



**Report to Creditors of
Ogen Ltd. and Ogen Holdings Ltd.
by KSV Restructuring Inc. as
Proposal Trustee**

September 8, 2023

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COURT OF KING'S BENCH OF ALBERTA
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
OGEN HOLDINGS LTD. AND OGEN LTD.
OF THE CITY OF CALGARY, IN THE PROVINCE OF ALBERTA

PROPOSAL TRUSTEE'S PRELIMINARY REPORT TO CREDITORS

SEPTEMBER 8, 2023

1.0 Introduction

1. This report ("**Report**") has been prepared by KSV Restructuring Inc. ("**KSV**") in its capacity as proposal trustee ("**Proposal Trustee**") in connection with Notices of Intention to Make a Proposal ("**NOI**") filed on June 26, 2023 by OGEN Holdings Ltd. ("**OHL**") and OGEN Ltd. ("**OL**") (collectively the "**Companies**" or "**OGEN**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**").
2. The principal purpose of the proposal proceedings is to allow the Companies to restructure their balance sheets to reduce their debt obligations to allow the Companies to continue to operate on a going-concern basis and exit the NOI proceedings with a capital structure the Companies can support going forward.
3. On July 21, 2023, the Court of King's Bench of Alberta ("**Court**") granted an Order ("**Extension Order**") which, among other things:
 - a) permitted the Companies to consolidate the proceedings in the estates of OHL and OL and to file a joint proposal to creditors;
 - b) extended the stay of proceedings and time to file a joint proposal for 45 days to September 5, 2023;
 - c) authorized the Companies to enter into an interim credit facility in the maximum amount of \$500,000 (the "**Interim Loan**"); and
 - d) granted the following charges on the Companies' current and future assets, undertakings and properties of every nature and kind whatsoever (including all real and personal property), and wherever situate, including all proceeds thereof (collectively, the "**Property**") (listed in order of priority):

- i. a super priority charge in the amount of \$250,000 (the “**Administration Charge**”) on the Property for the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee, and the Companies’ counsel;
 - ii. a super priority charge in the amount of \$50,000 on the Property in favour of the Companies’ directors and officers (collectively, the “**Directors and Officers**”) for possible liabilities that may be incurred by the Directors and Officers after the NOI filing date (the “**D&O Charge**”); and
 - iii. a super-priority charge on the Property in respect of amounts borrowed from the Interim Lenders (as defined herein) under the Interim Loan (the “**Interim Lenders’ Charge**”).
4. On September 1, 2023, the Companies filed a proposal (the “**Proposal**”) with the Official Receiver in accordance with Section 62(1) of the BIA and a Certificate of Filing a Proposal (“**Certificate**”) was issued by the Office of the Superintendent of Bankruptcy Canada (“**OSB**”) on that date. A copy of the Certificate and Proposal is included in the creditors package.

1.1 Meeting to Consider the Proposal

1. The details of the creditors’ meeting to consider and vote on the Proposal to be held pursuant to Section 51(1) of the BIA (the “**Meeting**”) are as follows:

Date: September 20, 2023

Time: 10:00 a.m. (MDT)

Location: to be convened virtually via Zoom – instructions will be provided upon submitting the Virtual Meeting Registration Form
2. As described in greater detail below, to vote on the Proposal, a creditor of the Companies must file a proof of claim with the Proposal Trustee prior to the Meeting. Creditors can vote at the Meeting by attending virtually or by submitting voting letters to the Proposal Trustee prior to the Meeting. Creditors can also vote by way of proxy and can identify the Proposal Trustee as its proxy. A proof of claim form, proxy, voting letter, virtual meeting registration form, convenience creditor election form and instruction letter are provided in the creditor package containing this report (the “**Report**”). Creditors should read the instruction letter to understand the voting procedures, including the procedure to register claims with the Proposal Trustee.
3. The Proposal Trustee’s Notice of Proposal to Creditors, a summary of the Companies’ Statement of Affairs, and a list of creditors are included in the creditor package.

1.2 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Companies and the cause of the Companies’ financial difficulties;

- b) summarize the terms of the Proposal;
- c) discuss the Companies' ability to fulfill the terms of the Proposal;
- d) provide the Proposal Trustee's opinion as to the reasonableness of the provision in the Proposal that sections 95 to 101 do not apply in respect of the Proposal, as required pursuant to Section 50(10)(b) of the BIA;
- e) compare the result for creditors under the Proposal to the result if the Proposal is not accepted and the Companies are deemed to have assignments in bankruptcy; and
- f) provide the Proposal Trustee's recommendation on the Proposal.

1.3 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.4 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies' representatives, the books and records of the Companies and discussions with representatives of the Companies. The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Companies' financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever. The Proposal Trustee accepts no reliance to any party based on the information in this Report.

2.0 Background and Causes of Financial Difficulty

1. OL was incorporated pursuant to the laws of Alberta as "Bloom Cultivation Ltd." on April 26, 2013. On June 9, 2020, OL changed its name from Bloom Cultivation Ltd. to OGEN Ltd.
2. OHL was incorporated pursuant to the laws of Alberta as "Bloom Cultivation Holdings Ltd." on January 12, 2017. On January 24, 2020, OHL changed its name from Bloom Cultivation Holdings Ltd. to OGEN Holdings Ltd.
3. OHL is the sole shareholder of OL. OHL has approximately 15 shareholders. Its two largest shareholders are G. Edwards Holdings Ltd. ("**GEHL**") and Hawksworth Holdings Ltd. ("**HHL**") who respectively hold 40.67% and 46.31% of the voting common shares of OHL.

4. OGEN cultivates, processes, and sells cannabis flower products under the OGEN brand in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and New Brunswick. The Companies also sell bulk flower to other cannabis producers. OGEN operates a purpose-built indoor production facility located in Calgary, Alberta (the “**OGEN Facility**”). The OGEN Facility is 57,387 sq. ft. and the total site is 2.32 acres. OHL owns the OGEN Facility and related production equipment, which it leases to OL. OHL does not conduct any active business operations nor have any employees.
5. As of the filing date, OL had approximately 78 employees.
6. The Companies’ financial difficulties are caused by a number of industry wide factors. Competition, over supply, regulatory complexity, inflation, a strong black market, and high levels of excise tax have all contributed to industry-wide struggles. Insolvencies in the sector are widespread. OGEN has been unable to achieve profitability after almost five (5) years of legalization although it believes it can become cash flow positive in the future. Increased distribution, product count, and decreased competition due to insolvencies contribute to OGEN’s ability to be profitable in the future, albeit with a lowered debt burden.
7. Much like the rest of the industry, the Companies have been impacted by higher than anticipated excise taxes for cannabis products. This issue was compounded by price compression of cannabis products as new producers entered the growing market. The Proposal Trustee understands that excise taxes are not proportionally impacted by the lower prices and so have an outsized impact on the Companies bottom line.
8. A cannabis excise tax white paper issued by Stand for Craft (the “**White Paper**”)¹ indicates that excise tax arrears are a widespread industry issue that often extracts over 30% of top line revenue and it is estimated that over 60% of Canadian cannabis production square footage could be on the path to insolvency in the next 12 months. The White Paper also states that by September 2022, 172 of 276 reporting firms had unpaid tax bills with a total amount owing of over \$97.5 million. A further report² indicates that cannabis companies remain unprofitable and on the verge of insolvency and concludes that government tax and regulatory burdens hinder full realization of the objectives of the *Cannabis Act* and threaten the industry’s survival.
9. Additional information regarding the Companies is included in the Proposal Trustee’s First Report to Court dated July 12, 2023 and the Affidavit of Darren Brisebois, the President of OL and OHL, sworn July 10, 2023 both of which have been posted at <https://www.ksvadvisory.com/expereince/case/ogen>.

¹ Short Form Excise Tax Whitepaper: Call for Emergency Cannabis Excise Relief, October 2022: (<https://drive.google.com/drive/u/0/folders/1i5hq4X76bRnSgz9P2GyzQCXWqcOiECF9>).

² Economic Analysis of Cannabis Excise Duties, Mark-Ups and Regulatory Fees, Phase 1 Report, June 2022: (<https://stratcann.com/wp-content/uploads/2022/05/Cannabis-Council-of-Canada-Economic-Analysis-of-Cannabis-Excise-Duties-Mark-Ups-and-Regulatory-Fees.pdf>).

2.1 Historical Operating Results

1. The Companies' combined internal financial information³ for the seven (7) months ended July 31, 2023 and the financial performance for fiscal 2022 and 2021, have been summarized below.

(\$000s)	7 months ended July 31, 2023 (unaudited)	Fiscal 2022 (unaudited)	Fiscal 2021 (unaudited)
Net revenue	4,715	7,274	11,772
Cost of sales	(3,634)	(4,091)	(10,273)
Gross margin	1,081	3,183	1,499
Expenses	(2,802)	(5,185)	(2,962)
Net Loss	(1,721)	(2,002)	(1,463)

2. As reflected above, the Companies have incurred significant and recurring losses.
3. The Companies assets listed at book value as at July 31, 2023 are listed below.

Description	Book Value (\$000s)
Accounts receivable	1,370
Inventory	8,052
Prepaid expenses and other current assets	679
Property and equipment, net of depreciation	28,205
Total	38,306

4. The book value of the Companies' liabilities as at July 31, 2023 are listed below.

Description	Book Value (\$000s)
Overdraft Account	581
Accounts Payable	7,000
GST Payable	270
CFCU Term Loans	20,649
Total	28,500

³ The 7 months ended July 31, 2023, and fiscal 2022 do not included amortization expense which is a year-end adjustment.

3.0 The Proposal⁴

1. This section provides an overview of the terms of the Proposal. Review of this section is not a substitute for reading the Proposal. Creditors are strongly encouraged to read the Proposal in its entirety prior to voting on the Proposal. Creditors are encouraged to discuss the terms of the Proposal with their legal counsel. A copy of the Proposal is included in this creditors package.

3.1 Purpose and Implications

1. The overall purpose of the Proposal is to effect a restructuring of the Companies' balance sheet in order to reduce their liabilities to a level that is appropriate for the forecasted profitability of the Companies; allowing them to continue as going concerns.
2. The Proposal applies to the Secured and Unsecured Creditors of the Companies. The classes of creditors in the Proposal are as follows:
 - a. CFCU Secured Creditor Class;
 - b. CFCU Unsecured Creditor Class; and
 - c. General Unsecured Creditor Class.
3. Affected Creditors are all creditors having a Claim, generally being amounts owed by the Companies which existed or occurred on or before the Filing Date.
4. Source Deduction Creditors, as defined in the Proposal, are to be paid in full from operational cash flows of the Companies on such date as agreed to by CRA, provided it is no later than six (6) months following approval of the Proposal by the Court. The Proposal Trustee understands that there are no amounts due or owing to Source Deduction Creditors.
5. The Claims, if any, of the Employee Creditors with Proven Claims will be paid or satisfied immediately after the making of the Approval Order in the ordinary course using the General Unsecured Proceeds.
6. The Preferred Claims will be distributed in priority from the General Unsecured Proceeds pursuant to the priority established by the BIA.

3.2 Dividend Amount

1. In the event that each class of Unsecured Creditors, as defined in the Proposal, vote to accept the Proposal, and the Proposal subsequently receives approval from the Court and the Conditions to Proposal Implementation are met, the Companies will pay to the Proposal Trustee for the benefit of creditors the amount of \$1,040,000 (the "**Proposal Proceeds**"). The Proposal Proceeds will be paid to the Proposal Trustee by the Companies by no later than 6 months following the Implementation Date.

⁴ Defined terms in this section of the Report have the meanings provided to them in the Proposal.

2. Pursuant to Section 147 of the BIA, payments under the Proposal are subject to the statutory levy of 5% payable to the OSB, up to a maximum of \$62,500.
3. As at the date the NOI was filed, General Unsecured Creditor Class Claims are estimated to be approximately \$6,238,290. The CFCU Unsecured Creditor Class Claims are estimated to be approximately \$6,853,677.
4. Pursuant to the terms of the Proposal, the Proposal Proceeds shall consist of the amount of \$1,040,000 separate in the following two categories:
 - a. \$25,000 payable to the CFCU Unsecured Creditor Class; and
 - b. \$1,015,000, net of any amounts payable to satisfy Preferred Claims and claims of Employee Creditors, payable to the General Unsecured Creditor Class.

3.3 Proposal Conditions

1. The Proposal is conditional upon:
 - a) acceptance of the Proposal by the statutory majority of the Creditors as required under the BIA (described in Section 3.5 of this Report);
 - b) the CRA License Renewal Condition outlined in Article 7.4(b) of the Proposal;
 - c) the Health Canada License Renewal Condition outlined in Article 7.4(c) of the Proposal;
 - d) the execution of an Amending Agreement between CFCU and the Companies on or before September 30, 2023 pursuant to Article 7.4(d) of the Proposal; and
 - e) the making of an Approval Order in respect of the Companies and the expiry of all appeal periods pursuant to Article 7.4(e) of the Proposal.
2. Should any of the above conditions not be met or waived by the Companies, where applicable, the Proposal will not be effective and the payments due under the Proposal will not be made.

3.4 Other Proposal Terms

1. Other key Proposal terms are summarized below:
 - a) The Proposal Trustee shall be entitled to apply for its discharge upon completing the distribution as contemplated in Article Section 6.7 of the Proposal;
 - b) Sections 95 to 101 of the BIA do not apply to the Proposal or the proceedings related to the Proposal and may not be invoked or relied upon by any Affected Creditor or the Proposal Trustee. Additional details regarding this provision are provided in Section 4 of this Report;

- c) **“Assessed Secured Claim”** refers to the claim of Connect First Credit Union Ltd. (“CFCU”) that has an assessed value pursuant to section 50.1 of the BIA in the amount of \$15,290,968. The Assessed Value is for Proposal purposes only in establishing the Companies’ Proposal that reflects current outstanding loan facilities, potential realizations on guarantees available to CFCU, and the assessment by the Companies on a reasonable Proposal to its creditors.
- d) At the Meeting, the Creditors may appoint up to five (5) Inspectors whose powers will be limited to:
 - i. advising the Proposal Trustee concerning any dispute which may arise as to the validity of Claims; and
 - ii. advising the Proposal Trustee from time to time with respect to any other matter that the Proposal Trustee may refer to them.

3.5 Acceptance and Approval of the Proposal

1. In order for the Proposal to be accepted, two-thirds in dollar value and over 50% in number of the Unsecured Creditors in each class present and voting, in person or by proxy, must vote in favour of the Proposal.
2. Rejection of the Proposal by the creditors would result in the Companies being deemed to have made an assignment in bankruptcy.
3. Upon being accepted by creditors, the Proposal must be approved by the Court. If the Court fails to approve the Proposal, the Companies are deemed to have made an assignment in bankruptcy.

4.0 Preferences and Transfers at Undervalue

1. As part of its statutory duties under the BIA, the Proposal Trustee is required to conduct a review of the Companies’ transactions immediately preceding the commencement of the NOI proceedings to identify transactions that could be considered preferences or transfers at undervalue.
2. As of the date of this Report, the Proposal Trustee has initiated a review of reviewable or preference transactions. As described in Section 3.4 above, Section 8 of the Proposal provides that Sections 95 to 101 of the BIA, being the relevant sections under the BIA dealing with transactions that may be challenged by a trustee, do not apply to the Proposal. The Proposal Trustee believes this to be reasonable based on its initial review and the Proposal Trustee will complete its review and comment on its findings at the Meeting.
3. The Proposal Trustee is not aware of any offences under the BIA being committed in relation to the Companies or the proceedings.

5.0 Estimated Distribution in the Event of a Bankruptcy

- The Companies have provided the Proposal Trustee with unaudited financial information available as at July 31, 2023. This information is disclosed and discussed in the following section and forms the basis for the statement of estimated realizations (“SER”), calculated on the basis that, in the event that the Proposal is not accepted by either the creditors or the Court, the Companies are deemed bankrupt.

(\$000s)	Note	Book Value	Proposal Scenario	Bankruptcy Scenario Estimated	
				Net Realizable Value	
				Low	High
Assets					
Accounts Receivable	1	899		500	899
Inventory	2	8,052		-	-
Prepaid Expenses	3	679		-	-
OGEN Facility	4	28,205		3,500	5,000
Facility/Office Equipment	5	-		75	238
		<u>37,835</u>		<u>4,075</u>	<u>6,137</u>
Estimated Priority Claims and Costs					
Administration Charge	6			(250)	-
Interim Financing	7			(225)	-
Liquidation Costs	8			(1,941)	(1,066)
CRA- Source Deductions	9				
Property Taxes	10				
Employee Claims	11			(156)	-
				<u>(2,572)</u>	<u>(1,066)</u>
Net Realizations available after priority Claims and Costs				1,503	5,072
Secured Creditor Debt					
Connect First Credit Union	12			<u>22,144</u>	<u>22,144</u>
Available to General Unsecured Class Creditors			1,015	(20,641)	(17,073)

- As calculated above, the SER estimates that in either a high or low bankruptcy scenario, the realizable asset value will result in insufficient recoveries to satisfy the Companies’ obligations to its secured creditors. As such, no amount would be available for the Unsecured Creditors of the Companies and CFCU would incur a significant shortfall on its outstanding indebtedness.
- Notes to the SER are as follows:
 - Accounts receivable consist of amounts due from current customers as of August 31, 2023, the most recent accounts receivable listing available from the Companies. The analysis assumes that all accounts receivable will be collected in the high realization estimate and that percentage will be uncollectible in the low realization estimate including aged receivables. The analysis also attempts to reflect any possible setoff by government authorities.
 - The book value of inventory is based on July 31, 2023 figures. In discussions with the Companies, the inventory book values will be adjusted based on the year end audit, which has not occurred. The Proposal Trustee has been advised that the actual value of inventory is significantly less than the recorded book value. In the event of bankruptcy of the Companies, it is assumed that all inventory will be required to be destroyed pursuant to government regulations and therefor will have a realizable value of \$nil.
 - Prepaid expenses consist largely of excise tax deposits. The analysis assumes no potential recoveries of these amounts.

4. The OGEN Facility is the listed book value less accumulated depreciation. The realization values are based on an Avison Young appraisal dated January 6, 2023. The appraised value was estimated to be \$4.875 million with a market exposure period of 12-24 months. The Companies do not believe that there have been any material changes to the market to impact the OGEN Facility valuation since the date of the appraisal.
5. Facility/office equipment was listed at book value less accumulated depreciation. The Companies obtained an appraisal dated August 25, 2023, which indicated the facility / office equipment has a forced liquidation value of \$238,000.
6. For the purposes of the SER, it is assumed that in the low scenario, the full amount of the Administration Charge will have a priority claim to the assets of the Companies and in the high scenario, the Companies will continue to pay professional fees in the normal course and there will be no outstanding obligations to the professionals involved in this restructuring and as a result, the Administration Charge will be \$nil.
7. Interim Financing amounts reflect advances that may be required in accordance with the Companies' filed cash flow forecast dated September 1, 2023.
8. Liquidations costs in a bankruptcy scenario are based on the experience of the Proposal Trustee and assumed timeframe of 12-24 months to realize upon the OGEN Facility. Liquidation costs are comprised of these key costs. Additional costs may also be incurred that are not factored into the analysis.

Estimated Liquidation Costs (\$000s)	Realization period	
	12 months	24 months
Property Tax @34,000 month	408	816
Utilities @25,000 month	300	600
Listing Agent @ 4.5% commission	158	225
Professional Costs	200	300
	<u>1,066</u>	<u>1,941</u>

9. The Companies' records indicate that source deduction amounts are paid.
 10. The Companies' records indicate no amounts due for property taxes. The Companies are on a monthly payment plan with the City of Calgary.
 11. The Companies do not have any amounts owing to employees that are not currently paid in the normal course. Subject to the timing of a possible bankruptcy, employees may have a claim under the *Wage Earners Protection Program Act*.
 12. The CFCU balance was provided by CFCU as of the NOI filing date.
4. As calculated above, if the Proposal is voted down and the Companies are deemed to make assignments in bankruptcy, it is estimated that the net realizations would result in no funds available for distribution to Unsecured Creditors. In comparison, \$1,015,000 would be available to the General Unsecured Class Creditors under the Proposal.

6.0 Remuneration of the Proposal Trustee

1. The Proposal Trustee's fees will be based on the time spent by the Proposal Trustee and the various members of its staff at their respective regular billing rates plus any direct out of pocket expenses incurred. All administrative fees and expenses of the Proposal Trustee will be assessed by the Court.
2. Section 6.1 of the Proposal provides that, should the Proposal be accepted by the Unsecured Creditors and the Court, the Companies will pay any fees and disbursements incurred in the administration of the Proposal within 10 business days of the Approval Order. The Companies will continue to pay fees and disbursements incurred subsequent to the Approval Order.
3. The Companies have paid the Proposal Trustee a retainer of \$30,000 as security for the Proposal Trustee's fees, costs and disbursements. As of the date of this Report, the retainer remains held in trust by the Proposal Trustee. Any unused portion of the retainer will be repaid to the Companies upon the Proposal Trustee's discharge.

7.0 Conclusion and Recommendation

1. Unsecured Creditors will not have any opportunity for recovery should the Proposal not be accepted and approved by the Court. Payments under the Proposal could result in a recovery of up to 100% of Convenience Claims, up to the maximum of \$20,000, and approximately 10% for General Unsecured Creditor Claims who have elected not to file as a Convenience Claim versus the alternative, which is a \$nil recovery if the Proposal is rejected and the Companies become bankrupt. **Accordingly, the Proposal Trustee recommends that the Companies' creditors vote in favour of the Proposal.**
2. If the Proposal is accepted by the Affected Creditors at the Meeting, the Companies will work to satisfy the Proposal Implementation Conditions and the Proposal Trustee will seek the Court's approval shortly thereafter.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
OGEN HOLDINGS LTD. AND OGEN LTD.
AND NOT IN ITS PERSONAL CAPACITY**