

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

N°: 500-

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

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED:**

STORNOWAY DIAMONDS (CANADA) INC., a
duly incorporated company having its domicile at
2500-1 Place Ville Marie, in the city and district of
Montreal, province of Québec, H3B 1R1

-&-

11272420 CANADA INC., a duly incorporated
company having its domicile at 2500-1 Place Ville
Marie, in the city and district of Montreal, province of
Québec, H3B 1R1

Debtors / Applicants

-&-

DELOITTE RESTRUCTURING INC., a duly
incorporated company having a place of business at
500-1190 des Canadiens-de-Montréal, in the city
and district of Montreal, province of Québec, H3B
0M7

Proposed Monitor

**APPLICATION FOR THE ISSUANCE OF AN INITIAL ORDER,
AN AMENDED AND RESTATED INITIAL ORDER AND ANCILLARY RELIEF**
(*Companies' Creditors Arrangement Act*, R.S.C. (1985), ch. C-36, Sections 4, 5, 9, 10,
11, 11.02, 11.03, 11.2, 11.51, 11.52 and 11.7 (hereinafter the **CCAA**))

TABLE OF CONTENTS

1.	Introduction	3
2.	History the Renard Mine	6
3.	The Streaming Agreements	8
4.	The 2019 CCAA Restructuring	9
4.1	Factual Background	9
4.2	2019 Restructuring Efforts	10
4.2.1	2019 SISP	11
4.2.2	The Participating Streamers/Diaquem LOI	11
5.	The CCAA Parties' Corporate Structure	11
5.1	1127	12
5.2	SDCI	12
6.	Employees	12
6.1	Employee Head Count	12
6.2	Employee Entitlements	13
7.	Indebtedness	13
7.1	Overview	13
7.2	The Financing Structure	13
7.3	Fiscal Liabilities	16
7.4	Secured Liabilities	16
7.5	Trade Liabilities	20
8.	Events Leading to the Proposed Restructured	20
8.1	Overview	20
8.2	Market Variation in the Rough Diamond Price	20
8.3	India's Freeze on Import of Rough Diamonds	21
8.4	Damage to the Accommodation Camp and Employee Turnover	21
8.5	Lost Production due to Forest Fires	22
9.	The Proposed Restructuring	22
9.1	Operational restructuring, necessary cost-cutting measures and sale of current inventory	22
9.2	The SISP	23
10.	Relief Sought	24
10.1	Appointment of the Proposed Monitor	24
10.2	Stay of Proceedings	24
10.3	Granting of CCAA Charges	25
10.3.1	Administration Charge	25
10.3.2	D&O Charge	26
10.3.3	KERP and KERP Charge	26
10.4	Approval of SISP and SISP Procedures	27
10.5	Payment of Critical Suppliers	27
10.6	Administrative Consolidation	27
10.7	Sealing of Confidential Documents	27
11.	Conclusions	28

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE APPLICANTS RESPECTFULLY SUBMIT:

1. INTRODUCTION

1. The Applicants Stornoway Diamonds (Canada) Inc. (hereinafter **SDCI**) and 11272420 Canada Inc. (hereinafter **1127**, and collectively with SDCI the **CCAA Parties**, the **Applicants** or **Stornoway**) are related companies for which protection is hereby sought under the CCAA.
2. The Applicants are corporations incorporated under the *Canada Business Corporations Act*, RSC 1985, ch. C-44 (hereinafter the **CBCA**) whose domicile is located in Montreal, Québec. 1127 is a holding company which holds all of the issued and outstanding shares of SDCI. SDCI is a corporation with active mining operations whose principal focus is its fully owned Renard diamond mine located in north-central Québec (hereinafter the **Renard Mine**).
3. SDCI is a wholly-owned subsidiary of 1127, and owns **100%** of the Renard Mine, the Applicants' main and sole operating asset, as stated in greater detail below. The Renard Mine is the first diamond mine in Québec, and one of only five in Canada, employing an aggregate of approximately **530** employees as of the date of the present Application.
4. After emerging from CCAA protection in 2019, as detailed further below, the CCAA Parties are once again experiencing serious liquidity issues, no longer have the ability to meet their liabilities as they become due and are insolvent.
5. Following a thorough review of their alternatives and in light of their intention to conduct a thorough SISP (as defined hereinafter), the CCAA Parties hereby seek creditor protection under the CCAA in order to, *inter alia*, effect a comprehensive restructuring in respect of their business and assets for the greater benefit of their stakeholders.
6. The CCAA Parties intend to finance the present CCAA proceedings from the sale of their current inventory of diamonds (as further explained below), but may return in front of this Court in order to approve and implement an interim financing if necessary.
7. The CCAA Parties hereby seek the issuance of a CCAA first day initial order (the **Proposed First Day Initial Order**) and an order approving a SISP (as defined below) (the **Proposed SISP Order**) providing for, *inter alia*, the following relief:
 - a) Application of the CCAA:
 - i) A declaration that the Applicants are “debtor companies” to whom the CCAA applies;
 - ii) A stay of proceedings in favour of the Applicants and their respective directors and officers and other general CCAA relief pursuant to, *inter alia*, sections 11, 11.02 and 11.03 thereof for an initial period of ten (10) days; and

- iii) The authorization for the Applicants to continue to conduct their business activities and operations in order to preserve their assets and to make payments related to the conduct of their business activities and operations, in accordance with the Projections (as this term is defined hereinafter) for which the CCAA Parties will seek this Court's approval;
- b) Proposed Monitor: The appointment of the proposed monitor, *Deloitte Restructuring Inc.*, as Monitor pursuant to section 11.7 of the CCAA (hereinafter the **Proposed Monitor**);
- c) SISP: The deployment of a sale or investor solicitation process (hereinafter **SISP**) with a view to identifying one or more transactions in respect of the sale, investment in, or refinancing of all or part of the business and/or the property of the Applicants that could, ideally, permit the continuation of all or part of the Applicants' activities on a going concern basis;
- d) CCAA Charges:
 - i) The granting of an administration charge (hereinafter the **General Administration Charge**) to secure the Applicants' obligations towards its legal advisors (*Norton Rose Fulbright Canada LLP*), the Proposed Monitor (*Deloitte Restructuring Inc.*), the Proposed Monitor's legal advisors (*Osler Hoskin & Harcourt LLP*), Diaquem (*McCarthy Tétrault LLP*), Streamers (*Stikeman Elliott LLP*, *Fasken Matineau LLP* and *FTI Consulting Canada Inc.*) and the proposed SISP Agent (*Deloitte Corporate Finance Inc.*), encumbering the assets identified in further detail in the First Day Initial Order or the Initial Order and following the rank set out therein;
 - ii) The granting of a directors and officers charge (hereinafter the **D&O Charge**) to secure the Applicants' obligations towards its directors and officers in respect of potential liabilities that could arise after the initial order has been issued, but only to the extent that such potential liability is not covered by existing insurance policies, encumbering the assets identified in further detail in the First Day Initial Order or the Initial Order and following the rank set out therein; and
 - iii) The granting of an additional administration charge (hereinafter the **Streamers Administration Charge**) to secure the payment of the fees and disbursement of the legal and financial advisors of the Streamers (*Stikeman Elliott LLP*, *Fasken Martineau LLP* and *FTI Consulting Canada Inc.*) up until January 1, 2024, encumbering the assets identified in further detail in the First Day Initial Order or the Initial Order and following the rank set out therein;
- e) KERP: the establishment of a key employee retention plan, secured by a priority charge (the **KERP Charge**), to incentivize the Applicants' key personnel to remain and participate in the restructuring process (hereinafter the **KERP**) encumbering the assets identified in further detail in the First Day Initial Order or the Initial Order and following the rank set out therein;

- f) Administrative Consolidation: the administrative consolidation of the present CCAA proceedings with respect to the CCAA Parties; and
- g) Sealing Order: a sealing order with regards to certain exhibits filed in support of this Application;

the whole in accordance with the Proposed First Day Initial Order and the Proposed SISP Order, communicated herewith respectively as **EXHIBIT R-1** and **R-2**.

8. At the comeback hearing, the Applicants will further seek the issuance of a proposed Amended and Restated Initial Order (hereinafter the **Proposed Initial Order**) providing for, *inter alia*, the following additional relief:

- a) an extension of the stay of proceedings until January 24, 2024 to allow for the full implementation of the Proposed Restructuring (as defined below);
- b) the granting of an increased General Administration Charge;
- c) the authorization to pay the claims of certain creditors deemed to be critical to the operations of the CCAA Parties and the successful restructuring of their affairs in accordance with the Projections or otherwise with the prior written consent of the Streamers and of Diaquem; and
- d) a reduction of the D&O Charge equivalent to any reduction of potential liabilities since the issuance of the First Day Initial Order as a result of the implementation of care & maintenance measures;

the whole in accordance with the Proposed Initial Order communicated herewith as **Exhibit R-3**.

9. Redline documents comparing the Proposed First Day Initial Order and the Proposed Initial Order to the model CCAA initial order are communicated herewith respectively as **Exhibits R-4** and **R-5**.

10. As is more fully described herein:

- a) The CCAA Parties are faced with a liquidity crisis and are insolvent; and
- b) The aggregate amount of their outstanding indebtedness is far greater than the CCAA **\$5 million** threshold;

11. The requested relief is necessary so as to allow the CCAA Parties, *inter alia*:

- a) to maintain their operations on a going concern basis;
- b) to implement a care & maintenance in connection with the Renard Mine program to preserve the assets and the business for the duration of the present restructuring;
- c) to continue the employment and retention of certain key employees of the CCAA Parties;

- d) to implement and conduct the SISP with the support of their principal secured creditors and in accordance with the Proposed Orders, and to consummate any resulting transaction from the SISP, if applicable;
 - e) to finance the present proceedings through the sale of their current diamond inventory, as explained below;
 - f) to obtain the crucial assistance of the CCAA Parties' directors, officers and advisors throughout the restructuring described in this Application (hereinafter the **Proposed Restructuring**), and secure their fees and protections with respect to potential liabilities via the D&O Charge and the General Administration Charge.
12. In support of this Application, the Proposed Monitor has prepared a report, *inter alia*, analyzing the circumstances leading up to the filing of this Application, the Applicants' financial and operational difficulties and an analysis of the proposed restructuring, the whole as appears from such report (the **Proposed Monitor's Report**), communicated herewith as **Exhibit R-6**.
13. It is respectfully submitted that authorizing the CCAA process contemplated in the Proposed First Day Initial Order, the Proposed Initial Order and the Proposed SISP Order (collectively, the **Proposed Orders**), is necessary and appropriate in the particular circumstances of this case and constitutes the best restructuring alternative available for the CCAA Parties' stakeholders.
14. The consolidation of proceedings in respect of the Applicants is for administrative purposes only and shall not effect a consolidation of the assets and property of the CCAA Parties, including for the purposes of any plan or plans of arrangement that may be hereafter proposed. Unless provided in the order sought herein, the CCAA Parties will continue to maintain their separate property, assets and liabilities;

2. HISTORY THE RENARD MINE

15. The CCAA Parties focus is the operation of their fully owned Renard Mine, Québec's first diamond mine, located approximately 250 km north of the Cree community of Mistissini and 350 km north of Chibougamau in the James Bay region of north-central Québec, approximately 800 km north of Montréal.
16. The Renard Mine is a component of what is commonly referred to as Québec's "*Plan Nord*", an initiative of the government whose objective is to enable the development of the northern part of the province and its local communities, including indigenous, rich resources area, for the benefit of its populations and of the whole of Québec, through an exemplary form of sustainable development based on a comprehensive, integrated, consistent and responsible approach, the whole by 2035.
17. As mentioned previously, the Renard Mine is one of only five diamond mines in Canada, employing approximately **530** people.
18. The initial regional exploration at the Renard Mine began in 1996, with the first kimberlite discovery taking place in 2001. On 2003, the drilling and mini bulk sampling began at the mine, leading to bulk sampling in 2006.

19. A feasibility study was conducted in 2011 with the discovery of the first mineral reserve, leading to the construction of Road 167 in order to provide year-round access to the mine, which became accessible in September 2013.
20. In April 2011, Diaquem Inc. (hereinafter **Diaquem**) obtained a direct royalty interest of **2%** on future diamond production at the Renard Mine (hereinafter the **Diaquem Royalty**).
21. In 2012, SDCI was granted a Québec Certificate of Authorization issued by the *Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs* in respect of the Renard Mine.
22. Mine construction at the Renard Mine commenced on July 10, 2014, following the successful completion of a comprehensive **\$946 million** financing package on July 8, 2014 designed to fully fund the project to completion (hereinafter the **Financing Transactions**).
23. As a result of these financing transactions, Investissement Québec (hereinafter **IQ**), Québec government's main industrial and financial holding company, through certain of its subsidiaries including Diaquem (collectively, hereinafter the **IQ Parties**), maintained a significant shareholding in CCAA Parties' predecessor holding company, Stornoway Diamond Corporation (hereinafter **SWY**).
24. First ore processing was achieved on July 15, 2016, and commercial production was formally achieved and declared on January 1, 2017.
25. The Renard Mine benefits from a strong social acceptance, as evidenced *inter alia* from the following agreements:

- a) Mecheshoo Agreement: The March 2012 Mecheshoo Agreement with the Cree Nation of Mistissini, the Grand Council of the Crees (Eeyou Istchee), the Cree Regional Authority (now, the Cree Nation Government) (hereinafter the **Mecheshoo Agreement**);

The Mecheshoo Agreement was entered into with a view to providing training, employment and business opportunities for Crees during project construction, operation and closure, as well as setting out social, cultural and environmental principles under which the mine ought to be managed and respected;

The Mecheshoo Agreement also includes a mechanism by which the Cree parties financially benefit from the success of the Renard Mine on a long-term basis, consistent with the mining industry's best practices for engagement with First Nations communities; and

- b) Partnership Agreement: The July 2012 Partnership Agreement with the communities of Chibougamau and Chapais (hereinafter the **Partnership Agreement**);

The Partnership Agreement was entered into with the host communities of Chapais and Chibougamau, historically important regional centres in civil and mining services;

The Partnership Agreement provides a framework to address the issues and initiatives of common interest such as communications, employment, economic diversification and attracting newcomers to the region;

Pursuant to the Partnership Agreement, the Renard Liaison Committee was created with a view to allow parties to foster cooperation and communication between the parties, to oversee, maintain and strengthen relationships throughout the life of the Renard Diamond Project.

26. Today, the Renard Mine combines open-pit and underground mine operations and, to date, nine kimberlite pipes have been identified of which two are in production.
27. SDCI is required to maintain a financial guarantee in favour of the Québec Government in the amount of **\$21.457 million** to deal with the costs associated with the ultimate closure of the Renard Mine and the related reclamation obligations. In this regard, SDCI benefits from a guarantee policy with XL Speciality Insurance Company (hereinafter **XL Insurance**) in favour of the *Ministère de l'Énergie et des Ressources naturelles*, as appears from a copy of the guarantee policy and General Agreement of Indemnity communicated herewith *en liasse* as **EXHIBIT R-7**.

3. THE STREAMING AGREEMENTS

28. On July 8, 2014, the predecessor entities to the CCAA Parties, SDCI, SWY, Ashton Mining of Canada Inc. (hereinafter **Ashton**) and FCDC Sales and Marketing Inc. (hereinafter **FCDC**, and together with SDCI, SWY and Ashton, the **SWY Parties**), entered into the Purchase and Sale Agreement with Orion Co-Investments I (Stream) LLC, as buyer, and Computershare Trust Company of Canada (hereinafter **Computershare**) acting as stream agent, which Purchase and Sale Agreement was subsequently assigned by Orion Co-Investments I (Stream) LLC and subsequent buyers to Osisko Gold Royalties Ltd. (hereinafter **Osisko**), CDPQ Ressources Inc. (hereinafter **CDPQ Ressources**) (as successor in interest to Caisse de dépôt et placement du Québec (hereinafter **CDPQ**)), TF R&S Canada Ltd. (formerly 1078243 Canada Limited), Albion Exploration Fund LLC and Washington State Investment Board (hereinafter collectively the **Streamers**).
29. The Purchase and Sale Agreement was amended on March 30, 2015, amended and restated on October 2, 2018, amended on March 29, 2019, further amended and restated on November 1, 2019, which in turn was further amended by the Omnibus Amendment and Consent on September 11, 2020, the Amendment dated November 18, 2020, the Second Omnibus Amendment dated as of April 29, 2022, and the Third Omnibus Amendment dated as of February 17, 2023 among the CCAA Parties, the Streamers and Computershare (as amended and restated from time to time, hereinafter the **Amended and Restated PSA**), a copy of the last Amended and Restated PSA is communicated herewith under seal as **EXHIBIT R-8**.
30. In connection with the Amended and Restated PSA, the SWY Parties entered into (i) the Co-Ownership Agreement, dated July 8, 2014 (hereinafter, as amended and restated on November 1, 2019, the **COA**, a copy of which is communicated herewith under seal as **EXHIBIT R-9**) and (ii) the Marketing and Sales Agreement dated July 8, 2014, (hereinafter, as amended and restated on November 1, 2019, December 16, 2022, March 28 and June 28, 2023 the **MSA**, a copy of the amendment and restatement is communicated under seal as **EXHIBIT R-10**) (collectively, with the Amended and Restated

PSA, as amended from time to time in accordance with their terms, the **Streaming Agreements**).

31. The Streaming Agreements purport to deal with the interaction between the Streamers, the Applicants and their respective rights and interest in respect to the Subject Diamonds Interests (as hereinafter defined). More details with respect to the purpose and subject matter of the Streaming Agreements are provided further below in this Application.

4. THE 2019 CCAA RESTRUCTURING

32. The circumstances of the prior CCAA restructuring of Stornoway in 2019 are set out in detail below in order to provide a complete picture of the events having led to the present situation, the capital structure of Stornoway and the present need for Stornoway to seek again CCAA protection.

4.1 FACTUAL BACKGROUND

33. During the first two years of production following commencement of commercial production (2017), delayed underground mine ramp-up (due to unexpected rock condition) coupled with lower-grade ore in the initial panels of underground mined and higher than anticipated levels of diamond breakage resulted in carat production falling short of projections by approximately **600,000** carats on a run-of-mine basis.
34. The Renard Mine's diamond recovery initially had a higher proportion of small diamonds (less than 1 carat), and lower recovery of coarse diamonds than expected when compared to the size distribution frequency of the Renard Mine feasibility study.
35. The lower production and carat recoveries in 2018 were primarily affected by delays in the ramp-up of the Renard 2 underground mine, the processing of low-grade stockpiles to curtail the shortfall in mined tonnes during the transition from open pit to underground operations, and the mining of lower than expected grades at the margin of the orebody during the initial phase of the underground ramp-up.
36. An additional **\$22 million** of capital expenditures for the ore waste sorting circuit designed as a mitigation measure for diamond breakage levels further challenged SWY Parties' liquidity during 2018.
37. In short, lower production and lower carats recovery had a negative and direct impact on the SWY Parties' cash flow availability.
38. Furthermore, at the time of the Financing Transactions, the projected Renard Mine diamond average price was set at **US\$147/ct**. However, since the commencement of its commercial production in 2017 until 2019, the Renard Mine's diamonds generated an average price return ranging between **US\$85.81/ct** and **US\$88.30/ct**.
39. The second half of 2018 saw a further rough market price correction. This market decline was partly attributed to the further weakening Indian Rupee, the lack of available credit available to Indian diamantaires, excess of polished inventory in India and lowering margins in manufacturing.

40. The rough diamond market price correction continued into 2019 and the average pricing achieved in the second quarter of 2019 was **US\$76/ct**, with a continued downward trend.
41. In response to these challenges, SWY Parties' management focused their efforts, *inter alia*, on addressing the aforementioned breakage issue in order to further improve the carat recovery.
42. On October 2, 2018 and December 7, 2018, the SWY Parties announced a series of supplemental financing transactions with lenders and key stakeholders designed to provide greater financial and operating flexibility (hereinafter the **2018 Financing Package**).
43. In total, the 2018 Financing Package provided the Applicants with additional consideration and liquidity for an amount of **\$129 million**, including the deferral of certain loan principal repayments representing debt service cost deferral of up to **\$54 million**.
44. Nonetheless, by the end of 2018:
 - a) Ramp-up of underground production at Renard 2 was completed, and a steady feed was achieved from underground operations; and
 - b) Recovered grade improved by **39%** and **45%** in the third and fourth quarters of 2018, respectively compared to the previous quarters. Carat recoveries improved by **47%** in both the third and fourth quarters.
45. However, despite improving production and carat recovery, implementing certain other operational changes and securing additional financial support from its principal stakeholders, the debt structure of SWY Parties did not allow them to operate the Renard Mine in a profitable manner and the above-noted measures alone proved to be insufficient.

4.2 2019 RESTRUCTURING EFFORTS

46. In light of the foregoing, the SWY Parties, in consultation with the Streamers and Diaquem, concluded that without a comprehensive restructuring of existing capital structure they would not be able to operate the Renard Mine with profitability.
47. As a result, on June 10, 2019, the SWY Parties entered into a Bridge Financing Agreement (as amended from time to time and as further detailed below, hereinafter the **Bridge Financing Agreement**) with, *inter alia*, the Streamers and Diaquem pursuant to which a secured credit facility of up to approximately **\$21.5 million** was made available to the SWY Parties.
48. The purpose of the Bridge Financing Agreement, which was secured by first ranking hypothecs over the universality of the SWY Parties' assets, was to provide short term financing in order to address the SWY Parties' immediate/short term liquidity needs and allow them to conduct a sale and investment solicitation process (the **2019 SISF**).

4.2.1 2019 SISP

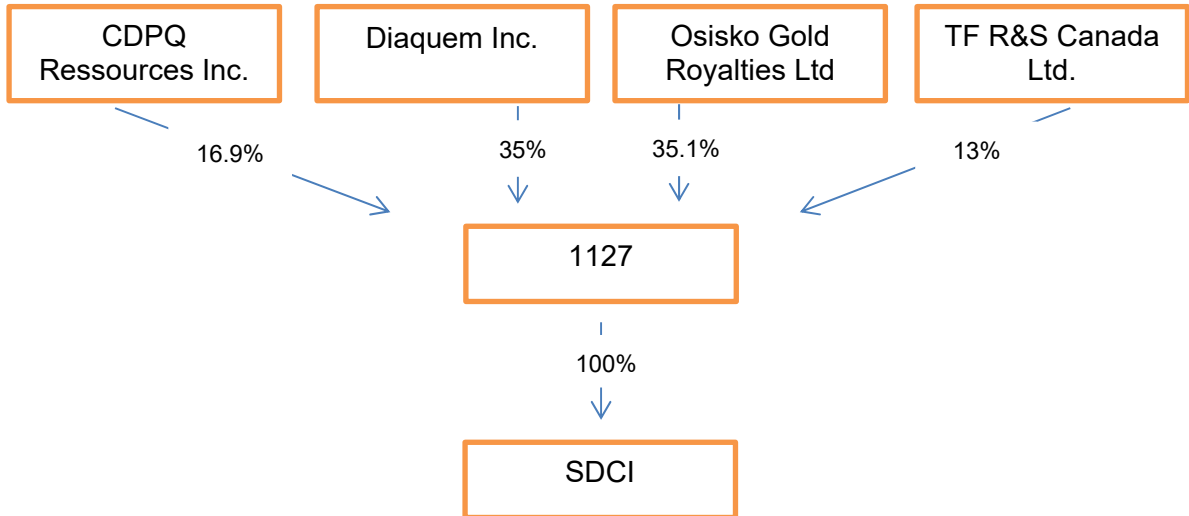
49. With the support of the Streamers and Diaquem, the SWY Parties conducted the 2019 SISP to canvass the market and seek the interest of potential partners/investors/acquirers interested in their business and/or property/assets/undertakings.
50. The 2019 SISP ultimately resulted in two (2) bids, a third party bid and the Streamers/Diaquem Bid (as defined hereinafter), which was chosen as the successful bid.

4.2.2 THE PARTICIPATING STREAMERS/DIAQUEM LOI

51. On September 8, 2019, in accordance with the SISP Procedures, the Osisko, CDPQ Ressources and 1078243 Canada Limited (the **Participating Streamers**) and Diaquem submitted a letter of intent to the CCAA Parties outlining the main terms and conditions of the proposed transaction (hereinafter the **Participating Streamers/Diaquem LOI**).
52. Essentially, pursuant to the Participating Streamers/Diaquem LOI:
 - a) The Participating Streamers and Diaquem contemplated acquiring indirectly, through an entity to be formed by them substantially all of the property, assets and undertakings of the SWY Parties, through the acquisition of **100%** of the equity interest in SDCI;
 - b) The consideration payable under the Participating Streamers/Diaquem Contemplated Transaction was the assumption of the principal liabilities of the SWY Parties, which on a combined measure and subject to adjustments, totalled approximately **\$540 million**.
53. Participating Streamers/Diaquem LOI was the only bid resulting from the 2019 SISP that provided SWY Parties with the with the proper capital and equity structure, allowing them to be in a position to face difficult and challenging market conditions of the time.
54. The transaction contemplated in the Participating Streamers/Diaquem LOI (the **Participating Streamers/Diaquem Transaction**) was approved by the Court and ultimately implemented in the fall of 2019, which allowed their business to continue on a going concern basis, preserving approximately **540** jobs at the time.

5. THE CCAA PARTIES' CORPORATE STRUCTURE

55. Given the implementation of the Participating Streamers/Diaquem Transaction, the corporate structure of the CCAA Parties is now as follows:



- 56. The Applicants are operated on a consolidated basis. Management of the Applicants is employed by SDCI.
- 57. In light of the above, the procedural consolidation of these CCAA Proceedings for administrative purposes in respect of the CCAA Parties is appropriate and necessary.

5.1 1127

- 58. 1127 is a Canadian corporation incorporated under the CBCA. 1127 is a holding company and has no significant operations of its own. It owns all of the shares of its subsidiary, SDCI.

5.2 SDCI

- 59. SDCI is a Canadian corporation incorporated pursuant to the CBCA and holds a **100%** interest in the Renard Mine.
- 60. SDCI is also the sole owner of the mining lease issued by the *Québec Ministère des Ressources naturelles* in October 2012 (hereinafter the **Mining Lease**) and the mineral titles on diamonds to be extracted from the Renard Mine (hereinafter the **Mineral Titles**), including any Subject Diamond (as defined hereinafter) to be extracted from the Renard Mine in accordance with the Streaming Agreements (as defined hereinafter).

6. EMPLOYEES

6.1 EMPLOYEE HEAD COUNT

- 61. As mentioned above, the CCAA Parties have an aggregate of approximately **530** non-unionized employees, all of which are employed by SDCI.
- 62. The CCAA Parties firmly believe that a substantial portion of the value of their business lies in part in their specialized and dedicated workforce.

63. However, as part of the Proposed Restructuring, SDCI must temporarily lay off a substantial portion of its workforce during the care & maintenance period as detailed further herein below.
64. After consulting with their main stakeholders, the CCAA Parties have implemented a retention program for certain key employees with a view of securing their essential contribution during the SISP until completion of any transaction that may result therefrom.
65. Pursuant to the KERP contemplated, an incentive will be calculated on a monthly basis and will be payable in one lump sum payment upon the earlier of (i) either April 27, 2024 or October 27, 2024 depending on the case, or (ii) the completion of a restructuring process in the manner set forth in the KERP agreements.

6.2 EMPLOYEE ENTITLEMENTS

66. As of the date hereof, the CCAA Parties are current in their payroll obligations, including accrued and unpaid wages. In addition, there are no pension plans in place.
67. As appears from the cash flow projections communicated as Appendix A to the Proposed Monitor's Report (hereinafter the **Projections**), key employees retained by the CCAA Parties for services to be rendered after the issuance of the initial order shall be paid in the normal course of business.

7. INDEBTEDNESS¹

7.1 OVERVIEW

68. As described in greater detail below, as of September 30, 2023, excluding contingent liabilities, the CCAA Parties have estimated outstanding liabilities, on a consolidated basis, of approximately **\$308.7 million**.

7.2 THE FINANCING STRUCTURE

69. Prior to the 2019 restructuring, the Renard Mine financing was the largest single project financing transaction for a publicly listed diamond company in Canada, and included equity, senior and convertible debt, equipment financing and the world's first ever diamond stream financing, as further detailed below.
70. Following the 2019 restructuring, approximately **\$249 million** remains outstanding to secured creditors through a combination of debt facilities, the Streaming Agreements, and an equipment finance facility, evidenced, *inter alia*, through the following agreements:
- a) **Secured Streaming Agreements**: The Streaming Agreements provided the CCAA Parties with access to the Deposit (as defined herein below) upon the fulfilment of certain specified conditions and milestones, all of which were achieved, i.e. approximately an initial amount of **US\$285 million**. More particularly:

¹ The amounts used in this section refer to the accounting carrying amounts used by the Applicants to compile their audited annual consolidated financial statements and their unaudited interim consolidated financial statements, as opposed to the face value of the debt instruments, which may be higher.

- i) Pursuant to the Amended and Restated PSA, (i) SDCI agreed to sell to the Streamers a 20% undivided interest in all diamonds to be generated from the Renard Mine during its lifespan (hereinafter the **Subject Diamonds Interest**); and (ii) Streamers agreed to pay a purchase price to SDCI, comprised of up-front payments totaling approximately US\$285 million, representing a prepayment of a portion of the purchase price payable for Subject Diamonds Interest produced by the Renard Mine (hereinafter the **Deposit**) and sale proceeds equal to the lesser of (a) 40% of the achieved sales price or (b) US\$40 per carat for any given sale of Subject Diamonds Interest, with the balance of purchase price payable by the Streamers, if any, being paid by way of offset against the up-front Deposit.

The Amended and Restated PSA also provides, inter alia, that upon the occurrence of various specific events of defaults, a "Settlement Amount" (as defined under the Amended and Restated PSA), shall become immediately due and payable to the Streamers in the circumstances set out in the Amended and Restated PSA;

- ii) Pursuant to the COA, when the Subject Diamonds Interests are exported outside Canada to the Approved Commissionaire (as defined hereinafter), the Streamers and SDCI become un-divided co-owners of same, in a proportion of **20%** for Streamers and **80%** for SDCI;
- iii) Pursuant to the MSA, Bonas-Couzyn (Antwerp) N.V. (hereinafter **Bonas** or the **Approved Commissionaire**), is appointed as exclusive Approved Commissionaire to sell all of the Subject Diamonds Interests produced by the Renard Mine through a tender process in Antwerp (Belgium) and upon receipt of the sale proceeds of any given sale of Subject Diamonds Interests, Bonas must remit the net proceeds to each of FCDC (now SDCI) and the Streamers, in accordance with the formula detailed in both the MSA and the COA, directly to their respective bank accounts;

As of September 30, 2023, approximately **\$47.7 million** is outstanding under the Deposit;

- b) **Secured Diaquem Senior Credit Agreements**: A Credit Agreement was entered into between Diaquem and SDCI on July 8, 2014 (hereinafter as amended on October 2, 2018, March 28, 2019, June 10, 2019, further amended and restated on November 1, 2019, and as amended pursuant to the omnibus amendment and consent dated as of September 11, 2020, the second omnibus amendment dated as of April 29, 2022, and the third omnibus amendment dated as of February 17, 2023, collectively the **Senior Credit Agreement**). The Senior Credit Agreement initially provided SDCI with an amount of approximately **\$120 million**. A copy of the last amended and restated Senior Credit Agreement is communicated herewith under seal as **EXHIBIT R-11**;

As of September 30, 2023, approximately **\$54,2 million** is outstanding under the Senior Credit Agreement;

- c) **Bridge Financing Agreement**: as explained previously, the Bridge Financing Agreement was entered into on June 10, 2019 by and among, *inter alios*, the SWY

Parties, as borrowers, Osisko, CDPQ (having subsequently assigned its rights and interests in the Bridge Financing Agreement to CDPQ Ressources), a predecessor to TF R&S Canada Ltd., Albion Exploration Fund, LLC, Washington State Investment Board and Diaquem, as bridge lenders, and Computershare, as agent and trustee on behalf of various parties. It was amended pursuant to the first amending agreement dated as of August 13, 2019, the second amending agreement dated as of September 8, 2019, the third amending agreement dated as of October 6, 2019 and the fourth amending agreement dated as of November 1, 2019, the omnibus amendment and consent dated as of September 11, 2020, the amendment dated November 18, 2020, the second omnibus amendment dated as of April 29, 2022, and the third omnibus amendment dated as of February 17, 2023. A copy of the Bridge Financing Agreement is communicated herewith under seal as **EXHIBIT R-12**;

As of September 30, 2023, approximately **\$141.3 million** is outstanding under the Bridge Financing Agreement;

- d) **Working Cap Facility**: An amended and restated working cap facility agreement was entered into on or about November 1, 2019 by and among SDCI, as borrower, Diaquem, Osisko, TF R&S Canada Ltd. (previously known as 10782343 Canada Limited), and CDPQ Ressources, as lenders, and Computershare, as security trustee for and on behalf of various parties. It was amended pursuant to the omnibus amendment and consent dated as of September 11, 2020, the amendment dated November 18, 2020, the second omnibus amendment dated as of April 29, 2022, and the third omnibus amendment dated as of February 17, 2023 (hereinafter, collectively, the **Working Cap Facility**). A copy of the last amended and restated Working Cap Facility is communicated herewith under seal as **EXHIBIT R-13**;

As of September 30, 2023, there is no outstanding amount under the Working Cap Facility;

- e) **Secured Caterpillar Agreement**: A Master Lease Agreement entered into between *Caterpillar Financial Services Limited* (hereinafter **Caterpillar**) and SDCI on July 25, 2014, as amended and restated from time to time (hereinafter the **Caterpillar Agreement**), provided SDCI with an amount of **US\$75 million** to finance the acquisition of the mining equipment to be used on site at the Renard Mine. A copy of the Caterpillar Agreement, as amended and restated on February 17, 2021, is communicated herewith under seal as **EXHIBIT R-14**;

As of September 30, 2023, approximately **\$5,9 million** is outstanding under the Caterpillar Agreement.

- f) **Secured Diaquem Royalty Agreement**: A restated royalty agreement was entered into between Diaquem and SDCI on April 1st, 2011 (hereinafter as amended and restated on November 1st, 2019, and as amended pursuant to the omnibus amendment and consent dated as of September 11, 2020 and the second omnibus amendment dated as of April 29, 2022, collectively the **Royalty Agreement**). Pursuant to the Royalty Agreement, SDCI agreed to pay on a quarterly basis a royalty on the sale of diamonds and other minerals generated

from the Renard Mine. A copy of the last amended and restated Royalty Agreement is communicated herewith under seal as **EXHIBIT R-15**.

- g) **Common Terms and Intercreditor Agreement:** In order to confirm their respective rights and obligations as creditors of the Applicants, including their respective priorities in connection with the indebtedness and obligations of the Application and the security therefore, SDCI, 1127, Streamers, Diaquem and Computershare, as security trustee for and on behalf of various parties, entered into a Second Amended and Restated Common Terms and Intercreditor Agreement dated November 1, 2019, which has been further amended from time to time in accordance with its terms, and a copy of which is communicated herewith under seal as **EXHIBIT R-16**.

7.3 FISCAL LIABILITIES

71. As of the date hereof, the CCAA Parties are current in their source deductions and other GST/QST obligations.
72. As appears from the Projections, source deductions and other GST/QST obligations in connection with services rendered/products supplied after the issuance of the initial order shall be paid in the normal course of business.

7.4 SECURED LIABILITIES

73. The outstanding secured liabilities of the CCAA Parties can be summarized as follows (creditors identified in the following chart are hereinafter collectively defined as **Secured Lenders**):²

<u>Creditor</u>	<u>Debtor(s) / Grantor(s)</u>	<u>Agreement</u>	<u>Amount of Security</u>	<u>Description of Collateral (Summary)</u>
Computershare (acting as: security trustee and/or as <i>fonde de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Streamers ; or security trustee and/or as <i>fonde de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Diaquem)	SDCI	Deeds executed before Lisa Erin Susser, Notary, on July 3, 2014 14-0614276-0001 , July 8, 2014; 14-0614276-0007 , July 8, 2014	\$700,000,000 with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fonde de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Streamers), \$600,000,000 with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fonde de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Diaquem)	The universality of all of its property, movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible, present and future, of whatever nature and wherever situated.

² The following table only summarizes movable hypothecs and remains subject to the independent review of the Proposed Monitor.

<u>Creditor</u>	<u>Debtor(s) / Grantor(s)</u>	<u>Agreement</u>	<u>Amount of Security</u>	<u>Description of Collateral (Summary)</u>
	SDCI (formerly Ashton)	Deeds executed before Lisa Erin Susser, Notary, on July 4, 2014 14-0614276-0003 , July 8, 2014; 14-0614276-0006 , July 8, 2014	\$700,000,000 with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Streamers) \$600,000,000 with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Diaquem)	All the Grantor's right, title and interest in and to (i) all the Securities it owns in the Material Subsidiaries, and (ii) all present and future claims and accounts arising under Affiliated Company Subordinated Debt, all hypothecary or other rights related thereto and all contracts, instruments, agreements, and books and records evidencing same, and all replacements, substitutions and, increases, additions and accessions thereto and all proceeds therefrom.
	SDCI (merelyly FCDC)	Deeds executed before Lisa Erin Susser, Notary, on July 4, 2014 14-0614276-0002 , July 8, 2014; 14-0614276-0008 , July 8, 2014	\$700,000,000 with interest at the rate of 20% per annum (Computershare acting as proxy of Streamers) \$600,000,000 with interest at the rate of 20% per annum (Computershare acting as proxy of Diaquem)	The universality of all of its property, movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible, present and future, of whatever nature and wherever situated.
Caterpillar	SDCI	Private deed executed on July 25, 2014 14-0699485-0001 ; July 31, 2014	\$75,000,000 (plus additional hypothec of \$15,000,000) with interest at the rate of 25% per annum	The universality of certain movables.
The Nova Scotia Bank	SDCI	Private deed executed on February 11, 2016 16-0122115-0001 ; February 15, 2016	\$2,000,000	Movable hypothec covering funds on deposit in the amount of CDN\$2,000,000.00 which may be held in the name of and/or on behalf of the Grantor and for its benefit, with the Bank of Nova Scotia from time to time.
Computershare (acting as: security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Lenders under the Working Cap Facility, <u>or</u>	SDCI	Deed executed before Melissa Amar, Notary, on October 30, 2019 19-1230708-0001 , October 30, 2019	\$150,000,000 with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Lenders under the Working Cap Facility)	The universality of all of its property, movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible, present and future, of whatever nature and wherever situated.

<u>Creditor</u>	<u>Debtor(s) / Grantor(s)</u>	<u>Agreement</u>	<u>Amount of Security</u>	<u>Description of Collateral (Summary)</u>
Diaquem, Streamers, or as applicable)	1127	Deed executed before Melissa Amar, Notary, on October 30, 2019 19-1230708-0002 , October 30, 2019	\$150,000,000 with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Lenders under the Working Cap Facility)	The universality of all of its property, movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible, present and future, of whatever nature and wherever situated.
	1127	Deeds executed before Melissa Amar, Notary, on October 30, 2019 19-1230733-0001 , October 30, 2019; 19-1230733-0002 , October 30, 2019	\$600,000,000 with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Diaquem) \$700,000,000 with interest at the rate of 20% per annum (Computershare acting as security trustee and/or as <i>fondé de pouvoir</i> under Article 2692 of the <i>Civil Code of Québec</i> of Streamers)	The universality of all of its property, movable and immovable, personal and real, corporeal and incorporeal, tangible and intangible, present and future, of whatever nature and wherever situated.
XL Insurance	SDCI	Private deed executed on February 17, 2023 23-0227554-0001 , February 27, 2023	\$21,456,939 with interest at the annual rate of 2% above the Prime Rate	Notamment, l'ensemble des créances et des dettes que SDCI détient à l'égard de toutes les personnes avec lesquelles il (i) a conclu ou conclura des Contrats garantis, (ii) a accordé ou accordera un contrat de sous-traitance ou d'approvisionnement; et (iii) a conclu ou conclura des contrats non garantis, lesdites réclamations et dettes.
	SDCI	Private deed executed on February 21, 2023 23-0227554-0002 , February 27, 2023	\$5,364,234.75 with interest at the rate of 25% per annum	La Garantie en espèces. "Garantie en espèce" signifie la somme de cinq millions trois cent soixante-quatre mille deux cent trente-quatre dollars canadiens (5,364,234.75 \$ CAN).
	SDCI	Private deed executed on March 23, 2023 23-0418782-0001 , April 13, 2023	\$12,500 with interest at the rate of 25% per annum	La Garantie en espèces. "Garantie en espèce" signifie la somme de douze mille cinq cents dollars canadiens (12 500 \$ CAN).
Diaquem	SDCI	Private deed executed on October 25, 2023	\$40,000,000 with interest at the rate of 25% per annum (plus a 20% additional hypothec)	L'universalité de ses biens meubles, présents et futurs, corporels et incorporels, de quelque nature que ce soit et

<u>Creditor</u>	<u>Debtor(s) / Grantor(s)</u>	<u>Agreement</u>	<u>Amount of Security</u>	<u>Description of Collateral (Summary)</u>
		23-1269517-0001, October 25, 2023 (in replacement of the movable hypothec created pursuant to the deed executed before Mona Golabi, Notary, on April 1, 2011 and previously registered under number 11-0218278-0001)		quel que soit leur emplacement, mais uniquement s'ils concernent, découlent ou se rapportent aux biens suivants : (i) les titres miniers qui sont décrits en Annexe A de la présente hypothèque (les « Titres miniers ») (ii) l'universalité de tout titre minier, présent et futur, sous toute forme, quelle qu'elle soit, incluant des claims, (qu'ils soient obtenus par jalonnement ou obtenus par désignation sur carte), permis d'exploration minière, baux miniers, permis de recherche, baux d'exploitation, concessions minières ou tout autre droit minier, titre ou intérêt minier émis en vertu de la Loi sur les mines, L.R.Q. c. M-13.1 pouvant découler des Titres miniers de temps à autre (les « Autres droits ») et (iii) l'universalité de tout renouvellement ou tout jalonnement, ou toute substitution des Titres Miniers ou des Autres droits.

74. In short, *inter alia*, Streamers and Diaquem benefit from universal hypothecs on the assets of CCAA Parties, while Caterpillar benefits from security over the financed equipment of SDCI, XL Insurance benefits from security over (i) cash deposits of approximately \$5.4M, and (ii) certain claims of SDCI, and Diaquem (in respect of the Diaquem Royalty) benefits from security over certain mining titles and related rights.
75. A summary report of the above registrations in the *Registre des droits personnels et réels mobiliers (RDPRM)* is communicated herewith for additional information as **EXHIBIT R-17**.
76. Diaquem (in respect of the Diaquem Royalty), the Cree parties and Computershare (acting as security trustee and/or as *fondé de pouvoir* under Article 2692 of the *Civil Code of Québec* of Diaquem, Streamers or Lenders under the Working Cap Facility) have also registered or inscribed certain deeds of hypothec affecting, as the case may be, the Mining Lease, mining claims and surface right leases at the Land Registry Office for the Registration Division of Sept-Îles, the Register of real rights of State resource development within the meaning of Article 2972.2 of the *Civil Code of Québec* for the Registration Division of Sept-Îles and the Register of real and immovable mining rights and known as "Gestim", the mining title management system kept by the Ministry of Energy and Natural Resources, as it appears more fully from copies of said deeds of hypothec which are communicated herewith *en liasse* as **EXHIBIT R-18** which includes (i) the index of immovables relating to the Mining Lease reflecting the registration of such hypothecs against the Mining Lease, (ii) an example of a land file relating to one mining claim reflecting the registration of certain hypothecs against such mining claim, (iii) an example

of a land file relating to one surface right lease reflecting the registration of certain hypothecs against such surface right lease and (iv) the file at Gestim relating to the Mining Lease.

77. Independent review of the validity and enforceability of certain security interests listed in the table above has yet to be concluded by the Proposed Monitor's counsel.

7.5 TRADE LIABILITIES

78. As of September 30, 2023, the CCAA Parties' indebtedness to its suppliers and other creditors not holding a security interest amounts to approximately **\$59.6 million**.
79. As appears from the Projections, to preserve the going concern value of its operations, SDCI will continue to pay trade suppliers that are critical to its operations during these proceedings regardless of whether services or supplies were rendered/supplied before or after the filing of this Application.

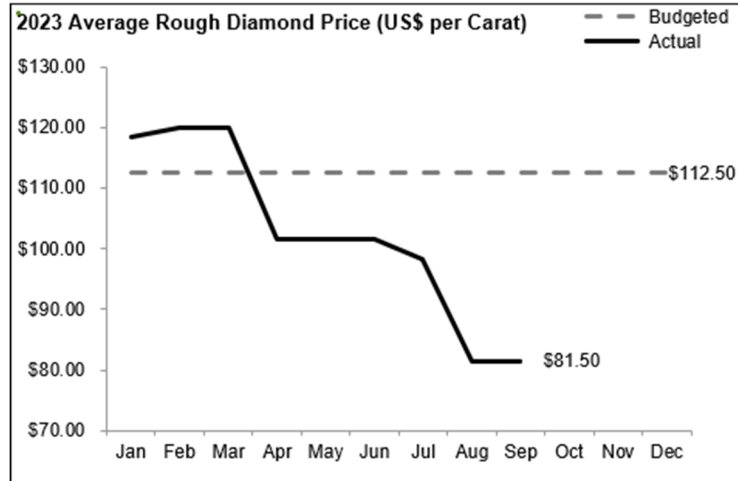
8. EVENTS LEADING TO THE PROPOSED RESTRUCTURED

8.1 OVERVIEW

80. Since the 2019 restructuring, the Renard Mine proceeded with fulsome development, leading to the construction of a ramp at 650 metres below surface and production at levels never seen before. This allowed Stornoway to partially reduce its outstanding indebtedness and continue the implementation of its development plan with a view to increasing its diamond reserves and extending the lifespan of the mine.
81. In fact, while four out of the five active diamond mines in Canada recorded decreases in production volume in 2019, only the Renard Mine in Quebec recorded an increase (~47%) mainly due to the exploitation of this higher-grade zone.
82. The production at Renard Mine contributed to Canada's ability to maintain its position as world's third-biggest producer of diamonds in 2019 (12.5% by value and 13.5% by volume).
83. However, despite the successful restructuring of their affairs in 2019, external events have once again led to the CCAA Parties' insolvency, as further detailed below.

8.2 MARKET VARIATION IN THE ROUGH DIAMOND PRICE

84. As mentioned above, the Applicants usually sell their diamond production in an open market by tender in Antwerp, Belgium, in accordance with the MSA entered into with the Approved Commissionaire Bonas.
85. At the beginning of 2023, the projected Renard Mine diamond average price was set at **US\$120/ct**, but the prices have declined to approximately **US\$81.50/ct**.



- 86. This rough market price correction was partly attributed to excess of polished inventory in India, lower demand in the United States and a Chinese market that has not recovered as quickly as anticipated.
- 87. The rough diamond market price correction has led India to take the unilateral actions described below in order to prevent a continued downward trend in the price of diamond.

8.3 INDIA’S FREEZE ON IMPORT OF ROUGH DIAMONDS

- 88. At the end of September 2023, India announced a 2-month freeze between October 15 and December 15, 2023 on imports of rough diamonds to reduce polished diamond inventories and restore the global price of diamond. The Indian manufacturing sector historically bought 90% of the available rough diamonds on the market.
- 89. Since the customers in India account for the majority of SDCI’s customers, this announcement has major financial consequences for Stornoway, which is working to implement various cost reduction measures as a result.
- 90. According to Bonas, such unilateral freezes were implemented twice in the past (November 2008 and May 2020), and successfully achieved their objective of increasing the price of diamond. Bonas believes that the necessary conditions are in place for a market recovery at the start of 2024.
- 91. The ongoing freeze of imports has had a catastrophic impact revenue of Stornoway, which will require the protection of the CCAA in order to put the Renard Mine into care and maintenance between now and January 2024 in order to minimize its costs, implement cost reduction initiatives and explore alternative avenues for the sale of its diamond reserves.

8.4 DAMAGE TO THE ACCOMMODATION CAMP AND EMPLOYEE TURNOVER

- 92. Last year, Stornoway identified damages caused by mould and mildew in various units of its accommodation camp. Inspections performed by WSP as independent expert confirmed manufacturing defects of the camps.

93. Since damages are deemed extensive, WSP proposed a complete renovation or a replacement of the impacted accommodation units (264 out of 350 rooms).
94. Stornoway has budgeted \$2.5M in 2023 and \$1.0M in 2024 for the camp renovation, and has initiated legal proceedings in order to preserve its rights. Nonetheless, the resolution of such legal actions remains months if not years away.
95. Furthermore, the Renard Mine is located in a highly competitive market and there is considerable employee turnover, which compounds difficulties faced by Stornoway as regards to the retention of its workforce.

8.5 LOST PRODUCTION DUE TO FOREST FIRES

96. Between June 24 and July 1, 2023, the Renard Mine was evacuated due to widespread wildfires in Quebec.
97. The closure of the mine impacted operations for 14 days, causing a shortfall in projected ores produced and processed.

9. THE PROPOSED RESTRUCTURING

98. As a result of the aforementioned challenges, the Applicants are now facing a severe liquidity crisis at their very material current burn and will quickly run out of cash if the status quo is maintained.
 99. Applicants' management have therefore focused their efforts, *inter alia*, on the following measures:
 - a) Putting the Renard Mine into care and maintenance mode until at least January 2024 in order to reduce costs associated with its ongoing operations;
 - b) Proceed with the sale of their diamond inventory in order to finance the operational needs of the care and maintenance program; and
 - c) Implementing and conducting the SISF in accordance with the SISF Procedures (as defined hereinafter).
 100. These efforts are intended to allow the business of the CCAA Parties to emerge from their restructuring and continue their going concern operations in the long term. It is submitted that a change in ownership and/or new investors combined with improvements of global market conditions may allow an acquirer to remedy to the cash flow pressure, notably with a restructured capital structure, and continue the operations of the Renard Mine as a going concern.
- ### **9.1 OPERATIONAL RESTRUCTURING, NECESSARY COST-CUTTING MEASURES AND SALE OF CURRENT INVENTORY**
101. As noted above, Stornoway's operations are cash-flow negative such that the only means of sustaining its operations is through additional debt or the monetization of their property.

102. In such circumstances and given Stornoway's insolvency and the commencement of these CCAA proceedings, it is urgently necessary to implement certain cost-cutting measures.
103. As reflected in the Proposed Monitor's Report, the Proposed Restructuring contemplates the following operational adjustments and cost-cutting measures, while the Proposed Restructuring is being implemented:
- a) The Renard Mine will be put into care and maintenance mode and will temporarily halt its mining operations; and
 - b) Stornoway will reduce its workforce to approximately 71 full-time equivalent employees, through a temporary layoff for a maximum period of 6 months.
104. Stornoway's management has had several discussions with Bonas who has expressed its confidence that SDCI will be able to sell their inventory per the planned schedule in early November. Bonas proposes to proceed with a combination of a few direct sales to Stornoway's regular clients in the beginning of November and through a tender that will close on or around November 24th, with another tender sale closing on or around December 15th. The timing of the direct sales in early November combined with the two tender sales is expected to generate sufficient cashflow to allow the CCAA Parties to conduct and implement the Proposed Restructuring.
105. Bonas has advised the CCAA Parties that other major producers are also cancelling or significantly reducing their sales. The pause of imports to India should contribute to reduce inventories globally. If sales of polished goods show encouraging signs in the fourth quarter of 2023, the Applicants believe that market confidence will gradually return, thus benefitting all parties involved in the production and sale of diamonds.

9.2 THE SISP

106. In an effort to find an enduring solution to Stornoway's financial underperformance, the Proposed Monitor, in collaboration with the CCAA Parties, intends to undertake a SISP conducted with the assistance of Deloitte Corporate Finance Inc. (the **SISP Agent**) soliciting investment, refinancing or sale offers for some or all of Stornoway's business or assets, in accordance with the SISP Procedures filed herewith as **Exhibit R-19**.
107. This approach serves to ensure that the timeline and modalities for the SISP are established based on the most up-to-date information and that the process is effectively tailored towards maximizing the value of the property and/or the business of Stornoway while preserving their core ongoing operations.
108. It is respectfully submitted that authorizing the Proposed Restructuring, for which the implementation of the SISP led by the Proposed Monitor is the cornerstone, is necessary and appropriate in order to achieve the rehabilitation of the Stornoway's business for the benefit of its stakeholders.

10. RELIEF SOUGHT

10.1 APPOINTMENT OF THE PROPOSED MONITOR

109. *Deloitte Restructuring Inc.* (hereinafter **Deloitte**) has been retained by the CCAA Parties to act as Monitor in the event of an Initial Order being granted in these CCAA proceedings.
110. Deloitte and has agreed to act as Monitor during these CCAA proceedings and to assist the CCAA Parties with all aspects of their restructuring pursuant to and subject to the terms of the First Day Initial Order and the Initial Order of the Court and the statutory provisions of the CCAA.
111. Deloitte is also prepared to monitor the operations of the CCAA Parties, to oversee the completion and implementation of the SISP, and to generally assist the CCAA Parties with their restructuring efforts.
112. Deloitte is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada). Deloitte is not subject to any of the restrictions on who may be appointed monitor as set out in section 11.7(2) of the CCAA.
113. At no time during the preceding two years has Deloitte been:
- a) A director, officer or employee of the CCAA Parties;
 - b) Related to the CCAA Parties or to any former director or officer of the CCAA Parties; or
 - c) The CCAA Parties' auditor, accountant or legal counsel, or a partner or employee of the auditor, accountant or legal counsel of the CCAA Parties.
114. It is respectfully submitted that the Proposed Monitor is in an ideal position to supervise the implementation of these measures by Stornoway given its familiarity with the assets and operations of the CCAA Parties and established relationships with members of their senior management.
115. Therefore, Applicants respectfully submit that Deloitte is qualified to act as Monitor and that it is appropriate in the circumstances to grant the Proposed Monitor the powers required to supervise in an appropriate manner Stornoway's affairs and the implementation of the SISP, the whole during the initial stay period sought pursuant to the Proposed First Day Initial Order (as extended, the **Stay Period**), in accordance with the Proposed First Day Initial Order.

10.2 STAY OF PROCEEDINGS

116. Notwithstanding the significant efforts of management, the CCAA Parties are currently insolvent, with limited cash resources to pay liabilities as they become due.
117. The CCAA Parties are deeply concerned that unless a stay of proceedings is granted pursuant to the terms of the CCAA, certain suppliers, creditors and other stakeholders may attempt to take steps to try to improve their positions in comparison to other similarly situated stakeholders.

118. This would not only jeopardize and potentially deplete the value of the CCAA Parties' estates to the detriment of all stakeholders, but it could also jeopardize the completion of the SISP.
119. The CCAA stay will preserve the status quo and permit the CCAA Parties to continue operating, while completing and implementing the any transaction resulting from the SISP for the benefit of all of their stakeholders.
120. The Applicants request that all proceedings against them as well as against their directors and officers and their property be stayed for an initial period of ten (10) days in order to preserve the *status quo* during the initial Stay Period.
121. However, under the terms of the Proposed First Day Initial Order, Streamers and Diaquem, subject to the terms of their respective contracts, agreements and arrangements entered into with the Applicants, remain as unaffected creditors throughout the Proposed Restructuring and will continue receiving payments as contemplated by the Projections.
122. At the comeback hearing, the Applicants will request a further extension of the Stay Period until January 24, 2024 to allow for the full deployment of the Proposed Restructuring.
123. Based on the Projections and in light of the direct and tender sales discussed above, the CCAA Parties expect to have sufficient funding and liquidity to cover anticipated post-filing costs and expenses during the Initial Period.

10.3 GRANTING OF CCAA CHARGES

10.3.1 GENERAL ADMINISTRATION CHARGE & STREAMERS ADMINISTRATION CHARGE

124. The Proposed Monitor, its counsel, the SISP Agent, and counsel for the CCAA Parties are essential to the restructuring efforts contemplated in these proceedings. Their assistance in completing the SISP is crucial.
125. They have each advised that they are prepared to provide or continue to provide professional services to the CCAA Parties only if they are protected by a charge over the assets of the CCAA Parties, in accordance with the Proposed Orders.
126. It is contemplated that the CCAA Parties will be invoiced and pay fees and expenses of the beneficiaries of the General Administration Charge on a weekly basis.
127. It is respectfully submitted that a General Administration Charge in the initial aggregate amount of **\$500,000** is reasonable to cover the work that was done in the context of the preparation of the present proceedings and the work required until the comeback hearing.
128. At the comeback hearing, the Applicants will request an increase in the General Administration Charge to the aggregate amount of **\$1,000,000** to secure the professional fees and disbursements to be incurred in connection with the Proposed Restructuring.
129. The amount of the General Administration Charge has been determined not on the basis of the total fees payable to these professionals during the proceedings but on an assessment of what could be an amount outstanding to these professionals at any given time in the proceedings.

130. Similarly, in order to secure the assistance of the legal and financial advisors of the Streamers, the Proposed First Day Initial Order and Initial Order provide for the creation of an additional charge for their professional fees and disbursements incurred directly in relation to the Proposed Restructuring up until January 1, 2024.
131. The CCAA Parties believe that the Streamers Administration Charge and the amount of the General Administration Charge are fair and reasonable in the circumstances.

10.3.2 D&O CHARGE

132. The continued active implication of the directors and officers of the CCAA Parties is essential to the restructuring efforts of the CCAA Parties.
133. The CCAA Parties maintain primary and excess directors' and officers' liability insurance policies for the directors and officers of its subsidiaries (together, the **D&O Insurance**).
134. The D&O Insurance contains limits and exclusions that could potentially affect the total amount of insurance available to the Director of the CCAA Parties.
135. The directors and officers of the CCAA Parties have expressed concern with respect to potential personal liability if they continue in their current capacities through this restructuring process. The CCAA Parties submit that, it is essential for the Proposed Orders sought herein to grant a charge as security for the CCAA Parties' obligations to their directors and officers.
136. The CCAA Parties propose that a charge in favour of the directors and officers be granted over the assets of the CCAA Parties, in accordance with the Proposed Orders, in the amount of **\$3.9M** for the initial period and a reduction to **\$1.4M** following the comeback hearing (due to measures taken to reduce temporarily the workforce during the care and maintenance program contemplated) with the priority set out in the Proposed First Day Initial Order (**Exhibit R-1**) to the extent such claims are not covered by the D&O Insurance, in order to provide a reasonable level of protection to the directors and officers.
137. The CCAA Parties believe that the amount of the D&O Charge is fair and reasonable in the circumstances.

10.3.3 KERP AND KERP CHARGE

138. In order to facilitate the implementation of the Proposed Restructuring, the KERP was developed in collaboration between the CCAA Parties and the Proposed Monitor, the whole in order to ensure that key members of management are retained through the process.
139. Copies of the agreements contemplated with such key members of management are communicated herewith under seal as **Exhibit R-20** (the **KERP Agreements**).
140. The KERP Charge will secure the obligations towards the beneficiaries of the KERP in the amount of **\$480,000**.
141. The Applicants respectfully submit that the amount of the KERP Charge is fair and reasonable in the circumstances and insist on the importance of the KERP in order to

ensure the continuity of operations and efficient implementation of the Proposed Restructuring.

142. The General Administration Charge and the Streamers Administration Charge, the D&O Charge and the KERP Charge each encumber the assets that are specifically identified in the Proposed Orders and shall rank in accordance with the terms of the Proposed Orders.

10.4 APPROVAL OF SISP AND SISP PROCEDURES

143. As noted above, the Applicants have developed the SISP and the SISP Procedures in consultation with the Proposed Monitor with a view to establishing a fair and transparent process geared towards identifying the best available transaction or transactions in respect of their business and/or the assets.
144. The Applicants therefore respectfully submit that the SISP and the SISP Procedures should be approved as part of the Proposed SISP Order, due to the urgency of initiating the SISP based on the limited liquidities of Stornoway.

10.5 PAYMENT OF CRITICAL SUPPLIERS

145. The CCAA Parties, with the assistance of the Proposed Monitor, have determined that several trade suppliers are critical suppliers, in that they are essential to (i) Stornoway's business during the restructuring, and/or (ii) what Stornoway's business is anticipated to be post restructuring.
146. At the comeback hearing, the CCAA Parties will seek from this Court a declaration that payments to the Critical Suppliers, up to those amounts set out in the Projections, are permitted with the prior authorization of the Monitor, provided that they are in compliance with the Projections or otherwise agreed upon by the Streamers and Diaquem. This measure is not anticipated to have a material impact on the Projections.

10.6 ADMINISTRATIVE CONSOLIDATION

147. Considering that Stornoway is operating its business as a corporate group, the Applicants submit that it is appropriate to order the consolidation of the present CCAA proceedings for the CCAA Parties, for administrative purposes only.

10.7 SEALING OF CONFIDENTIAL DOCUMENTS

148. Certain exhibits filed in support of this Application contain commercially sensitive information related to the affairs of Stornoway and the Secured Lenders as well as information regarding the value of the business that could be marketed as part of the SISP.
149. It is respectfully submitted that the confidentiality of such information should be preserved and that it should be ordered that **Exhibits R-8 to R-16, R-20** to the Application and **Appendix A** to the Proposed Monitor's Report be kept confidential and filed under seal until further order of this Court.

11. CONCLUSIONS

150. For the reasons explained above, the Applicants believe it is both appropriate and necessary that the relief being sought be granted. With such relief, the Applicants believe that, with the assistance of the Proposed Monitor, they will be able to restructure their business and affairs and to maximize value for the benefit of all of their stakeholders.
151. Considering the urgency of the situation, the Applicants respectfully submits that the notices given for the presentation of the Application are proper and sufficient.
152. In addition to the above, the emergency of the situation and circumstances surrounding the present Application justify that the orders requested by the present Application be granted notwithstanding appeal.
153. The Applicants have developed the Proposed Restructuring in good faith, with regard to their stakeholders and in consultation with the Proposed Monitor, who supports the relief sought in this Application, as appears from its Report.
154. The Applicants there submit that the Application should be granted in accordance with its conclusions, which Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for an Initial Order, an Amended and Restated Initial Order and Ancillary Relief*;

AT THE INITIAL HEARING OF THE APPLICATION

RENDER an initial order substantially in the form of the draft order communicated herewith as **Exhibit R-1**;

RENDER an order substantially in the form of the draft order communicated herewith as **Exhibit R-2** with respect to the approval of a sale and investment solicitation process;

AT THE COMEBACK HEARING OF THE APPLICATION

RENDER an amended and restated initial order substantially in the form of the draft order communicated herewith as **Exhibit R-3**;

THE WHOLE without costs.

Montréal, October 26, 2023

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA LLP

Me Luc Morin

Me Guillaume Michaud

Me Arad Mojtahedi

Me Noah Zucker

Attorneys of the Applicants

Suite 2500 - 1 Place Ville Marie

Montréal, Québec H3B 1R1

Telephone: 514.847.4860 / 514.847.4417

514.847.4582 / 514.847.6076

Facsimile: (514) 514-286-5474

luc.morin@nortonrosefulbright.com,

guillaume.michaud@nortonrosefulbright.com,

arad.mojtahedi@nortonrosefulbright.com,

noah.zucker@nortonrosefulbright.com,

AFFIDAVIT

I, the undersigned, Patrick Sevigny, President and Chief Executive Officer, duly authorized director of the Applicants, having my professional domicile at 1111 Blvd. Saint-Charles West, Suite 400, Longueuil, province of Québec, J4K 5G4, solemnly declare that all the facts alleged in the present Application are true.

AND I HAVE SIGNED

Patrick Sévigny, inc.

Patrick Sevigny 2023-10-25

SOLEMNLY DECLARED before me in
Montreal, province of Québec
this 26th day of October 2023

Rebecca Thibeault



Commissioner of Oaths for the Province of
Québec

NOTICE OF PRESENTATION

TO: The Service List

TAKE NOTICE that the present “*Application for the Issuance of an Initial Order, an Amended and Restated Initial Order and Ancillary Relief*” will be presented for adjudication before the Honourable Justice Karen M. Rogers of the Superior Court of Québec in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **October 27, 2023, at 2:15 pm, in room 14.09.**

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, October 26, 2023

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA LLP

Me Luc Morin

Me Guillaume Michaud

Me Arad Mojtahedi

Me Noah Zucker

Attorneys of the Applicants

Suite 2500 - 1 Place Ville Marie

Montréal, Québec H3B 1R1

Telephone: 514.847.4860 / 514.847.4417

514.847.4582 / 514.847.6076

Facsimile: (514) 514-286-5474

luc.morin@nortonrosefulbright.com,

guillaume.michaud@nortonrosefulbright.com,

arad.mojtahedi@nortonrosefulbright.com,

noah.zucker@nortonrosefulbright.com

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Nº: 500-

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

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,
c. C-36, AS AMENDED:**

STORNOWAY DIAMONDS (CANADA) INC.

-&-

11272420 CANADA INC.

Debtors / Applicants

-&-

DELOITTE RESTRUCTURING INC.

Proposed Monitor

**LIST OF EXHIBITS
IN SUPPORT OF THE APPLICATION FOR THE ISSUANCE OF AN INITIAL ORDER,
AN AMENDED AND RESTATED INITIAL ORDER AND ANCILLARY RELIEF**

- Exhibit R-1:** Proposed First Day Initial Order;
- Exhibit R-2:** Proposed Sale and Investment Solicitation Process Order;
- Exhibit R-3:** Proposed Initial Order;
- Exhibit R-4:** Redline documents comparing the Proposed First Day to the model CCAA initial order;
- Exhibit R-5:** Redline documents comparing the Proposed Initial Order to the model CCAA initial order;
- Exhibit R-6:** Proposed Monitor's Report (Appendix A **UNDER SEAL**);

- Exhibit R-7:** CCAA Parties guarantee policy and General Agreement of Indemnity with XL Speciality Insurance Company in favour of the *Ministère de l'Énergie et des Ressources naturelles*;
- Exhibit R-8:** UNDER SEAL – Amended and Restated Purchase and Sale Agreement, dated as of November 1, 2019;
- Exhibit R-9:** UNDER SEAL – Co-Ownership Agreement as amended and restated on November 1, 2019;
- Exhibit R-10:** UNDER SEAL – Marketing and Sales Agreement as amended and restated on November 1, 2019;
- Exhibit R-11:** UNDER SEAL – Senior Credit Agreement as amended and restated on November 1, 2019;
- Exhibit R-12:** UNDER SEAL – Bridge Financing Agreement dated June 10, 2019;
- Exhibit R-13:** UNDER SEAL – Working Cap Facility as last amended on November 1, 2019;
- Exhibit R-14:** UNDER SEAL – Caterpillar Agreement, as amended and restated on February 17, 2021;
- Exhibit R-15:** UNDER SEAL – Secured Diaquem Royalty Agreement as amended and restated on November 1, 2019;
- Exhibit R-16:** UNDER SEAL – Second Amended and Restated Common Terms and Intercreditor Agreement dated November 1, 2019;
- Exhibit R-17:** Summary report of the *Registre des droits personnels et réels mobiliers*;
- Exhibit R-18:** *En liasse*, deed of hypothec which includes (i) the index of immovables relating to the Mining Lease reflecting the registration of such hypothecs against the Mining Lease, (ii) an example of a land file relating to one mining claim reflecting the registration of certain hypothecs against such mining claim, (iii) an example of a land file relating to one surface right lease reflecting the registration of certain hypothecs against such surface right lease and (iv) the file at Gestim relating to the Mining Lease;
- Exhibit R-19:** Sale and Investment Solicitation Process Procedures;
- Exhibit R-20:** UNDER SEAL – *En liasse*, Key Employees Retention Programs Agreements;

Montréal, October 26, 2023

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA LLP

Me Luc Morin

Me Guillaume Michaud

Me Arad Mojtahedi

Me Noah Zucker

Attorneys of the Applicants

Suite 2500 - 1 Place Ville Marie

Montréal, Québec H3B 1R1

Telephone: 514.847.4860 / 514.847.4417

514.847.4582 / 514.847.6076

Facsimile: (514) 514-286-5474

luc.morin@nortonrosefulbright.com,

guillaume.michaud@nortonrosefulbright.com,

arad.mojtahedi@nortonrosefulbright.com,

noah.zucker@nortonrosefulbright.com