

January 18, 2015

## **Answers to frequently asked questions**

### **For depositors to Lutheran Church – Canada, the Alberta – British Columbia District Investments Ltd. (“DIL”) – Amended January 20, 2016**

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As you are aware, DIL obtained an Initial order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “CCAA”) on January 23, 2015. Deloitte Restructuring Inc. acts as the Monitor in the CCAA proceedings. Defined terms in this document are as included in DIL’s Plan of Compromise and Arrangement (the “DIL Plan”) and in the Monitor’s First Report to the Creditors of DIL dated December 8, 2015. References to the DIL Plan will include all amendments to the DIL Plan, filed as of the date of this document.

The Monitor posted a document entitled “Answers to frequently asked questions” on December 24, 2015. This document provided answers to some questions received by the Monitor related to the DIL Plan. Since that time, the Monitor has received or been made aware of additional questions, which are answered below:

#### **1. What is the Monitor’s role with respect to the DIL Plan?**

The Monitor is not the author of the DIL Plan. The DIL Plan has been formulated by DIL, subject to input from the DIL Committee, the CRO and the Monitor. The Monitor is an officer of the Court and has no economic stake in the outcome of the DIL Plan. The Monitor’s role includes providing DIL Depositors with sufficient information to consider the DIL Plan and reporting to DIL Depositors on its view of the reasonableness and fairness of the DIL Plan.

#### **2. Who will sit on the Subcommittee and what is the Subcommittee’s role?**

*The Subcommittee will be made up of three to five individuals, including at least one member of the DIL Committee (the creditors’ committee established for DIL). All members of the Subcommittee will be DIL Depositors, who also elect to participate in the Representative Action.*

*The Subcommittee will be chosen by the DIL Committee, which is made up of three DIL Depositors with significant claims and two DIL Depositors who were elected by DIL Depositors at large. The DIL Committee serves in a fiduciary capacity on behalf of DIL Depositors.*

*The Subcommittee's first task will be to review the qualifications of at least three lawyers and select one to act as Representative Counsel for those DIL Depositors who are participating in the Representative Action. The Subcommittee will also work with Representative Counsel to identify a party willing to act as Representative Plaintiff.*

*The mandate of the Subcommittee includes assisting in maximizing the amount available for distribution to the Representative Class, consulting with and instructing the Representative Counsel on behalf of the Representative Class, replacing Representative Counsel, serving in a fiduciary capacity in representing the Representative Class, establishing the amount of the Representative Action Holdback and seeking advice and direction from the Court where required. No potential named defendant in the Representative Action will be eligible to serve on the Subcommittee.*

**3. What assurance is there that I will be satisfied with the lawyer chosen to act as Representative Counsel?**

*The lawyers that will be considered to act as Representative Counsel will specialize in class action proceedings or other forms of litigation. Legal counsel who have expressed an interest in acting as Representative Counsel have already been invited to submit their qualifications with the decision on the selection of Representative Counsel being made by the Subcommittee. For clarity, it is currently contemplated that the District Plan will include similar provisions to the DIL Plan regarding a Representative Action to be undertaken on behalf of District Depositors. Different legal counsel will be chosen to act as Representative Counsel for District Depositors and DIL Depositors pursuant to those groups' respective Representative Actions.*

*As the Subcommittee will be made up of DIL Depositors who are participating in the Representative Action, their interests will be aligned with other DIL Depositors in the Representative Class. Also, as noted above, the Subcommittee will act in a fiduciary capacity in respect of the Representative Class.*

*The Subcommittee will likely consider multiple factors in choosing the Representative Counsel, including each candidate's experience, fee arrangements (preference will likely be given to legal counsel who may be willing to act on a contingency basis), litigation strategy, etc.*

**4. How will the Representative Counsel's fees be charged in the Representative Action?**

*Any fee arrangement will be negotiated between the Subcommittee and Representative Counsel. The Subcommittee will likely give preference to legal counsel who are willing to act mainly on a contingency basis but this decision will ultimately be that of the Subcommittee.*

*The DIL Plan provides the Representative Action Holdback as a mechanism for DIL Depositors to share any out-of-pocket costs associated with the Representative Action. For greater clarity, should the lawyer chosen to act as Representative Counsel be willing to act entirely on a contingency basis, it is possible that no Representative Action Holdback will be required. The inclusion of the Representative Action Holdback in the plan is intended to provide the Subcommittee the flexibility to fund the Representative Action in the most appropriate fashion.*

*The inclusion of the Representative Action in the DIL Plan may result in cost savings for DIL Depositors since it serves to streamline future litigation and avoids a situation where DIL Depositors are making contributions to multiple legal counsel to pursue the Representative Action Claims. It also may provide for increased recoveries on the basis that defendants will be able to settle claims with confidence that no further litigation from other potential parties related to DIL will be advanced.*

**5. What releases are provided for in the DIL Plan?**

*As previously reported, the releases provided for in the DIL Plan are very limited. For DIL, the other Applicants, the directors, officers and employees of DIL, parties covered under the D&O insurance and any independent contractors of DIL, who were employed three days or more a week on a regular basis, the releases are largely limited to statutory filing obligations (the Monitor is not aware of any such obligations) and most importantly, do not impact any claims that DIL Depositors wish to advance in the Representative Action. The Monitor notes that more fulsome releases are often granted in CCAA proceedings but that, as a result of negotiations between DIL, the Monitor and the DIL Committee, such releases do not form part of the DIL Plan.*

*The DIL Plan provides for releases to the professionals involved in the CCAA proceedings but these releases are limited to the extent that any liability arises out of fraud, gross negligence or willful misconduct and only apply to action or omissions related directly or indirectly to the CCAA proceedings. Similar releases are routinely provided to professionals in most CCAA plans of arrangement.*

**6. How can I vote on the DIL Plan if amendments can still be made to the DIL Plan?**

*The provisions of the DIL Plan that allow for the DIL Plan be amended are typical in CCAA plans of arrangement. The purpose of these provisions is to allow for amendments that ensure that the DIL Plan's mechanics and operations are as efficient as possible. No amendments could be made, without prior consultation with DIL Depositors, which substantively changed the DIL Plan or worsened the treatment of DIL Depositors under the DIL Plan.*

**7. What amendments have been made to the DIL Plan since the version that was mailed to me on December 8, 2015?**

*A further amended version of the DIL Plan was filed on January 11, 2016. This document is posted on the Monitor's website and the link is below:*

<http://www.insolvencies.deloitte.ca/Documents/Amended%20Amended%20Plan%20of%2020Compromise%20and%20Arrangement%20of%20LCC%20-%20filed%20Jan%202011,%202016.pdf>

*The amendments to the DIL Plan included in the version filed on January 11, 2016 are minor and include the following:*

- *Amendments were made to definitions to clarify the intent and purpose of the DIL Plan;*
- *Wording was added clarifying that class proceedings legislation in Alberta and British Columbia may apply to any Representative Action;*
- *Wording was added to clarify that DIL Depositors who are participants in the Representative Action for DIL Depositors are not precluded from participating in a Representative Action for District Depositors; and*
- *Wording was added to clarify that the Proportionate Share of Costs for a DIL Depositor who opts-out of the Representative Action from the Representative Action Holdback will be calculated as at the Sunday of the week in which the Notice of Opting Out is received. For clarity, should a Representative Action Holdback be required, this holdback will be from distributions made pursuant to the DIL Plan to DIL Depositors who are part of the Representative Class.*

**8. When should I decide whether to opt-in or opt-out of the Representative Action?**

*DIL Depositors can opt-out of the Representative Action at any point until the commencement of the Representative Action.*

*Some DIL Depositors have indicated that they view any involvement in litigation as inconsistent with their personal religious beliefs. Those DIL Depositors have the option of opting-out of the Representative Action right away, if that is their preference. The ability to opt-out in advance of the commencement of such legal proceedings is not available in traditional class proceedings.*

*For DIL Depositors who remain uncertain about whether they want to participate in the Representative Action, additional information will be provided by the Monitor prior to DIL Depositors having to decide whether they wish to opt-in or opt-out of the Representative Action. This information will include the names of the members of the Subcommittee, the name of the Representative Counsel, the estimated amount of the Representative Action Holdback and the timeframe for commencement of the Representative Action. This information would be provided following the DIL Plan being approved by the Court and prior to the commencement of the Representative Action.*

**9. What will happen if I do not fill out my Election Letter correctly?**

*Upon receipt, the Monitor will review the Election Letter submitted by each DIL Depositor and will contact DIL Depositors where the Election Letter is incomplete or the amount is entered incorrectly.*

*The Election Letter indicates that, should the DIL Depositor submitting the Election Letter not specify their vote, they will be considered as having voted for approval of the resolution to accept the DIL Plan.*

*For clarity, we note the following:*

- *You must submit an Election Letter (or vote in person or by proxy) in order to have a vote recorded on the DIL Plan. If you do not submit an Election Letter (or vote in person or by proxy), no vote will be recorded on your behalf and your claim will be excluded from the calculation of the Required Majority (as further described below). For clarity, if the DIL Plan is approved by the Required Majority and sanctioned by the Court, the claims of all DIL Depositors will be dealt with as set out in the DIL Plan regardless of whether or not individual DIL Depositors submitted Election Letters.*
- *Should you submit an Election Letter with no vote recorded, the Monitor will attempt to contact you to confirm whether you had intended to further complete the Election Letter. If you submit an Election Letter with no vote recorded and the Monitor cannot reach you, you will be considered as voting in favour of the DIL Plan.*

## **10. How and where can the Representative Action be advanced?**

*The Representative Action could include multiple legal actions, which could be undertaken in any jurisdiction (including Alberta or British Columbia) and could be undertaken as a class action or otherwise. To be clear, the DIL Plan does not preclude the commencement of a legal action that will be governed by the Class Proceedings Act, R.S.B.C. 1996, c. 50 (British Columbia) or any other class proceedings legislation. If there are advantages to commencing legal proceedings under, for example, British Columbia legislation, this will likely be a major consideration for Representative Counsel and the Subcommittee in determining how to proceed.*

*The Representative Action will be advanced following Court approval of the DIL Plan. The timing for commencement of the Representative Action will be determined by the Subcommittee and the Representative Counsel and will be communicated to DIL Depositors by the Monitor.*

## **11. How are the votes on the DIL Plan calculated?**

*Each DIL Depositor has one and not multiple votes on the DIL Plan. In order for the DIL Plan to be considered as being approved by DIL Depositors it must be approved by the Required Majority being 2/3 in value and a majority in number of voting DIL Depositors. For clarity this means that two tests must be met:*

- 1. When considering the total dollar value of the claims of those voting for and against the DIL Plan, at least 2/3 in dollar value must be voting in favour of the DIL Plan. For example, if DIL Depositors with claims totaling \$1.0 million vote on the DIL Plan, the claims of DIL Depositors voting in favour of the DIL Plan must be at least \$666,667 in order for the DIL Plan to pass.*
- 2. When considering the votes received from DIL Depositors, a majority of DIL Depositors who are voting must vote in favour of the DIL Plan. For example, if 400 DIL Depositors vote on the DIL Plan, at least 201 DIL Depositors must vote in favour of the DIL Plan in order for the DIL Plan to pass.*

*Also for clarity, DIL Depositors are voting for or against the DIL Plan in its entirety i.e. there is no ability to vote in favour of selected portions of the DIL Plan and against other portions of the DIL Plan.*

Should you have additional questions, please contact the undersigned by telephone at 1-403-298-5955 or via email at [vanallen@deloitte.ca](mailto:vanallen@deloitte.ca)

Yours truly,

**DELOITTE RESTRUCTURING INC.**

In its capacity as the Court-appointed Monitor of Lutheran Church – Canada, the Alberta – British Columbia District, Encharis Community Housing and Services, Encharis Management and Support Services and Lutheran Church – Canada, the Alberta – British Columbia District Investments Ltd. and not in its personal or corporate capacity



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