

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF ABITIBI

No: 615-11-001311-127

“Commercial Division”

SUPERIOR COURT

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

CENTURY MINING CORPORATION,
Debtor

-and-

DELOITTE RESTRUCTURING INC.,
formerly known as **SAMSON BÉLAIR /**
DELOITTE & TOUCHE INC.,
Receiver/Petitioner

-and-

**COMPUTERSHARE TRUST COMPANY OF
CANADA,**

Collateral Agent

-and-

DEUTSCHE BANK AG, LONDON BRANCH.,
Principal Secured Creditor

-and-

NEW CAROLIN GOLD CORP.

Mise-en-cause

**MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING CERTAIN
AMENDMENTS TO A TRANSACTION WITH RESPECT TO THE SALE OF PART OF
THE DEBTOR’S ASSETS**

(Section 249 of the Bankruptcy and Insolvency Act,
R.S.C. (1985) c. B-3 (the “BIA”))

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF ABITIBI, THE
PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

A. PURPOSE OF THE MOTION

1. On December 2, 2014, this Honourable Court issued an order (the “**NCGC Vesting Order**”) authorizing *Deloitte Restructuring Inc.* (previously known as *Samson Bélair / Deloitte & Touche Inc.*), in its capacity of Court appointed receiver (the “**Receiver**”) of *Century Mining Corp.* (“**CMC**”), to accept an offer to acquire part of Century’s assets, i.e. the *Carolin Mine Assets*, as this term is defined below) (the “**NCGC Transaction**”) and declaring that the transfer of such assets resulting therefrom be made in favour of the purchaser *New Carolin Gold Corp.* (“**NCGC**”);
2. Pursuant to the present Motion, for the reasons set forth hereinafter, the Receiver requests from this Honourable Court the authorization to amend the NCGC APA and the NCGC Transaction in accordance with the Amendments (as this term is defined below) in order for the Receiver to proceed with the NCGC Transaction as authorized by this Court with the NCGC Vesting Order, but as amended by the Amendments, the whole as will be detailed hereinafter;

B. THE PARTIES

3. CMC is a corporation continued under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 and which was operating as a gold producer, with its principal mining operations in Val d’Or, Québec (the “**Lamaque Mine**”) and an indirect majority equity interest in mining operations situated in San Juan, Arequipa, Peru (the “**San Juan Mine**”), as appears from the Court record herein;
4. The Receiver was appointed in such capacity with respect to all of the assets, properties and undertakings of CMC pursuant to an order from this Honourable Court issued on May 29, 2012 (the “**Receivership Order**” and the “**Receivership Proceedings**”);
5. The *Mise-en-cause Deutsche Bank AG* (“**DB**”) is a corporation acting through its London, U.K. Branch, and is the principal secured creditor of CMC and maintains, through *Computershare Trust Company of Canada*, in its capacity as collateral agent for DB, a security over CMC’s property (“**Computershare**”), the whole as appears from the Court record herein;
6. The Receivership Order was issued by this Honourable Court at the request of DB, through Computershare, as it appears from the Court record herein. As of May 25, 2012, CMC was indebted towards DB in a total amount of **US\$66,805,018.00** (the “**Indebtedness**”);
7. NCGC, formerly known as *Module Resources Incorporated*, is a publicly traded and Canadian-based junior mining company, and is the contemplated purchaser of the mining assets and interests of CMC in British Columbia that are known as the *Carolin Mine assets* (the “**Carolin Mine Assets**”) pursuant to the asset purchase agreement entered into between NCGC and the Receiver on July 10, 2014 (the “**NCGC APA**”) with respect to the NCGC Transaction authorized by this Court;

C. **CONTEXT**

8. On November 23, 2015, in the context of the issuance of an order authorizing the transaction for the sale of the San Juan Mine assets, the Receiver reported to this Court with respect to the status of its mandate and the Receivership Proceedings, as appears from the Court record and the Thirteenth Report of the Receiver filed therein;
9. The developments in the present matter since the hearing of November 23, 2015 can be summarized as follows:
 - a) The first part of the transaction for the sale of the San Juan Mine assets authorized by this Court on November 23, 2015 has closed in January 2016;
 - b) The Receiver has continued to take certain conservatory measures with respect to CMC or its remaining assets and interests;
 - c) The Receiver has continued the various negotiations with NCGC and amendments entered into with respect to the NCGC Transaction and its completion, as will be more detailed hereinafter;

the whole as appears from the fourteenth report of the Receiver, filed herewith **under seal** as **EXHIBIT R-1**;

10. With respect to the NCGC Transaction and the NCGC APA (filed herewith **under seal** as **EXHIBIT R-2**), NCGC and the Receiver have entered into the following amending agreements since the issuance of the NCGC Vesting Order:
 - a) a first amending agreement dated December 29, 2014 (the “**First Amending Agreement**”), a copy of which is filed herewith **under seal** as **EXHIBIT R-3**;
 - b) a second amending agreement dated April 15, 2015 (the “**Second Amending Agreement**”) a copy of which is filed herewith **under seal** as **EXHIBIT R-4**;
 - c) a third amending agreement dated February 2, 2016 (the “**Third Amending Agreement**”), which is conditional to the authorization of this Court, and which has resulted in the present Motion, a copy of said agreement being filed herewith **under seal** as **EXHIBIT R-5**;

the amendments made pursuant to the First Amending Agreement and the Second Amending Agreement, and the amendments being contemplated in the Third Amending Agreement being collectively referred to as the “**Amendments**”;

11. The Amendments resulting from the First Amending Agreement and the Second Amending Agreement can be described as follows:
 - a) The First Amending Agreement was entered into in order to modify the limit date for certain conditions to be complied with from December 31, 2014 to April 15, 2015, for the following reasons:
 - i) The transactions contemplated in the NCGC Transaction also involved the exercise by the Receiver on behalf of CMC of an option to acquire the

remaining interest in the Carolin Mine Assets (the “**Additional Option**”) from the receiver of *Tamerlane Venture Inc.* (“**Tamerlane**”), in the context of the receivership proceedings of Tamerlane before the Ontario Superior Court of Justice, in order for said remaining interest to be sold to NCGC within the NCGC Transaction;

- ii) The NCGC Transaction had been entered into on July 10, 2014, but authorized by the NCGC Vesting Order on December 2, 2014 following the various proceedings that took place in Ontario during Fall 2014 in order for the transaction with respect to the Additional Option to be authorized;
 - iii) By the time the exercise of the Additional Option and the NCGC Transaction were authorized by the Ontario Superior Court of Justice and by this Court respectively, it appeared that the deadline for the parties to close the NCGC Transaction had to be adjusted and extended in order to reflect the fact that the NCGC Transaction had been authorized on December 2, 2014;
- b) It became apparent in March 2015 that the timeline had to be modified again, together with some other modifications to the NCGC Transaction, in order for NCGC to be in a position to complete the NCGC Transaction, and as such, the Receiver and NCGC entered into the Second Amending Agreement, which amended the NCGC APA as follows:
- i) The limit date to complete the transaction was extended until April 15, 2016;
 - ii) The wording with respect to the 35% net profits interest from the eventual sale of gold obtained by NCGC reprocessing certain tailings of the Carolin Mine Assets, which was granted by NCGC as part of the consideration paid in the NCGC Transaction, was modified in order to adjust the NCGC APA to the possibility that such tailings be reprocessed by a third party on terms satisfactory to the Receiver in its sole discretion without affecting the consideration to be paid to the Receiver, and in order to specify that the Receiver be part of any such agreement with a third party;
 - iii) The wording for the exercise of the Additional Option was adjusted notably to reflect the new timeline of the NCGC Transaction, in agreement with the receiver of Tamerlane, and the financing of the exercise of the Additional Option by a third party;
 - iv) Section 7.2.3 (c) was deleted as this condition had already been completed;

the whole as more fully appears from the First Amending Agreement, **EXHIBIT R-3**, the Second Amending Agreement, **EXHIBIT R-4** and the Fourteenth Report of the Receiver, **EXHIBIT R-1**;

12. On September 16, 2015, the parties closed the exercise of the Additional Option with the receiver of Tamerlane, thereby allowing the rest of the NCGC Transaction to proceed;
13. Over the course of December 2015, NCGC reached out to the Receiver in order to renegotiate certain aspect of the NCGC Transaction in order to allow NCGC to finally complete and close the transaction, and said discussions resulted in the parties entering into the Third Amending Agreement, as appears from the Fourteenth Report of the Receiver, **EXHIBIT R-1**;

D. AMENDMENTS SOUGHT PURSUANT TO THE THIRD AMENDING AGREEMENT

14. The amendments contemplated in the Third Amending Agreement can be summarized as follows:
 - a) One of the condition precedent to the NCGC Transaction being that NCGC would secure a financing up to a certain amount, a portion of which would be used to conduct exploration and development work on the Carolin Mine Assets, the Third Amending Agreement seeks to amend this condition by reducing the financing to be obtained and the amount to be spent on exploration and development work;
 - b) One other condition precedent to the NCGC Transaction being that NCGC would settled a set amount of its existing outstanding accounts payable and accrued liabilities, the Third Amending Agreement reduces the said amount to be settled;
 - c) Should the consideration be paid entirely with shares instead, at the option of NCGC, the calculation of the amounts of shares to be issued has been slightly modified;
 - d) Added as a condition precedent to the NCGC Transaction, the extension of the deadline for NCGC to reimburse the third party which financed the exercise of the Additional Option;
 - e) Undertaking from NCGC to pay the Receiver's fees and disbursements up to an amount of \$25,000 plus all applicable taxes in relation with the preparation and presentation of this Motion to obtain the authorization with respect to the Amendments;

the whole as more fully appears from the Third Amending Agreement, **EXHIBIT R-5**, and the Fourteenth Report of the Receiver, **EXHIBIT R-1**

15. It must be noted that none of the amendments contemplated in the Third Amending Agreement have the effect to reduce directly the consideration paid for the Carolin Mine Assets;
16. The Receiver considers nevertheless that the amendments contemplated in the Third Amending Agreement can be considered material, contrary to the amendments resulting from the First Amending Agreement and the Second Amending Agreement. For this reason, considering the extensions granted so far to close the NCGC Transaction, and considering paragraph [9] of the NCGC Vesting Order, the Receiver is seeking the authorization of this Court in order for the NCGC APA and the NCGC Transaction to be amended and modified in accordance with the Amendments;

17. This motion seeking the authorization to amend the NCGC Transaction is brought pursuant to *inter alia* paragraphs [10](k), (u) and [11] of the Receivership Order, which provide as follows:

[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:

[...]

(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;

[...]

(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;

[...]

[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;

as appears from the Court record;

18. The Receiver came to the conclusion that the amendments contemplated in the Third Amending Agreement allowed for a sufficient level of certainty to be brought as to a closing of the NCGC Transaction in the short term, the whole without diminishing the consideration paid by NCGC, and with a limited potential impact on the assets obtained by the Receiver as part of the consideration for the NCGC Transaction, as appears from the Fourteenth Report of the Receiver, **EXHIBIT R-1**;
19. The Receiver also notes that the cost of the present proceedings with respect to the authorization sought for the Amendments is being assumed by NCGC up to an amount of \$25,000 plus applicable taxes, in order to avoid or limit any prejudice for CMC's stakeholders in this respect;
20. As such, the Receiver considers that the NCGC Transaction as amended by the Amendments still represents the best possible offer under the circumstances for the Carolin Mine Assets, also considering the interests of all stakeholders, the whole for the reasons stated hereinabove and more fully expressed in the Fourteenth Report (**EXHIBIT R-1**);

E. CONCLUSIONS SOUGHT

21. It is respectfully submitted to this Honourable Court that the NCGC Transaction as amended by the Amendments remains the best transaction under the circumstances, given notably the particular nature of the Carolin Mine Assets, the extensive solicitation process conducted, the current market conditions in the mining industry which remain unfavourable, and considering the efforts and expenses incurred so far in order to complete and close this particular transaction, the whole as more fully appears from the Court record and the Fourteenth Report (**EXHIBIT R-1**);
22. In light of the foregoing, the Receiver respectfully submits to this Honourable Court that the Amendments to the NCGC Transaction should be authorized, the whole in accordance with the conclusions set forth herein;
23. Finally, the Receiver respectfully submits that **EXHIBIT R-1** to **R-5** must be filed under confidential seal in the Court Record, given that said documents include commercially sensitive information;
24. The present Motion is well founded both in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

- [A] **GRANT** the present *Motion for the Issuance of an Order Authorizing Certain Amendments to a Transaction with respect to the Sale of Part of the Debtor's Assets* (the "**Motion**");
- [B] **ORDER** 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;
- [C] **PERMIT** service of this Order at any time and place and by any means whatsoever;
- [D] **ORDER** and **DECLARE** that the amendments (the "**Amendments**") contemplated in (i) the agreement entitled *First Amending Agreement* entered into on December 29, 2014 by *New Carolin Gold Corp.* ("**NCGC**") and *Deloitte Restructuring Inc.*, acting in its capacity as receiver to the assets of *Century Mining Corporation* (the "**Receiver**"), and filed herewith under seal as **EXHIBIT R-3** (the "**First Amending Agreement**"), (ii) the agreement entitled *Second Amending Agreement* entered into by NCGC and the Receiver on April 15, 2015, and filed herewith under seal as **EXHIBIT R-4** (the "**Second Amending Agreement**"), and (iii) the agreement entitled *Third Amending Agreement* entered into by NCGC and the Receiver on February 2, 2016, and filed herewith under seal as **EXHIBIT R-5** (the "**Third Amending Agreement**"), are hereby authorized and approved, and that the transaction approved by order of this Court dated December 2, 2014 in the present matter, notably at paragraph [9] of said order, is authorized and approved as amended by the Amendments;
- [E] **ORDER** that an amount of \$25,000, excluding taxes, to be remitted by NCGC to the Receiver in accordance with paragraph 7 of the Third Amending Agreement be applied in payment of the Receiver's fees in disbursements in relation with the implementation of

the Third Amending Agreement and the preparation and preparation of the Motion in this respect;

- [F] **DECLARE** 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;
- [G] **ORDER** that unless communicated by written consent of the Receiver, **EXHIBIT R-1 to R-5** be kept confidential and under seal until further order of this Court;
- [H] **DECLARE** that this Order shall have full force and effect in all provinces and territories in Canada;
- [I] **DECLARE** 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, 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;
- [J] **REQUEST** 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;
- [K] **ORDER** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;
- [L] **THE WHOLE** without costs.

Montréal, this February 8, 2016



Fasken Martineau DuMoulin LLP
Attorneys for Petitioner *Deloitte Restructuring Inc.*

AFFIDAVIT

I, Martin Franco, Partner at Deloitte Restructuring Inc., practicing my profession at 1190, avenue des Canadiens-de-Montréal, Suite 500, City of Montréal, Province of Québec, H3B 0M7, do solemnly affirm:

1. I am a duly authorized representative of Receiver/Petitioner;
2. I have personal knowledge of all the facts alleged in the attached Motion;
3. All the facts mentioned in the attached Motion are true.

AND I HAVE SIGNED:



MARTIN FRANCO

Solemnly affirmed before me, in
Montréal, on February 8, 2016



Commissioner for Oaths for Québec



NOTICE OF PRESENTATION

TO: **Stikeman Elliott, s.e.n.c.r.l.**
1155, boul. René-Lévesque Ouest
Bureau 4000
Montréal, Québec H3B 3V2
*Attorneys for Deutsche Bank AG,
London Branch*
Attention: Me Guy Martel

Rivest, Tellier, Paradis,
500 boulevard René-Lévesque Ouest
25e étage
Montréal QC H2Z 2A5
*Attorneys for Commission des normes
du travail*
Attention: Me Claire-France Mercier

Cliche Lortie Ladouceur inc.
1121 6e Rue
C.P. 460
Val-d'Or QC J9P 4P5
Attorneys for CMAC
Attention: Me Pierre André Matte

Fontaine Descôteaux, avocats
640 3e avenue
Bureau 203
Val-d'Or QC J9P 1S5
*Attorneys for 2985080 - A.B.F.
Mines*
Attention: Me Denise Descôteaux

Revenu Québec
3, Complexe Desjardins
Montréal, Québec H5B 1A7
Attention : Me Normand Bérubé

Stikeman Elliott, s.e.n.c.r.l.
1155, boul. René-Lévesque Ouest
Bureau 4000
Montréal, Québec H3B 3V2
*Attorneys for Computershare Trust Company
of Canada*
Attention: Me Guy Martel

Cliche Lortie Ladouceur inc.
1121 6e Rue
C.P. 460
Val-d'Or QC J9P 4P5
Attorneys for Pétroles JC Trudel
Attention: Me Pierre André Matte

**Norton Rose Fulbright Canada
S.E.N.C.R.L.,s.r.l.**
Complexe Jules-Dallaire / Tour Norton Rose
2828 boulevard Laurier
Bureau 1500
Québec QC G1V 0B9
Attorneys for Century Mining Corporation
Attention: Me Terrence Mathieu

Ministère de la Justice
Complexe Guy Favreau
200, boul. René Lévesque Ouest
Tour Est - 9e étage
Montréal, Québec H2Z 1X4
Attention: Me Chantal Comtois

Régie des rentes du Québec
C.P. 5200, 5e étage
2600 boulevard Laurier
Bureau 501
Québec QC G1K 7S9
Attorneys for Régie des rentes du Québec
Attention: Me Sheila York

**Commission de la santé et de la
sécurité du travail**

524, rue Bourdages, local 304,
Québec (Québec) G1K 7E2

Attention: Me Yves Lavallée

New Carolin Gold Corp

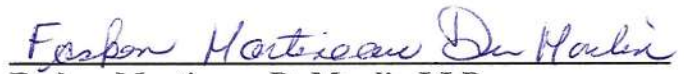
bthast@telus.net;

krholmes55@gmail.com

TAKE NOTICE that the present *Motion for the Issuance of an Order Authorizing Certain Amendments to a Transaction with respect to the Sale of Part of the Debtor's Assets* will be presented for adjudication before Honourable Robert Dufresne j.c.s, on **February 10, 2016** , at **13:00** via conference call at the following number **1-855-453-6954 - access code 2790477**.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, this February 8, 2016



Fasken Martineau DuMoulin LLP

Attorneys for Petitioner *Deloitte Restructuring Inc.*

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF ABITIBI

No: 615-11-001311-127

“Commercial Division”

SUPERIOR COURT

IN THE MATTER OF THE RECEIVERSHIP
OF:

CENTURY MINING CORPORATION,

Debtor

-and-

DELOITTE RESTRUCTURING INC.,
formerly known as SAMSON BÉLAIR /
DELOITTE & TOUCHE INC.,

Receiver/Petitioner

-and-

COMPUTERSHARE TRUST COMPANY OF
CANADA,

Collateral Agent

-and-

DEUTSCHE BANK AG, LONDON BRANCH.,

Principal Secured Creditor

-and-

NEW CAROLIN GOLD CORP.

Mise-en-cause

LIST OF EXHIBITS

Exhibit R-1 Under seal - Fourteenth Report of the Receiver

Exhibit R-2 Under seal -New Carolin Gold Corp. Asset Purchase Agreement dated
July 10, 2014

- Exhibit R-3** **Under seal** - First Amending Agreement dated December 29, 2014
- Exhibit R-4** **Under seal** - Second Amending Agreement dated April 15, 2015
- Exhibit R-5** **Under seal** - Third Amending Agreement dated February 2, 2016

Montréal, this February 8, 2016



Fasken Martineau DuMoulin LLP
Attorneys for Petitioner *Deloitte Restructuring Inc.*

COMMERCIAL DIVISION

N°: 615-11-001311-127

PROVINCE OF QUÉBEC
SUPERIOR COURT
DISTRICT OF ABITIBI

IN THE MATTER OF THE RECEIVERSHIP OF:
CENTURY MINING CORPORATION,
Debtor

-and-

DELOITTE RESTRUCTURING INC., formerly known as
SAMSON BÉLAIR / DELOITTE & TOUCHE INC.,
Receiver/Petitioner

-and-

COMPUTERSHARE TRUST COMPANY OF CANADA,
Collateral Agent

-and-

DEUTSCHE BANK AG, LONDON BRANCH.,
Principal Secured Creditor

-and

NEW CAROLIN GOLD CORP.
Mise-en cause

16809/282868.00003

BF1339

**MOTION FOR THE ISSUANCE OF AN ORDER
AUTHORIZING CERTAIN AMENDMENTS TO A
TRANSACTION WITH RESPECT TO THE SALE OF
PART OF THE DEBTOR'S ASSETS, AFFIDAVIT,
NOTICE OF PRESENTATION, LIST OF EXHIBITS
AND EXHIBITS R-1 to R-5 (all under seal)**

ORIGINAL

Fasken Martineau DuMoulin LLP

Stock Exchange Tower
Suite 3700, P.O. Box 242
800 Place Victoria
Montréal, Quebec
H4Z 1E9

Guillaume-Pierre Michaud Tel. +1 514 397 5264
(AM0LQ4) Fax. +1 514 397 7600
gmichaud@fasken.com