

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

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

DOCUMENT THIRD SUPPLEMENTAL REPORT TO THE SIXTEENTH REPORT  
OF FTI CONSULTING CANADA INC., IN ITS CAPACITY AS  
MONITOR OF DOMINION DIAMOND MINES ULC, DOMINION  
DIAMOND DELAWARE COMPANY LLC, DOMINION  
DIAMOND CANADA ULC, WASHINGTON DIAMOND  
INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC,  
DOMINION FINCO INC. AND DOMINION MARKETING  
CORPORATION

**November 15, 2021**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**THIRD SUPPLEMENTAL REPORT TO THE  
SIXTEENTH REPORT OF THE MONITOR**

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## INTRODUCTION

1. The purpose of this Third Supplemental Report to the Sixteenth Report (the “**Third Supplemental Report**”) is to supplement the Sixteenth Report of the Monitor dated October 6, 2021 (the “**Sixteenth Report**”), the Supplemental Report to the Sixteenth Report dated October 19, 2021 (the “**Supplemental Report**”) and the Second Supplemental Report to the Sixteenth Report dated November 1, 2021 (the “**Second Supplemental Report**”) and together with the Supplemental Report, the “**Supplemental Reports**”) by providing this Honourable Court with information with respect to:
  - a. certain amendments to the AVO that will be sought at the adjourned hearing on November 16, 2021;
  - b. certain amendments to the RVO that will be sought at the adjourned hearing on November 16, 2021; and
  - c. a confidential settlement agreement (the “**Settlement Agreement**”) between ACDC, DDMI and the Agent.
2. This Third Supplemental Report should be read in conjunction with the Sixteenth Report and the Supplemental Reports and all capitalized terms not otherwise defined herein are as defined in the Sixteenth Report and the Supplemental Reports.

## TERMS OF REFERENCE

3. In preparing this Third Supplemental Report, the Monitor has relied upon certain information (the “**Information**”) including Dominion’s unaudited financial information, books and records and discussions with members of Dominion’s former senior management team.
4. Except as described in this Third Supplemental Report, the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information

in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.

5. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
6. Future oriented financial information reported to be relied on in preparing this report is based on the Monitor's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### **AMENDED AVO**

8. Subsequent to filing the Monitor's Application materials, the Sixteenth Report and the Supplemental Reports, the parties to the AVO Agreement and ACDC have agreed upon certain revisions to the form of AVO that includes a release of the BC Civil Claim (the "**Amended AVO**"). A blackline copy of the Amended AVO (showing all the changes that have been made from the draft that was attached as Schedule "**B**" to the Monitor's October 19, 2021 Amended Application) is attached as Appendix "**A**". The Monitor, DDMI, the Agent and ACDC have agreed that the Amended AVO is the form of AVO that will be sought from the Court at the November 16<sup>th</sup> application.
9. The amendments reflected in the Amended AVO are summarized as follows:
  - a. counsel to ACDC was added as a party heard from at the November 16<sup>th</sup> application of the Monitor;
  - b. paragraph 13(b), which required the Purchaser to destroy all LCs upon delivery of the Monitor's Closing Certificate, has been deleted (the parties have now agreed

that, at closing, the LCs will be delivered to the Monitor's agent in Yellowknife, for return to the First Lien Lenders who issued the LCs);

- c. ACDC was added to paragraph 15(a) and upon filing of the Monitor's Closing Certificate, shall now, along with DDMI, be deemed to be forever irrevocably released and discharged from any an all present and future liability, indebtedness, damages, judgments or executions based in whole or in part on any allegation that was or ought to have been pleaded in the Notice of Civil Claim issued by the Dominion against DDMI in the BC Civil Claim and the release was expanded to include any counterclaim related thereto and all claims related to the BC Civil Claim whether advanced in the BC Civil Claim or not; and
- d. paragraph 15(b) was expanded to bar all Persons from taking any and all steps or proceedings against ACDC relating in any way to or in respect of the BC Civil Claim.

#### **AMENDED RVO**

10. Subsequent to filing the Monitor's Application materials, the Sixteenth Report and the Supplemental Reports, the parties to the RVO Term Sheet and ACDC have agreed upon certain revisions to the RVO. A blackline copy of the amended RVO (the "**Amended RVO**") (showing all the changes that have been made from the draft that was attached as Tab "1" to the Monitor's November 1, 2021 Reply Brief) is attached as Appendix "**B**". The Monitor, Washington and ACDC have agreed that the Amended RVO is the form of RVO that will be sought from the Court at the November 16<sup>th</sup> application.

11. The amendments reflected in the Amended RVO are summarized as follows:

- a. counsel to ACDC was added as a party heard from at the November 16<sup>th</sup> Application of the Monitor;
- b. certain defined terms were revised as follows:

- i. “ACDC Claims” was defined as any Claim arising under the ACDC APA;
  - ii. “Claims” were expanded to include “without limitation the ACDC Claims”;  
and
  - iii. “Transferred Assets” were expanded to include “all right, title and interest of the Dominion Entities under the ACDC APA”;
- c. paragraph 6(b) was revised to provide that “Without limiting this Order, from and after the Effective Time the Dominion Entities shall not have any right or interest of any kind or nature whatsoever, including any equity or ownership interest, in or with respect to the ACDC APA...”; and
  - d. paragraph 10 was revised to include the ACDC APA and ACDC Claims. The revised paragraph provides that “Notwithstanding anything to the contrary in this Order or the Agreement, none of the ACDC APA, First Lien Agreements or Diavik Assets may be designated as Retained Assets and none of the ACDC Claims or First Lien Liabilities or Diavik Liabilities may be designated as Retained Claims”.

## **SETTLEMENT AGREEMENT**

12. When this matter came for hearing before the Court on November 9, 2021, the Monitor advised the Court that the parties who were disputing certain issues raised in the application (DDMI, the Agent and ACDC) were in discussions and that a consensual resolution was possible, if those parties were given more time to complete their discussions. The parties to the AVO Agreement and ACDC have now advised the Monitor that they have reached the Settlement Agreement which resolves all disputed issues between them related to the AVO and RVO Transaction.
13. The Settlement Agreement is confidential and its terms have been disclosed to the Monitor on a confidential basis. The parties have advised that they have made the Settlement Agreement confidential, because it concerns their private commercial interests. Accordingly, the Monitor has agreed to disclose those terms to the Court on a confidential

basis only. The Monitor is satisfied that no stakeholder will be prejudiced by the terms of the Settlement Agreement being kept confidential. The Monitor has described the terms of the Settlement Agreement in Confidential Appendix “C” to this Third Supplemental Report and will ask that the Court seal Confidential Appendix “C” on the Court file. The form of Sealing Order that will be sought by the Monitor is attached as Appendix “D” to this Third Supplemental Report.

14. The Monitor supports the Settlement Agreement and recommends the granting of the Sealing Order for the following reasons:

- a. the Settlement Agreement is a private commercial agreement amongst ACDC, DDMI and the Agent which contains confidential and commercially sensitive information and the Sealing Order does not prejudice other stakeholders;
- b. absent the Settlement Agreement, the completion of the transactions contemplated by the Amended RVO and AVO will be put at risk and may be subject to ongoing litigation (and potential appeals) which would result in significant additional professional fees. Overall recoveries to stakeholders will be significantly reduced if the transactions contemplated by the Amended RVO and AVO are not completed; and
- c. based on the foregoing, the Monitor is of the view that the Settlement Agreement is in the best economic interest of the estate’s stakeholders and will allow for a timely conclusion to these CCAA Proceedings.

\*\*\*\*\*

All of which is respectfully submitted this 15<sup>th</sup> day of November, 2021.

FTI Consulting Canada Inc.  
in its capacity as Monitor of the Applicants

A handwritten signature in blue ink, appearing to read 'Deryck Helkaa', with a large circular flourish at the end.

Deryck Helkaa  
Senior Managing Director

A handwritten signature in black ink, appearing to read 'Tom Powell', with a large, stylized initial 'T'.

Tom Powell  
Senior Managing Director



# APPENDIX “A”

Amended AVO

Clerk's Stamp

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, R.S.C. 1985, c. C-36, AS AMENDED

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

DOCUMENT **APPROVAL AND VESTING ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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**DATE ON WHICH ORDER WAS PRONOUNCED:** November 9, 2021

**NAME OF JUSTICE WHO MADE THIS ORDER:** The Honourable Madam Justice K.M. Eidsvik

**LOCATION OF HEARING:** Calgary, Alberta

**UPON** the application (the "**Application**") of FTI Consulting Canada Inc. (the "**Monitor**"), in its capacity as court-appointed monitor of Dominion Diamond Mines ULC (the "**Seller**"), as seller, for an order approving the sale transaction (the "**Transaction**") contemplated by the agreement of purchase and sale (the "**Sale Agreement**") between the Seller and Diavik Diamond Mines (2012) Inc. (the "**Purchaser**"), as purchaser, attached as Schedule "**A**" hereto and vesting in the Purchaser (or its nominee) the Seller's right, title, and interest in and to the acquired assets described in the Sale Agreement (the "**Acquired Assets**");

**AND UPON HAVING READ** the Order issued by the Honourable Madam Justice K.M. Eidsvik dated April 22, 2020 (as amended and restated on May 1, 2020, further amended on May 15, 2020, further amended and restated on June 19, 2020, and further amended on March 4, 2021 (collectively, the “**Initial Order**”)) and the Sixteenth Report of the Monitor, dated October 6, 2021, all filed; **AND UPON** hearing counsel for the Monitor, the Seller, the Purchaser, [Arctic Canadian Diamond Company Ltd \(“Arctic Canadian”\)](#) and any other counsel present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of this application and supporting materials is hereby declared to be good and sufficient, no other Person is required to have been served with notice of this application and time for service of this application is abridged to that actually given.

**DEFINED TERMS**

2. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Sale Agreement or the Initial Order, as applicable.

**APPROVAL OF TRANSACTION**

3. The Transaction is hereby approved and execution of the Sale Agreement by the Monitor on behalf of the Seller is hereby authorized and approved, with such minor amendments as the Purchaser and the Monitor, on behalf of the Seller, may agree are necessary. The Monitor, on behalf of the Seller, is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for completion of the Transaction and conveyance of the Acquired Assets to the Purchaser (or its nominee).

**VESTING OF PROPERTY**

4. Upon delivery of a Monitor’s certificate to the Purchaser (or its nominee) substantially in the form set out in Schedule “**B**” hereto (the “**Monitor’s Closing Certificate**”), all of the Seller’s right, title and interest in and to the Acquired Assets shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts,

reservations of ownership, royalties, options, rights of pre-emption, privileges, interests, assignments, actions, judgments, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, other than the Assumed Liabilities (collectively, "**Claims**") including, without limiting the generality of the foregoing:

- (a) any encumbrances or charges created by the Initial Order or any other Order granted in the within CCAA proceedings;
- (b) any charges, security interests or claims evidenced by registrations, filing or publication, pursuant to (i) the *Personal Property Security Act*, SNWT 1994, c 8 (NWT); (ii) the *Personal Property Security Act*, RSO 1990, c P.10 (Ontario); (iii) the *Personal Property Security Act*, RSA 2000, c P-7 (Alberta); (iv) the *Personal Property Security Act*, RSBC 1996, c 359 (British Columbia); (v) the *Uniform Commercial Code* (U.C.C.); (vi) the Land Titles Act, RSNWT 1988, c-8; (vii) the Northwest Territories Mining Regulation, SOR/2014-68; and (viii) any other personal property or real property registration system;
- (c) any liens or claims of lien under the *Miners Lien Act*, RSNWT 1988, c M-12 (NWT);
- (d) any claims of Arctic Canadian Diamond Company Ltd., as successor in interest to the purchasers under an asset purchase agreement dated as of December 6, 2020 and approved in these proceedings on December 11, 2020;
- (e) any claims of the Seller to a royalty payment under the Diavik Joint Venture Agreement;
- (f) any claims under the Royalty Agreements arising prior to the Filing Date; and
- (g) those Claims listed in Schedule "**C**" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, caveats, interests, easements, and restrictive covenants listed in Schedule "**D**" (collectively, "**Permitted Encumbrances**"));

and for greater certainty, this Court orders that all Claims including Encumbrances other than Permitted Encumbrances, affecting or relating to the Acquired Assets are hereby expunged, discharged and terminated as against the Acquired Assets upon filing of the Monitor's Closing Certificate.

5. Upon delivery of the Monitor's Closing Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities including those referred to below in this paragraph (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Closing Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to convey to the Purchaser or its nominee clear title to the Acquired Assets subject only to Permitted Encumbrances.
6. In order to effect the transfers and discharges described above, this Court directs each of the Governmental Authorities to take such steps as are necessary to give effect to the terms of this Order and the Sale Agreement. Presentment of this Order and the Monitor's Closing Certificate shall be the sole and sufficient authority for the Governmental Authorities to make and register transfers of title or interest and cancel and discharge registrations against any of the Acquired Assets of any Claims including Encumbrances, but excluding Permitted Encumbrances.
7. No authorization, approval or other action by and no notice to or filing with any governmental authority or regulatory body exercising jurisdiction over the Acquired Assets is required for the due execution, delivery and performance by the Purchaser of the Sale Agreement.
8. Except as expressly provided for in the Sale Agreement, the Purchaser (or its nominee) shall not, by completion of the Transaction, have liability of any kind whatsoever in respect of any Claims against the Seller.
9. Upon completion of the Transaction, the Seller and all Persons who claim by, through or under the Seller in respect of the Acquired Assets, and all Persons or entities having any Claims of any kind whatsoever in respect of the Acquired Assets, save and except for Persons entitled to the benefit of the Permitted Encumbrances, shall stand absolutely and forever barred, estopped and foreclosed from and permanently enjoined

from pursuing, asserting or claiming any and all right, title, estate, interest, royalty, rental, equity of redemption or other Claim whatsoever in respect of or to the Acquired Assets, and to the extent that any such Persons or entities remain in the possession or control of any of the Acquired Assets, or any artifacts, certificates, instruments or other indicia of title representing or evidencing any right, title, estate, or interest in and to the Acquired Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).

10. The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Acquired Assets for its own use and benefit without any interference of or by the Seller, or any Person claiming by, through or against the Seller.
11. Immediately upon closing of the Transaction, holders of Permitted Encumbrances shall have no claim whatsoever against the Seller.
12. The Monitor is directed to file with the Court a copy of the Monitor's Closing Certificate forthwith after delivery thereof to the Purchaser (or its nominee).
13. Upon the delivery of the Monitor's Closing Certificate to the Purchaser (or its nominee):~~(a)~~ all LCs issued by any of the First Lien Lenders to the Purchaser shall be cancelled and extinguished without any further obligation of the First Lien Lenders;  
~~(b) — the Purchaser shall destroy all LCs.~~
14. Upon payment or satisfaction in full of the Obligations (as defined in the Credit Agreement (as defined in the Sale Agreement)), which, for greater certainty, includes counsel fees of the First Lien Agent, the Credit Agreement shall be deemed terminated and the First Lien Agent and the First Lien Lenders shall be released from all of their respective obligations thereunder.

#### **RELEASE OF BC LITIGATION CLAIM**

15. Upon the filing of the Monitor's Closing Certificate:
  - (a) each of the Purchaser and Arctic Canadian shall be deemed to be forever irrevocably released and discharged from any and all present and future liability, indebtedness, damages, judgments or executions (whether direct or indirect,

known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) based in whole or in part on any allegation that was or ought to have been pleaded ~~by the Seller against the Purchaser~~ in the Notice of Civil Claim issued by the Seller against the Purchaser in the Supreme Court of British Columbia, Vancouver Registry, No. S206419 and any counterclaim related thereto (the "**BC Litigation Claim**") and all claims related to the BC Litigation Claim whether advanced in the BC Litigation Claim or not; and;

- (b) any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively, as assignee or otherwise, against the Purchaser or Arctic Canadian relating in any way to or in respect of the BC Litigation Claim.

#### **MISCELLANEOUS MATTERS**

16. Notwithstanding:

- (a) the pendency of these proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**"), in respect of the Seller, and any bankruptcy order issued pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Seller; and
- (d) the provisions of any federal or provincial statute;

the vesting of the Acquired Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Seller and shall not be void or voidable by creditors of the Seller, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial

legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

17. The Monitor on behalf of the Seller, the Purchaser (or its nominee) and any other interested party, shall be at liberty to apply for further advice, assistance and direction as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction.
18. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.
19. Service of this Order shall be deemed good and sufficient by service the same in accordance with the procedures in the CaseLines Service Order granted on May 29, 2020 in these proceedings.

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Justice of the Court of Queen's Bench of Alberta



**SCHEDULE "A"**  
**SALE AGREEMENT**

**SCHEDULE "B"**  
**FORM OF MONITOR'S CLOSING CERTIFICATE**

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, R.S.C. 1985, c. C-36, AS AMENDED

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

DOCUMENT                **MONITOR'S CLOSING CERTIFICATE**

ADDRESS FOR  
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INFORMATION OF  
PARTY FILING THIS  
DOCUMENT                Bennett Jones LLP  
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**RECITALS**

- A. Pursuant to an Order of the Honourable Justice K.M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 22, 2020 (as amended and restated on May 1, 2020, further amended on May 15, 2020, further amended and restated on June 19, 2020, and further amended on March 4, 2021, and as may be further amended, restated or supplemented from time to time), FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of Dominion Diamond Mines ULC (the "**Seller**").
- B. Pursuant to an Order of the Court dated November 9, 2021 the Court approved the asset purchase agreement made as of ●, 2021 (the "**Sale Agreement**") between Diavik Diamond Mines (2012) Inc. (the "**Purchaser**") and the Seller, provided for the vesting in the Purchaser of the Seller's right, title and interest in and to the Acquired Assets, which vesting is to be effective with respect to the Acquired Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming that the transactions contemplated by the Sale Agreement (collectively, the "**Transactions**") have been completed to the satisfaction of the Monitor.
- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Sale Agreement.

**THE MONITOR CERTIFIES** the following:

20. The Transactions contemplated by the Sale Agreement have been completed to the satisfaction of the Monitor.

This Certificate was delivered by the Monitor at **[Time]** on **[Date]**.

**FTI CONSULTING CANADA INC., in its  
capacity as Monitor of DOMINION  
DIAMOND MINES ULC, and not in its  
personal capacity**

Per:

\_\_\_\_\_  
Name:

Title:

**SCHEDULE "C"  
ENCUMBRANCES**

**[TO BE UPDATED PRIOR TO HEARING]**

**SCHEDULE “D”  
PERMITTED ENCUMBRANCES**

“Permitted Encumbrances” means, as of any particular time and in respect of any Person, each of the following Encumbrances: (a) any subsisting restrictions, exceptions, reservations, limitations, provisos and conditions (including royalties, reservation of mines, mineral rights and timber rights, access to navigable waters and similar rights) expressed in any original grant from the Crown or a Governmental Body and any statutory limitations, exceptions, reservations and qualifications to title or Encumbrances imposed by Law; (b) any claim based on treaty rights, traditional territory or land claims; (c) inchoate or statutory liens solely with respect to Assumed Liabilities not at the time overdue; (d) permits, reservations, covenants, servitudes, watercourse, rights of water, rights of access or user licenses, easements, rights-of-way and rights in the nature of easements (including, without in any way limiting the generality of the foregoing, licenses, easements, rights-of-way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) in favor of any Governmental Body or utility company in connection with the development, servicing, use or operation of any property which (1) do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto and (2) have been complied with to date in all material respects; (e) each of the following Encumbrances: (1) permits, reservations, covenants, servitudes, rights of access or user licenses, easements, rights of way and rights in the nature of easements in favor of any Person (other than those in (d) above); (2) any encroachments, title defects or irregularities existing; (3) any instrument, easement, charge, caveat, lease, agreement or other document registered or recorded against title to any property so long as same have been complied with in all material respects; (4) agreements with any Governmental Body and any public utilities or private suppliers of services; (5) restrictive covenants, private deed restrictions, and other similar land use control agreements; in each of (1), (2), (3), (4) and (5), which (I) do not individually or in the aggregate materially detract from the value or materially interfere with the use of the real or immovable property subject thereto and (II) have been complied with to date in all material respects; (6) purchase money security interests granted by the Purchaser, in its capacity as manager of the Diavik Joint Venture, in respect of equipment leased or purchased in the ordinary course of business of the Diavik Joint Venture (f) Encumbrances to which the Purchaser consents in writing; and (g) other than any Claims on the Royalty Agreements arising prior to the Filing Date, which shall not constitute Permitted Encumbrances, the Royalty Rights.

Document comparison by Workshare 10.0 on Sunday, November 14, 2021  
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Input:	
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Rendering set	Standard

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Moved from	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	6
Moved from	0
Moved to	0
Style changes	0
Format changes	0
Total changes	13

# APPENDIX “B”

Amended RVO

Clerk's Stamp:



COURT FILE NUMBER 2001-05630

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

JUDICIAL CENTRE CALGARY

APPLICANTS IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF DOMINION DIAMOND MINES  
ULC, DOMINION DIAMOND DELAWARE COMPANY,  
LLC, DOMINION DIAMOND CANADA ULC,  
WASHINGTON DIAMOND INVESTMENTS, LLC,  
DOMINION DIAMOND HOLDINGS LLC, DOMINION  
FINCO INC., and DOMINION DIAMOND MARKETING  
CORPORATION

DOCUMENT **TRANSACTION APPROVAL AND REVERSE VESTING  
ORDER**

ADDRESS FOR SERVICE **BENNETT JONES LLP**  
AND CONTACT Barristers and Solicitors  
INFORMATION OF 4500 Bankers Hall East  
PARTY FILING THIS 855 – 2<sup>nd</sup> Street SW  
DOCUMENT Calgary, AB T2P 4K7  
  
Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219

**DATE ON WHICH  
ORDER WAS  
PRONOUNCED:** TUESDAY, NOVEMBER 9, 2021

**LOCATION OF  
HEARING OR TRIAL** CALGARY COURTS CENTRE

**NAME OF JUDGE WHO  
MADE THIS ORDER:** THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK



UPON THE APPLICATION of FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor (the “**Monitor**”) in these proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order (this “**Order**”), *inter alia*, approving the transaction (the “**Transaction**”) contemplated by the Definitive Term Sheet for RVO Transaction (as it may be amended in accordance with this Order, the “**Agreement**”) between the Monitor and Washington Diamond Investments Holdings II, LLC (“**Washington**”), a copy of which is attached as Appendix “N” to the October 19, 2021 Supplemental Report to the Sixteenth Report of the Monitor, filed (the “**Monitor’s Report**”) and vesting the Transferred Assets, subject to the Claims and Encumbrances, to the Monitor in trust for the benefit of the creditors of the Dominion Entities (the “**Creditor Trust**”);

AND UPON READING the Monitor’s Report; AND UPON hearing the submissions of counsel for the Monitor, Washington, [Arctic Canadian Diamond Company Ltd.](#) and such other counsel as were present;

**IT IS ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of the application for this Order and the Monitor’s Report is hereby abridged and deemed good and sufficient, no other Person is required to have been served with notice of this application, and this application is properly returnable today.

**DEFINED TERMS**

2. The following capitalized terms used in this Order shall have the following meanings:

- (a) [“ACDC APA” has the meaning given to it in the Monitor’s Report;](#)
- (b) [“ACDC Claims” means any Claim arising under the ACDC APA;](#)
- (c) ~~(a)~~ “**Applicants**” means the applicant debtor companies in these proceedings;

- (d)** ~~(b)~~ “**Claims**” means all claims, liabilities, indebtedness, actions, causes of action, demands, judgments, executions, assessments or reassessments, damages, losses, expenses, commitments and obligations of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, due or not yet due, in law or equity and whether based in statute or otherwise) whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, or otherwise, including without limitation the ACDC Claims;
- (e)** ~~(e)~~ “**Closing Payment**” means a cash payment of US\$1,500,000 made by Washington to the Monitor on closing of the Transaction;
- (f)** ~~(d)~~ “**DDM**” means Dominion Diamond Mines ULC;
- (g)** ~~(e)~~ “**Diavik APA**” has the meaning given to it in the Agreement;
- (h)** ~~(f)~~ “**Diavik Assets**” has the meaning given to it in the Agreement;
- (i)** ~~(g)~~ “**Diavik Joint Venture**” means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the “Diavik Diamond Mine”;
- (j)** ~~(h)~~ “**Diavik Joint Venture Agreement**” means the joint venture agreement dated March 23, 1995 between DDM and Diavik Diamond Mines (2012), Inc. originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time;
- (k)** ~~(i)~~ “**Diavik Liabilities**” has the meaning given to it in the Agreement;
- (l)** ~~(j)~~ “**Dominion Entities**” means, collectively, (i) Washington Diamond Investments, LLC, (ii) Dominion Diamond Holdings, LLC, (iii) DDM, and (iv) Dominion Diamond Marketing Corporation, each of which is a “**Dominion Entity**”;

**(m)** ~~(k)~~—“**Encumbrances**” means all security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts (including statutory, constructive or deemed trusts), reservations of ownership, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgments, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreement, charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing:

- (i) any encumbrances or charges created by the Initial Order or any other orders granted in the within CCAA Proceedings;
- (ii) any charges, security interests or claims evidenced by registration, filing or publication pursuant to the *Personal Property Security Act*, SNWT 1994, c. 8 (NWT); the *Personal Property Security Act*, RSO 1990, c. P.10 (Ontario); the *Personal Property Security Act*, RSA 2000, c. P-7 (Alberta); the *Personal Property Security Act*, RSBC 1996, c. 359 (British Columbia); the Uniform Commercial Code (U.C.C.); the *Land Titles Act*, RSNWT 1988, c. 8; the *Northwest Territories Mining Regulation*, SOR/2014-68; and any other personal or real property registry system in any jurisdiction (collectively, “**Security Registrations**”); and
- (iii) any liens or claims of lien under the *Miners Lien Act*, RSNWT 1988, c. M-12 (NWT) or the *Garage Keepers’ Lien Act*, RSA 2000, c. G-2 (Alberta);

**(n)** ~~(j)~~—“**Equity Interest**” means, with respect to a Person, all shares of capital stock, partnership interests, joint venture interests or other equity interests in respect of

such Person, or securities convertible into, exchangeable or exercisable for any such shares of capital stock, partnership interests, joint venture interests or other equity interests in respect of such Person;

- (o) ~~(m)~~ “**First Lien Agreements**” has the meaning given to it in the Agreement;
- (p) ~~(n)~~ “**First Lien Liabilities**” has the meaning given to it in the Agreement;
- (q) ~~(o)~~ “**Initial Order**” means the Initial Order of the Honourable Madam Justice K. Eidsvik dated April 22, 2020, as amended and restated on May 1, 2020, further amended on May 15, 2020, further amended and restated on June 19, 2020, and further amended on March 4, 2021, as it may be further amended, restated or supplemented from time to time;
- (r) ~~(p)~~ “**Intercompany Claim**” means any Claim that is owed by one Dominion Entity to another Dominion Entity, and, for greater certainty, Intercompany Claim does not include the approximately \$92.8 million intercompany indebtedness formerly owing by DDM to Dominion Diamond Canada ULC;
- (s) ~~(q)~~ “**Person**” means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority (including any Governmental Authority), or natural person;
- (t) ~~(r)~~ “**Retained Assets**” means the right, title and interest of any Dominion Entity in and to the following:

  - (i) the organizational documents, corporate books and records, minute books, income tax returns, and corporate seal of such Dominion Entity;
  - (ii) any records that are required by applicable law to be retained by such Dominion Entity;
  - (iii) the tax attributes, including all operating, non-operating, and capital loss balances or carry forwards, of such Dominion Entity;

- (iv) any Equity Interest in any other Dominion Entity;
- (v) any Intercompany Claim owing to such Dominion Entity by another Dominion Entity;
- (vi) all current or former director and officer insurance policies, including all rights, coverage and entitlements thereunder, of such Dominion Entity or pursuant to which such Dominion Entity had any rights, coverage or entitlements;
- (vii) the Agreement or this Order with respect to the Transaction; and
- (viii) subject to paragraph 10 of this Order, any other asset, property or undertaking designated as a Retained Asset by Washington in writing to the Monitor prior to the Effective Time;

(u) ~~(s)~~ “**Retained Claims**” means, in respect of a Dominion Entity, the following Claims and any related Encumbrances:

- (i) any Intercompany Claim owing by such Dominion Entity to another Dominion Entity; and
- (ii) subject to paragraph 10 of this Order, any other Claim designated as a Retained Claim by Washington in writing to the Monitor prior to the Effective Time;

(v) ~~(t)~~ “**Transferred Assets**” means all assets, properties, interests and undertakings of the Dominion Entities of any kind or nature whatsoever other than the Retained Assets, which Transferred Assets shall include, without limitation:

- (i) the Closing Payment;
- (ii) all right, title and interest of the Dominion Entities in and to the Diavik Assets, including, without limitation, the Diavik Joint Venture Agreement and the Diavik Joint Venture;

(iii) all right, title and interest of the Dominion Entities under the ACDC APA;

(iv) ~~(iii)~~ the First Lien Agreements; and

(v) ~~(iv)~~ all Equity Interests in any Person other than a Dominion Entity, including, without limitation, all Equity Interests in the Transferred Subsidiaries; and

(w) ~~(t)~~ “**Transferred Subsidiaries**” means (i) Dominion Finco Inc., (ii) Dominion Diamond Delaware Company LLC, (iii) Dominion Diamond Canada ULC, and (iv) Dominion Diamond (Luxembourg) S.a.r.l.

#### **APPROVAL OF THE TRANSACTION**

3. The Agreement and the Transaction are hereby approved. The execution of the Agreement by the Monitor, on its own behalf and on behalf of the Applicants, is hereby authorized, ratified, confirmed and approved, with such amendments as the Monitor and Washington may deem necessary or desirable. The Monitor and the Applicants are hereby authorized and directed to complete the Transaction subject to the terms of the Agreement, to perform their obligations under the Agreement and any ancillary documents related thereto, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction. In the event of any conflict between the terms of the Agreement and this Order, this Order shall govern.
4. This Order shall constitute the only authorization required in respect of the Applicants to proceed with and complete the Transaction, and no shareholder, director or other approval in respect of the Dominion Entities shall be required in connection therewith.

## VESTING OF TRANSFERRED ASSETS AND CLAIMS AND ENCUMBRANCES

5. Upon delivery of a Monitor's certificate to Washington substantially in the form set out in Schedule "A" hereto (the "**Monitor's Certificate**"), the following shall occur and be deemed to occur commencing at the time of delivery of the Monitor's Certificate (the "**Effective Time**") in the following sequence:
- (a) all right, title and interest of the Dominion Entities in and to the Transferred Assets shall be transferred to and shall vest absolutely and exclusively without recourse in the Creditor Trust;
  - (b) all Claims and Encumbrances in respect of the Dominion Entities other than the Retained Claims shall be transferred to and assumed by and shall vest absolutely and exclusively without recourse in the Creditor Trust, and (i) such Claims and Encumbrances shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the Effective Time, (ii) such Claims and Encumbrances equal to the fair market value of the Transferred Assets shall be transferred to and assumed by the Creditor Trust in consideration of the Transferred Assets, and (iii) the remaining Claims and Encumbrances shall be transferred to and assumed by the Creditor Trust for no consideration as part of, and to facilitate, the implementation of the Transaction and the conclusion of these CCAA proceedings;
  - (c) all Claims and Encumbrances other than the Retained Claims shall be irrevocably and forever expunged, released and discharged as against the Dominion Entities and the Retained Assets;
  - (d) without limiting subparagraph 5(c), any and all Security Registrations against any Dominion Entity (other than any Security Registrations in respect of a Retained Claim) shall be and are hereby forever released and discharged as against such Dominion Entity, and all such Security Registrations shall attach to the Transferred Assets vested in the Creditor Trust and maintain the same attributes, rights, nature, perfection and priority as they had immediately prior to the

Effective Time, and no financing change statements in any applicable personal property or other registry system are required to reflect the transfer of and assumption by the Creditor Trust of such Security Registrations; and

- (e) the Dominion Entities shall cease to be Applicants in the CCAA Proceedings and shall be released from the purview of the Initial Order and all other orders of this Court granted in these CCAA Proceedings.

6. As of the Effective Time:

- (a) the Dominion Entities shall continue to hold all right, title and interest in and to the Retained Assets, free and clear of all Claims and Encumbrances other than the Retained Claims; and
- (b) the Dominion Entities shall be deemed to have disposed of the Transferred Assets and shall have no right, title or interest in or to the Transferred Assets. Without limiting this Order, from and after the Effective Time the Dominion Entities shall not have any right or interest of any kind or nature whatsoever, including any equity or ownership interest, in or with respect to the [ACDC APA, the](#) Diavik Joint Venture, the Diavik Joint Venture Agreement or the Creditor Trust.

7. For greater certainty, any Person that, prior to the Effective Time, had a Claim or Encumbrance other than a Retained Claim against the Dominion Entities or their assets, properties or undertakings shall, as of the Effective Time, no longer have any such Claim or Encumbrance against or in respect of the Dominion Entities or the Retained Assets, but shall have an equivalent Claim or Encumbrance, as applicable, against the Transferred Assets to be administered by the Creditor Trust from and after the Effective Time, with the same attributes, rights, security, nature and priority as such Claim or Encumbrance had immediately prior to its transfer to the Creditor Trust, and nothing in this Order limits, lessens, modifies (other than by change in debtor) or extinguishes the Claim or Encumbrance of any Person as against the Transferred Assets to be administered by the Creditor Trust.



8. From and after the Effective Time, the Dominion Entities shall be authorized to take all steps as may be necessary to effect the discharge and release as against the Dominion Entities and the Retained Assets of the Claims and Encumbrances that are transferred to and vested in the Creditor Trust pursuant to this Order, including the Security Registrations.
9. Upon the delivery of the Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Dominion Entities, the Retained Assets or the Transferred Assets (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to give effect to the terms of this Order and the completion of the Transaction and to discharge and release all Claims and Encumbrances other than Retained Claims against or in respect of the Dominion Entities and the Retained Assets, and presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to do so.
10. Washington shall have the right, at any time prior to the Effective Time, by notice in writing to the Monitor and without any adjustment to the Closing Payment, to deem, for all purposes of this Order and the Agreement, (a) any asset, property or undertaking of the Dominion Entities other than the Closing Payment to be a Retained Asset (including any asset, property or undertaking that is otherwise identified herein as a Transferred Asset), (b) any asset, property or undertaking of the Dominion Entities to be a Transferred Asset (including any asset, property or undertaking that is otherwise identified herein as a Retained Asset), and (c) any Retained Claim to be a Claim and Encumbrance that is transferred to and vested in the Creditor Trust and released and discharged as against the Dominion Entities and the Retained Assets. Notwithstanding anything to the contrary in this Order or the Agreement, ~~no~~[none of the ACDC APA](#), First Lien Agreements or

Diavik Assets may be designated as Retained Assets and ~~ne~~none of the ACDC Claims or First Lien Liabilities or Diavik Liabilities may be designated as Retained Claims.

## INJUNCTIONS

11. From and after the Effective Time, all Persons shall be absolutely and forever barred, estopped, foreclosed and permanently enjoined from pursuing, asserting, exercising, enforcing, issuing or continuing any steps or proceedings, or relying on any rights, remedies, claims or benefits in respect of or against the Dominion Entities or the Retained Assets, in any way relating to, arising from or in respect of:
  - (a) the Transferred Assets;
  - (b) any and all Claims or Encumbrances other than the Retained Claims against or relating to the Dominion Entities, the Transferred Assets or the Retained Assets existing immediately prior to the Effective Time;
  - (c) the insolvency of the Dominion Entities prior to the Effective Time;
  - (d) the commencement or existence of the CCAA Proceedings; or
  - (e) the completion of the Transaction.

## CREDITOR TRUST

12. The Creditor Trust created pursuant to this Order shall be named the “Dominion Residual Asset Trust”. The Creditor Trust shall be instituted and administered in accordance with the Trust Settlement attached as **Schedule "B"** hereto.
13. At the Effective Time, the style of cause for these proceedings shall be changed to:

IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF THE ADMINISTRATION OF THE  
DOMINION RESIDUAL ASSET TRUST

14. The administration of the Creditor Trust shall remain subject to the Court's oversight and these proceedings. The Initial Order and the Order (Expansion of Monitor's Powers) of this Court dated January 27, 2021 (the "**Expanded Powers Order**") shall apply *mutatis mutandis* to the Creditor Trust, the Transferred Assets and the Monitor.
15. In addition to and without limiting the rights and protections afforded to the Monitor pursuant to the CCAA, the Initial Order and the Expanded Powers Order, the Monitor and its employees and representatives shall not incur any liability as a result of acting in accordance with this Order or administering the Creditor Trust, save and except for any gross negligence or wilful misconduct on the part of any such parties.

#### MISCELLANEOUS

16. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to Washington provided, however that, subject to further Court order, the Monitor shall not execute, deliver or file the Monitor's Certificate until after the completion of the transactions contemplated by the Diavik APA.
17. Notwithstanding:
  - (a) the pendency of these proceedings;
  - (b) any application for a bankruptcy order or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**") or otherwise and any bankruptcy or receivership order issued pursuant to any such application; or
  - (c) the provisions of any federal or provincial statute,

the execution of the Agreement and the implementation of the Transaction shall be binding on any trustee or other administrator in respect of the Creditor Trust and any trustee in bankruptcy or receiver that may be appointed in respect of any Dominion Entity and shall not be void or voidable by creditors of the Creditor Trust or the Dominion Entities, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction

under the BIA or any other applicable federal or provincial legislation or at common law, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. The Monitor, Washington and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order and to assist and aid the parties in completing the Transaction.
19. This Court shall retain exclusive jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order, the Agreement and all amendments thereto, in connection with any dispute involving the Dominion Entities or the Creditor Trust, and to adjudicate, if necessary, any disputes concerning the Dominion Entities or the Creditor Trust related in any way to the Transaction.
20. This Court hereby requests the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor and the Dominion Entities and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Dominion Entities and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order.
21. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

---


Justice of the Court of Queen's Bench of Alberta



**SCHEDULE A**

**FORM OF MONITOR'S CERTIFICATE**

Clerk's Stamp:



COURT FILE NUMBER

2001-05630

COURT

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

JUDICIAL CENTRE

CALGARY

APPLICANTS

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

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

DOCUMENT

MONITOR'S CERTIFICATE

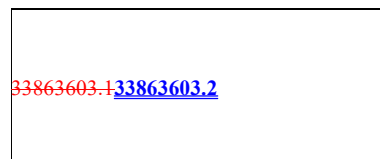
ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7

Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219

**RECITALS**

- A. Pursuant to an Order of the Honourable Madam Justice K. Eidsvik of Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 22, 2020, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of the Applicants



~~33863603-1~~[33863603.2](#)

in proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

- B. On November 9, 2021, the Court granted a Transaction Approval and Reverse Vesting Order approving a Definitive Term Sheet for RVO Transaction (the “**Agreement**”) between the Monitor and Washington Diamond Investments Holdings II, LLC (“**Washington**”) and the transaction completed thereby (the “**Transaction**”).
- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Agreement.

**THE MONITOR CERTIFIES** the following:

- 1. The Monitor has received the Cash Payment from or on behalf of Washington and the Closing Conditions have been satisfied or waived;
- 2. The Transaction has been completed to the satisfaction of the Monitor; and
- 3. This Certificate was delivered by the Monitor at [TIME] on [DATE].

**FTI CONSULTING CANADA INC., in its capacity as Monitor and not in its personal or corporate capacity**

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE B**  
**CREDITOR TRUST SETTLEMENT**



Document comparison by Workshare 9.5 on Friday, November 12, 2021 4:03:37 PM

Input:	
Document 1 ID	interwovenSite://INVENTORYS1/TorysAtWork/33863603/1
Description	#33863603v1<TorysAtWork> - Reverse Vesting Order (ACDC)
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Rendering set	Firm_Standard

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Format change	
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Inserted cell	
Deleted cell	
Moved cell	
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Padding cell	

Statistics:	
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Deletions	31
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Moved to	0
Style change	0
Format changed	0
Total changes	71

# APPENDIX “D”

Sealing Order

CLERK'S STAMP

COURT FILE NUMBER

2001-05630

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, 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, DOMINION FINCO INC., AND DOMINION DIAMOND MARKETING CORPORATION

DOCUMENT

**ORDER (SEALING)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

**BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2 Street SW  
Calgary, AB T2P 4K7

Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219  
Client File No.: 76142.10

**DATE ON WHICH ORDER WAS PRONOUNCED:**

TUESDAY, NOVEMBER 16, 2021

**LOCATION OF HEARING OR TRIAL:**

CALGARY COURTS CENTRE

**NAME OF MASTER/JUDGE WHO MADE THIS ORDER:**

THE HONOURABLE MADAM JUSTICE  
K. M. EIDSVIK

**UPON THE APPLICATION** by FTI Consulting Canada Inc., the Court-appointed monitor (the "**Monitor**") of Dominion Diamond Mines ULC, Dominion Diamond Delaware Company LLC, Dominion Diamond Canada ULC, Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Finco Inc. and Dominion Diamond Marketing Corporation (collectively, "**Dominion**"); **AND UPON HAVING READ** the Sixteenth Report of the Monitor dated October 6, 2021 (the "**Sixteenth Report**"), the Supplement to the Sixteenth Report dated October 19, 2021, the Second Supplement to the Sixteenth Report dated November 1, 2021 and the Third Supplement to the Sixteenth Report dated November 15, 2021 (the "**Third Supplemental Report**"), including Confidential Appendix "C" thereto (the "**Confidential Appendix**"); **AND UPON HEARING** the submissions of counsel for the Monitor and of other interested parties;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE AND NOTICE OF APPLICATION**

1. Service of notice of this application, the Third Supplemental Report and the Confidential Appendix is hereby declared to be good and sufficient, no other person is required to have been served with notice of this application, and time for service of this application is abridged to that actually given.

**SEALING OF THE CONFIDENTIAL APPENDIX**

2. The Confidential Appendix shall be sealed on the Court file and shall not form part of the public record.
3. The Clerk of this Honourable Court shall file the Confidential Appendix in a sealed envelope attached to a notice that sets out the style of cause of these proceedings and states that:

THIS ENVELOPE CONTAINS CONFIDENTIAL MATERIALS FILED BY FTI CONSULTING CANADA INC., THE COURT-APPOINTED MONITOR OF DOMINION DIAMOND MINES ULC, DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA ULC, WASHINGTON DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC, DOMINION FINCO INC. AND DOMINION DIAMOND MARKETING CORPORATION; AND

THE CONFIDENTIAL MATERIALS ARE SEALED PURSUANT TO THE SEALING ORDER ISSUED BY THE HONOURABLE MADAM JUSTICE K. M. EIDSVIK ON OR ABOUT NOVEMBER 16, 2021 AND SHALL REMAIN SEALED ON THE COURT FILE.

4. Any party may apply to the Court, on notice to the Monitor, Arctic Canadian Diamond Company and Diavik Diamond Mines Inc., to amend or vary this Order, or seek any further or other relief with respect to this Order.

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Justice of the Court of Queen's Bench of Alberta