

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

IN THE MATTER OF RECEIVERSHIP OF SEAFIELD RESOURCES LTD.

**NOTICE OF MOTION
(returnable May 19, 2015)**

KPMG Inc., in its capacity as receiver (the “**Receiver**”) of Seafield Resources Ltd. (“**Seafield**”), will make a motion to a judge on Tuesday, May 19, 2015, at 10 am or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

An order, in the form attached as Schedule “A” hereto,

- (a) if necessary, abridging the time for service of this Notice of Motion, the Motion Record and the Factum of the Receiver and dispensing with any further service thereof;
- (b) approving the First Report of the Receiver to the Court, dated May 11, 2015 (the “**First Report**”), and the activities of the Receiver and its legal counsel set out therein;
- (c) approving a sales and investor solicitation procedures (the “**SISP**”) substantially in the form attached as Schedule “E” to the First Report;

- (d) deeming all advances from RMB Australia Holdings Limited and/or RMB Resources Inc. (collectively “**RMB**”) to Minera Seafield S.A.S. (“**Minera**”) from or after the date of the receivership of Seafield with approval of the Receiver to be secured obligations under the Receiver’s Borrowings Charge;
- (e) increasing the permitted amount of the Receiver’s Borrowings Charge, provided for at paragraph 21 of the Receivership Order (as defined below), from \$750,000 to USD \$3,000,000;
- (f) authorizing the Receiver to assign Seafield into bankruptcy; and,
- (g) such further and other relief as to the Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (h) On September 9, 2014 KPMG was appointed receiver (the “**Receiver**”) pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (“**BIA**”) and s. 101 of the *Courts of Justice Act* (Ontario) of all assets, undertakings and property of Seafield (the “**Receivership Order**”);
- (i) The Receivership Order authorizes the Receiver to market and sell the property of Seafield;
- (j) Seafield is a Toronto based company incorporated pursuant to the Ontario *Business Corporations Act*;
- (k) Seafield’s principal asset is 100% of the shares of Minera;
- (l) Minera is a mining company constituted under the laws of Colombia, holding various mining claims in Colombia;
- (m) Under the Receivership Order, the Receiver was granted the power to exercise any shareholder, partnership, joint venture or other rights that Seafield has as sole shareholder of Minera;

Approval of the First Report

- (n) The Receiver's actions and activities, as described in the First Report, are lawful and proper, and consistent with its powers and duties under the Receivership Order;

SISP

- (o) The SISP is necessary to facilitate an efficient disposition of the assets of Seafield and to maximize the value of Seafield's assets;
- (p) The terms of the SISP are reasonable in the circumstances;
- (q) The SISP does not require the Receiver to accept an offer that is not in the best interests of the creditors of Seafield;
- (r) The Receiver will return to this Court to seek approval of any transaction and to provide definitive documentation with respect to same;

The Receiver's Borrowings Charge

- (s) The Receivership Order provided for a Receiver's Borrowings Charge of \$750,000;
- (t) On December 19, 2014, RMB entered a loan agreement with Minera (the "**Minera Loan Agreement**") to facilitate direct funding of Minera's operations in order to ensure that the funding provided by RMB to Minera would have priority over Minera's assets in the event of an asset sale in respect of Minera;
- (u) The Receiver agreed to the Minera Loan Agreement to ensure the ongoing funding of Minera and to avoid reorganization proceedings in respect of Minera;
- (v) In consideration of RMB providing funding to Minera, the Receiver agreed to seek an order from the Court deeming any advances made

under such loan agreement from the date of the Receivership Order to be secured under the Receiver's Borrowings Charge;

- (w) To date, the amount of funds advanced to the Receiver and directly to Minera by RMB is close to \$1,000,000;
- (x) Ongoing funding will be required in the coming months;

Authority to assign Seafield into bankruptcy

- (y) At various times, some of the directors of Seafield were simultaneously directors of Minera;
- (z) Shortly prior to the Receivership Order, following a resolution of the board of directors of Seafield, Minera adopted certain compensation obligations and labour agreement amendments in favour of certain former executives/administrators that may have the effect of giving those executives/administrators a priority over other creditors of Minera under Colombian law (the "**Labour Agreement Amendments**") and may have a detrimental effect on the recoveries available to creditors of Seafield;
- (aa) The Labour Amendment Agreements threaten to diminish the value of Seafield's estate;
- (bb) The Receiver requires the ability to assign Seafield into bankruptcy in order to preserve any rights to challenge the Labour Agreement Amendments and any other reviewable transactions undertaken by Seafield pursuant to the BIA;

Generally

- (cc) The circumstances that exist make the Order sought by the Receiver appropriate;
- (dd) Paragraphs 3(k), (r) and (t), and 27 of the Receivership Order;

- (ee) Rules 2.03, 3.02 and 16 of the *Rules of Civil Procedure* (Ontario); and
- (ff) Such further and other grounds as counsel may advise and this Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (gg) The Order of Justice Newbould, dated September 9, 2014;
- (hh) The First Report of the Receiver to the Court, dated May 11, 2015; and,
- (ii) Such further material as counsel may advise and the Court permit.

May 11, 2015

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TO: **SERVICE LIST**

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(RETURNABLE May 19, 2015)**

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