

No. S128887  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF AN APPLICATION PURSUANT TO  
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c.B-3, AS AMENDED and SECTION 39 OF THE *LAW AND EQUITY ACT*,  
R.S.B.C. 1996 C.253, AS AMENDED

BETWEEN:

**DUMAS HOLDINGS INC.**

Petitioner

**TERCON INVESTMENTS LTD., TERCON A.C. LTD., TERCON EQUIPMENT LTD.,  
TERCON CONSTRUCTION LTD., TERCON MINING LTD., TERCON ENTERPRISES  
LTD., TERCON MRC LIMITED, FNP VENTURES INC., TERCON MINING PV LTD.,  
TERCON EQUIPMENT ALASKA PARTNERSHIP AND TERCON ALASKA LTD.**

Respondents

**ORDER MADE AFTER APPLICATION**

**DISTRIBUTION ORDER**

BEFORE THE HONOURABLE )  
 ) 21/01/2013  
JUSTICE SEWELL )

THE APPLICATION of FTI CONSULTING CANADA INC., in its capacity as Court-appointed Receiver (the "**Receiver**") of the assets, undertakings and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd. (collectively, the "**Debtors**") coming on

for hearing at Vancouver, British Columbia, on the 21<sup>st</sup> day of January, 2013; AND ON HEARING Geoffrey Thompson, counsel for the Receiver, and those other counsel listed on Schedule "A" hereto, AND UPON READING the material filed, including the Second Report of the Receiver dated January 15, 2013 (the "**Second Report**")<sup>1</sup>;

THIS COURT ORDERS AND DECLARES THAT:

**Payment of Accounts Receivable**

1. All amounts owing to any of the Debtors, including any holdback amounts, by any person having notice of this order shall forthwith be paid to the Receiver and no such funds shall be paid to any other person unless such payment is approved in advance by the Court, on notice to the Receiver.
2. The terms of paragraph 1 hereof shall not apply to any of the Bonded Projects, pending further order of the Court on a motion by Trisura Guarantee Insurance Company ("**Trisura**") or the Receiver to determine, *inter alia*, the application of this Order to the Bonded Projects (the "**Bonded Projects Motion**").

**Establishment of Reserves**

3. The Receiver is authorized and directed to establish reserves in respect of the following proceeds of Property in the Receiver's possession ("**Proceeds**"), which Proceeds, notwithstanding the creation of such reserves, shall continue to be "Property" pursuant to the Receivership Order:
  - (a) The amount of \$1,069,017.91, in respect of the Total Lien Amount referred to in paragraph 14 of the Second Report or such other amount as may be, in the discretion of the Receiver, necessary to pay any claims for lien registered (the "**Registered Liens**") against the Equipment (as such term is defined in the Asset Purchase and Sale Agreement dated as of December 21, 2012 (the "**APA**")) as at the date of this Order (the "**Equipment Lien Reserve**"), such Equipment Lien Reserve to be established solely from the net proceeds of the Equipment received by the Receiver pursuant to the APA;
  - (b) The aggregate of all amounts claimed in accordance with the provisions of this Order prior to the Reserve Bar Date (defined below) in connection with any security interests or charges evidenced by registrations against the Debtors pursuant to the *Personal Property Security Act* ("**PPSA**") of British Columbia or Alberta, or pursuant to the Uniform Commercial Code ("**Secured Claims**") or other state law relating to the registration of Secured Claims in Alaska where such Secured Claims may, by virtue of priority of registration, or pursuant to the claim of a person asserting a Secured Claim, have priority to the security interests of

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning ascribed to them in the Second Report.

HSBC or DHI to the Assets (the “**Priority Claims Reserve**”), such Priority Claims Reserve to be established solely from the net proceeds of the Assets (as defined in the APA) received by the Receiver pursuant to the APA;

- (c) All amounts that might be payable to the Purchasers pursuant to the provisions of the APA (the “**APA Reserve**”);
- (d) From any funds received by the Receiver in respect of any Bonded Project, the lesser of (i) the face amount of the Bond issued on the Bonded Project; (ii) the amount of accounts receivable collected on account of the Bonded Project; and (iii) the aggregate of the amounts of all claims of Claimants (as defined in the Bonds) (the “**Bond Claims**”), if any, made against Trisura Guarantee Insurance Company (“**Trisura**”) in accordance with the terms of the applicable Bond within the period provided for such claims pursuant to the terms of the Bond (the “**Bond Claim Period**”) issued in respect of the Bonded Project (the “**Bonded Project Reserve**”), For greater clarity, there shall be a separate Bonded Project Reserve for each Bonded Project;
- (e) Out of any funds received by the Receiver in respect of any Tercon Project, the aggregate of the amounts of all claims for lien that have been preserved in accordance with applicable lien legislation or that may constitute trust funds pursuant to applicable lien legislation (the “**Lien and Trust Reserve**”);
- (f) From the proceeds of sale of any Property (as defined in the Receivership Order dated December 14, 2012) delivered to the Receiver by a Possessory Claimant (as defined in the Receivership Order) pursuant to paragraph 5 of the Receivership Order, an amount which is the lesser of:
  - (a) the alleged Possessory Claim (as defined in the Receivership Order);  
and
  - (b) the proceeds of sale of the Property against which the Possessory Claim is made (the “**Possessory Claim Reserve**”);
- (g) An amount determined by the Receiver, in its sole discretion, to be sufficient to pay all of the Receiver’s fees, costs, expenses and disbursements during the Receivership Proceedings (the “**Receiver’s Costs**”), to the date of its discharge (the “**Receivership Reserve**”); and
- (h) An amount equal to: (i) the proceeds received by the Receiver, determined pursuant to the terms of the APA, from the sale of any Property ( as defined in the Receivership Order dated Dec 14 ,2012 ) that was transferred from Tercon Equipment Ltd. to Tercon Equipment Alaska Partnership (the “**Alaska Property**”) pursuant to the Purchase and Sale Agreement dated December 6, 2012 that is referred to in paragraph 31 of the Affidavit of Steven Chambers, sworn December 13, 2012 and filed in support of the application for the Receivership Order, less (ii) the amount of the Equipment Lien Reserve held in respect of

Registered Liens that have been registered against Alaska Property ( the “ **TEAP Reserve**”);

(collectively hereinafter referred to as the “**Reserves**”).

4. For greater certainty, to the extent that the Receiver holds proceeds in respect of any item of Alaska Property in the Equipment Lien Reserve, it shall not be required to hold an amount in the TEAP Reserve in respect of a Registered Lien filed against the same item of the Alaska Property.

#### **Payment to HSBC**

5. Subject to the Receiver establishing the Reserves and subject to paragraph 6 hereof, the Receiver shall be authorized and directed, without further Order of the Court, to distribute to HSBC Bank Canada (“**HSBC**”) as Lead Arranger, Bookrunner and Administrative Agent under the senior secured credit agreement dated as of February 28, 2012 between, *inter alia*, HSBC, certain lenders from time to time (the “**Secured Lenders**”) and the Debtors, such Proceeds of the Assets in its hands, free and clear of all Encumbrances other than those in favour of the Secured Lenders (the “**HSBC Distributions**”).
6. The Receiver is authorized to make HSBC Distributions from time to time as soon as practical once it has, in its possession, at least \$500,000 in excess of the Reserves to distribute to HSBC.
7. Notwithstanding anything set out in paragraph 5 and 6 above, no money from the TEAP Reserve shall be paid to HSBC without further order of the Court.

#### **Claims against Reserves**

8. The Receiver shall as soon as practicable after the date of this Order, send a copy of this Order, together with a copy of a notice substantially in the form attached as Schedule “B” hereto (the “**Property Claim Notice**”) to every individual, firm, corporation, governmental body or agency (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) with a Registered Lien or a Secured Claim (a “**Potential Property Interest Claimant**”) by regular prepaid mail, facsimile, courier or electronic mail to the address of such Potential Property Interest Claimant as set out in the registrations made in respect of the Registered Liens or the Secured Claims.
9. The Receiver shall cause the Property Claim Notice and this Order to be posted on the Receiver’s Website as soon as practicable after the date of this Order and cause it to remain posted thereon until its discharge as Receiver.
10. All Potential Property Interest Claimants and other entities having notice of this Order, excluding HSBC and DHI, that intend to assert a claim against the Assets, the Equipment Lien Reserve or the Priority Claims Reserve shall provide the Receiver with an affidavit or declaration, or other notice in writing in a form acceptable to the Receiver setting out all of particulars of the Potential Property Interest Claim and attaching all documents and

records that support the Potential Property Interest Claim of the Person (the "**Claim Support Documents**") on or before February 15, 2013 (the "**Reserve Bar Date**").

11. No Potential Property Interest Claimant shall be entitled to any payment from the Equipment Lien Reserve or the Priority Claims Reserve unless it has delivered to the Receiver the Claim Support Documents prior to the Reserve Bar Date.
12. Any Person that has registered a lien against real property owned by a third party relating to a Tercon Project (as defined in the Second Report) shall deliver copies of all lien claim and registration documents to the Receiver forthwith after making such registration or receiving notice of this order.
13. The Receiver shall provide Trisura with copies of all documentation relating to the Bonded Projects required to be provided under the indemnity agreement(s) between the Debtors and Trisura that are in the possession of the Receiver as soon as reasonably practicable.
14. Trisura shall, within five (5) business days following receipt of any Bond Claim (as defined hereafter), provide the Receiver with copies of all and documents received in support thereof, any and all claims which it receives against the Bonds within the Bond Claim Period provided pursuant to the Bonds ("**Bond Claims**").
15. Any paper copy of any notice, notification or communication required to be provided or delivered to the Receiver under this Order will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email addressed to:

FTI Consulting Canada Inc.  
TD Waterhouse Tower  
79 Wellington Street West, Suite 2010  
P. O. Box 104  
Toronto, ON M5K 1G8  
Attn: Nigel Meakin  
Fax: (416) 649-8181  
Email: tercon@fticonsulting.com

16. The Receiver is entitled to bring a motion to the Court for an Order to determine the entitlement of any and all Potential Property Interest Claimants to the Purchased Assets, the Equipment Lien Reserve and/or the Priority Claims Reserve on seven (7) days' notice following the expiration of the Reserve Bar Date on notice to all Potential Property Interest Claimants and the service list established in this proceeding.

#### **Payment from Reserves**

17. The Receiver is hereby authorized and empowered, without further Order of the Court, to make disbursements from the Equipment Lien Reserve to or for the benefit of any of the

Equipment Lien Claimants (as described in the Second Report) that have Registered Liens that are valid and enforceable against the Equipment and that have priority to the interests of HSBC and DHI, in an amount agreed upon between HSBC, DHI and the Receiver or otherwise as determined by further Order of the Court, free and clear of all Encumbrances.

18. The Receiver is hereby authorized and empowered, without further Order of the Court, to make disbursements from the Priority Claims Reserve to or for the benefit of any of person asserting a Secured Claim to the Assets in priority to the interest of DHI or HSBC in an amount agreed upon between HSBC, DHI and the Receiver or otherwise as determined by further Order of the Court, free and clear of all Encumbrances.
19. The Receiver is hereby authorized and empowered, without further Order of the Court, to make disbursements from the APA Reserve to or for the benefit of any of the Purchasers (as described in the Second Report) in accordance with the terms of the APA, free and clear of all Encumbrances.
20. The Receiver is hereby authorized and empowered, without further Order of the Court, to make disbursements from the Possessory Claim Reserve to or for the benefit of any Person who delivered Assets to the Receiver pursuant to paragraph 5 of the Receivership Order in an amount agreed upon between HSBC, DHI and the Receiver, or otherwise as determined by further Order of the Court, free and clear of all Encumbrances.
21. The Receiver is authorized to disburse funds from the Receivership Reserve in accordance with Receivership Order.
22. No disbursements from the Bonded Project Reserve or the Lien and Trust Reserve shall be made without further Order of the Court, on notice to all affected parties.
23. Once all claims to the Equipment Lien Reserve, the Priority Claims Reserve, the APA Reserve and the Possessory Claim Reserve (collectively, the “**Disbursable Reserves**”) have been finally determined and all applicable payments have been made, the Receiver is hereby authorized, without further Order of the Court, to distribute all amounts remaining in such Disbursable Reserve to HSBC, free and clear of all Encumbrances.
24. For greater certainty: (i) no amounts shall be payable from any Disbursable Reserve on account of a claim to any other Disbursable Reserve; and (ii) the Receiver’s Costs may be applied to any of the Disbursable Reserves and the TEAP Reserve if the Receivership Reserve is not sufficient to pay all of the Receiver’s Costs up to and including its discharge.
25. In the event that: (i) any legislation applicable in the Provinces of British Columbia or Alberta, or the State of Alaska, requires the seizure of property subject to a lien in order to enforce, or prevent the expiry of, lien rights against the Equipment and (ii) any Person with a Registered Lien would be required to seize or direct the seizure of the Equipment to preserve or perfect the Registered Lien (“Seizure”), then:

(a) all such requirements are hereby suspended and extended, *nunc pro tunc*, from the date of the Approval and Vesting Order made in this proceeding (the “**Suspension Date**”), pending further order of the Court; and

(b) all periods of limitation providing the time within such Seizure must be enforced or effected are hereby suspended and extended, *nunc pro tunc*, from the Suspension Date, pending further order of the Court;

26. The terms of paragraph 25 are without prejudice to the rights of the Parties with Registered Liens, the Receiver, HSBC and DHI, each as against the other, and in particular, are made without prejudice to any positions or legal defences arising from the passage of time that may have accrued with respect to the Registered Liens as at the Suspension Date to the benefit of the Persons with the Registered Liens, the Receiver, HSBC and DHI under any statute, at common law, or in equity.

### **The Bonded Projects Motion**

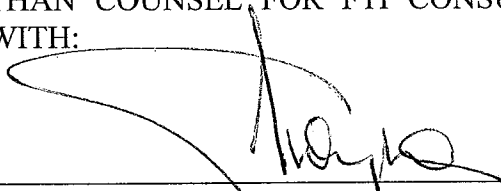
27. The Bonded Projects Motion shall be heard by this Court on not less than seven (7) days’ notice, on a date to be scheduled by counsel but, in any event, the moving party’s motion material shall not be served prior to January 28, 2013.
28. Nothing in this Order shall affect Trisura’s ability to attend on or investigate any Bonded Project, including discussing such Bonded Projects with any obligee or Claimant, as those terms are defined in any performance bonds or labour and material payment bonds issued on the Bonded Projects.
29. Any obligee or Claimant under any Bond is entitled to provide notice to Trisura of any claim that it is advancing and Trisura shall be entitled to make such investigations as it deems appropriate in the ordinary course under the relevant bond
30. Notwithstanding the terms of paragraphs 2, 28 and 29 hereof, the Receiver, Trisura, and any obligee or owner of a Bonded Project (which, for clarity, includes the Ministry of Transportation (B.C.)), are directed not to settle, admit or pay any Bond Claims or other claims relating to the Bonded Projects pending further direction of the Court, with such direction to be provided as part of the relief on the Bonded Projects Motion.

### **Directions**

31. Each of the Receiver, HSBC, DHI, the Purchasers or any Person asserting a claim to a Reserve may apply to the Court for directions in respect of any aspect of this Order.
32. The Receiver shall have liberty to apply for such further or other directions or relief as may be necessary or desirable to give effect to this Order.

33. The activities of the Receiver set out in the Second Report filed, be and are hereby approved.
34. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

THE APPROVAL OF COUNSEL SET OUT IN SCHEDULE "A" OF THIS ORDER, OTHER THAN COUNSEL FOR FTI CONSULTING CANADA INC., IS HEREBY DISPENSED WITH:



\_\_\_\_\_  
Signature of Geoffrey Thompson  
 Party  Lawyer for  
FTI Consulting Canada Inc.

BY THE COURT



\_\_\_\_\_  
REGISTRAR



SCHEDULE A - List of Counsel

H. FERRIS, NC MACHINERY

D GRUBER, PENTACONER

M. WASSERMAN, "

J. MOSTOWAS, TRISURTA

C RAMSAY, HSBC

D WIERBE "

J DIETRICH "

**SCHEDULE "B"**

No. S128887  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF AN APPLICATION PURSUANT TO  
SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c.B-3, AS AMENDED and SECTION 39 OF THE *LAW AND EQUITY ACT*,  
R.S.B.C. 1996 C.253, AS AMENDED

BETWEEN:

**DUMAS HOLDINGS INC.**

Petitioner

**TERCON INVESTMENTS LTD., TERCON A.C. LTD., TERCON EQUIPMENT LTD.,  
TERCON CONSTRUCTION LTD., TERCON MINING LTD., TERCON ENTERPRISES  
LTD., TERCON MRC LIMITED, FNP VENTURES INC., TERCON MINING PV LTD.,  
TERCON EQUIPMENT ALASKA PARTNERSHIP AND TERCON ALASKA LTD.  
(collectively, the "Tercon Debtors")**

Respondents

**PROPERTY CLAIM NOTICE:**

On December 14, 2012, FTI Consulting Canada Inc. was appointed as receiver (the "**Receiver**") of all of the assets, undertakings and properties (the "**Property**") of the Tercon Debtors noted above. By Order of the British Columbia Supreme Court (the "**Court**") dated January 21, 2013 (the "**Distribution Order**")<sup>2</sup>, a process was established for creditors to prove claims against the Tercon Debtors that have Registered Liens or Secured Claims against certain assets of the Tercon Debtors. A copy of the Distribution Order is enclosed with this Property Claim Notice and can also be found on the Receiver's website at <http://cfcanada.fticonsulting.com/tercon..>

All Potential Property Interest Claimants and other entities having notice of this Order, excluding HSBC and DHI, that intend to assert a claim against the Assets, the Equipment Lien Reserve or the Priority Claims Reserve established under the Distribution Order shall provide the Receiver with an affidavit or declaration, or other notice in writing in a form acceptable to the Receiver setting out all of particulars of the Potential Property Interest Claim and attaching all documents and records that support the Potential

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<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Distribution Order.

Property Interest Claim of the Person (the “**Claim Support Documents**”) on or before February 15, 2013 (the “**Reserve Bar Date**”).

No Potential Property Interest Claimant shall be entitled to any payment from the Equipment Lien Reserve or the Priority Claims Reserve unless it has delivered the Claim Support Documents to the Receiver prior to the Reserve Bar Date.

In accordance with the Distribution Order, all Claim Support Documents shall be delivered to the Receiver by prepaid registered mail, courier, personal delivery, facsimile transmission or email addressed to:

FTI Consulting Canada Inc.  
TD Waterhouse Tower  
79 Wellington Street West, Suite 2010  
P. O. Box 104  
Toronto, ON M5K 1G8  
Attn: Nigel Meakin  
Fax: (416) 649-8181  
Email: [tercon@fticonsulting.com](mailto:tercon@fticonsulting.com)

**IF YOUR CLAIM SUPPORT DOCUMENTS ARE NOT RECEIVED BY THE RECEIVER BY THE RESERVE BAR DATE, YOU SHALL NOT BE ENTITLED TO ANY PAYMENT FROM THE EQUIPMENT LIEN RESERVE OF THE PRIORITY CLAIMS RESERVE.**

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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BETWEEN:

**DUMAS HOLDINGS INC.**

Petitioner

- and -

**TERCON INVESTMENTS LTD., TERCON A.C. LTD.,  
TERECON EQUIPMENT LTD., TERCON  
CONSTRUCTION LTD., TERCON MINING LTD.,  
TERCON ENTERPRISES LTD., TERCON MRC  
LIMITED, FNP VENTURES INC., TERCON MINING  
PV LTD., TERCON EQUIPMENT ALASKA  
PARTNERSHIP AND TERCON ALASKA LTD.**

Respondents

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE RECEIVERSHIP OF  
**TERCON INVESTMENTS LTD., TERCON A.C. LTD.,  
TERECON EQUIPMENT LTD., TERCON  
CONSTRUCTION LTD., TERCON MINING LTD.,  
TERCON ENTERPRISES LTD., TERCON MRC  
LIMITED, FNP VENTURES INC., TERCON MINING  
PV LTD., TERCON EQUIPMENT ALASKA  
PARTNERSHIP AND TERCON ALASKA LTD.**

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**INTERIM DISTRIBUTION ORDER**

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