

SUPERIOR COURT
(Commercial Division)

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF ABITIBI
No. 615-11-001311-127
DATE: March 30, 2017**

PRESIDING : THE HONOURABLE ROBERT DUFRESNE, J.S.C.

IN THE MATTER OF THE RECEIVERSHIP OF:

CENTURY MINING CORPORATION,

Debtor

-and-

DELOITTE RESTRUCTURING INC.,

Receiver / Petitioner

-and-

COMPUTERSHARE TRUST COMPANY OF CANADA,

-and-

DEUTSCHE BANK AG, LONDON BRANCH,

-and-

MINERA YANAQUIHUA S.A.C.

-and-

PRO INVERT S.A.C.,

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS,

Mis-en-Cause

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Receiver/ Petitioner's *Second Motion for the Issuance of an Order Authorizing the Sale of Part of the Debtor's Assets and for the Issuance of an Approval and Vesting Order* dated March 27, 2017 (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the Receiver / Petitioner dated March 27, 2017 (the "**Report**");
- [2] **SEEING** the submissions of the Receiver / Petitioner's attorneys, including with respect to the service of the Motion;
- [3] **SEEING** that it is appropriate to issue an order approving the transaction(s) (the "**Transaction**") contemplated by the agreement entitled *Asset Purchase Agreement* (the "**Purchase Agreement**") by and between the Receiver / Petitioner, as vendor in its capacity as receiver (the "**Receiver**") to the assets of *Century Mining Corporation* (the "**Debtor**"), and *Minera Yanacocha S.A.C.* (the "**Purchaser**"), as purchaser, copy of which was filed under seal of confidentiality as Exhibit R-3 to the Motion, and vesting in the Purchaser the assets described in the list appended as **Schedule "B"** hereto (the "**Purchased Assets**").

WHEREFORE THE COURT:

- [4] **GRANTS** the Motion;

SERVICE

- [5] **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, subject to paragraph [21] of this Order, hereby dispenses with further service thereof.
- [6] **PERMITS** service of this Order at any time and place and by any means whatsoever, subject to paragraph [21] of this Order.

TERMINATION OF THE PURCHASE AGREEMENT AND TRANSACTION WITH PRO INIVERT S.A.C.

- [7] **TAKES ACT** of the termination of the purchase agreement that was entered into between the Receiver and *Pro Invert S.A.C.* dated August 24 2015, as amended thereafter, and of the transaction provided therewith, and which had been the object of an approval and vesting order issued by this Court on November 23, 2015.

SALE APPROVAL

- [8] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Receiver is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Receiver.

EXECUTION OF DOCUMENTATION

- [9] **AUTHORIZES** the Receiver and the Purchaser to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (Exhibit R-3, **under seal**) and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

- [10] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Receiver to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

VESTING OF PURCHASED ASSETS

- [11] **ORDERS** and **DECLARES** that upon the issuance of a Receiver's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, charges, hypothecs, priorities, liens, pledges, deemed trusts, encumbrances, judgments, writs of seizure or execution, notices of sale, contractual rights relating to the Purchased Assets, encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, or security evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* in movable / immovable property, and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets be cancelled and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [12] **DECLARES** that upon issuance of the Certificate, the Transaction shall be deemed to constitute and shall have the same effect as a sale under judicial authority as per the provisions of the *Code of Civil Procedure* and a forced sale as per the provisions of the *Civil Code of Quebec*.
- [13] **ORDERS** and **DIRECTS** the Receiver to file with the Court a copy of the Certificate forthwith after issuance thereof.

CANCELLATION OF SECURITY REGISTRATIONS

- [14] **ORDERS** the Quebec *Personal and Movable Real Rights Registrar*, upon presentation of the required form with a true copy of this Order and the Certificate, to reduce the scope of the registrations numbers 09-0795138-0001 and 11-0857514-0001 in connection with the Purchased Assets in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

NET PROCEEDS

- [15] **ORDERS** and **DECLARES** that the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**") shall be remitted to the Receiver for purposes of distribution, and further **DECLARES** that the distribution by the Receiver of the "Legal Fees", as defined in the Purchase Agreement, Exhibit R-3, to itself, its Canadian and Peruvian legal counsels and other experts and professionals retained for the Transaction, the whole in accordance with the terms of the Purchase Agreement, shall be considered as a "Future Distribution" pursuant to paragraph [9] of the order issued by this Court on October 15, 2015 in the present matter on the *Re-Amended Motion for an Order Approving a Second Partial Distribution and Other Future Distributions of the Proceeds of the Sale of Assets of Century Mining Corporation* (the "**Distribution Order**"), for the purposes of determining if the aggregate of the distributions made to Deutsche Bank AG London Branch ("**DB**") by the Receiver in the present matter have been made only up to the amounts owed to DB with respect to the PRA Funds and the Receiver's Borrowings (as defined in the Distribution Order), the whole in application of the reserve of rights in favor of Canada Revenue Agency contained in paragraph [9] of the Order.
- [16] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon the payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.
- [17] **ORDERS** and **DECLARES** that any distribution pursuant to this Order shall not constitute a "distribution" and the Receiver shall not constitute a "legal representative" or "representative" of the Debtor for the purposes of section 14 of the *Tax Administration Act*, R.S.Q., c. A-6.002 or any other similar provincial or territorial tax legislation (collectively, the "**Tax Laws**"), given that the Receiver is only a disbursing agent pursuant to this Order and the Receivership Order, and the Receiver in making such payments is not "distributing", nor shall be considered to "distribute" not to have "distributed", such funds for the purpose of the Tax Laws, and the Receiver shall not incur any liability under the Tax Laws in respect of it making any payments ordered or permitted hereunder, and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Laws or otherwise at law, arising in respect of payments made pursuant to this Order and any claims of this nature are hereby forever barred.

VALIDITY OF THE TRANSACTION

- [18] **ORDERS** that notwithstanding:
- (i) the pendency of these proceedings;
 - (ii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order and the execution of the Purchase Agreement pursuant to this Order are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Receiver or the Purchaser.

LIMITATION OF LIABILITY

- [19] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Receiver to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Receiver shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3;
- [20] **DECLARES** that no action lies against the Receiver by reason of this Order or the performance of any act authorized by this Order, 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;

GENERAL

- [21] **DECLARES** that any interested party not served with the Motion prior to the issuance of this Order may apply to this Court within a delay of five (5) business days following the service on them of this Order, to vary or rescind this Order or seek other relief at a comeback hearing, upon one (1) business day's prior notice to the Receiver, *Deutsche Bank AG* and to any other party likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.
- [22] **ORDERS** that the Purchaser or the Receiver shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [23] **ORDERS** that, unless communicated by written consent of the Receiver, the Purchase Agreement be kept confidential and under seal until further order of this Court.
- [24] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [25] **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, in Peru or elsewhere, for orders which aid and complement the Order 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 respectfully requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose;

[26] **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, in Peru 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;

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

THE WHOLE WITHOUT COSTS.



Robert Dufresne , J.S.C.

SCHEDULE "A"
DRAFT CERTIFICATE OF THE RECEIVER

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF ABITIBI**

File: No: 615-11-001311-127

SUPERIOR COURT
Commercial Division

**IN THE MATTER OF THE RECEIVERSHIP
OF:**

CENTURY MINING CORPORATION

Debtor

-and-

DELOITTE RESTRUCTURING INC.,

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**COMPUTERSHARE TRUST COMPANY OF
CANADA,**

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DEUTSCHE BANK AG, LONDON BRANCH,

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MINERA YANAQUIHUA S.A.C.,

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PRO INVERT S.A.C.,

-and-

**THE REGISTRAR OF THE REGISTER OF
PERSONAL AND MOVABLE REAL RIGHTS,**

Mis-en-Cause

CERTIFICATE OF THE RECEIVER

RECITALS:

WHEREAS on May 29, 2012, the Superior Court of Quebec (the "**Court**") issued a receivership order (the "**Receivership Order**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (the "**Act**") in respect of *Century Mining Corporation* (the "**Debtor**");

WHEREAS pursuant to the terms of the Receivership Order, *Deloitte Restructuring Inc.* (the "**Receiver**") was appointed Receiver of the Debtor;

WHEREAS on ●, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Petitioner of an agreement entitled *Asset Purchase Agreement* (the "**Purchase Agreement**") by and between the Receiver, as vendor in its capacity as receiver to the assets of the Debtor, and *Minera Yanacocha S.A.C.* (the "**Purchaser**"), as purchaser, copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Receiver.

WHEREAS the Vesting Order contemplates the issuance of this Certificate of the Receiver once (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto;

THE RECEIVER CERTIFIES AS TO THE FOLLOWING:

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction has been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Receiver at ____ [TIME] on _____ [DATE].

Deloitte Restructuring Inc. in its capacity as receiver to the assets of Century Mining corp., and not in its personal capacity.

Name: _____

Title: _____

SCHEDULE "B"
PURCHASED ASSETS

Century Mining Peru S.A.C.:

Tax ID N° 20510636946

6'999,999 shares (S/.1.00 Nuevos Soles each), which belong to Century Mining Corporation, it being understood that the total share capital of *Century Mining Peru S.A.C.* is of 7'000,000 shares, the remaining share being held by *Century Mining Finance Corporation*.

Century Operations S.A.C.:

Tax ID N° 20520875621

999 shares (S/.1.00 Nuevos Soles each), which belong to Century Mining Corporation, it being understood that the total share capital of *Century Mining Peru S.A.C.* is of 1,000 shares, the remaining share being held by *Century Mining Finance Corporation*.

Century Mining Finance Corporation:

Total shares: 100 common shares, which belong to Century Mining Corporation

Intercompany Debt between Century Mining Corporation and Century Mining Peru S.A.C.

Rights of *Century Mining Corporation* with respect to a claim representing a total amount of US\$ 2,480,091.00 owed by *Century Mining Peru S.A.C.* to *Century Mining Corporation*.