

CLERK'S STAMP

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY  
AND INSOLVENCY

JUDICIAL CENTRE CALGARY

APPLICANTS **IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF DOMINION DIAMOND MINES ULC,  
DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION  
DIAMOND CANADA ULC, WASHINGTON DIAMOND  
INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC  
AND DOMINION FINCO INC.**

DOCUMENT **AFFIDAVIT**

ADDRESS FOR  
SERVICE AND  
CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**AFFIDAVIT OF KRISTAL KAYE**

**Sworn on September 18, 2020**

I, Kristal Kaye, of Calgary, Alberta, SWEAR AND SAY THAT:

## I. Introduction

1. I am the Chief Financial Officer of Dominion Diamond Mines ULC (“**Dominion Diamond**”), Dominion Diamond Canada ULC (“**Dominion Canada**”) and Dominion Diamond Delaware Company, LLC (“**Dominion Delaware**”), three of the applicants in these proceedings, a director of Dominion Canada and Dominion Diamond Marketing Corporation (“**Dominion Marketing**”), and I also hold other director and officer positions with certain other non-CCAA applicant entities affiliated with Dominion Diamond. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true.

2. Dominion Diamond, Dominion Canada, Dominion Delaware, together with the other applicants in these proceedings, being Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, and Dominion Finco Inc., are collectively referred to in this affidavit as “**Dominion**” or the “**Applicants**”.

3. I have previously sworn affidavits in these proceedings, including my affidavit sworn on April 21, 2020 (my “**April 2020 Affidavit**”), in support of Dominion’s application for an initial order under the *Companies Creditors’ Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) that, among other things, describes Dominion’s business operations and restructuring objectives.

4. This affidavit provides an update on the status of these CCAA proceedings since the last hearing before this Court on June 19, 2020 and is made in support of Dominion’s application for an order, among other things:

- (a) extending the Stay Period (as defined in the Second Amended and Restated Initial Order of this Court dated June 19, 2020 (the “**SARIO**”)) until and including November 7, 2020; and
- (b) adding Dominion Marketing as an Applicant in these CCAA proceedings with the same rights and protections as are afforded to the Applicants by the SARIO.

5. In addition to my April 2020 Affidavit, the affidavits sworn in support of Dominion’s application for the SARIO, including affidavits of John Startin sworn May 21, 2020 (“the **Startin May Affidavit**”) and the supplement to the Startin May Affidavit dated June 12, 2020 (together, the “**Startin Affidavits**”), provide background to the current status of Dominion’s restructuring efforts. Capitalized terms not otherwise defined in this affidavit have the meanings ascribed to them in the Startin Affidavits.

## II. Update on the Applicants' Restructuring Efforts

### i. The SISP

6. As is described in detail in the Startin Affidavits, the Applicants, in consultation with Evercore, the Monitor, and certain key stakeholders, developed a structured two-phase Sale and Investment Solicitation Process (the "**SISP**") to be implemented by the Applicants with the assistance of Evercore and oversight of the Monitor. The SISP and the Stalking Horse Bid that served as the baseline bid for the SISP were approved by the SARIO on June 19, 2020.

7. The SISP contemplated a Phase 2 Bid Deadline (for delivery of definitive offers in accordance with the SISP) of August 31, 2020 (the "**Phase 2 Bid Deadline**") with an auction commencement date of September 3, 2020 (if needed). The SISP also provided for an Outside Date for the closing of a transaction of October 31, 2020.

8. The SISP permitted the Applicants, with the consent of the Monitor, to extend the Phase 2 Bid Deadline and to waive strict compliance with certain of the bid requirements.

9. Following the approval of the SISP on June 19, 2020, the Applicants, with the assistance of Evercore, implemented the SISP.

10. A bidder participating in the SISP requested an extension to the Phase 2 Bid Deadline. The Applicants, with the consent of the Monitor, the Stalking Horse Bidder, and the lenders under the Applicants' interim facility (the "**Interim Financing Facility**") waived certain SISP requirements and extended the date by which such requirements were required to be met (and extended certain corresponding SISP dates and deadlines) to September 8, 2020 (the "**First Extension**"). On September 9, 2020, and with the consent of the same parties, the Phase 2 Bid Deadline (and certain corresponding dates and deadlines) was extended until September 15, 2020 (the "**Second Extension**").

11. Ultimately, notwithstanding the First Extension and the Second Extension, on the extended September 15, 2020 Phase 2 Bid Deadline, there were no competing bids to that of the Stalking Horse Bid. Attached as **Exhibit "A"** to this affidavit is a copy of the Press Release of the Applicants dated September 15, 2020, which identifies the Stalking Horse Bid as the successful bid under the SISP. As noted in the Press Release, and in accordance with the Asset Purchase Agreement governing the Stalking Horse Bid (the "**Stalking Horse APA**"), the Stalking Horse Bidder will not be purchasing the Applicants' 40% interest in the Diavik Mine.

12. In accordance with the SISP, as amended in light of the above extensions, the Applicants anticipate making an application to this Court for an approval and vesting order in respect of the Stalking Horse Bid (that bid being the Successful Bid under the SISP). Further information and detail with respect to the SISP, including the extensions referenced above, will be provided to the Court at that time.

**ii. Interim Financing**

13. As of the date of this affidavit, the Applicants have made three draws on the Interim Financing Facility approved by the SARIO on June 19, 2020, as follows:

<u>Date</u>	<u>Amount</u>
June 24, 2020	US \$10 million
July 15, 2020	US \$10 million
August 17, 2020	US \$10 million
<i>TOTAL</i>	<i>US \$30 million</i>

**iii. Diamond Sales**

14. As set out in my April 2020 Affidavit, at the time of filing for CCAA protection, the Applicants had diamond inventory with a total book value of approximately US \$180 million, which was effectively “trapped” in various stages of the Applicants’ diamond marketing and sale cycle due to COVID-19 related trade and travel restrictions.

15. Recently, access to the international diamond market has gradually begun to reopen and provide opportunity for the Applicants to realize value on their diamond inventory.

16. The Applicants have been successful in initiating a sale process in their re-opened Antwerp sales office. The Applicants proceeded with a sales process to sell goods with a book value of US \$58 million in inventory at a reserve price of US \$52 million. As of the date of this affidavit, the first tranche of the sale resulted in US \$46 million being sold. A second tranche estimated to generate gross proceeds of approximately US \$8 million consisting of smaller diamonds will be put on sale next week.

17. The net revenue generated by recent diamond sales will be paid to reduce the amounts outstanding on the Interim Financing Facility. The net revenue generated will be lower than the gross sales price in light of expenses, fees, royalties, taxes, etc.

### **III. The Proposed Stay Extension**

18. The Initial Order of this Court granted on April 22, 2020 granted a Stay Period until and including May 2, 2020. This initial Stay Period was subsequently extended by various orders of this Court and is currently set to expire on September 28, 2020.

19. The Applicants' proposed stay extension up to and including November 7, 2020, which coincides with the Outside Date under the SISF, is required to permit a closing of the transaction contemplated by the Successful Bid under the SISF, provide the necessary breathing room for the Applicants as they continue to work towards their restructuring objectives, and permit the Applicants to attend to the various other CCAA matters that will arise, all for the benefit of their stakeholders.

20. I understand that the Monitor will file a report (the "**Monitor's Sixth Report**") which will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the Applicants will have sufficient funds to continue their operations and fund these CCAA proceedings until November 7, 2020. I further understand that the Monitor's Sixth Report will recommend that the Stay Period be extended as requested by the Applicants.

### **IV. Addition of Dominion Marketing as a CCAA Applicant**

21. Dominion Marketing, a private company incorporated under the federal laws of Canada, is a wholly owned subsidiary of Dominion Holdings (a CCAA Applicant). As noted in my April 2020 Affidavit, and shown on the organizational chart attached as **Exhibit "B"** hereto, Dominion Marketing holds a nominal interest in each of Dominion Diamond (India) Private Limited ("**Dominion India**") (0.01%) and Dominion Diamond Marketing N.V. ("**Dominion Belgium**") (0.0003%), and has historically operated with the Applicants and their affiliated entities on an integrated basis.

22. Pursuant to the Stalking Horse APA, the issued and outstanding equity interests held by Dominion Holdings in Dominion Marketing are an "Acquired Asset" together with all of the issued and outstanding equity interests held by the Dominion Vendors in Dominion India and Dominion Belgium. The parties are continuing to consider whether it will be necessary for

Dominion Marketing to become a party to, or guarantor of, the Interim Financing Facility and whether amendments will need to be made to the Stalking Horse APA as a result of the issues described below and the inclusion of Dominion Marketing as a CCAA Applicant.

23. Prior to July 2018, Dominion Marketing was engaged in Dominion's diamond sorting and marketing activities. However, as discussed in my April 2020 Affidavit, Dominion's rough diamonds are presently sorted by Dominion India pursuant to the India Sorting Agreement.

24. Dominion Marketing is not currently engaged in any diamond sorting, marketing or other material business activities and does not have any employees. Its residual assets from its past operations consist of (a) a sorting building located on leased land in Yellowknife that has only nominal market value which is being subleased to a third-party for approximately \$2,200 a month; and (b) a commercial lease dated June 1, 2016 with 60198338 Canada Inc. (the "**Landlord**") for the lease of certain office space (the "**Leased Space**") in Toronto, as well as a related Storage Lease for certain storage premises (together, the "**Lease**"). Pursuant to an indemnity agreement dated June 1, 2016, Dominion Diamond Corporation (as predecessor to Dominion Diamond) has indemnified the Landlord for Dominion Marketing's obligations under the Lease, meaning that any claim by the Landlord against Dominion Marketing with respect to the Lease can also be brought against Dominion Diamond.

25. Dominion Marketing subleases the Leased Space to iQ Office 250 University Inc. (the "**Sub-Tenant**"), which has been in default on its rent payments to Dominion Marketing since April 2020. The amount currently owing to Dominion Marketing by the Sub-Tenant is approximately CAD \$582,000. Dominion Marketing has noted the Sub-Tenant in default.

26. The Sub-Tenant's default has rendered Dominion Marketing unable to meet its own obligations to the Landlord under the Lease. With no material active operations and assets, Dominion Marketing is unable to meet its obligations under the Lease, consisting primarily of the obligation to pay monthly rent in the amount of approximately CAD \$113,000 over the remaining term of the Lease (expiring January 31, 2024), as they become due.

27. The Applicants and Dominion Marketing are of the view that it is in the best interests of the Applicants' restructuring efforts that Dominion Marketing be formally added as an Applicant in these CCAA proceedings with the same rights and protections as are afforded to the Applicants by the SARIO.

28. A copy of the unaudited financial statements of Dominion Marketing for the period January 1, 2020 to August 31, 2020 is attached as **Exhibit "C"**. However, as noted above, Dominion Marketing has not been engaged in sorting and marketing activities since approximately July 2018 and is not presently engaged in other material business activities. For historical reasons, intercompany funds and cross charges payable in connection with Dominion India's third-party sorting and shipping costs were flowed through Dominion Marketing. There are no *Personal Property Security Act* registrations against Dominion Marketing.

29. As Dominion Marketing does not generate material revenues or have material operating liabilities other than its obligations under the Lease, it does not have material cash needs. The company's current cash inflow consists of GST and income tax refunds and rent on the Yellowknife sorting facility in the amount of CAD \$2,200 per month. The company's current cash outflow consists of payment of rent of approximately CAD \$113,000 payable on the first of each month until the end of the Lease term in January 2024, or until the Lease is disclaimed (which is the Applicants' current intention), terminated or amended in these CCAA proceedings. Based on the cash flow forecasts to be attached to the Monitor's Sixth Report, the Applicants will have sufficient funds to fund Dominion Marketing's status as an applicant in these CCAA proceedings. The Monitor has not raised any concerns with respect to the addition of Dominion Marketing as an applicant in these CCAA proceedings.

30. For the reasons set out above, it is my view that it is appropriate and necessary that the relief being sought is granted. The Applicants are acting in good faith and with due diligence.

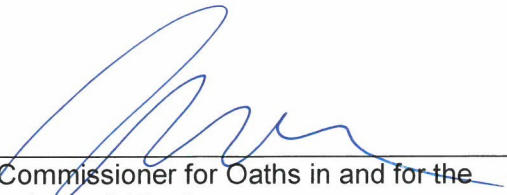
SWORN BEFORE ME at Calgary, Alberta, )  
this 18<sup>th</sup> day of September, 2020. )  
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A Commissioner for Oaths in and for the )  
Province of Alberta )  
Morgan E. Crilly )  
Barrister & Solicitor )

  
\_\_\_\_\_  
KRISTAL KAYE

**Tab A**



This is Exhibit "A" referred to in the Affidavit of  
Kristal Kaye sworn before me this 18 day of  
September 2020.



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A Commissioner for Oaths in and for the  
Province of Alberta

Morgan E. Crilly  
Barrister & Solicitor



## NOTIFICATION

### **DOMINION DIAMOND MINES PROVIDES UPDATE ON SALE PROCESS**

**CALGARY, AB - September 16, 2020** - Dominion Diamond Mines ULC (“Dominion” or the “Company”) announced today that the stalking horse bid (the “Washington Bid”) submitted by Canadian Diamond Holdings, L.P. and CA Canadian Diamond Mines ULC, affiliates of the Washington Companies (“Washington”) is the successful bid under the sales process approved by the Court of Queen’s Bench of Alberta (the “Court”) on June 19, 2020. No other qualified bids were submitted for the purchase of all or part of Dominion’s assets.

The Washington Bid contemplates a purchase of substantially all of Dominion’s assets related to the Ekati Diamond Mine (“Ekati”). Dominion’s 40% interest in the Diavik Diamond Mine joint venture has been excluded from the sale. The consideration to be paid by Washington to Dominion includes approximately US\$126 million in cash, US\$20 million to be made available with respect to pre-filing trade suppliers (less the amount of the Company’s interim facility proceeds available to pay claims of such suppliers) and the assumption of substantially all of Dominion’s other Ekati-related operating liabilities, which includes offering employment to substantially all of Dominion’s employees and the assumption of pension obligations.

The Washington Bid is subject to a number of conditions to closing, including approval by the Court and Washington entering into an agreement with the issuers of the surety bonds currently posted with the Government of the Northwest Territories to provide continued security for the reclamation obligations related to Ekati. Assuming satisfaction of all conditions to closing, the transaction is expected to close by November 7, 2020.

Dominion is working to return to full operations at Ekati, pending the completion of the transaction, a successful recovery of global diamond sales and the Company’s ability to maintain a safe and healthy work environment for its employees and the communities in the Northwest Territories.

Copies of the applicable Court orders and other Court materials and information related to the Company’s CCAA proceedings are available on the website maintained by FTI, which has been appointed by the Court as Dominion’s Monitor to oversee the CCAA proceedings: [cfcanda.fticonsulting.com/Dominion](http://cfcanda.fticonsulting.com/Dominion).

\* \* \* \* \*

#### **About Dominion Diamond Mines**

Dominion Diamond Mines ULC is a Canadian mining company and one of the world’s largest producers and suppliers of premium rough diamond assortments to the global market. The company owns a controlling interest in the Ekati Diamond Mine, which it operates, and owns 40% of the Diavik Diamond Mine. The company also holds a controlling interest in the Lac de Gras Diamond Project. The Ekati and Diavik Diamond Mines, and the Lac de Gras Diamond Project are located in the Northwest Territories of Canada. In addition to its mining and exploration operations, Dominion has offices in Canada, Belgium and India.

For more information, please visit [www.ddmines.com](http://www.ddmines.com) and Dominion’s private investor portal, or contact [investor@ddcorp.ca](mailto:investor@ddcorp.ca).

**Media Contacts:**

Rebecca Hurl

Rebecca.Hurl@ddcorp.ca

403-797-0486

Sard Verbinnen & Co

Jared Levy/Liz Zale

DominionDiamond-SVC@sardverb.com

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# Tab B

This is Exhibit "B" referred to in the Affidavit of  
Kristal Kaye sworn before me this 18 day of  
September 2020.

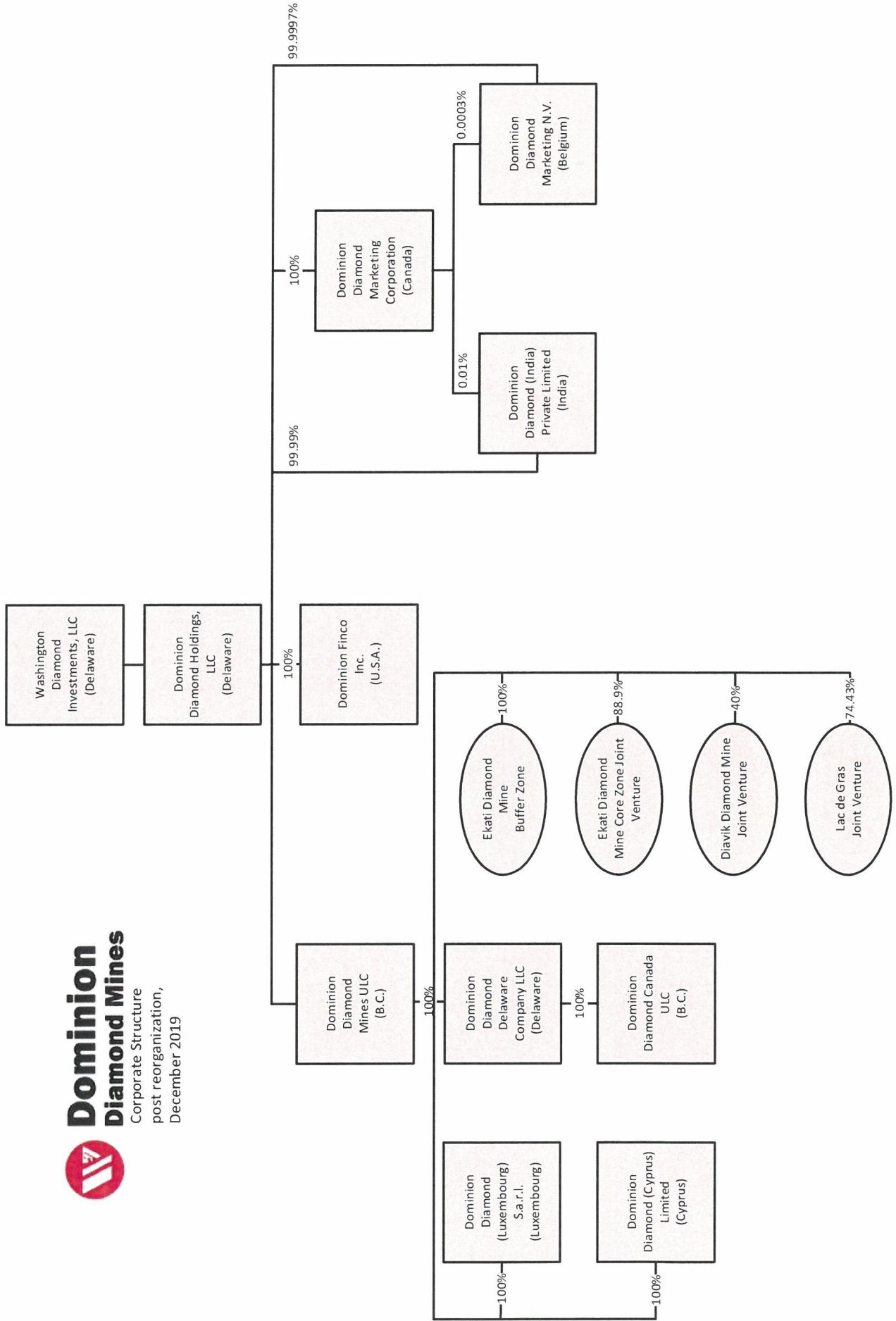


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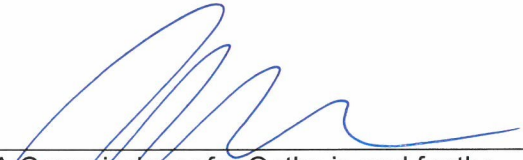
Morgan E. Crilly  
Barrister & Solicitor

Schedule A-1  
**DOMINION DIAMOND MINES ULC ORGANIZATIONAL CHART**



# Tab C

This is Exhibit "C" referred to in the Affidavit of  
Kristal Kaye sworn before me this 17 day of  
September 2020.



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A Commissioner for Oaths in and for the  
Province of Alberta

Morgan E. Crilly  
Barrister & Solicitor



	BW Reference	Legal From BW consolidated BW = SAP	PPA From BW consolidated BW = SAP	Total legal + PPA Total
<b>BALANCE SHEET</b>				
<b>Assets</b>				
<b>Non-current assets</b>				
Property, plant & equipment	WDI119	645,955	(0)	645,955
Other non-current assets	WDI129	2,537,420	-	2,537,420
<b>Total non-current assets</b>		<b>3,183,375</b>	<b>(0)</b>	<b>3,183,375</b>
<b>Current assets</b>				
Trade & other receivables	WDI132	355,843	-	355,843
Cash & cash equivalents	WDI133	474,053	-	474,053
Other current assets	WDI131	76,598	-	76,598
<b>Total current assets</b>		<b>906,495</b>	<b>-</b>	<b>906,495</b>
<b>Total Assets</b>		<b>4,089,869</b>	<b>(0)</b>	<b>4,089,869</b>
<b>Equity &amp; Liabilities</b>				
<b>Equity</b>				
Share capital	DDC1469550	(71)	(4,115,929)	(4,116,000)
Retained earnings	WDI121	491,977	4,116,336	4,608,313
Net Income (loss)		523,983	(390)	523,593
Closing retained earnings		1,015,889	18	1,015,906
Contributed surplus	WDI115	(1,684,385)	-	(1,684,385)
<b>Total equity</b>		<b>(668,496)</b>	<b>18</b>	<b>(668,479)</b>
<b>Liabilities</b>				
<b>Non-current liabilities</b>				
Lease Obligation	WDI147	(1,248,992)	-	(1,248,992)
Deferred income tax liabilities	WDI153	610,255	-	610,255
<b>Total non-current liabilities</b>		<b>(638,737)</b>	<b>-</b>	<b>(638,737)</b>
<b>Current liabilities</b>				
Trade & other payables	WDI17	(198,096)	(276)	(198,372)
Inter-company payables & receivables	WDI67	(2,331,723)	259	(2,331,464)
Income taxes payable	WDI112	131,624	-	131,624
Current Portion of lease obligation	WDI19	(384,442)	-	(384,442)
<b>Total current liabilities</b>		<b>(2,782,636)</b>	<b>(17)</b>	<b>(2,782,654)</b>
Total liabilities		(3,421,373)	(17)	(3,421,390)
<b>Total equity and liabilities</b>		<b>(4,089,869)</b>	<b>0</b>	<b>(4,089,869)</b>
<b>INCOME STATEMENT</b>				
Revenue - Intercompany	WDI112	(582,125)	-	(582,125)
Other Income	WDI68	(14,292)	-	(14,292)
Selling and distribution expenses	WDI69	934,006	-	934,006
General & administrative expenses	WDI170	-	-	-
<b>Operating loss</b>		<b>337,589</b>	<b>-</b>	<b>337,589</b>
Finance expenses	WDI61	287,481	-	287,481
Finance income	WDI162	-	-	-
Foreign exchange (gain) loss	WDI63	7,662	(390)	7,272
<b>Net finance costs</b>		<b>295,143</b>	<b>(390)</b>	<b>294,753</b>
Loss (Income) before income taxes		632,732	(390)	632,342
Current income tax expense (recovery)	WDI27	-	-	-
Deferred income tax expense (recovery)	WDI60	(108,749)	-	(108,749)
<b>Net (Income) loss</b>		<b>523,983</b>	<b>(390)</b>	<b>523,593</b>