

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

N° : 200-11-020 446 - 129

DATE : 29 mai 2012

SOUS LA PRÉSIDENTE DE L'HONORABLE JEAN-FRANÇOIS ÉMOND, j.c.s.

IN THE MATTER OF RECEIVERSHIP OF :

CENTURY MINING CORPORATION, a corporation duly constituted having its principal place of business at 288, Martin Street, Suite 210, in the city of Blaine, state of Washington, United States, 98230

Debtor

COMPUTERSHARE TRUST COMPANY OF CANADA, a trust corporation incorporated under the laws of Canada, having as its head office in the City of Toronto, in the Province of Ontario, and a place of business at 1500 Université Street, Suite 700, Montreal, Province of Quebec, H3A 3S8

Collateral Agent/Petitioner

SAMSON BÉLAIR DELOITTE & TOUCHE INC., a corporation duly constituted having its registered office at 1 Place Ville-Marie, Suite 3000, in the City and District of Montréal, Province of Quebec, H3B 4T9

Proposed Receiver

DEUTSCHE BANK AG, LONDON BRANCH, a corporation duly constituted having its principal place of business at 1 Great Winchester Street, London, England, EC2N 2DB

Principal Secured Creditor/Mis en cause

ORDER APPOINTING A RECEIVER
(Section 243 of the *Bankruptcy and Insolvency Act*)

[1] ON READING the Petitioners' Motion to Appoint a Receiver (the "**Motion**") pursuant to Article 243 of the Bankruptcy and Insolvency Act (the "**BIA**"), the affidavit and the exhibits in support thereof;

[2] SEEING the service of the Motion;

[3] SEEING the submissions of Petitioners' attorneys and the submissions of the attorneys of the Receiver;

[4] SEEING that Petitioners sent the Debtor a notice pursuant to the terms of Article 244 of the BIA;

[5] SEEING that it is appropriate to appoint a receiver to the Property (such as defined herein) of the Debtor;

WHEREFORE THE COURT:

[6] **GRANTS** the Motion;

SERVICE

[7] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof;

APPOINTMENT

[8] **APPOINTS** Samson Bélair Deloitte & Touche Inc., trustee, to act as receiver (the "Receiver") to all the assets, undertakings and properties of Century Mining Corporation (the "**Debtor**") including all books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business, the affairs or the Property of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information, and finally all proceeds thereof, wherever situate (the "**Property**") until one of the following events comes to pass:

(a) the sale of all the Property; or

(b) the issuance of any order by the Court terminating the mandate of the Receiver;

[9] **DECLARES** that the order (the "**Order**") and its effects shall survive the filing by the Debtor of a notice of intention to make a proposal or of a proposal pursuant to the

terms of the BIA, the issuance of an initial order in regard of the Debtor pursuant to the terms of the Companies Creditors Arrangements Act (the "CCAA") or the bankruptcy of the Debtor, unless the Court orders otherwise.

RECEIVER'S POWERS

[10] **ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, wherever located, using any and all legal means it has to constrain the remittance of the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to carry on the business of the Debtor or any part or parts thereof;
- (e) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (f) to settle, extend or compromise any indebtedness owing to the Debtor;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this order;
- (h) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such

proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with the prior approval of this Court in respect of any transaction;
- (l) to report to, meet with and discuss with any persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (m) to register a copy of the pursuant order and any other orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licenses, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (o) to contest and defend, in the name of the Debtor and/or the Petitioners, any and all proceedings pertaining to annul, vary, cancel or modify, in any way, any permits, licenses, approvals, permissions, mining claims, leases, contracts, renewal rights, agreements, and any other rights of the Debtor, if though desirable by the Receiver;
- (p) to file i) a voluntary assignment in bankruptcy, ii) a notice of intention or iii) seek creditor protection under the CCAA in respect of the Debtor;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;
- (t) to seek additional powers from this court; and

- (u) to apply to the court for directions under Section 34 of the BIA, as if the Receiver was trustee to the bankruptcy of the Debtor;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of any individual, firm, corporation, governmental body or agency or other entities having notice of this Order, including the Debtor, and without interference from any other Person.

[11] **ORDERS** the Receiver to petition the Court for authorization to sell all or any part of the Debtor's Property outside the ordinary course of business, upon finding a purchaser and pursuant to conditions it deems reasonable in the circumstances;

[12] **GRANTS** the Receiver all the powers necessary to initiate, prosecute and continue the prosecution of any and all proceedings it considers appropriate, including for the purpose of Sections 34 and 249 of the BIA, within the performance of its duties regarding the Property;

[13] **AUTHORIZES** the Receiver to retain the services of any lawyer, or of any person or business in order to appropriately fulfil its functions;

[14] **DECLARES** that the Receiver may provide creditors and other relevant stakeholders with information in response to requests made by them in writing. A copy of such requests must be sent to the Petitioners' attorney. Where the Receiver has been advised by the Petitioners that information is confidential, proprietary or competitive, the Receiver shall not provide such information to any person without the consent of the Petitioners unless otherwise directed by this Court.

DEBTOR'S DUTIES

[15] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to forthwith provide the Receiver with access to the Property, to the places of business and to the premises of the Debtor, as well as to the Records;

[16] **ORDERS** the Debtor, its directors, officers, employees, agents and representatives to cooperate with the Receiver in the exercise of the powers that are granted pursuant to the terms of the Order;

[17] **ORDERS** the Debtor not to dispose, alienate, encumber or otherwise transact in any manner whatsoever, with regard to the Property, other than in the ordinary course of business or with the authorization of the Receiver;

NON-INTERFERENCE WITH THE RECEIVER, THE DEBTOR AND THE PROPERTY

[18] **ORDERS** that subject to any other order rendered by the Court, which may only be rendered after a prior notice has been duly sent to the Receiver and to the

Petitioners, no proceeding, seizure, revendication, or any other enforcement process shall be commenced or enforced against the Property;

[19] **ORDERS** that no person shall interrupt, modify, terminate or fail to execute its obligations pursuant to any contract, agreement, license or permit entered into with the Debtor without the prior consent of the Receiver or without the authorization of the Court;

CONTINUATION OF SERVICES

[20] **ORDERS** that any person having an oral or written agreement with the Debtor, as well as any supplier of goods or services to the Debtor is hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, as may be required by the Receiver and that the Receiver shall be authorized to continue use of the Debtor's current premises, telephone numbers, facsimile numbers, internet addresses, domain names and other services, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver, in accordance with the normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court;

EMPLOYEES

[21] **AUTHORIZES** the Receiver to continue to engage the services of the Debtor's employees until the Receiver, acting for and on behalf of the Debtor, terminates the employment of such employees. The Receiver shall not be liable for any employee related liabilities, including any successor-employer liabilities as provided for in sections 14.06(1.2) of the BIA other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) and 81.6(3) of the BIA or under the Wage Earner Protection Program Act;

PROTECTION OF PERSONAL INFORMATION

[22] **DECLARES** that pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver shall disclose personal information on identifiable individuals, which information it has in its possession or under its responsibility, to interested parties or to investors, financiers, prospective purchasers or potential strategic partners, as well as to their advisors, but only to the extent desirable or required, and only upon condition that the persons to whom such personal information is disclosed shall undertake to maintain and protect the privacy of such information and limit the use of such information pursuant to confidentiality agreements entered into with the Receiver.

LIMITATION OF LIABILITY

[23] **DECLARES** that subject to the powers granted to the Receiver pursuant to the terms of paragraph 10 of the Order, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Property. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Property within the meaning of environmental legislation, the whole pursuant to the terms of the BIA;

[24] **DECLARES** that the powers of the Receiver shall be exercised pursuant to its sole discretion and judgment;

[25] **DECLARES** that section 215 of the BIA applies mutatis mutandis, and hence that no action lies against the Receiver by reason of its appointment or the execution of the powers granted by the Court, except by leave of the Court. The entities related to the Receiver or belonging to the same group as the Receiver shall benefit from the protection arising under the present paragraph;

FEES

[26] **DECLARES** that as security for the professional fees and disbursements incurred in relation to these proceedings, both before and after the date of the Order, a charge and security over the Property is hereby constituted in favour of the Receiver, of the Receiver's attorneys and other advisors, to the extent of the aggregate amount of \$350,000 (three hundred and fifty thousand dollars) (the "**Administration Charge**");

[27] **DECLARES** that the Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances;

[28] **DECLARES** that the Administration Charge is effective and shall charge, as of 12:01 a.m. (Montreal time) the day of the Order (the "**Effective Time**"), all the Debtor's Property present and future;

[29] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiver order filed pursuant to the BIA in respect of the Petitioners and any receiving order granting such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioners and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Receiver pursuant to the Order and the granting of the Administration Charges do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting a recourse for abuse under an applicable law, and shall be valid and enforceable as against any person, including any trustee in bankruptcy, and any receiver to the Property of the Debtor;

[30] **AUTHORIZES** the Receiver to collect the payment of its fees and disbursements and those of its attorneys, with the consent of the Petitioners, the whole subject to taxation in conformity with the BIA, if applicable;

FUNDING OF THE RECEIVERSHIP

[31] **DECLARES** that the Receiver be at liberty and empowered to use from time to time as it may consider necessary or desirable the funds that may be made available by Deutsche Bank AG, London Branch ("**DB**") to the Receiver (the "**PRA Funds**") out of the Account (as defined in the Amended and Restated Performance Reserve Account Agreement dated November 4, 2011 filed as Exhibit P-5 to the Motion) up to an amount not exceeding US \$1,250,000 (one million two hundred and fifty thousand U.S. dollars) under such terms and conditions as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to this order, including interim expenditures.

[32] **DECLARES** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**PRA Certificates**") in connection with the use of PRA Funds pursuant to this Order.

[33] **DECLARES** that the Receiver be at liberty and empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable (the "**Receiver's Borrowing**"), provided that the outstanding principal amount does not exceed \$500,000 (five hundred thousand dollars) (or such greater amount as this Court may by further order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver pursuant to this order, including interim expenditures.

[34] **DECLARES** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Borrowing Certificates**") in connection with any amount borrowed by it pursuant to this Order.

[35] **DECLARES** that until further order of this Court, the total aggregate amount of PRA Funds and Receivers Borrowings shall not exceed \$1,250,000 (one million two hundred and fifty thousand dollars).

[36] **DECLARES** that the whole of the Property shall be and is hereby charged by a hypothec, mortgage, lien and security interest to the extent of the aggregate amount of \$1,500,000 (one million five hundred thousand dollars) by way of a fixed and specific charge (the "**Funding Charge**") as security for the repayment of the PRA Funds and the Receiver's Borrowing, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

[37] **DECLARES** that the Funding Charge is effective and shall charge as of the Effective Time, all of the Debtor's Property present and future.

[38] **DECLARES** that neither the Funding Charge nor any other security granted by the Receiver in connection with the use of PRA Funds or its borrowings pursuant to this order shall be enforced without leave of this Court.

[39] **DECLARES** that the PRA Funds used by the Receiver and the monies from time to time borrowed by the Receiver pursuant to this order or any further order of this Court shall rank on a pari passu basis, unless otherwise agreed to by DB and the lenders of any such monies.

GENERAL

[40] **DECLARES** that the Order, the Motion and the affidavit do not, in and of themselves, constitute a default or failure to comply by the Debtor under any statute, regulation, license, permit, contract, permission, covenant, agreement, undertaking or any other written document or requirement;

[41] **DECLARES** that the Receiver is at liberty to serve any notice, circular or any other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to persons or other appropriate parties at their respective given address as last shown in the Records; the documents served in this manner shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three (3) business days after mailing if delivered by ordinary mail;

[42] **DECLARES** that the Receiver may serve any court materials in these proceedings on all represented parties, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Receiver shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter;

[43] **DECLARES** that any party interested in these proceedings may serve any court material in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that such party shall deliver a "hard copy" on paper of such PDF or electronic materials to the Debtor's and the Receiver's counsel and to any other party who may request such delivery;

[44] **DECLARES** that, unless otherwise provided herein, ordered by this Court, or provided by the BIA, no document, order or other material need be served on any person in respect of these proceedings, unless such person has served a notice of appearance on the solicitors for the Debtor and the Receiver and has filed such notice with the Court;

[45] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Receiver, the Petitioners and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;

[46] **DECLARES** that the present Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada;

[47] **DECLARES** that the Receiver shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Receiver shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;

[48] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;

[49] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.



JEAN-FRANÇOIS ÉMOND, j.c.s.

M^e Terence Mathieu
Norton Rose Canada (Casier 92)
Procureurs de Century Mining Corporation

M^e Alain Riendeau
Fasken Martineau DuMoulin (Casier 133)
Procureurs de Samson Bélair Deloitte & Touche

M^e Guy Paul Marté
M^e Danny Vu

COPIE CONFORME

PAR : 
*Personne désignée par le greffier en vertu
des articles 44 G.p.c. et/ou 140 L.T.J.*

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Stikeman Elliott s.e.n.c.r.l., s.r.l.
1155 boulevard René-Lévesque Ouest
Bureau 4000
Montréal QC H3B 3V2
Procureurs de Deutsche Bank AG, London Branch

Date d'audience : 29 mai 2012

SCHEDULE "A"
PRA CERTIFICATE

CERTIFICATE NO.

AMOUNT \$

THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "**Receiver**") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Quebec Superior Court (Commercial Division) (the "**Court**") dated the of May, 2012 (the "**Order**") made in an action having Court file number [●], has received as such Receiver from the PRA Account (as defined in the Order) the principal sum of \$[●], being part of the total principal sum of \$[●], which the Receiver is authorized to use under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by Deutsche Bank AG, London Branch ("**DB**") with interest thereon calculated and compounded [**daily**][**monthly not in advance on the day of each month**] after the date hereof at a notional rate per annum equal to the rate of per cent above the prime commercial lending rate of from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of DB at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

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The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2012.

**[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity**

Per:

Name:

Title:

SCHEDULE "B"

RECEIVER'S BORROWINGS CERTIFICATE

CERTIFICATE NO.

AMOUNT \$

THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "**Receiver**") of the assets, undertakings and properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Quebec Superior Court (Commercial Division) (the "**Court**") dated the _____ of MONTH, 2012 (the "**Order**") made in an action having Court file number [●], has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$[●], being part of the total principal sum of \$[●], which the Receiver is authorized to borrow under and pursuant to the Order.

The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [**daily**][**monthly not in advance on the day of each month**] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2012.

**[RECEIVER'S NAME], solely in its capacity
as Receiver of the Property, and not in its
personal capacity**

Per:

Name:

Title: