February 9, 2021

SUMMARY OF GNWT RESPONSE TO DOMINION DIAMOND MINES CREDITOR PROTECTION PROCESS AND EKATI DIAMOND MINE SALE

This document describes the Government of the Northwest Territories' (GNWT) response to the Dominion Diamond Mines creditor protection process and sale of the Ekati Diamond Mine to Arctic Canadian Diamond Company.

On April 22, 2020, Dominion Diamond Mines (Dominion) filed for and received creditor protection under the *Companies' Creditors Arrangement Act* (CCAA). The GNWT organized a coordinated departmental approach in response to this development – with efforts led by the Departments of Finance and Industry, Tourism and Investment (ITI) – and the GNWT has been represented by outside legal counsel (Cassels Brock and Blackwell LLP) experienced in CCAA proceedings.

Consistent with the role of government, the GNWT has remained neutral throughout the Dominion CCAA, advocating only for the NWT's interests to have both the Ekati and Diavik mines operating, creating jobs and business opportunities for residents, and to have NWT businesses on the creditor listing be paid in full. Statements to this effect have been made by our counsel in Court.

On February 3, 2021, the sale of the Ekati mine closed. Arctic Canadian Diamond Company Ltd. (ACDC) purchased the mine from Dominion, assuming most of the company's liabilities as well as responsibility for the Ekati Environmental Agreement, regulatory instruments, Impact and Benefits Agreements (IBAs), the Socio-Economic Agreement (SEA), and other authorizations.

The sale is a significant step in the Dominion creditor protection process and, when approved by the Court in December 2020, it had overwhelming support from the majority of stakeholders. Nevertheless, the GNWT completed a thorough review of the purchasers, the new entity structure, and the proposed sale, as well as all related assignments; these were found to be acceptable.

Dominion's 40 percent share of the Diavik Diamond Mines joint venture and related liabilities were not included in the Ekati sale. As such, it is likely that the next steps for Dominion's share of the Diavik mine will be decided by the courts.

The CCAA process continues to play out through the Court and Dominion remains in creditor protection until March 1, 2021. The GNWT continues to participate in these proceedings keeping in mind the best interests of NWT residents, workers, and businesses.

NWT Creditors

When Dominion filed for creditor protection, the list of known creditors included $155 million in claims, of which approximately $13.2 million was owing to NWT-based companies. (The bulk of the debt ($130 million) was outstanding to Dominion Diamond Mines Canada ULC.) However, this creditor list only included invoices outstanding as of April 22, 2020, so it is likely that there are additional amounts owing.

The Ekati mine sale to ACDC included US$85 million in working capital to fund certain assumed liabilities (e.g. payments to trade creditors), mine operations, and other general purposes. Notably, this amount increased by US$15 million from the bid approved in December. Within this working capital funding, US$20.5 million was earmarked as a Cure Funding Amount to be used first for essential contract payments, followed by payments on other contracts.

Confidential negotiations took place between ACDC, Dominion, and NWT trade creditors; the GNWT was not a party to these negotiations. It was understood that Dominion had previously been in negotiations with larger suppliers to reduce their liabilities in exchange for life-of-mine contracts with the Ekati mine. If such arrangements were made with some suppliers, more of the Cure Funding Amount would have been available for payments to smaller creditors.

As of February 3, 2021, there are $21.6 million in miners liens filed by 10 businesses against the Ekati leases in a process authorized under the *Miners Lien Act*. These liens act as a form of security for the filing applicant. Normally, once liens have been filed with the Court, leases are not transferred until the liens have been discharged; however, in this case, the Court has approved miners liens as "Permitted Encumbrances" that transferred to the purchaser with the sale. This is further supported by the *Mining Regulations* which state that "transfer of a recorded claim or a lease, or any interest in either, is subject to all judgments, orders liens and other encumbrances that were recorded against the claim or lease, or any interest in them, at the time of the recording of the transfer." (Section 82 (3))

Employment

Ekati is a major employer. The Ekati mine has normally supported approximately 1,300 workers, including direct and ancillary employment. Of these, about 680 have typically been NWT residents. Since it opened, Ekati is responsible for more than 17,000 person-years[1] of Northern employment.

[1] Employment is expressed in Person Years. Person Years (PY) is defined as 2,140 hours, equivalent to a year of two weeks in and two weeks out rotation.

The restart of operations at the Ekati mine on January 20, 2021 was good news for the territory. Most of the 391 previously furloughed workers have returned to the mine site and full recall back to work is expected by February 25, 2021. ACDC has additional vacancies to fill, many of which are anticipated to be filled by Northern workers and Northern Indigenous workers.

Impact Benefit Agreements

ACDC has provided evidence that Ekati's Impact Benefit Agreements (IBAs) with the Tłı̨cho Government, Akaitcho Government, North Slave Métis Alliance, and Kitikmeot Inuit Association will continue to be in effect. These agreements provide for mine-related training, employment, business development, and capacity-building. IBAs are private agreements negotiated directly between the project developer and Indigenous groups.

Due Diligence Review of the Sale

After the court approved the sale on December 11, 2020, the GNWT worked diligently to complete a fulsome review of ACDC to ensure that they can meet the regulatory, financial and social commitments of the Ekati mine. Key to the GNWT's due diligence was a review of ACDC's financial and operational capacity, undertaken with the assistance of external financial advisors (Ernst & Young Orenda Corporate Finance Inc. and PricewaterhouseCoopers).

The GNWT's review found the purchaser and the proposed sale acceptable. At closing, informed by the results of our review, new securities were accepted and the following assignments were made from Dominion to ACDC:

- The Ekati Environmental Agreement;
- Mineral leases;
- Surface leases; and
- The Socio-Economic Agreement.

At the sale closing, all reclamation securities held by Dominion were transferred to ACDC in the same amounts and with the same insurance companies and banks. As part of the GNWT's due diligence prior to accepting the new securities, the financial health of the surety providers and the purchaser were reviewed. A Bond Reduction Protocol was also agreed to by ACDC, the surety providers, and the GNWT and will see surety bonds replaced with cash by late 2024. The GNWT continues to hold securities that are absolute, unconditional, and irrevocable.

GNWT Receivables

Prior to closing, all royalty reports were filed and all outstanding royalty audits were closed out. This provided the GNWT with the value of royalties owing, including audit adjustments on prior-year returns, and provided an accurate pool balance for the leases that transferred to ACDC.

Tax payments required by law for the transfer of surface leases were received prior to the sale closing, including over $8.0 million in current year property taxes and almost $640,000 in outstanding fuel taxes. Dominion, ACDC, and the GNWT reached an agreement where additional amounts owing from payroll tax audits, royalty audits, and unpaid royalties will be paid in installments between May 2021 and December 2021. Even so, there are a handful of outstanding receivables for which the GNWT has not yet received payment or agreed to payment terms with ACDC or Dominion.