "principal place of business" or "nerve center." *Id.* at 138 n.10. Accordingly, courts look to factors such as:

> the location of the debtor's headquarters; the location of those who actually manage the debtor . . . ; the location of the debtor's primary assets; the location of the majority of the debtor's creditors or of a majority of the creditors who would be affected by the case; and the jurisdiction whose law would apply to most disputes.

In re Inversora Eléctrica de Buenos Aires S.A., 560 B.R. at 654 (internal citations omitted); *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 130 (2d Cir. 2013). A debtor's COMI is determined as of the date the chapter 15 case is commenced. *Id.* at 134.

24. The above factors support a finding that the Debtors' COMI is Canada. CGI and the Borrower maintain their registered offices in Canada and are, therefore, entitled to the statutory presumption that their COMI is located there. Before ceasing operations, the Debtors' business operations, financing, and strategic decision-making were all located in, or executed from, Canada. Since the appointment of the Receiver on November 5, 2019, the Debtors and their estates have been under the exclusive management and control of the Receiver, which is

located in Canada.[6] *See* Stelzer Declaration ¶ 9. Accordingly, at the time the Petition was filed, each of the Debtor's COMI was located in Canada where the Canadian Proceeding is pending.[7]

II. <u>The Debtor is entitled to automatic relief under section 1520 of the Bankruptcy Code</u>

25. Section 1520(a) of the Bankruptcy Code sets forth a series of statutory protections that automatically result from the recognition of a foreign main proceeding, including the application of the protection afforded by the automatic stay under section 362(a) of the Bankruptcy Code to the Debtors and their property located within the territorial jurisdiction of the United States. *See* 11 U.S.C. 1520(a). Given that the protections set forth in section 1520(a) of the Bankruptcy Code flow automatically from the recognition of a foreign main proceeding under section 1517 of the Bankruptcy Code, the Foreign Representative respectfully submits that no further showing is required to the extent the Court recognizes the Canadian Proceeding as a foreign main proceeding.

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[6] While the registered head office of CI, a New York corporation, is located in Ohio, CI's COMI is located in Ontario. As with the other Debtors, CI's operational "nerve center" is located in Ontario. *See* Stelzer Declaration ¶ 9. In addition, where (as here) the chapter 15 debtors are organized under the laws of varying jurisdictions, if "Jurisdiction A" is the debtors' nerve center and the number and degree of activity of the debtors organized under the laws of Jurisdiction A is greater than the number and degree of activity of those debtors that are not, the COMI of all debtors is Jurisdiction A. *See, e.g., In re Catalyst Paper Corp.*, Case No. 12-10221 (PJW) (Bankr. D. Del. Jan. 17, 2012) (Hr'g Tr. 28:14-20) (Walsh, J.: "Regarding the COMI issue, I've seen practically the same scenario at least on two other occasions in the last few years where the number and activity of the Canadian debtors outweighs the number and activity of the United States debtors, and where the shots that are called come out of Canada, not the United States. And I think it's a very conventional recognition that I'll approve.").

[7] In the event that this Court does not recognize the Canadian Proceeding as a foreign main proceeding, the Foreign Representative submits that the Canadian Proceeding should be recognized as a foreign nonmain proceeding. A foreign proceeding will be recognized as a foreign nonmain proceeding if "the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending." 11 U.S.C. § 1517(b)(2). Section 1502(2) defines "establishment" as "any place of operations where the debtor carries out a nontransitory economic activity." 11 U.S.C. § 1502(2). Each of the Debtors has an establishment in Canada because, among other things, the Debtors' business operations, financing, and strategic decision-making are all located in, and executed from, Canada, and the Debtors and all of their assets are under the exclusive management and control of the Receiver located in Ontario, Canada.

III. Additional relief is appropriate.

A. Appropriate relief under section 1521 is warranted.

26. Section 1521 of the Bankruptcy Code provides, in relevant part, that the court may grant a foreign representative "any appropriate relief," including "any relief that may be available to a trustee," subject to certain limitations (which do not apply here) where necessary to effectuate the purpose of chapter 15 and to protect the debtor's assets and creditors' interests. 11 U.S.C. § 1521(a); *see In re Rede Energia S.A.*, 515 B.R. 69, 91 (Bankr. S.D.N.Y. 2014) (*citing In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 333-34 (S.D.N.Y. 2008)) (noting that chapter 15 of the Bankruptcy Code empowers "courts with broad, flexible rules to fashion relief that is appropriate to effectuate the objectives of the chapter in accordance with comity."); *see also In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006) ("chapter 15 maintains – and in some respects enhances – the 'maximum flexibility' . . . that section 304 provided bankruptcy courts in handling ancillary cases in light of principles of international comity and respect for the laws and judgments of other nations.") (internal citations omitted).

27. As this Court has explained:

> While recognition of the foreign proceeding turns on the objective criteria under § 1517, relief [post-recognition] is largely discretionary and turns on subjective factors that embody principles of comity. Once a case is recognized as a foreign main proceeding, chapter 15 specifically contemplates that the court will exercise its discretion consistent with the principles of comity.

In re Sino-Forest Corp., 501 B.R. 655, 664 (Bankr. S.D.N.Y. 2013) (internal citations and quotations omitted). Here, the Court should exercise its discretion under sections 1507 and

1521 of the Bankruptcy Code, consistent with the principles of comity, to recognize and enforce the Canadian Proceeding and the Recognition Order.[8]

28. The Foreign Representative requests appropriate relief under section 1521 of the Bankruptcy Code to protect the Debtors' assets located within the territorial jurisdiction of the United States, including:

- staying the commencement or continuation of an individual action or proceeding concerning the Debtors' assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);
- staying execution against the Debtors' assets to the extent it has not been stayed under section 1520(a);
- suspending the right to transfer, encumber or otherwise dispose of any assets of the Debtors to the extent this right has not been suspended under section 1520(a);
- entrusting the administration or realization of all or part of the Debtors' assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;
- extending relief granted under section 1519(a); and
- granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

29. In particular, the Foreign Representative requests application of section 365 of the Bankruptcy Code to the Debtors under section 1521(a)(7) of the Bankruptcy Code. Section 365 of the Bankruptcy Code prevents counterparties from terminating their contracts or halting performance as a result of the debtor's insolvency. *See In re Lehman Bros. Holdings Inc.*, 422 B.R. 407, 414 (Bankr. S.D.N.Y. 2010) (explaining that section 365 of the Bankruptcy Code invalidates provisions of law or contract which specify that a bankruptcy filing per se will

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8 The relief requested herein is also consistent with section 1525(a) of the Bankruptcy Code, which provides that "[c]onsistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee." 11 U.S.C. § 1525(a).

terminate or modify the contract). Here, application of section 365 of the Bankruptcy Code will facilitate the Receiver's liquidation efforts without interference by contract counterparties. Accordingly, applying section 365 of the Bankruptcy Code is warranted in these chapter 15 cases, as it has been in other chapter 15 cases. *See, e.g.*, *In re Mundo Media Ltd., et al.*, Case No. 19-11365 (KBO) (Bankr. D. Del. July 11, 2019) (applying section 365 of the Bankruptcy Code in chapter 15 case recognizing BIA proceedings); *In re Axios Logistics Solutions, Inc.*, Case No. 17-10438 (BLS) (Bankr. D. Del. Mar. 28, 2017) (same); *Essar Steel Algoma Inc*., Case No. 15-12271 (BLS) (Bankr. D. Del. Dec. 1, 2015) (applying section 365 of the Bankruptcy Code in chapter 15 case recognizing proceedings under the Companies' Creditors Arrangement Act of Canada).

B. Additional assistance under section 1507 is also warranted.

30. The Court may also provide the foreign representative with "additional assistance" under section 1507 of the Bankruptcy Code. *See* 11 U.S.C. § 1507(a). The relief requested herein satisfies the requirements of that section and is consistent with the principles of comity. The relief requested also is not manifestly contrary to U.S. public policy. *See* 11 U.S.C. § 1506.

<u>NOTICE</u>

31. Notice of this Verified Petition has been provided in accordance with the terms set forth in the Debtors' *Motion for Entry of an Order Scheduling a Hearing on Chapter 15 Petition for Recognition and Related Relief and Specifying Form And Manner of Service of Notice* filed concurrently herewith. The Foreign Representative submits that such notice is proper and that no other or further notice need be provided.

NO PRIOR REQUEST

32. No prior request for the relief sought in this Petition has been made to this or any other court.

WHEREFORE, the Foreign Representative respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as is just and proper.

Dated: New York, New York
November 13, 2019

Respectfully submitted,

/s/ *Robert H. Trust*

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Comsale Group Inc., *et al.*,[1] Debtors in a Foreign Proceeding.	Chapter 15 Case No. 19-13625 (JLG) Joint Administration Requested

STATEMENT OF VERIFICATION

Pursuant to 28 U.S.C. § 1746, Rob Stelzer, in my capacity as Vice President of the Receiver, hereby declares as follows under penalty of perjury:

1. The Receiver is the Debtors' duly authorized foreign representative. The Receiver is duly authorized to file this Petition and to commence and act in this Chapter 15 Case.

2. I have read the foregoing Verified Petition and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information and belief.

3. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: November 13, 2019

/s/ Rob Stelzer

Rob Stelzer
Vice President
Grant Thornton Limited, solely in its capacity as Receiver for the Debtors, and not in its personal or corporate capacity

[1] The Debtors in these chapter 15 cases, along with the last four digits of each Debtor's U.S. Federal Tax Identification Number or other unique identifier are: Comsale Group Inc. (7355) (Ontario Corporation Number); Comsale Computer Inc. (7508) (Ontario Corporation Number); and Comsale Inc. (0354) (FEIN). The Receiver and Foreign Representative is Grant Thornton Limited, located at 200 King St. W. 11th Floor, Toronto, Ontario, Canada M5H 3T4.

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re Comsale Group Inc., *et al.*,[1] Debtors in a Foreign Proceeding.	Chapter 15 Case No. 19-13625 (JLG) Joint Administration Requested

[PROPOSED] ORDER RECOGNIZING FOREIGN MAIN PROCEEDING AND GRANTING RELATED RELIEF

Upon the *Verified Petition Under Chapter 15 for Recognition of a Foreign Main Proceeding and Related Relief* [Dkt. No. 2] (together with the Forms of Voluntary Petition [Dkt. No. 1], collectively, the "Petition")[2] of Grant Thornton Limited, in its capacity as the court-appointed receiver and manager and not in its personal or corporate capacity (the "Receiver") and authorized foreign representative (the "Foreign Representative") of Comsale Group Inc., Comsale Computer Inc. and Comsale Inc. (collectively, the "Debtors"), each of which were placed in a receivership on November 5, 2019 by the order (the "Receivership Order") of the Superior Court of Justice (Commercial List) in Ontario, Canada (the "Canadian Court"), Court File No. CV-19-630501-00CL (the "Canadian Proceeding") for entry of an order:

(a) finding that (i) each of the Debtors is eligible to be a "debtor" under chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*.

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[1] The Debtors in these chapter 15 cases, along with the last four digits of each Debtor's U.S. Federal Tax Identification Number or other unique identifier are: Comsale Group Inc. (7355) (Ontario Corporation Number); Comsale Computer Inc. (7508) (Ontario Corporation Number); and Comsale Inc. (0354) (FEIN). The Receiver and Foreign Representative is Grant Thornton Limited, located at 200 King St. W. 11th Floor, Toronto, Ontario, Canada M5H 3T4.

[2] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Verified Petition.

(the "Bankruptcy Code"), (ii) the Canadian Proceeding is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code, (iii) the Foreign Representative satisfies the requirements of a "foreign representative" under section 101(24) of the Bankruptcy Code and (iv) the Petition was properly filed and meets the requirements of section 1515 of the Bankruptcy Code;

(b) granting recognition of the Canadian Proceeding as a "foreign main proceeding" under sections 1517 and 1520 of the Bankruptcy Code;

(c) granting all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code;

(d) recognizing, granting comity to, and giving full force and effect within the territorial jurisdiction of the United States to the order of the Canadian Court appointing the Foreign Representative (the "Receivership Order"), including any and all extensions or amendments thereof authorized by the Canadian Court;

(e) granting additional relief under sections 1521 and 1507 of the Bankruptcy Code, including for purposes of applying section 365 of the Bankruptcy Code in these chapter 15 cases; and

(f) granting related relief;

all as more fully described in the Petition; and upon the record of this case, the hearing held on November [__], 2019 to consider the relief requested in the *Motion of the Receiver as Authorized Foreign Representative for Entry of an Order Granting Provisional Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* and the hearing held on December [__], 2019 (the "Hearing") on the Petition and this Court's review and consideration of the Petition and the Stelzer Declaration; and the Court having found and determined that the relief sought in the Petition is consistent with the purposes of chapter 15 of the Bankruptcy Code and is in the best interests of the Debtors and their creditors; and after due deliberation and sufficient cause appearing therefor; and for the reasons stated on the record at the Hearing,

IT IS HEREBY FOUND AND DETERMINED THAT:[3]

A. This Court has jurisdiction to consider the Petition and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the Southern District of New York dated as of January 31, 2012, Reference M-431, *In re Standing Order of Reference Re: Title 11*, 12 Misc. 00032 (S.D.N.Y. Feb. 1, 2012) (Preska, C.J.).

B. The consideration of the Petition and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P), and this Court may enter a final order consistent with Article III of the United States Constitution.

C. Venue is proper before this Court pursuant to 28 U.S.C. § 1410(1) and (3).

D. Good, sufficient, appropriate, and timely notice of the filing of the Petition and the Hearing has been given by the Foreign Representative, pursuant to Bankruptcy Rules 1011(b) and 2002(q) and the *Order Scheduling Hearing on Chapter 15 Petition and Related Relief and Specifying Form and Manner of Service of Notice* [Dkt. No. [_]] to: (i) the United States Trustee for the Southern District of New York; (ii) the Debtors; (iii) Comsale Malaysia Sdn. Bhd.; (iv) Comsale Hong Kong Limited; (v) Neil Shaul and Wenqiang Feng, shareholders of Comsale Group Inc. and Comsale Computer Inc.; (vi) all persons or bodies authorized to administer foreign proceedings of the Debtors, including the Canadian Proceeding; (vii) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (viii) all known creditors and contract counterparties of the Debtors in the United States;

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[3] The findings and conclusions set forth herein and on the record of the Hearing constitute this Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

(ix) all parties to litigation pending in the United States to which any of the Debtors is a party at the time of the filing of the Petition; and (x) all parties that have filed a notice of appearance in these chapter 15 cases. In light of the nature of the relief requested and prior orders of this Court, no other or further notice is required.

E. No objections or responses were filed that have not been overruled, withdrawn, or otherwise resolved.

F. Each of the Debtors has property located in this District, and therefore, each of the Debtors is "eligible" to be a debtor in these chapter 15 cases pursuant to sections 109 and 1501 of the Bankruptcy Code.

G. The Canadian Proceeding is a "foreign proceeding" as such term is defined in section 101(23) of the Bankruptcy Code.

H. The Canadian Proceeding is pending in Canada, which is where the Debtors have their "center of main interests" as referred to in section 1517(b)(1) of the Bankruptcy Code. As such, the Canadian Proceeding is a "foreign main proceeding" pursuant to section 1502(4) of the Bankruptcy Code, is entitled to recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code and is entitled to all relief afforded to foreign main proceedings under section 1520 of the Bankruptcy Code.

I. The Foreign Representative is a "person" as such term is defined in section 101(41) of the Bankruptcy Code and has been duly appointed and designated as the "foreign representative" of the Debtors as such term is defined in section 101(24) of the Bankruptcy Code.

J. These chapter 15 cases were properly commenced pursuant to sections 1504 and 1509 of the Bankruptcy Code, and the Petition satisfies the requirements of section 1515 of the Bankruptcy Code.

K. The Foreign Representative and each of the Debtors, as applicable, are entitled to the additional assistance and discretionary relief requested in the Petition under sections 1507 and 1521 of the Bankruptcy Code (including application of section 365 of the Bankruptcy Code).

L. The Foreign Representative has demonstrated that application of section 365 of the Bankruptcy Code, as made applicable by sections 105(a), 1521(a)(7) and 1507 of the Bankruptcy Code, is necessary to enable the Foreign Representative or any of the Debtors to assume or reject a contract or compel a contract counterparty to perform under a contract. Absent application of section 365 of the Bankruptcy Code, there is a material risk that one or more of the Debtors' contract counterparties may terminate agreements or discontinue performance and any such termination or discontinuation could impose severe economic consequences on the Debtors' estates and interfere with liquidation efforts.

M. The relief granted herein is necessary and appropriate, in the interests of the public and of international comity, not inconsistent with the public policy of the United States, warranted pursuant to sections 105(a), 1504, 1507, 1509, 1515, 1517, 1520 and 1521 of the Bankruptcy Code and will not cause hardship to any party in interest. To the extent that any hardship or inconvenience may result to such parties, it is outweighed by the benefits of the requested relief to the Foreign Representative, the Debtors, their creditors and other parties in interest.

N. The relief granted herein is necessary to effectuate the purposes and objectives of chapter 15 of the Bankruptcy Code and to protect the Debtors and the interests of their creditors and all parties in interest.

O. In accordance with section 1507(b) of the Bankruptcy Code, the relief granted herein will reasonably assure: (i) the just treatment of all holders of claims against or interests in the Debtors' property; (ii) the protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in the Canadian Proceeding; (iii) the prevention of preferential or fraudulent dispositions of property of the Debtors; and (iv) the distribution of proceeds of the Debtors' property substantially in accordance with the order prescribed in the Bankruptcy Code.

P. All creditors and other parties in interest, including the Debtors, are sufficiently protected in the grant of the relief ordered hereby in compliance with section 1522(a) of the Bankruptcy Code.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED THAT:

1. The Petition and the relief requested therein are granted, and any objections or responses thereto that have not been withdrawn or resolved are overruled with prejudice.

2. The Canadian Proceeding is recognized as a "foreign main proceeding" under sections 1517(a) and 1517(b)(1) of the Bankruptcy Code.

3. The Receivership Order, including any extensions or amendments thereto authorized by the Canadian Court, is hereby enforced on a final basis and given full force and effect in the United States (except as otherwise expressly provided herein).

4. The Foreign Representative is recognized as the "foreign representative" as defined in section 101(24) of the Bankruptcy Code in respect of the Canadian Proceeding.

5. All relief and protection afforded to a foreign main proceeding under section 1520 of the Bankruptcy Code is hereby granted to the Canadian Proceeding, the Foreign Representative, the Debtors and their assets located in the United States.

6. Sections 362 and 365 of the Bankruptcy Code shall hereby apply with respect to the Debtors and the property of the Debtors that is located within the territorial jurisdiction of the United States. All entities (as that term is defined in section 101(15) of the Bankruptcy Code) other than the Foreign Representative and its authorized representatives and agents are hereby permanently enjoined from:

a. executing against any asset of any Debtor;

b. commencing or continuing, including issuing or employing process, of a judicial, quasi-judicial, administrative, regulatory, arbitral, or other action or proceeding, or to recover a claim, including, without limitation, any and all unpaid judgments, settlements or otherwise against any Debtor, its property, or any direct or indirect transferee of or successor to any property of any Debtor, or any property of such transferee or successor, or the seeking of any discovery related to any of the foregoing, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceeding or Canadian law;

c. taking or continuing any act to create, perfect or enforce a lien or other security interest, setoff or other claim against any Debtor or any of its property or proceeds thereof, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceeding or Canadian law;

d. transferring, relinquishing or disposing of any property of any Debtor to any entity other than the Foreign Representative and its authorized representatives and agents or taking or continuing any act to obtain possession of, commingle, or exercise control over, such property, which in each case is in any way inconsistent with, relates to, or would interfere with, the administration of the Debtors' estates in the Canadian Proceeding or Canadian law;

e. commencing or continuing in any manner, directly or indirectly, an individual action or proceeding concerning any Debtor's assets, rights, obligations or liabilities, or to resolve any dispute arising out of the Canadian Proceeding or Canadian law relating to the Canadian Proceeding, in each case, to the extent they have not been stayed pursuant to sections 1520(a) and 362 of the Bankruptcy Code;

f. declaring or considering the filing of the Canadian Proceeding, the Receivership Order or any of these chapter 15 cases a default or event of default under any agreement, contract or arrangement; and

g. terminating, modifying, refusing to perform, or otherwise accelerating obligations or exercising remedies under any contract with any of the Debtors on the basis of (i) the insolvency or financial condition of the Debtors at any time before the closing of these cases; (ii) the commencement of the Canadian Proceeding, the entry of the Receivership Order or the commencement of these chapter 15 cases; or (iii) the appointment of, and taking possession by, the Foreign Representative of any asset or contract of any Debtor;

provided, in each case, that such injunctions shall be effective solely within the territorial jurisdiction of the United States.

7. Sections 1521(a)(1)-(3) and (5)-(7) of the Bankruptcy Code shall apply with respect to the Debtors and the property of the Debtors that is located within the territorial jurisdiction of the United States.

8. Pursuant to section 1520(a)(3) of the Bankruptcy Code, the Foreign Representative is entitled to operate the Debtors' businesses and administer their assets, including without limitation, all bank accounts and accounts receivable. All banks at which the Debtors maintain bank accounts are authorized to: (i) honor the Foreign Representative's instructions with respect to accessing any such accounts; and (ii) accept, hold, or permit withdrawal, transfer, or other disposition of funds in accordance with the Foreign Representative's instructions.

9. Subject to sections 1520 and 1521 of the Bankruptcy Code, the Canadian Proceeding and the Receivership Order, and the transactions consummated or to be consummated thereunder, shall be granted comity and given full force and effect in the United

States to the same extent that they are given effect in Canada, and each is binding on all creditors of the Debtors and their successors and assigns.

10. Under section 1521(a)(6) of the Bankruptcy Code, all prior relief granted to the Debtors or the Foreign Representative by this Court under section 1519(a) of the Bankruptcy Code shall be extended and the *Order Granting Motion of the Foreign Representative for Provisional Relief Pursuant to Sections 105(a) and 1519 of the Bankruptcy Code* [Dkt. No. [_]] shall remain in full force and effect, notwithstanding anything to the contrary contained therein.

11. No action taken by the Foreign Representative, any Debtor or their respective agents, representatives, advisors, or counsel, in preparing, disseminating, applying for, implementing or otherwise acting in furtherance of the Canadian Proceeding, the documents contemplated thereunder, this Order, the chapter 15 cases, any further order for additional relief in the chapter 15 cases, or any adversary proceedings in connection therewith, will be deemed to constitute a waiver of the immunity afforded such persons under sections 306 or 1510 of the Bankruptcy Code.

12. No party shall incur any liability for following the terms of this Order (whether by acting or refraining from acting), except in the case of the party's own gross negligence or willful misconduct.

13. Notwithstanding anything to the contrary contained herein, this Order shall not be construed as (i) enjoining the police or regulatory act of a governmental unit, including a criminal action or proceeding, to the extent not stayed under section 362 of the Bankruptcy Code or (ii) staying the exercise of any rights that section 362(o) of the Bankruptcy Code does not allow to be stayed.

14. The Foreign Representative, the Debtor, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or local rules of this Court.

15. Notwithstanding any provision in the Bankruptcy Code or the Bankruptcy Rules to the contrary, (i) this Order shall be effective immediately and enforceable upon its entry, (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order and (iii) this Order shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

16. The Foreign Representative and its agents are authorized and empowered to take all actions necessary to effectuate the relief granted under this Order in accordance with the Petition.

17. This Court shall retain jurisdiction with respect to the implementation, enforcement, amendment or modification of this Order.

Dated: December __, 2019
New York, New York

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THE HONORABLE JAMES L. GARRITY, JR.
UNITED STATES BANKRUPTCY JUDGE