



101926

Justice Eidsvik  
JS  
Oct 15, 2021



COURT FILE NUMBER 2001-05630  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

APPLICANTS **IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 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.**

PARTY FILING THIS DOCUMENT **ARCTIC CANADIAN DIAMOND COMPANY LTD.**

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
**Torys LLP**  
79 Wellington St W., 30<sup>th</sup> Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2  
  
Attention: Scott Bomhof  
Telephone: + 1 416.865.7370  
Email: sbomhof@torys.com  
File No.: 41909-0001

**AFFIDAVIT OF RACHEL DINGMAN**  
**affirmed on October 13, 2021**

I, Rachel Dingman, of the Town of Okotoks, in the Province of Alberta, **SOLEMNLY AFFIRM AND DECLARE THAT:**

- I am a Legal Assistant at Torys LLP. Our office is counsel to Arctic Canadian Diamond Company Ltd. ("ACDC"), who purchased certain of the assets that are the subject matter of the Application brought by FTI Consulting Canada Inc., the Court-appointed monitor of Dominion Diamond Mines ULC, scheduled to be heard before The Honourable Madam Justice Eidsvik on October 15, 2021 at 10:00 a.m. As such, I have personal knowledge of



This is Exhibit "1"  
to the Affidavit of Rachel Dingman  
affirmed before me this 13<sup>th</sup> day of October, 2021

---

Notary Public or Commissioner for Oaths in  
and for the Province of Alberta

A handwritten signature in black ink, appearing to be the initials 'RD' or similar, located in the bottom right corner of the page.



**Chris Simard**  
Direct Line: 403.298.4485  
e-mail: simardc@bennettjones.com  
Our File No.: 76142.10

October 13, 2021

**Via Email**

Scott A. Bomhof  
Torys LLP  
3300 - 79 Wellington St W  
Toronto, ON M5K 1N2

Dear Mr. Bomhof:

**Re: Dominion Diamond Mines ULC - CCAA Proceedings in Action No. 2001-05630**

We are writing to provide the Monitor's responses to the questions set out in your letter of October 11, 2021 (the "**October 11 Letter**"). All capitalized terms in this letter that are not defined are intended to bear their meanings as defined in the Sixteenth Report, or in the October 11 Letter.

**1. Short Notice**

We do not agree that the Monitor's application was brought on "short notice". The *Alberta Rules of Court* provide that a notice of application must be served at least five days before the hearing. The Monitor's application was served on October 6, 2021, nine days before the hearing.

ACDC also had notice of the substantive relief being sought in the application, well before October 6. ACDC was aware of the general commercial terms of both transactions by the time we spoke on the morning of September 28, and ACDC was made aware of the specific terms of the RVO Transaction that same afternoon, when I forwarded to you the draft RVO Term Sheet and RVO.

Since that time, the Monitor has also made efforts to attempt to help ACDC access the additional information about the Diavik Joint Venture that was requested in the email sent by Mr. Hoff of DDJ to the Monitor on September 29 (the day after he had separately spoken directly to the Monitor about the two transactions). As you know, the Monitor communicated with you and with counsel for DDMI, to facilitate the exchange of the information that DDJ had requested, but that DDMI considered to be confidential. On September 30, 2021, the Monitor established a data room to facilitate the transfer of this information. On October 3, I advised you that DDMI had agreed in principle to allow the Monitor to release certain information to the Bidders, their professionals and ACDC's professionals, and that it had agreed to release other information to the three individuals at ACDC that you had identified (Kristal Kaye, Andrew Petch and Huili Li). DDMI's agreement to release this information was contingent on DDMI being satisfied with the confidentiality arrangements to be put in place. Accordingly, on October 3 I repeated my request from October 2 that you consent to the Monitor

sharing with DDMI the non-disclosure agreements entered into by the Bidders and your firm as counsel, during the SISP. On October 3, you advised that you were seeking instructions from your clients on that point, but in the ten days since that communication, neither you nor your client have communicated on this point further.

The Monitor believes that the application must proceed promptly, because:

- to maximize the benefit it can derive from the tax attributes of the Dominion Entities, Washington (or any other successful bidder in the RVO Transaction) will want to take certain steps before December 31, 2021;
- it is a condition of the Support Agreement that the AVO Transaction be approved within 60 days after September 16, 2021; and
- as disclosed in paragraphs 71 – 77 and Appendix "L" to the Sixteenth Report, the estate's funding is being depleted and there are no other sources of available funding (other than the funding being provided in connection with the AVO Transaction and the RVO Transaction, to pay for the work associated with those transactions). After the completion of the ACDC Transaction, the estate was left with a fixed amount of funding: US\$1,000,000 in the Diavik Realization Account and US\$250,000 in the Wind-down Account (in the aggregate, approximately C\$1,598,000). The Diavik Realization Account has been almost entirely depleted, essentially leaving only the Wind-down Account available to cover all post-transaction costs.

In your October 8, 2021 letter to the Service List, you advised that ACDC will ask for an adjournment of the October 15 hearing. We want to make you aware that the Monitor does not agree that an adjournment is necessary, and intends to proceed with its application on October 15.

## **2. The AVO Transaction**

- (a) The Monitor's discussions and negotiations of the AVO Transaction documents are privileged and confidential. As a result, the Monitor will not comment on the specifics of any negotiations or drafting of the transaction documents.
- (b) The Monitor became aware of these developments on the following approximate dates:
  - on or about June 29, 2021: the Monitor learned that the Agent and DDMI had commenced direct conversations about possible transactions or resolutions; and
  - on or about September 16, 2021: the Monitor learned that the Agent and DDMI had executed the Support Agreement.
- (c) As noted above, the Monitor will not comment on the specifics of any negotiations or drafting of the transaction documents. The Monitor's efforts to administer the Applicants' Property after the closing of the ACDC Transaction, including DDM's interest in the Diavik JVA, were



described in paragraphs 15 – 21 of the August 30, 2021 Fifteenth Report (the "**Fifteenth Report**").

- (d) The Monitor has not prepared or commissioned any valuation of DDM's interest in the Diavik JVA. As described in the Sixteenth Report, the Applicants extensively marketed DDM's interest in the Diavik JVA in the SISP and no bids were received. The Monitor's illustrative purchase price of the Acquired Assets is set out at paragraph 44(h) of the Sixteenth Report and the Monitor's Illustrative Cover Payment Forecast is set out at paragraph 51(e) of the Sixteenth Report. In the circumstances, the Monitor did not consider it necessary to prepare or commission a valuation of the Acquired Assets.
- (e) As a result of the circumstances set out in the preceding subparagraph, the Monitor did not take steps to actively market DDM's interest in the Diavik JVA. I note that in subparagraphs 2(e) and 2(j) of the October 11 Letter, you seem to imply, or state, that the Diavik Realization Account US\$1,000,000 was funded by ACDC. The Monitor does not agree with that suggestion. As reported in paragraph 21(i) and (j) of the Monitor's December 9, 2020 Eleventh Report, the Diavik Realization Account and the Wind-down Account were funded with the Applicants' cash on hand when the ACDC Transaction closed. This was expressly agreed between the parties in sections 7.1(a)(iii) and (iv) of the ACDC APA. (Although I note that in paragraph 19 of the Monitor's February 22, 2021 Fourteenth Report, it was incorrectly reported that the Purchaser (*ie.* the Bidders) funded those amounts).
- (f) The parties' respective positions regarding the dispute over the Section 4 Diamonds with a DICAN value of approximately \$8.4 million (as described in paragraph 18 of the Fifteenth Report), are set out in the letters attached as **Appendix "A"** to this letter.
- (g) DDMI's cash calls issued since the granting of the EMP Order, totaling \$229 million, were issued on the following dates and in the following amounts:



<b>Summary of Cash Calls since EMP Order</b> <i>(\$ thousands)</i>		
<b>Cash Call Date</b>	<b>Payment Type</b>	
February 1	Operating Payment	\$ 11,200
February 15	Operating Payment	4,800
March 1	Operating Payment	18,000
March 4	Exploration Payment	46
March 15	Operating Payment	18,000
April 1	Operating Payment	22,400
April 8	Exploration Payment	86
April 15	Operating Payment	14,000
May 1	Operating Payment	18,000
May 11	Exploration Payment	27
May 15	Operating Payment	6,400
June 1	Operating Payment	7,600
June 1	Exploration Payment	310
June 15	Operating Payment	4,800
July 1	Operating Payment	10,000
July 1	Exploration Payment	583
July 5	Reclamation Payment	60,940
July 15	Operating Payment	4,400
August 2	Operating Payment	8,800
August 16	Operating Payment	6,400
August 16	Exploration Payment	350
September 1	Operating Payment	8,000
September 1	Exploration Payment	221
September 15	Operating Payment	3,600
<b>Total Cash Calls</b>		<b>\$228,961</b>

The cash call invoices received from DDMI are attached as **Appendix "B"** to this letter. The Monitor is not in possession of any correspondence between the Agent and the technical experts referenced in paragraph 37 of the Sixteenth Report. With respect to the validity and enforceability of DDMI's claims against DDM, we confirm that we have provided an opinion to the Monitor, in which we have confirmed that DDMI's security as against DDM is valid and enforceable.

- (h) The Monitor does not understand what you mean by analyses of "the First Lien Lenders' exposure under their LCs net of all current Cash Collateral". That the First Lien Lenders issued the LCs totaling C\$105 million, and that the Applicants delivered those LCs to DDMI has never been disputed, and was indeed admitted by the Applicants in the First Affidavit of Kristal Kaye dated April 21, 2021. At paragraph 19 of the Sixteenth Report, the Monitor has reported that the net current exposure of the First Lien Lenders under the LCs is approximately



C\$53,610,000. We confirm that we have provided an opinion to the Monitor, in which we have confirmed that the First Lien Lenders' security as against DDM is valid and enforceable.

- (i) The Monitor understands that your client ACDC has copies of the LCs. The Monitor is not aware of the arrangements that DDMI has made or may make with GNWT regarding the replacement of the LCs.
- (j) A detailed accounting of the use of the US\$1,000,000 Diavik Realization Account (as noted above, funded by the Applicants) is set out in paragraphs 71, 75 and 77 of the Sixteenth Report.

### **3. The RVO Transaction**

- (a) The Applicants extensively marketed all of their assets in the SISP, and no bids were received for the shares of the Dominion RVO Entities or the Retained Assets. The Monitor's view is that the only other party who could realistically benefit from these assets, and therefore the only other potential bidder, is ACDC. Since the RVO Term Sheet provides the Monitor with the ability to market the assets and potentially hold an auction, the Monitor did not consider it necessary to actively market these assets. Because ACDC is the only other potentially viable bidder for these assets, we wrote to you on October 7, 2021, asking you to confirm by Tuesday, October 12, 2021 whether ACDC intended to make a bid for these assets. The Monitor assumes from your lack of response that ACDC does not intend to make such a bid.
- (b) The Monitor's discussions and negotiations of the RVO Transaction documents are privileged and confidential. As a result, the Monitor will not comment on the specifics of any negotiations or drafting of the transaction documents.
- (c) Given the circumstances regarding the RVO Transaction (including that the RVO Term Sheet provides the Monitor with the ability to market the assets and potentially hold an auction in which ACDC is the only other potential bidder), the Monitor has not undertaken any valuation of the Tax Attributes.
- (d) Given the circumstances regarding the RVO Transaction (including that the RVO Term Sheet provides the Monitor with the ability to market the assets and potentially hold an auction), the Monitor has not undertaken any analyses or assessments regarding Dominion's tax attributes on an RVO "cleansed" basis.
- (e) Your client ACDC has copies of all up-to-date tax filings. The 2020 tax filings for DDM (now 1192090 BC Unlimited Liability Company), Dominion Diamond Marketing Corporation and Dominion Diamond Canada ULC (now 1191452 BC Unlimited Liability Company), being the only Canadian taxpayers among the Applicants, were in fact completed and filed by employees of ACDC (pursuant to the TSA), working with PwC. Tammy Taylor and Kristal Kaye are the ACDC employees who did this work and have this information.
- (f) Confirmed, on the basis that the "Acquired Subsidiaries" include only Dominion Diamond (India) Private Limited, Dominion Diamond Marketing N.V. and Dominion Diamond





October 13, 2021

Page 6

(Cyprus) Limited, because the Bidders did not elect to include any other entities prior to the closing of the ACDC Transaction. I have asked for and await your confirmation on that point.

- (g) The Monitor's view is that if the RVO Transaction closes before the AVO Transaction closes, all creditors' rights and entitlements to the Diavik Joint Venture, and ACDC's interest in the Diavik Realization Assets, would continue substantively unaffected, although the Diavik Joint Venture would reside in the Creditor Trust.
- (h) The Monitor is not able to estimate exactly what funding might be required, as this would be dependent on the complexity of the required process.

We trust that this answers your questions. Please let us know if you would like to discuss these matters further. The Monitor will file and serve a Supplementary Report prior to the October 15, 2021 hearing, which will include the October 11 Letter and this response letter, so that the Court and all stakeholders are aware of your questions and the Monitor's responses.

Yours truly,



Chris Simard

CS:/dmk

cc: Client  
Kelsey Meyer, Bennett Jones LLP



## Appendix "A"



Bennett Jones

Bennett Jones LLP  
4500 Bankers Hall East, 855 - 2nd Street SW  
Calgary, Alberta, Canada T2P 4K7  
Tel: 403.298.3100 Fax: 403.265.7219

**Kelsey Meyer**  
Partner  
Direct Line: 403.298.3323  
e-mail: meyerk@bennettjones.com  
Our File No.: 76142.10

April 30, 2021

**VIA EMAIL: louis.beland@riotinto.com**

Louis Beland  
Senior Legal Counsel  
Rio Tinto  
400 - 1190 Avenue Des Canadiens-de-Montréal  
Montréal, QC H3B 0E3

Dear Mr. Beland:

**Re: Joint Venture Agreement Between Dominion Diamond Mines ULC ("Dominion") and Diavik Diamond Mines (2012) Inc. ("DDMI") dated March 23, 1995, as amended ("JVA")  
Section 4 Diamonds**

As you know, we are legal counsel to FTI Consulting Canada Inc., the court-appointed Monitor of Dominion pursuant to its proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA"). We write with respect to a call from Thomas Croese of DDMI to the Monitor on April 22, 2021 wherein Mr. Croese advised the Monitor that with respect to the Section 4 Diamonds, any value in excess of the DICAN value will be taken by DDMI and applied toward Cover Payments.

The Monitor strongly disagrees with DDMI's position in this regard. It is clearly contrary to Madam Justice Eidsvik's decisions in the CCAA proceedings<sup>1</sup>, the effect of which is that 40% of the full sale price of the Section 4 Diamonds is allocated to Dominion. We demand that DDMI provide written confirmation of this point, and that any value in excess of the DICAN value of the Section 4 Diamonds will be paid to the Monitor, on behalf of Dominion, forthwith.

If DDMI fails to provide such written confirmation by Monday, May 3, 2021, this letter constitutes notice that the Monitor objects to DDMI selling any of the Section 4 Diamonds, pending resolution of entitlement to the proceeds thereof.

If necessary, we will seek further direction from Madam Justice Eidsvik on this point, in which case the Monitor will seek costs against DDMI.

---

<sup>1</sup> Her Ladyship's Endorsement filed November 10, 2020 states at paragraph 3 that "the diamonds in excess of the Cover Payments owed, based on the DICAN valuation, should be delivered immediately to Dominion", and Her Ladyship's Endorsement filed January 19, 2021 held at paragraphs 1 and 17 that the value of the Dominion Product (based on the DICAN valuation) should include the value of the Section 4 Diamonds.

The Monitor also has the following concerns:

1. As previously advised, the Monitor continues to reserve its rights regarding DDMI's selection of the December 2020 diamond collateral.
2. The Monitor continues to review the appropriateness of DDMI's deduction of more than \$3 million in "enforcement costs" from the proceeds of the February 23<sup>rd</sup> diamond sale.
3. We understand from the joint venture meeting held between DDMI and the Monitor on April 27, 2021 that DDMI's reclamation assumptions have caused DDMI's estimate of reclamation costs to increase substantially from previous years, and that as a result, DDMI will be issuing a cash call to Dominion in the amount of approximately \$60 million in or about July of 2021. The Monitor will be seeking further information from DDMI on the basis for this significant increase.

Please provide written confirmation forthwith that the excess value of the Section 4 Diamonds (all value in excess of the DICAN value) will be paid to the Monitor on behalf of Dominion.

Yours truly,

**BENNETT JONES LLP**



Kelsey Meyer

KM:ae

cc: Deryck Helkaa, Tom Powell, Lindsay Shierman, and Ben Chiu, FTI Consulting Canada Inc. (via email)  
Chris Simard, Bennett Jones LLP (via email)  
Marc Wasserman, Michael De Lellis and Emily Paplawski, Osler, Hoskin & Harcourt LLP (via email)



Calgary

July 14, 2021

Marc Wasserman  
Direct Dial: 416.862.4908  
MWasserman@osler.com  
Our Matter Number: 1210529

Toronto

Montréal

**Sent By Electronic Mail**

Ottawa

McCarthy Tetrault LLP  
Suite 4000, 421 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

Vancouver

New York

Attention: Mr. Walker MacLeod

Dear Sir:

**Re: *In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC (“Dominion”), et al, ABQB Action No. 2001-05630***

As you know, we are counsel to Credit Suisse AG, Cayman Islands Branch (the “Agent”). We write regarding Diavik Diamond Mines (2012) Inc.’s (“DDMI”) ongoing breach of paragraph 16 of the Second Amended and Restated Initial Order, granted June 19, 2020 (as confirmed by further Order of the Honourable Justice Eidsvik, granted November 4, 2020, and as further clarified by Her Ladyship on January 18, 2021, the “SARIO”).

**1. DDMI’s Continued Retention of Dominion’s Property**

First, DDMI continues to unlawfully retain possession of Dominion’s share of the Section 4 Diamonds. As you know, paragraph 16 of the SARIO authorizes DDMI to “hold an amount of Dominion Diamond’s share of production from the Diavik Mine equal to the total value of the JVA Cover Payments made by DDMI.” As Justice Eidsvik noted in her Endorsement, filed November 10, 2020, any “diamonds in excess of the Cover Payments owed, based on the DICAN valuation, should be delivered immediately to Dominion.” Her Ladyship confirmed in her endorsement filed January 19, 2021 that “diamonds” include the Section 4 Diamonds.

Dominion’s share of Section 4 Diamonds in excess of Cover Payments (as valued on the basis of DICAN) total approximately \$8.4 million CAD. Accordingly, pursuant to Section 16 of the SARIO, Section 4 Diamonds totalling \$8.4 million CAD (on the basis of DICAN) constitute the property of Dominion. As the property of Dominion, any upside realized on the sale of such Section 4 Diamonds also constitutes the property of Dominion.

We understand that in recognition of the complexities involved in implementing the Splitting Protocol during Dominion’s CCAA proceeding, DDMI suggested, and the Monitor agreed, that DDMI would sell Dominion’s share of the Section 4 Diamonds and remit the proceeds to the Monitor for the benefit of Dominion’s stakeholders. However, on April 22, 2021, Thomas Croese of DDMI called the Monitor and unilaterally announced

that any value in excess of DICAN realized on the sale of Dominion's share of Section 4 Diamonds would be taken by DDMI and applied toward Cover Payments.

By letter dated April 30, 2020, the Monitor objected to such misappropriation of Dominion's property, advising that "It is clearly contrary to Madam Justice Eidsvik's decision in the CCAA proceedings." The Monitor demanded that DDMI provide written confirmation that "any value in excess of the DICAN value of the Section 4 Diamonds will be paid to the Monitor, on behalf of Dominion, forthwith" and put DDMI on notice that unless such written confirmation was received, the Monitor objected to DDMI selling any of the Section 4 Diamonds. We understand from the Monitor that no such written confirmation from DDMI was forthcoming.

The Agent strongly objects to DDMI's continuing efforts to circumvent the clear intent and language of the SARIO. The Agent demands that DDMI immediately deliver to the Monitor the DICAN value of Dominion's share of the Section 4 Diamonds in excess of the Cover Payments (approximately \$8.4 million CAD). The Agent reserves all rights with respect to any additional value realized by DDMI on the sale of Dominion's share of the Section 4 Diamonds.

Unless such value is captured within a global settlement between the Agent and DDMI, the Agent intends to bring DDMI's ongoing breach of the SARIO back before Justice Eidsvik for determination. If such an application becomes necessary, the Agent will seek enhanced costs against DDMI.

## **2. DDMI's Inequitable Distribution of the Excess Collateral**

Second, DDMI selected the composition of Excess Production (as defined below) which it delivered to Dominion in early 2021 to heavily favour the interests of DDMI contrary to the spirit and intent of the SARIO.

On January 18, 2021, Justice Eidsvik directed DDMI to "deliver the excess diamonds, as discussed, for the period up to November 15, 2020" (the "**Excess Production**") and "continue to calculate the appropriate set off on a periodic monthly basis using the same methodology."

On January 27, 2020, DDMI delivered the Excess Production (less the Section 4 Diamonds) to Dominion. Upon receipt, Dominion advised the Agent that the composition of the Excess Production appeared to heavily prefer the interests of DDMI over Dominion by:

1. excluding diamonds from earlier production cycles which were significantly undervalued by DICAN because of the point in time at which such valuations were completed (at the height of the COVID-19 pandemic). Instead, DDMI has included

only diamonds from recent production cycles which are less undervalued by DICAN, thereby reducing the quantum of diamonds required to satisfy the value of Excess Production required to be delivered by DDMI to Dominion; and

2. including only diamonds at the lower end of all production sizes instead of providing an equitable distribution across different size categories of non-Section 4 Diamonds, thereby limiting the available market for Dominion to sell the Excess Production, and minimizing the potential upside that is typically realized on the sale of larger diamonds.

The Agent understands that the Monitor reserved all rights regarding DDMI's inequitable selection of the Excess Production.

DDMI's approach to calculating and delivering the Excess Production offends the spirit and intent of the SARIO. The SARIO provides a narrow exception to the otherwise binding and continuing obligations of DDMI under the Diavik JVA to make available to each participant its respective share of all diamond production in kind and in accordance with the established delivery schedule. DDMI has blatantly failed to comply with such obligations in its selection and delivery of the Excess Production to Dominion.

Similar to the Monitor, the Agent reserves all rights with respect to DDMI's inequitable selection of the Excess Production. Again, unless such value is captured within a global settlement between the Agent and DDMI, the Agent intends to bring this issue back before Justice Eidsvik for determination. Similar to the Section 4 Diamonds discussed above, if such an application becomes necessary, the Agent will seek enhanced costs against DDMI.

Yours truly,



Marc Wasserman

c: Client  
Sean Collins, *McCarthy Tetrault*  
Tom Powell, Deryck Helkaa, Lindsay Shierman, *FTI Consulting*  
Chris Simard and Kelsey Meyer, *Bennett Jones*  
Michael De Lellis and Emily Paplawski, *Osler*



McCarthy Tétrault LLP  
Suite 4000  
421-7th Avenue S.W.  
Calgary AB T2P 4K9  
Canada  
Tel: 403-260-3500  
Fax: 403-260-3501

**Walker W. MacLeod**  
Partner  
Direct Line: (403) 260-3710  
Direct Fax: (403) 260-3501  
Email: [wmacleod@mccarthy.ca](mailto:wmacleod@mccarthy.ca)

*Assistant: Katie Doran*  
*Direct Line: (403) 260-3560*  
*Email: [kdoran@mccarthy.ca](mailto:kdoran@mccarthy.ca)*

July 29, 2021

**Via Email ([mwasserman@osler.com](mailto:mwasserman@osler.com))**

Osler, Hoskin & Harcourt LLP  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Attention: Marc Wasserman**

Dear Sir:

**Re: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.  
Court File No. 2001-05630**

Thank you for your letter dated July 14, 2021 (the “**July 14 Letter**”). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the July 14 Letter or the SARIO.

DDMI was disappointed to receive correspondence from the Agent in relation to matters pertaining to (and, indeed, alleging a breach of) paragraph 16 of the SARIO.

Over the past six months DDMI has been communicating with the Monitor and representatives of the Agent on various matters pertaining to the Diavik JVA. These discussions were undertaken with a view to collaboration which we believe is the best interests of all stakeholders. In light of this background, the July 14 Letter was a surprising development.

DDMI is committed to pursuing constructive engagement with the Monitor and the Agent on the Diavik JVA. Nonetheless, and with the intentions of the Agent not entirely clear at this point in time, DDMI feels compelled to respond to the various allegations made by the Agent in the July 14 Letter. To this end, DDMI’s reply to the specific allegations made by the Agent is set forth below.

### **The Section 4 Diamonds**

Various statements in the July 14 Letter suggest that the Agent has failed to appreciate some of the complexity involved with the Section 4 Diamonds or is unaware of various important background discussions with the Monitor. Notably, the Agent demands that “...DDMI immediately deliver to the Monitor the DICAN value of Dominion’s share of the Section 4 Diamonds in excess



of the Cover Payments (approximately \$8.4 million CAD).” As the Agent should be aware, and while the Section 4 Diamonds can be valued, immediate delivery of any of the Section 4 Diamonds to either DDMI or Dominion cannot be undertaken.

Inline with the above observation we note that Madam Justice Eidsvik’s Endorsements dated January 18, 2021 drew a distinction between the *value* and the *delivery* of the Section 4 Diamonds, with Madam Justice Eidsvik stating the following:

Accordingly, the value of the Dominion Product should include the value of the Section 4 diamonds, since they are in DDMI’s possession, but the *delivery* of the amount of excess diamonds beyond the Dominion Product will have to exclude them. The difference can be accounted for when they are sold pursuant to the Protocol.

...

The value of the Dominion Product should include the Section 4 diamonds held by DDMI, as manager, although the way that they are dealt with in terms of delivery can vary from the other small diamonds held.<sup>1</sup>

This reality and its impact on various elements of Schedule “A” to Order (Approval of Monetization Process) (the “**Monetization Process**”) dated November 4, 2020 (the “**Monetization Process Order**”) has been one of the subjects of discussions we describe above. Since it appears that the Agent may be operating without knowledge of all relevant facts and circumstances, we briefly summarize key developments below. In short, with a firmer understanding of the background, it is clear that DDMI has not been unlawfully retaining possession of what Dominion believes to be its share of the Section 4 Diamonds nor has it been acting unilaterally.

As an initial matter, we note that Section 4 of the Splitting Protocol provides that select diamonds are divided into three separate categories: boart quality, near gem quality and gem quality. The gem quality product are termed “Selected Diamonds” and subject to an auction process (the “**Auction Process**”) long established by the Splitting Protocol. The “Selected Diamonds” must first be split through the Auction Process prior to delivery being effected. The Auction Process was developed by the parties to the Diavik JVA to account for the particular features of the Section 4 Diamonds, which the parties determined required a specialized process be put into place enable efficient splitting and delivery. The Auction Process stands in contrast to the processes in place for the other diamonds produced from the Diavik Mine.

Dominion’s insolvency admittedly creates various complications for the Auction Process.<sup>2</sup> Resolving these complications has been the focus of recent discussions with the Monitor.

By way of a short history of such discussions, we recognize that Mr. Petch on behalf of Dominion did previously request that DDMI sell the Section 4 Diamonds and remit 40% of the proceeds to Dominion. DDMI did not accede to this request, which is inconsistent with both the Splitting Protocol and the Monetization Process Order and which does not appear to be in DDMI’s interest

---

<sup>1</sup> Endorsement of the Honourable Madam Justice K.M. Eidsvik, dated January 18, 2021, at para 17 and 21.

<sup>2</sup> Partially in recognition of this reality, DDMI notes that paragraph 5 (the “**Paragraph 5 Exception**”) of the Monetization Process expressly provides a limited exception to the Auction Process and states that “...DDMI may sell “Selected Diamonds” by closed tender where it is industry practice to do so and make distribution of Dominion’s 40% share of proceeds in accordance with the Monetization Process.”

(in that Cover Payment indebtedness would not be reduced). This cannot be conflated with unlawfully retaining possession of Dominion's share of the Section 4 Diamonds. DDMI continued to communicate with the Monitor in an effort to resolve matters pertaining to the Section 4 Diamonds throughout February and March 2021 but was unable to agree on sale or distribution terms.

In this context, we note that the July 14 Letter does not provide an accurate summary of the events of April 2021. DDMI never represented or agreed that it would "...sell Dominion's share of the Section 4 Diamonds and remit the entirety of proceeds to the Monitor for the benefit of Dominion's stakeholders" (which is a reiteration of Mr. Petch's earlier request). For clarity, on April 22, 2021, Mr. Croese proposed that DDMI sell the Section 4 Diamonds, remit the DICAN value of Dominion's share of the Section 4 Diamonds to Dominion and distribute any excess balance in accordance with the waterfall established in the Monetization Process Order. Mr. Croese's proposal was made in the context of ongoing discussions aiming to address concerns raised by the Monitor and it is inaccurate to characterize it as a unilateral announcement.

DDMI's April 22, 2021 proposal was not acceptable to the Monitor, which led to the Monitor's April 30 Letter to DDMI. The April 30 Letter demanded that "...any value in excess of the DICAN value of the Section 4 Diamonds will be paid to the Monitor, on behalf of Dominion, forthwith." The April 30 Letter also confirmed that the Monitor objected to the sale of the Section 4 Diamonds if the proceeds in excess of DICAN were not paid to it. DDMI does not believe that this accords with the Splitting Protocol or the Monetization Process Order and did not provide written confirmation to the Monitor on this particular point. In any event, and as DDMI confirmed to the Monitor following the April 30 Letter, no proposal to dispose of the Section 4 Diamonds has been implemented at this time.

Instead, DDMI has been holding all of the Section 4 Diamonds (i.e. it has not attempted to dispose of Dominion's interest in the Selected Diamonds) in a safe and secure fashion pending resolution of these discussions with a view to collaborating with stakeholders before taking any steps with respect to the Monetization Process which cannot be easily unwound. We suggest this is a far cry from the unilateral behaviour on the part of DDMI.

### **Previously Delivered Diamonds (January 2021 and April 2021)**

DDMI has made two deliveries of Dominion Products (the "**Previously Delivered Diamonds**") to Dominion in accordance with paragraph 16 of the SARIO. The July 14 Letter suggests that Dominion has been prejudiced on account of the undervaluation of the Previously Delivered Diamonds by DICAN.

We have reviewed paragraph 16 of the SARIO and Madam Justice Eidsvik's subsequent Endorsements in detail and we see nothing that suggests that delivery of the Previously Delivered Diamonds was to have been determined on any basis other than DICAN. The two subject deliveries made by DDMI were fully compliant with the terms, spirit and intent of the SARIO and Dominion has received (subject to accounting for the valuation of the unsplit Section 4 Diamonds, which is addressed immediately below) its full entitlement to the Previously Delivered Diamonds under the SARIO.

We would note that the prospect of a point-in-time estimated value of property having a variance to its subsequent market value is an inherent risk in any valuation (and, indeed, this specific issue has been considered at length in the within case). DICAN has been recognized as an

independent third-party with expertise in the industry and has been accepted as the appropriate and objective valuation methodology in this proceeding.

### **Proposed Additional Deliveries**

In light of the fact and circumstances described under the heading Section 4 Diamonds above, DDMI is holding Dominion Product that exceeds the Cover Payments by the approximate amount of \$8.4 million CAD. Dominion has advised DDMI that its preferred method of satisfying this over collateralization is through the delivery of the Section 4 Diamonds.

For the avoidance of any doubt, DDMI is (and always has been) prepared to make additional deliveries of Dominion Products that have been split in accordance with the Splitting Protocol to Dominion to account for this over-collateralization. If Dominion is now desirous of receiving additional Dominion Products with a DICAN value equal to the amount of the over-collateralization DDMI will immediately deliver the parcels identified in Schedule "A" to this letter to Dominion. While DDMI believes that the allegations made in the July 14 Letter are wholly without merit, Dominion is free to accept them without prejudice to any rights that it believes that it has relating to the Previously Delivered Diamonds.

The allegations made in the July 14 Letter aside, DDMI would still prefer to reach an agreement on how to implement the procedures contemplated by the Monetization Process and, in broader terms and as recognized in the July 14 Letter, a global settlement with the Agent. To this end we would be pleased to discuss this matter further once you have had chance to consider our letter.

Yours truly,

McCarthy Tétrault LLP



Walker W. MacLeod  
WWM

cc: Bennett Jones LLP  
FTI Consulting Canada Inc.

**SCHEDULE "A"**  
**PROPOSED SECTION 3 DIAMOND DELIVERIES**

<b>Shipment</b>	<b>Size Fraction</b>	<b>Carats</b>	<b>CAD</b>
2008.1	8gr	1,974	686,783
2008.1	6gr	2,029	431,903
2008.1	5gr	1,473	259,591
2008.1	4gr	3,546	390,704
2008.1	3gr	4,273	332,728
2008.1	+11	13,756	606,318
2008.1	+9	13,375	410,567
2008.1	+7	9,738	291,832
2008.1	+5	17,507	507,655
2005.2	5cts	964	841,442
2005.2	4cts	1,667	1,449,031
2005.2	3cts	2,957	2,224,623
<b>Total</b>			<b>8,433,175</b>

## Appendix "B"

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-FEB-2021**

**INVOICE: DDC 02-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
February 2021 Cash Requirement – Cash Call 1	\$28,000,000.00	\$11,200,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$11,200,000.00**

(DUE ON February 08, 2021)

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-FEB-2021**

**INVOICE: DDC 02-21B**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
February 2021 Cash Requirement – Cash Call 2	\$12,000,000.00	\$4,800,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$4,800,000.00**

(DUE ON February 22, 2021)

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-MAR-2021**

**INVOICE: DDC 03-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
March 2021 Cash Requirement – Cash Call 1	\$45,000,000.00	\$18,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$18,000,000.00**

(DUE ON March 08, 2021)



SCHEDULE "A"

DOMINION MARCH EXPLORATION CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 04-MAR-2021

INVOICE: DDC EXP 03-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: Jan and Feb 2021 Costs	\$114,170.78
	\$45,668.31
GST Registration # 83952 4048RT	

TOTAL Exploration  
charges

\$45,668.31

(Due on March 11, 2021)

Croese,  
Thomas  
(DDMI)

Digitally signed by  
Croese, Thomas (DDMI)  
Date: 2021.03.04  
11:40:55 -0700

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered In Canada

Page 1 of 1

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-MAR-2021**

**INVOICE: DDC 03-21B**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
March 2021 Cash Requirement – Cash Call 2	\$45,000,000.00	\$18,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$18,000,000.00**

(DUE ON March 22, 2021)

SCHEDULE "A"

DOMINION APRIL #1(2021) CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 608 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 01-APR-2021

INVOICE: DDC 04-21A

DESCRIPTION	AMOUNT
APR 2021 Cash Requirement – Cash Call 1	\$22,400,000.00
GST Registration # 83952 4048RT	

TOTAL CASH CALL **\$22,400,000.00**

(DUE ON April 08, 2021)

Croese,  
Thomas  
(DDMI)

Digitally signed by  
Croese, Thomas  
(DDMI)  
Date: 2021.03.31  
17:22:06 -06'00'

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

SCHEDULE "A"

DOMINION APRIL EXPLORATION CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 08-APR-2021

INVOICE: DDC EXP 04-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: MARCH Costs	\$214,387.11
	\$85,754.84
GST Registration # 83952 4048RT	

TOTAL Exploration charges \$85,754.84

(Due on APRIL 15, 2021)

Croese, Thomas (DDMI)  
Digitally signed by Croese, Thomas (DDMI)  
Date: 2021.04.08 12:00:35 -0600

SCHEDULE "A"

DOMINION APRIL #2(2021) CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE:** 15-APR-2021

**INVOICE:** DDC 04-21B

DESCRIPTION	AMOUNT
APR 2021 Cash Requirement – Cash Call 2	\$14,000,000.00
	\$35,000,000.00

GST Registration # 83952 4048RT

**TOTAL CASH CALL \$14,000,000.00**

(DUE ON April 22, 2021)

Croese, Thomas  
(DDM)  
Digitally signed by  
Croese, Thomas (DDM)  
Date: 2021.04.14 15:24:00  
-0700

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-May-2021**

**INVOICE: DDC 05-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
May 2021 Cash Requirement – Cash Call 1	\$45,000,000.00	\$18,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$18,000,000.00**

(DUE ON May 8, 2021)

SCHEDULE "A"

DOMINION MAY EXPLORATION CASH CALL NOTICE  
(erroneously dated April 11, 2021)



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 11-APR-2021

INVOICE: DDC EXP 05-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: APR Costs \$66,939.26	\$26,775.70
GST Registration # 83952 4048RT	

TOTAL Exploration  
charges

\$26,775.70

(Due on May 18, 2021)

Croise, Thomas  
(DDM) Digitally signed by Croise,  
Thomas (DDM)  
Date: 2021.05.11 13:43:03  
-04'02'

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

**SCHEDULE "A"**

**DOMINION MAY #2(2021) CASH CALL NOTICE**



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 8500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 808 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE:** 15-May-2021

**INVOICE:** DDC 05-21B

DESCRIPTION		AMOUNT
	100%	40%
May 2021 Cash Requirement – Cash Call 2	\$16,000,000.00	\$6,400,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL** \$6,400,000.00

**(DUE ON May 22, 2021)**

Croese, Thomas  
(DDM) Digitally signed by Croese,  
Thomas (DDM)  
Date: 2021.05.17 10:03:41 -0500

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered In Canada

Page 1 of 1



# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-JUN-2021**

**INVOICE: DDC 06-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
JUNE 2021 Cash Requirement – Cash Call 1	\$19,000,000.00	\$7,600,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$7,600,000.00**

(DUE ON JUN 08, 2021)

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

**DATE: 01-JUN-2021**

**INVOICE: DDC EXP 06-21**

DESCRIPTION	AMOUNT
<b>100%</b>	<b>40%</b>
<b>Exploration Recharge:</b> Diavik Brownfields Project: MAY Costs	
\$774,837.84	\$309,935.14
GST Registration # 83952 4048RT	

**TOTAL Exploration charges** \$309,935.14

**(Due on JUN 08, 2021)**

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-JUN-2021**

**INVOICE: DDC 06-21B**

DESCRIPTION		AMOUNT
	100%	40%
JUNE 2021 Cash Requirement – Cash Call 2	\$12,000,000.00	\$4,800,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$4,800,000.00**

(DUE ON JUN 22, 2021)

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-JUL-2021**

**INVOICE: DDC 07-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
JULY 2021 Cash Requirement – Cash Call 1	\$25,000,000.00	\$10,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$10,000,000.00**

(DUE ON JUL 08, 2021)

# SCHEDULE "A"

## DOMINION JULY EXPLORATION CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

### BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 01-JUL-2021

INVOICE: DDC EXP 07-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: JUN Costs \$1,456,917.16	\$582,766.86
GST Registration # 83952 4048RT	

**TOTAL Exploration charges** \$582,766.86

(Due on JUL 08, 2021)

Croese, Thomas  
(DDMI)

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

SCHEDULE "A"

DOMINION JULY 2021 CLOSURE SECURITY CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 05-JUL-2021

INVOICE: DDC 07-21

DESCRIPTION	AMOUNT
Closure Securitization – Cash Call	100% 40% \$152,350,000.00 \$60,940,000.00

GST Registration # 83952 4048RT

TOTAL CASH CALL \$60,940,000.00

(DUE ON JUL 12, 2021)

Croese, Thomas  
(DDMI)  
Digitally signed by  
Croese, Thomas (DDMI)  
Date: 2021.07.05  
12:11:28 -0600

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-JUL-2021**

**INVOICE: DDC 07-21B**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
JULY 2021 Cash Requirement – Cash Call 2	\$11,000,000.00	\$4,400,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$4,400,000.00**

(DUE ON JUL 22, 2021)

**SCHEDULE "A"**

**DOMINION AUGUST #1(2021) CASH CALL NOTICE**



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE:** 02-Aug-2021

**INVOICE:** DDC 08-21A

DESCRIPTION		AMOUNT
	100%	40%
AUG 2021 Cash Requirement – Cash Call 1	\$22,000,000.00	\$8,800,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL** \$8,800,000.00

(DUE ON Aug 09, 2021)

Croese,  
Thomas  
(DDMI)

Digitally signed by  
Croese, Thomas  
(DDMI)  
Date: 2021.07.29  
15:22:05 -0600

Document #: DCON-006-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1



SCHEDULE "A"

DOMINION August #2(2021) CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 16-Aug-2021

INVOICE: DDC 08-21B

DESCRIPTION	AMOUNT
	100%
	40%
AUG 2021 Cash Requirement – Cash Call 2	\$16,000,000.00
	\$6,400,000.00
GST Registration # 83952 4048RT	

TOTAL CASH CALL \$6,400,000.00

(DUE ON Aug 23, 2021)

Williams,  
Kimberly  
(DDMI)

Digitally signed by  
Williams, Kimberly (DDMI)  
Date: 2021.08.13 14:35:57  
-06'00'

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

SCHEDULE "A"

DOMINION AUGUST EXPLORATION CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 16-AUG-2021

INVOICE: DDC EXP 08-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: July Costs	\$874,029.75
	\$349,611.90
GST Registration # 83952 4048RT	

TOTAL Exploration charges \$349,611.90

(Due on August 23, 2021)

Williams,  
Kimberly  
(DDMI)

Digitally signed by  
Williams, Kimberly  
(DDMI)  
Date: 2021.08.13  
14:43:55 -0600'

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-Sep-2021**

**INVOICE: DDC 09-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
SEP 2021 Cash Requirement – Cash Call 1	\$20,000,000.00	\$8,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$8,000,000.00**

(DUE ON Sep 08, 2021)

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

**DATE: 01-SEP-2021**

**INVOICE: DDC EXP 09-21**

DESCRIPTION	AMOUNT
<b>100%</b>	<b>40%</b>
<b>Exploration Recharge:</b> Diavik Brownfields Project: August 2021 Costs	\$220,584.73
\$551,461.82	
GST Registration # 83952 4048RT	

**TOTAL Exploration  
charges**

**\$220,584.73**

**(Due on September 08, 2021)**

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-Sep-2021**

**INVOICE: DDC 09-21B**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
SEP 2021 Cash Requirement – Cash Call 2	\$9,000,000.00	\$3,600,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$3,600,000.00**

(DUE ON Sep 22, 2021)

COURT FILE NUMBER 2001-05630  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
APPLICANTS **IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, RSC 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.**  
PARTY FILING THIS DOCUMENT ARCTIC CANADIAN DIAMOND COMPANY LTD.  
DOCUMENT **AFFIDAVIT**  
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Torys LLP**  
79 Wellington St W., 30<sup>th</sup> Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2  
Attention: Scott Bomhof  
Telephone: + 1 416.865.7370  
Email: sbomhof@torys.com  
File No.: 41909-0001

---

**AFFIDAVIT OF RACHEL DINGMAN**  
**affirmed on October 13, 2021**

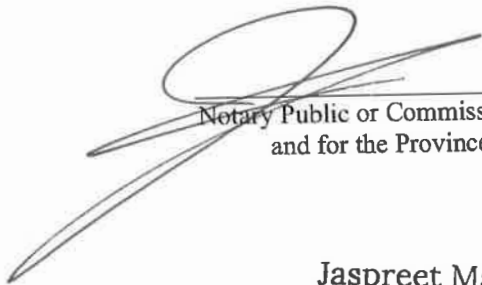
---

I, Rachel Dingman, of the Town of Okotoks, in the Province of Alberta, **SOLEMNLY AFFIRM AND DECLARE THAT:**

1. I am a Legal Assistant at Torys LLP. Our office is counsel to Arctic Canadian Diamond Company Ltd. ("ACDC"), who purchased certain of the assets that are the subject matter of the Application brought by FTI Consulting Canada Inc., the Court-appointed monitor of Dominion Diamond Mines ULC, scheduled to be heard before The Honourable Madam Justice Eidsvik on October 15, 2021 at 10:00 a.m. As such, I have personal knowledge of



This is Exhibit "1"  
to the Affidavit of Rachel Dingman  
affirmed before me this 13<sup>th</sup> day of October, 2021



Notary Public or Commissioner for Oaths in  
and for the Province of Alberta

Jaspreet Mann  
*Barrister & Solicitor*  
A Commissioner for Oaths  
in and for Alberta





**Chris Simard**  
Direct Line: 403.298.4485  
e-mail: simardc@bennettjones.com  
Our File No.: 76142.10

October 13, 2021

**Via Email**

Scott A. Bomhof  
Torys LLP  
3300 - 79 Wellington St W  
Toronto, ON M5K 1N2

Dear Mr. Bomhof:

**Re: Dominion Diamond Mines ULC - CCAA Proceedings in Action No. 2001-05630**

We are writing to provide the Monitor's responses to the questions set out in your letter of October 11, 2021 (the "**October 11 Letter**"). All capitalized terms in this letter that are not defined are intended to bear their meanings as defined in the Sixteenth Report, or in the October 11 Letter.

**1. Short Notice**

We do not agree that the Monitor's application was brought on "short notice". The *Alberta Rules of Court* provide that a notice of application must be served at least five days before the hearing. The Monitor's application was served on October 6, 2021, nine days before the hearing.

ACDC also had notice of the substantive relief being sought in the application, well before October 6. ACDC was aware of the general commercial terms of both transactions by the time we spoke on the morning of September 28, and ACDC was made aware of the specific terms of the RVO Transaction that same afternoon, when I forwarded to you the draft RVO Term Sheet and RVO.

Since that time, the Monitor has also made efforts to attempt to help ACDC access the additional information about the Diavik Joint Venture that was requested in the email sent by Mr. Hoff of DDJ to the Monitor on September 29 (the day after he had separately spoken directly to the Monitor about the two transactions). As you know, the Monitor communicated with you and with counsel for DDMI, to facilitate the exchange of the information that DDJ had requested, but that DDMI considered to be confidential. On September 30, 2021, the Monitor established a data room to facilitate the transfer of this information. On October 3, I advised you that DDMI had agreed in principle to allow the Monitor to release certain information to the Bidders, their professionals and ACDC's professionals, and that it had agreed to release other information to the three individuals at ACDC that you had identified (Kristal Kaye, Andrew Petch and Huili Li). DDMI's agreement to release this information was contingent on DDMI being satisfied with the confidentiality arrangements to be put in place. Accordingly, on October 3 I repeated my request from October 2 that you consent to the Monitor

sharing with DDMI the non-disclosure agreements entered into by the Bidders and your firm as counsel, during the SISP. On October 3, you advised that you were seeking instructions from your clients on that point, but in the ten days since that communication, neither you nor your client have communicated on this point further.

The Monitor believes that the application must proceed promptly, because:

- to maximize the benefit it can derive from the tax attributes of the Dominion Entities, Washington (or any other successful bidder in the RVO Transaction) will want to take certain steps before December 31, 2021;
- it is a condition of the Support Agreement that the AVO Transaction be approved within 60 days after September 16, 2021; and
- as disclosed in paragraphs 71 – 77 and Appendix "L" to the Sixteenth Report, the estate's funding is being depleted and there are no other sources of available funding (other than the funding being provided in connection with the AVO Transaction and the RVO Transaction, to pay for the work associated with those transactions). After the completion of the ACDC Transaction, the estate was left with a fixed amount of funding: US\$1,000,000 in the Diavik Realization Account and US\$250,000 in the Wind-down Account (in the aggregate, approximately C\$1,598,000). The Diavik Realization Account has been almost entirely depleted, essentially leaving only the Wind-down Account available to cover all post-transaction costs.

In your October 8, 2021 letter to the Service List, you advised that ACDC will ask for an adjournment of the October 15 hearing. We want to make you aware that the Monitor does not agree that an adjournment is necessary, and intends to proceed with its application on October 15.

## **2. The AVO Transaction**

- (a) The Monitor's discussions and negotiations of the AVO Transaction documents are privileged and confidential. As a result, the Monitor will not comment on the specifics of any negotiations or drafting of the transaction documents.
- (b) The Monitor became aware of these developments on the following approximate dates:
  - on or about June 29, 2021: the Monitor learned that the Agent and DDMI had commenced direct conversations about possible transactions or resolutions; and
  - on or about September 16, 2021: the Monitor learned that the Agent and DDMI had executed the Support Agreement.
- (c) As noted above, the Monitor will not comment on the specifics of any negotiations or drafting of the transaction documents. The Monitor's efforts to administer the Applicants' Property after the closing of the ACDC Transaction, including DDM's interest in the Diavik JVA, were



described in paragraphs 15 – 21 of the August 30, 2021 Fifteenth Report (the "**Fifteenth Report**").

- (d) The Monitor has not prepared or commissioned any valuation of DDM's interest in the Diavik JVA. As described in the Sixteenth Report, the Applicants extensively marketed DDM's interest in the Diavik JVA in the SISP and no bids were received. The Monitor's illustrative purchase price of the Acquired Assets is set out at paragraph 44(h) of the Sixteenth Report and the Monitor's Illustrative Cover Payment Forecast is set out at paragraph 51(e) of the Sixteenth Report. In the circumstances, the Monitor did not consider it necessary to prepare or commission a valuation of the Acquired Assets.
- (e) As a result of the circumstances set out in the preceding subparagraph, the Monitor did not take steps to actively market DDM's interest in the Diavik JVA. I note that in subparagraphs 2(e) and 2(j) of the October 11 Letter, you seem to imply, or state, that the Diavik Realization Account US\$1,000,000 was funded by ACDC. The Monitor does not agree with that suggestion. As reported in paragraph 21(i) and (j) of the Monitor's December 9, 2020 Eleventh Report, the Diavik Realization Account and the Wind-down Account were funded with the Applicants' cash on hand when the ACDC Transaction closed. This was expressly agreed between the parties in sections 7.1(a)(iii) and (iv) of the ACDC APA. (Although I note that in paragraph 19 of the Monitor's February 22, 2021 Fourteenth Report, it was incorrectly reported that the Purchaser (*ie.* the Bidders) funded those amounts).
- (f) The parties' respective positions regarding the dispute over the Section 4 Diamonds with a DICAN value of approximately \$8.4 million (as described in paragraph 18 of the Fifteenth Report), are set out in the letters attached as **Appendix "A"** to this letter.
- (g) DDMI's cash calls issued since the granting of the EMP Order, totaling \$229 million, were issued on the following dates and in the following amounts:



<b>Summary of Cash Calls since EMP Order</b>		
<i>(\$ thousands)</i>		
<b>Cash Call Date</b>	<b>Payment Type</b>	
February 1	Operating Payment	\$ 11,200
February 15	Operating Payment	4,800
March 1	Operating Payment	18,000
March 4	Exploration Payment	46
March 15	Operating Payment	18,000
April 1	Operating Payment	22,400
April 8	Exploration Payment	86
April 15	Operating Payment	14,000
May 1	Operating Payment	18,000
May 11	Exploration Payment	27
May 15	Operating Payment	6,400
June 1	Operating Payment	7,600
June 1	Exploration Payment	310
June 15	Operating Payment	4,800
July 1	Operating Payment	10,000
July 1	Exploration Payment	583
July 5	Reclamation Payment	60,940
July 15	Operating Payment	4,400
August 2	Operating Payment	8,800
August 16	Operating Payment	6,400
August 16	Exploration Payment	350
September 1	Operating Payment	8,000
September 1	Exploration Payment	221
September 15	Operating Payment	3,600
<b>Total Cash Calls</b>		<b>\$228,961</b>

The cash call invoices received from DDMI are attached as **Appendix "B"** to this letter. The Monitor is not in possession of any correspondence between the Agent and the technical experts referenced in paragraph 37 of the Sixteenth Report. With respect to the validity and enforceability of DDMI's claims against DDM, we confirm that we have provided an opinion to the Monitor, in which we have confirmed that DDMI's security as against DDM is valid and enforceable.

- (h) The Monitor does not understand what you mean by analyses of "the First Lien Lenders' exposure under their LCs net of all current Cash Collateral". That the First Lien Lenders issued the LCs totaling C\$105 million, and that the Applicants delivered those LCs to DDMI has never been disputed, and was indeed admitted by the Applicants in the First Affidavit of Kristal Kaye dated April 21, 2021. At paragraph 19 of the Sixteenth Report, the Monitor has reported that the net current exposure of the First Lien Lenders under the LCs is approximately



C\$53,610,000. We confirm that we have provided an opinion to the Monitor, in which we have confirmed that the First Lien Lenders' security as against DDM is valid and enforceable.

- (i) The Monitor understands that your client ACDC has copies of the LCs. The Monitor is not aware of the arrangements that DDMI has made or may make with GNWT regarding the replacement of the LCs.
- (j) A detailed accounting of the use of the US\$1,000,000 Diavik Realization Account (as noted above, funded by the Applicants) is set out in paragraphs 71, 75 and 77 of the Sixteenth Report.

### **3. The RVO Transaction**

- (a) The Applicants extensively marketed all of their assets in the SISP, and no bids were received for the shares of the Dominion RVO Entities or the Retained Assets. The Monitor's view is that the only other party who could realistically benefit from these assets, and therefore the only other potential bidder, is ACDC. Since the RVO Term Sheet provides the Monitor with the ability to market the assets and potentially hold an auction, the Monitor did not consider it necessary to actively market these assets. Because ACDC is the only other potentially viable bidder for these assets, we wrote to you on October 7, 2021, asking you to confirm by Tuesday, October 12, 2021 whether ACDC intended to make a bid for these assets. The Monitor assumes from your lack of response that ACDC does not intend to make such a bid.
- (b) The Monitor's discussions and negotiations of the RVO Transaction documents are privileged and confidential. As a result, the Monitor will not comment on the specifics of any negotiations or drafting of the transaction documents.
- (c) Given the circumstances regarding the RVO Transaction (including that the RVO Term Sheet provides the Monitor with the ability to market the assets and potentially hold an auction in which ACDC is the only other potential bidder), the Monitor has not undertaken any valuation of the Tax Attributes.
- (d) Given the circumstances regarding the RVO Transaction (including that the RVO Term Sheet provides the Monitor with the ability to market the assets and potentially hold an auction), the Monitor has not undertaken any analyses or assessments regarding Dominion's tax attributes on an RVO "cleansed" basis.
- (e) Your client ACDC has copies of all up-to-date tax filings. The 2020 tax filings for DDM (now 1192090 BC Unlimited Liability Company), Dominion Diamond Marketing Corporation and Dominion Diamond Canada ULC (now 1191452 BC Unlimited Liability Company), being the only Canadian taxpayers among the Applicants, were in fact completed and filed by employees of ACDC (pursuant to the TSA), working with PwC. Tammy Taylor and Kristal Kaye are the ACDC employees who did this work and have this information.
- (f) Confirmed, on the basis that the "Acquired Subsidiaries" include only Dominion Diamond (India) Private Limited, Dominion Diamond Marketing N.V. and Dominion Diamond



October 13, 2021

Page 6

(Cyprus) Limited, because the Bidders did not elect to include any other entities prior to the closing of the ACDC Transaction. I have asked for and await your confirmation on that point.

- (g) The Monitor's view is that if the RVO Transaction closes before the AVO Transaction closes, all creditors' rights and entitlements to the Diavik Joint Venture, and ACDC's interest in the Diavik Realization Assets, would continue substantively unaffected, although the Diavik Joint Venture would reside in the Creditor Trust.
- (h) The Monitor is not able to estimate exactly what funding might be required, as this would be dependent on the complexity of the required process.

We trust that this answers your questions. Please let us know if you would like to discuss these matters further. The Monitor will file and serve a Supplementary Report prior to the October 15, 2021 hearing, which will include the October 11 Letter and this response letter, so that the Court and all stakeholders are aware of your questions and the Monitor's responses.

Yours truly,



Chris Simard

CS:/dmk

cc: Client  
Kelsey Meyer, Bennett Jones LLP



## Appendix "A"



Bennett Jones

Bennett Jones LLP  
4500 Bankers Hall East, 855 - 2nd Street SW  
Calgary, Alberta, Canada T2P 4K7  
Tel: 403.298.3100 Fax: 403.265.7219

**Kelsey Meyer**  
Partner  
Direct Line: 403.298.3323  
e-mail: meyerk@bennettjones.com  
Our File No.: 76142.10

April 30, 2021

**VIA EMAIL: louis.beland@riotinto.com**

Louis Beland  
Senior Legal Counsel  
Rio Tinto  
400 - 1190 Avenue Des Canadiens-de-Montréal  
Montréal, QC H3B 0E3

Dear Mr. Beland:

**Re: Joint Venture Agreement Between Dominion Diamond Mines ULC ("Dominion") and Diavik Diamond Mines (2012) Inc. ("DDMI") dated March 23, 1995, as amended ("JVA")  
Section 4 Diamonds**

As you know, we are legal counsel to FTI Consulting Canada Inc., the court-appointed Monitor of Dominion pursuant to its proceedings under the *Companies' Creditors Arrangement Act* (Canada) ("CCAA"). We write with respect to a call from Thomas Croese of DDMI to the Monitor on April 22, 2021 wherein Mr. Croese advised the Monitor that with respect to the Section 4 Diamonds, any value in excess of the DICAN value will be taken by DDMI and applied toward Cover Payments.

The Monitor strongly disagrees with DDMI's position in this regard. It is clearly contrary to Madam Justice Eidsvik's decisions in the CCAA proceedings<sup>1</sup>, the effect of which is that 40% of the full sale price of the Section 4 Diamonds is allocated to Dominion. We demand that DDMI provide written confirmation of this point, and that any value in excess of the DICAN value of the Section 4 Diamonds will be paid to the Monitor, on behalf of Dominion, forthwith.

If DDMI fails to provide such written confirmation by Monday, May 3, 2021, this letter constitutes notice that the Monitor objects to DDMI selling any of the Section 4 Diamonds, pending resolution of entitlement to the proceeds thereof.

If necessary, we will seek further direction from Madam Justice Eidsvik on this point, in which case the Monitor will seek costs against DDMI.

---

<sup>1</sup> Her Ladyship's Endorsement filed November 10, 2020 states at paragraph 3 that "the diamonds in excess of the Cover Payments owed, based on the DICAN valuation, should be delivered immediately to Dominion", and Her Ladyship's Endorsement filed January 19, 2021 held at paragraphs 1 and 17 that the value of the Dominion Product (based on the DICAN valuation) should include the value of the Section 4 Diamonds.



The Monitor also has the following concerns:

1. As previously advised, the Monitor continues to reserve its rights regarding DDMI's selection of the December 2020 diamond collateral.
2. The Monitor continues to review the appropriateness of DDMI's deduction of more than \$3 million in "enforcement costs" from the proceeds of the February 23<sup>rd</sup> diamond sale.
3. We understand from the joint venture meeting held between DDMI and the Monitor on April 27, 2021 that DDMI's reclamation assumptions have caused DDMI's estimate of reclamation costs to increase substantially from previous years, and that as a result, DDMI will be issuing a cash call to Dominion in the amount of approximately \$60 million in or about July of 2021. The Monitor will be seeking further information from DDMI on the basis for this significant increase.

Please provide written confirmation forthwith that the excess value of the Section 4 Diamonds (all value in excess of the DICAN value) will be paid to the Monitor on behalf of Dominion.

Yours truly,

**BENNETT JONES LLP**



Kelsey Meyer

KM:ae

cc: Deryck Helkaa, Tom Powell, Lindsay Shierman, and Ben Chiu, FTI Consulting Canada Inc. (via email)  
Chris Simard, Bennett Jones LLP (via email)  
Marc Wasserman, Michael De Lellis and Emily Paplawski, Osler, Hoskin & Harcourt LLP (via email)



Calgary

July 14, 2021

Marc Wasserman  
Direct Dial: 416.862.4908  
MWasserman@osler.com  
Our Matter Number: 1210529

Toronto

Montréal

**Sent By Electronic Mail**

Ottawa

McCarthy Tetrault LLP  
Suite 4000, 421 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9

Vancouver

New York

Attention: Mr. Walker MacLeod

Dear Sir:

**Re: *In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC (“Dominion”), et al, ABQB Action No. 2001-05630***

As you know, we are counsel to Credit Suisse AG, Cayman Islands Branch (the “**Agent**”). We write regarding Diavik Diamond Mines (2012) Inc.’s (“**DDMI**”) ongoing breach of paragraph 16 of the Second Amended and Restated Initial Order, granted June 19, 2020 (as confirmed by further Order of the Honourable Justice Eidsvik, granted November 4, 2020, and as further clarified by Her Ladyship on January 18, 2021, the “**SARIO**”).

**1. DDMI’s Continued Retention of Dominion’s Property**

First, DDMI continues to unlawfully retain possession of Dominion’s share of the Section 4 Diamonds. As you know, paragraph 16 of the SARIO authorizes DDMI to “hold an amount of Dominion Diamond’s share of production from the Diavik Mine equal to the total value of the JVA Cover Payments made by DDMI.” As Justice Eidsvik noted in her Endorsement, filed November 10, 2020, any “diamonds in excess of the Cover Payments owed, based on the DICAN valuation, should be delivered immediately to Dominion.” Her Ladyship confirmed in her endorsement filed January 19, 2021 that “diamonds” include the Section 4 Diamonds.

Dominion’s share of Section 4 Diamonds in excess of Cover Payments (as valued on the basis of DICAN) total approximately \$8.4 million CAD. Accordingly, pursuant to Section 16 of the SARIO, Section 4 Diamonds totalling \$8.4 million CAD (on the basis of DICAN) constitute the property of Dominion. As the property of Dominion, any upside realized on the sale of such Section 4 Diamonds also constitutes the property of Dominion.

We understand that in recognition of the complexities involved in implementing the Splitting Protocol during Dominion’s CCAA proceeding, DDMI suggested, and the Monitor agreed, that DDMI would sell Dominion’s share of the Section 4 Diamonds and remit the proceeds to the Monitor for the benefit of Dominion’s stakeholders. However, on April 22, 2021, Thomas Croese of DDMI called the Monitor and unilaterally announced

that any value in excess of DICAN realized on the sale of Dominion's share of Section 4 Diamonds would be taken by DDMI and applied toward Cover Payments.

By letter dated April 30, 2020, the Monitor objected to such misappropriation of Dominion's property, advising that "It is clearly contrary to Madam Justice Eidsvik's decision in the CCAA proceedings." The Monitor demanded that DDMI provide written confirmation that "any value in excess of the DICAN value of the Section 4 Diamonds will be paid to the Monitor, on behalf of Dominion, forthwith" and put DDMI on notice that unless such written confirmation was received, the Monitor objected to DDMI selling any of the Section 4 Diamonds. We understand from the Monitor that no such written confirmation from DDMI was forthcoming.

The Agent strongly objects to DDMI's continuing efforts to circumvent the clear intent and language of the SARIO. The Agent demands that DDMI immediately deliver to the Monitor the DICAN value of Dominion's share of the Section 4 Diamonds in excess of the Cover Payments (approximately \$8.4 million CAD). The Agent reserves all rights with respect to any additional value realized by DDMI on the sale of Dominion's share of the Section 4 Diamonds.

Unless such value is captured within a global settlement between the Agent and DDMI, the Agent intends to bring DDMI's ongoing breach of the SARIO back before Justice Eidsvik for determination. If such an application becomes necessary, the Agent will seek enhanced costs against DDMI.

## **2. DDMI's Inequitable Distribution of the Excess Collateral**

Second, DDMI selected the composition of Excess Production (as defined below) which it delivered to Dominion in early 2021 to heavily favour the interests of DDMI contrary to the spirit and intent of the SARIO.

On January 18, 2021, Justice Eidsvik directed DDMI to "deliver the excess diamonds, as discussed, for the period up to November 15, 2020" (the "**Excess Production**") and "continue to calculate the appropriate set off on a periodic monthly basis using the same methodology."

On January 27, 2020, DDMI delivered the Excess Production (less the Section 4 Diamonds) to Dominion. Upon receipt, Dominion advised the Agent that the composition of the Excess Production appeared to heavily prefer the interests of DDMI over Dominion by:

1. excluding diamonds from earlier production cycles which were significantly undervalued by DICAN because of the point in time at which such valuations were completed (at the height of the COVID-19 pandemic). Instead, DDMI has included

only diamonds from recent production cycles which are less undervalued by DICAN, thereby reducing the quantum of diamonds required to satisfy the value of Excess Production required to be delivered by DDMI to Dominion; and

2. including only diamonds at the lower end of all production sizes instead of providing an equitable distribution across different size categories of non-Section 4 Diamonds, thereby limiting the available market for Dominion to sell the Excess Production, and minimizing the potential upside that is typically realized on the sale of larger diamonds.

The Agent understands that the Monitor reserved all rights regarding DDMI's inequitable selection of the Excess Production.

DDMI's approach to calculating and delivering the Excess Production offends the spirit and intent of the SARIO. The SARIO provides a narrow exception to the otherwise binding and continuing obligations of DDMI under the Diavik JVA to make available to each participant its respective share of all diamond production in kind and in accordance with the established delivery schedule. DDMI has blatantly failed to comply with such obligations in its selection and delivery of the Excess Production to Dominion.

Similar to the Monitor, the Agent reserves all rights with respect to DDMI's inequitable selection of the Excess Production. Again, unless such value is captured within a global settlement between the Agent and DDMI, the Agent intends to bring this issue back before Justice Eidsvik for determination. Similar to the Section 4 Diamonds discussed above, if such an application becomes necessary, the Agent will seek enhanced costs against DDMI.

Yours truly,



Marc Wasserman

c: Client  
Sean Collins, *McCarthy Tetrault*  
Tom Powell, Deryck Helkaa, Lindsay Shierman, *FTI Consulting*  
Chris Simard and Kelsey Meyer, *Bennett Jones*  
Michael De Lellis and Emily Paplawski, *Osler*



McCarthy Tétrault LLP  
Suite 4000  
421-7th Avenue S.W.  
Calgary AB T2P 4K9  
Canada  
Tel: 403-260-3500  
Fax: 403-260-3501

**Walker W. MacLeod**  
Partner  
Direct Line: (403) 260-3710  
Direct Fax: (403) 260-3501  
Email: [wmacleod@mccarthy.ca](mailto:wmacleod@mccarthy.ca)

*Assistant: Katie Doran*  
*Direct Line: (403) 260-3560*  
*Email: [kdoran@mccarthy.ca](mailto:kdoran@mccarthy.ca)*

July 29, 2021

**Via Email ([mwasserman@osler.com](mailto:mwasserman@osler.com))**

Osler, Hoskin & Harcourt LLP  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Attention: Marc Wasserman**

Dear Sir:

**Re: In the Matter of a Plan of Compromise or Arrangement of Dominion Diamond Mines ULC, et al.  
Court File No. 2001-05630**

Thank you for your letter dated July 14, 2021 (the “**July 14 Letter**”). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the July 14 Letter or the SARIO.

DDMI was disappointed to receive correspondence from the Agent in relation to matters pertaining to (and, indeed, alleging a breach of) paragraph 16 of the SARIO.

Over the past six months DDMI has been communicating with the Monitor and representatives of the Agent on various matters pertaining to the Diavik JVA. These discussions were undertaken with a view to collaboration which we believe is the best interests of all stakeholders. In light of this background, the July 14 Letter was a surprising development.

DDMI is committed to pursuing constructive engagement with the Monitor and the Agent on the Diavik JVA. Nonetheless, and with the intentions of the Agent not entirely clear at this point in time, DDMI feels compelled to respond to the various allegations made by the Agent in the July 14 Letter. To this end, DDMI’s reply to the specific allegations made by the Agent is set forth below.

### **The Section 4 Diamonds**

Various statements in the July 14 Letter suggest that the Agent has failed to appreciate some of the complexity involved with the Section 4 Diamonds or is unaware of various important background discussions with the Monitor. Notably, the Agent demands that “...DDMI immediately deliver to the Monitor the DICAN value of Dominion’s share of the Section 4 Diamonds in excess

of the Cover Payments (approximately \$8.4 million CAD).” As the Agent should be aware, and while the Section 4 Diamonds can be valued, immediate delivery of any of the Section 4 Diamonds to either DDMI or Dominion cannot be undertaken.

Inline with the above observation we note that Madam Justice Eidsvik’s Endorsements dated January 18, 2021 drew a distinction between the *value* and the *delivery* of the Section 4 Diamonds, with Madam Justice Eidsvik stating the following:

Accordingly, the value of the Dominion Product should include the value of the Section 4 diamonds, since they are in DDMI’s possession, but the *delivery* of the amount of excess diamonds beyond the Dominion Product will have to exclude them. The difference can be accounted for when they are sold pursuant to the Protocol.

...

The value of the Dominion Product should include the Section 4 diamonds held by DDMI, as manager, although the way that they are dealt with in terms of delivery can vary from the other small diamonds held.<sup>1</sup>

This reality and its impact on various elements of Schedule “A” to Order (Approval of Monetization Process) (the “**Monetization Process**”) dated November 4, 2020 (the “**Monetization Process Order**”) has been one of the subjects of discussions we describe above. Since it appears that the Agent may be operating without knowledge of all relevant facts and circumstances, we briefly summarize key developments below. In short, with a firmer understanding of the background, it is clear that DDMI has not been unlawfully retaining possession of what Dominion believes to be its share of the Section 4 Diamonds nor has it been acting unilaterally.

As an initial matter, we note that Section 4 of the Splitting Protocol provides that select diamonds are divided into three separate categories: boart quality, near gem quality and gem quality. The gem quality product are termed “Selected Diamonds” and subject to an auction process (the “**Auction Process**”) long established by the Splitting Protocol. The “Selected Diamonds” must first be split through the Auction Process prior to delivery being effected. The Auction Process was developed by the parties to the Diavik JVA to account for the particular features of the Section 4 Diamonds, which the parties determined required a specialized process be put into place enable efficient splitting and delivery. The Auction Process stands in contrast to the processes in place for the other diamonds produced from the Diavik Mine.

Dominion’s insolvency admittedly creates various complications for the Auction Process.<sup>2</sup> Resolving these complications has been the focus of recent discussions with the Monitor.

By way of a short history of such discussions, we recognize that Mr. Petch on behalf of Dominion did previously request that DDMI sell the Section 4 Diamonds and remit 40% of the proceeds to Dominion. DDMI did not accede to this request, which is inconsistent with both the Splitting Protocol and the Monetization Process Order and which does not appear to be in DDMI’s interest

---

<sup>1</sup> Endorsement of the Honourable Madam Justice K.M. Eidsvik, dated January 18, 2021, at para 17 and 21.

<sup>2</sup> Partially in recognition of this reality, DDMI notes that paragraph 5 (the “**Paragraph 5 Exception**”) of the Monetization Process expressly provides a limited exception to the Auction Process and states that “...DDMI may sell “Selected Diamonds” by closed tender where it is industry practice to do so and make distribution of Dominion’s 40% share of proceeds in accordance with the Monetization Process.”

(in that Cover Payment indebtedness would not be reduced). This cannot be conflated with unlawfully retaining possession of Dominion's share of the Section 4 Diamonds. DDMI continued to communicate with the Monitor in an effort to resolve matters pertaining to the Section 4 Diamonds throughout February and March 2021 but was unable to agree on sale or distribution terms.

In this context, we note that the July 14 Letter does not provide an accurate summary of the events of April 2021. DDMI never represented or agreed that it would "...sell Dominion's share of the Section 4 Diamonds and remit the entirety of proceeds to the Monitor for the benefit of Dominion's stakeholders" (which is a reiteration of Mr. Petch's earlier request). For clarity, on April 22, 2021, Mr. Croese proposed that DDMI sell the Section 4 Diamonds, remit the DICAN value of Dominion's share of the Section 4 Diamonds to Dominion and distribute any excess balance in accordance with the waterfall established in the Monetization Process Order. Mr. Croese's proposal was made in the context of ongoing discussions aiming to address concerns raised by the Monitor and it is inaccurate to characterize it as a unilateral announcement.

DDMI's April 22, 2021 proposal was not acceptable to the Monitor, which led to the Monitor's April 30 Letter to DDMI. The April 30 Letter demanded that "...any value in excess of the DICAN value of the Section 4 Diamonds will be paid to the Monitor, on behalf of Dominion, forthwith." The April 30 Letter also confirmed that the Monitor objected to the sale of the Section 4 Diamonds if the proceeds in excess of DICAN were not paid to it. DDMI does not believe that this accords with the Splitting Protocol or the Monetization Process Order and did not provide written confirmation to the Monitor on this particular point. In any event, and as DDMI confirmed to the Monitor following the April 30 Letter, no proposal to dispose of the Section 4 Diamonds has been implemented at this time.

Instead, DDMI has been holding all of the Section 4 Diamonds (i.e. it has not attempted to dispose of Dominion's interest in the Selected Diamonds) in a safe and secure fashion pending resolution of these discussions with a view to collaborating with stakeholders before taking any steps with respect to the Monetization Process which cannot be easily unwound. We suggest this is a far cry from the unilateral behaviour on the part of DDMI.

### **Previously Delivered Diamonds (January 2021 and April 2021)**

DDMI has made two deliveries of Dominion Products (the "**Previously Delivered Diamonds**") to Dominion in accordance with paragraph 16 of the SARIO. The July 14 Letter suggests that Dominion has been prejudiced on account of the undervaluation of the Previously Delivered Diamonds by DICAN.

We have reviewed paragraph 16 of the SARIO and Madam Justice Eidsvik's subsequent Endorsements in detail and we see nothing that suggests that delivery of the Previously Delivered Diamonds was to have been determined on any basis other than DICAN. The two subject deliveries made by DDMI were fully compliant with the terms, spirit and intent of the SARIO and Dominion has received (subject to accounting for the valuation of the unsplit Section 4 Diamonds, which is addressed immediately below) its full entitlement to the Previously Delivered Diamonds under the SARIO.

We would note that the prospect of a point-in-time estimated value of property having a variance to its subsequent market value is an inherent risk in any valuation (and, indeed, this specific issue has been considered at length in the within case). DICAN has been recognized as an

independent third-party with expertise in the industry and has been accepted as the appropriate and objective valuation methodology in this proceeding.

### **Proposed Additional Deliveries**

In light of the fact and circumstances described under the heading Section 4 Diamonds above, DDMI is holding Dominion Product that exceeds the Cover Payments by the approximate amount of \$8.4 million CAD. Dominion has advised DDMI that its preferred method of satisfying this over collateralization is through the delivery of the Section 4 Diamonds.

For the avoidance of any doubt, DDMI is (and always has been) prepared to make additional deliveries of Dominion Products that have been split in accordance with the Splitting Protocol to Dominion to account for this over-collateralization. If Dominion is now desirous of receiving additional Dominion Products with a DICAN value equal to the amount of the over-collateralization DDMI will immediately deliver the parcels identified in Schedule "A" to this letter to Dominion. While DDMI believes that the allegations made in the July 14 Letter are wholly without merit, Dominion is free to accept them without prejudice to any rights that it believes that it has relating to the Previously Delivered Diamonds.

The allegations made in the July 14 Letter aside, DDMI would still prefer to reach an agreement on how to implement the procedures contemplated by the Monetization Process and, in broader terms and as recognized in the July 14 Letter, a global settlement with the Agent. To this end we would be pleased to discuss this matter further once you have had chance to consider our letter.

Yours truly,

McCarthy Tétrault LLP



Walker W. MacLeod  
WWM

cc: Bennett Jones LLP  
FTI Consulting Canada Inc.



**SCHEDULE "A"**  
**PROPOSED SECTION 3 DIAMOND DELIVERIES**

<b>Shipment</b>	<b>Size Fraction</b>	<b>Carats</b>	<b>CAD</b>
2008.1	8gr	1,974	686,783
2008.1	6gr	2,029	431,903
2008.1	5gr	1,473	259,591
2008.1	4gr	3,546	390,704
2008.1	3gr	4,273	332,728
2008.1	+11	13,756	606,318
2008.1	+9	13,375	410,567
2008.1	+7	9,738	291,832
2008.1	+5	17,507	507,655
2005.2	5cts	964	841,442
2005.2	4cts	1,667	1,449,031
2005.2	3cts	2,957	2,224,623
<b>Total</b>			<b>8,433,175</b>

## Appendix "B"

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-FEB-2021**

**INVOICE: DDC 02-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
February 2021 Cash Requirement – Cash Call 1	\$28,000,000.00	\$11,200,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$11,200,000.00**

(DUE ON February 08, 2021)

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-FEB-2021**

**INVOICE: DDC 02-21B**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
February 2021 Cash Requirement – Cash Call 2	\$12,000,000.00	\$4,800,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$4,800,000.00**

(DUE ON February 22, 2021)

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-MAR-2021**

**INVOICE: DDC 03-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
March 2021 Cash Requirement – Cash Call 1	\$45,000,000.00	\$18,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$18,000,000.00**

(DUE ON March 08, 2021)

SCHEDULE "A"

DOMINION MARCH EXPLORATION CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 04-MAR-2021

INVOICE: DDC EXP 03-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: Jan and Feb 2021 Costs	\$114,170.78
	\$45,668.31
GST Registration # 83952 4048RT	

TOTAL Exploration charges

\$45,668.31

(Due on March 11, 2021)

Croese,  
Thomas  
(DDMI)

Digitally signed by  
Croese, Thomas (DDMI)  
Date: 2021.03.04  
11:40:55 -0700

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered In Canada

Page 1 of 1

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-MAR-2021**

**INVOICE: DDC 03-21B**

DESCRIPTION		AMOUNT
	100%	40%
March 2021 Cash Requirement – Cash Call 2	\$45,000,000.00	\$18,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$18,000,000.00**

(DUE ON March 22, 2021)

SCHEDULE "A"

DOMINION APRIL #1(2021) CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 608 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 01-APR-2021

INVOICE: DDC 04-21A

DESCRIPTION	AMOUNT
APR 2021 Cash Requirement – Cash Call 1	\$22,400,000.00
GST Registration # 83952 4048RT	

TOTAL CASH CALL **\$22,400,000.00**

(DUE ON April 08, 2021)

Croese,  
Thomas  
(DDMI)

Digitally signed by  
Croese, Thomas  
(DDMI)  
Date: 2021.03.31  
17:22:06 -06'00'

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1



SCHEDULE "A"

DOMINION APRIL EXPLORATION CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 668 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 08-APR-2021

INVOICE: DDC EXP 04-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: MARCH Costs	\$214,387.11
	\$85,754.84
GST Registration # 83952 4048RT	

TOTAL Exploration charges

\$85,754.84

(Due on APRIL 15, 2021)

Croese, Thomas (DDMI)  
Digitally signed by Croese, Thomas (DDMI)  
Date: 2021.04.08 12:00:35 -0600

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered In Canada

Page 1 of 1

SCHEDULE "A"

DOMINION APRIL #2(2021) CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 15-APR-2021

INVOICE: DDC 04-21B

DESCRIPTION	AMOUNT
APR 2021 Cash Requirement – Cash Call 2	\$14,000,000.00
GST Registration # 83952 4048RT	

TOTAL CASH CALL **\$14,000,000.00**

(DUE ON April 22, 2021)

Croese, Thomas  
(DDM)  
Digitally signed by  
Croese, Thomas (DDM)  
Date: 2021.04.14 15:24:00  
-0700

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-May-2021**

**INVOICE: DDC 05-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
May 2021 Cash Requirement – Cash Call 1	\$45,000,000.00	\$18,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$18,000,000.00**

(DUE ON May 8, 2021)

SCHEDULE "A"

DOMINION MAY EXPLORATION CASH CALL NOTICE  
(erroneously dated April 11, 2021)



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 11-APR-2021

INVOICE: DDC EXP 05-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: APR Costs \$66,939.26	\$26,775.70
GST Registration # 83952 4048RT	

TOTAL Exploration charges

\$26,775.70

(Due on May 18, 2021)

Croise, Thomas  
(DDM) Digitally signed by Croise, Thomas  
Date: 2021.05.11 13:43:03  
-04'02'

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

# SCHEDULE "A"

## DOMINION MAY #2(2021) CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 8500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 808 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE:** 15-May-2021

**INVOICE:** DDC 05-21B

DESCRIPTION	AMOUNT
	100%
	40%
May 2021 Cash Requirement – Cash Call 2	\$16,000,000.00
	\$6,400,000.00
GST Registration # 83952 4048RT	

**TOTAL CASH CALL** \$6,400,000.00

(DUE ON May 22, 2021)

Croese, Thomas  
(DDM)

Digitally signed by Croese,  
Thomas (DDM)  
Date: 2021.05.17 10:03:41 -0500

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered In Canada

Page 1 of 1

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-JUN-2021**

**INVOICE: DDC 06-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
JUNE 2021 Cash Requirement – Cash Call 1	\$19,000,000.00	\$7,600,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$7,600,000.00**

(DUE ON JUN 08, 2021)

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

**DATE: 01-JUN-2021**

**INVOICE: DDC EXP 06-21**

DESCRIPTION	AMOUNT
<b>100%</b>	<b>40%</b>
<b>Exploration Recharge:</b> Diavik Brownfields Project: MAY Costs	\$309,935.14
\$774,837.84	
GST Registration # 83952 4048RT	

**TOTAL Exploration charges** \$309,935.14

**(Due on JUN 08, 2021)**

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-JUN-2021**

**INVOICE: DDC 06-21B**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
JUNE 2021 Cash Requirement – Cash Call 2	\$12,000,000.00	\$4,800,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$4,800,000.00**

(DUE ON JUN 22, 2021)



# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-JUL-2021**

**INVOICE: DDC 07-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
JULY 2021 Cash Requirement – Cash Call 1	\$25,000,000.00	\$10,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$10,000,000.00**

(DUE ON JUL 08, 2021)

# SCHEDULE "A"

## DOMINION JULY EXPLORATION CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

**DATE:** 01-JUL-2021

**INVOICE:** DDC EXP 07-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: JUN Costs \$1,456,917.16	\$582,766.86
GST Registration # 83952 4048RT	

**TOTAL Exploration charges** \$582,766.86

**(Due on JUL 08, 2021)**

Croese, Thomas  
(DDMI)

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

SCHEDULE "A"

DOMINION JULY 2021 CLOSURE SECURITY CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 05-JUL-2021

INVOICE: DDC 07-21

DESCRIPTION	AMOUNT
Closure Securitization – Cash Call	100% 40% \$152,350,000.00 \$60,940,000.00

GST Registration # 83952 4048RT

TOTAL CASH CALL \$60,940,000.00

(DUE ON JUL 12, 2021)

Croese, Thomas  
(DDMI)  
Digitally signed by  
Croese, Thomas (DDMI)  
Date: 2021.07.05  
12:11:28 -0600

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-JUL-2021**

**INVOICE: DDC 07-21B**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
JULY 2021 Cash Requirement – Cash Call 2	\$11,000,000.00	\$4,400,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$4,400,000.00**

(DUE ON JUL 22, 2021)

**SCHEDULE "A"**

**DOMINION AUGUST #1(2021) CASH CALL NOTICE**



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE:** 02-Aug-2021

**INVOICE:** DDC 08-21A

DESCRIPTION		AMOUNT
	100%	40%
AUG 2021 Cash Requirement – Cash Call 1	\$22,000,000.00	\$8,800,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL** \$8,800,000.00

(DUE ON Aug 09, 2021)

Croese,  
Thomas  
(DDMI)

Digitally signed by  
Croese, Thomas  
(DDMI)  
Date: 2021.07.29  
15:22:05 -0600

Document #: DCON-006-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

SCHEDULE "A"

DOMINION August #2(2021) CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

DATE: 16-Aug-2021

INVOICE: DDC 08-21B

DESCRIPTION	AMOUNT
	100%
	40%
AUG 2021 Cash Requirement – Cash Call 2	\$16,000,000.00
	\$6,400,000.00
GST Registration # 83952 4048RT	

TOTAL CASH CALL \$6,400,000.00

(DUE ON Aug 23, 2021)

Williams,  
Kimberly  
(DDMI)

Digitally signed by  
Williams, Kimberly (DDMI)  
Date: 2021.08.13 14:35:57  
-06'00'

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

SCHEDULE "A"

DOMINION AUGUST EXPLORATION CASH CALL NOTICE



Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

DATE: 16-AUG-2021

INVOICE: DDC EXP 08-21

DESCRIPTION	AMOUNT
100%	40%
Exploration Recharge: Diavik Brownfields Project: July Costs	\$874,029.75
	\$349,611.90
GST Registration # 83952 4048RT	

TOTAL Exploration charges \$349,611.90

(Due on August 23, 2021)

Williams,  
Kimberly  
(DDMI)

Digitally signed by  
Williams, Kimberly  
(DDMI)  
Date: 2021.08.13  
14:43:55 -0600'

Document #: DCON-000-1010

Template #: DCON-036-1010

Registered in Canada

Page 1 of 1

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 01-Sep-2021**

**INVOICE: DDC 09-21A**

DESCRIPTION		AMOUNT
	<b>100%</b>	<b>40%</b>
SEP 2021 Cash Requirement – Cash Call 1	\$20,000,000.00	\$8,000,000.00
GST Registration # 83952 4048RT		

**TOTAL CASH CALL \$8,000,000.00**

(DUE ON Sep 08, 2021)



# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP  
'Accounts Payable'  
<accountspayable@ddcorp.ca>

**DATE: 01-SEP-2021**

**INVOICE: DDC EXP 09-21**

DESCRIPTION	AMOUNT
	<b>100%</b>
	<b>40%</b>
<b>Exploration Recharge:</b> Diavik Brownfields Project: August 2021 Costs	\$551,461.82
	\$220,584.73
GST Registration # 83952 4048RT	

**TOTAL Exploration  
charges**

**\$220,584.73**

**(Due on September 08, 2021)**

# RioTinto

Diavik Diamond Mines (2012) Inc.  
P.O. Box 2498  
Suite 300, 5201-50th Avenue  
Yellowknife, NT X1A 2P8 Canada  
T (867) 669 6500 F 1-866-313-2754

**BILLED TO:**

Dominion Diamond Mines ULC  
900 – 606 4 Street SW  
Calgary, AB T2P 1T1  
Canada

Attention: DDC-AP

**DATE: 15-Sep-2021**

**INVOICE: DDC 09-21B**

DESCRIPTION	AMOUNT
	<b>100%</b>
	<b>40%</b>
SEP 2021 Cash Requirement – Cash Call 2	\$9,000,000.00
	\$3,600,000.00
GST Registration # 83952 4048RT	

**TOTAL CASH CALL \$3,600,000.00**

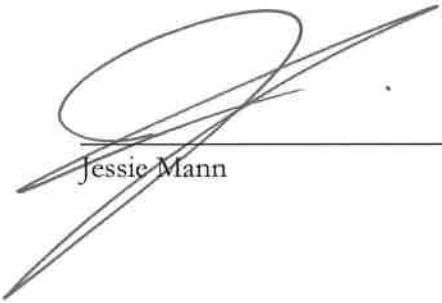
(DUE ON Sep 22, 2021)

**Certificate of Commissioning by Video Technology  
to the Affidavit of Rachel Dingman  
affirmed on October 13, 2021**

I, Jessie Mann, Notary Public/Commissioner for Oaths in and for the Province of Alberta, took the Affidavit of Rachel Dingman via video technology on October 13, 2021 (the “**Affidavit**”).

The deponent and I followed the process outlined by the Alberta Court of Queen’s Bench Notice to the Profession & Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the deponent with the initialed copy that was before me while I was linked by video technology with the deponent. Upon being satisfied that the two copies were identical, I affixed by name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.



---

Jessie Mann