



NO. S-154746  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

**IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT,**  
R.S.C. 1985 c. C-44, as amended

AND

**IN THE MATTER OF NORTH AMERICAN TUNGSTEN CORPORATION LTD.**

PETITIONER

**NOTICE OF APPLICATION**

**Name of applicant: Alvarez & Marsal Canada Inc. (the "Monitor") in its capacity as Court-appointed Monitor of North American Tungsten Corporation Ltd. ("NATC" or the "Petitioner")**

To: The Service List

TAKE NOTICE that an application will be made by the Applicant to the Honourable Mr. Justice Butler at the courthouse at 800 Smithe Street, Vancouver, B.C. on September 11, 2017 at 9:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An order substantially in the form attached hereto as **Schedule "A"**:
  - (a) extending the Stay Period, as defined in the Amended and Restated Initial Order made July 9, 2015 (the "**ARIO**"), to 11:59 p.m. on March 31, 2019; and
  - (b) directing the Department of Indian Affairs and Northern Development ("**DIAND**") to fund the Company's expenses as set out the Tenth Cash Flow Statement, as that term is defined in the Monitor's Sixteenth Report to the Court dated September 1, 2017 (the "**Sixteenth Report**").

## Part 2: FACTUAL BASIS

### BACKGROUND

1. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the ARIO.
2. On June 9, 2015, Mr. Justice Butler granted the Initial Order providing for a stay of proceedings to July 8, 2015.
3. On July 9, 2015, Mr. Justice Butler granted the ARIO, pursuant to which (among other things) the Stay Period was extended to 11:59 p.m. on July 17, 2015. The Stay Period has since been extended on a number of occasions, most recently to October 27, 2017 pursuant to the September 12, 2016 order of Mr. Justice Butler made herein.

### CARE AND MAINTENANCE

4. Since September 1, 2016, the date of the Monitor's Thirteenth Report to the Court, the Company, under the Monitor's oversight, has continued its care and maintenance program at the Cantung mine and mine site. This includes monitoring and reporting in respect of environmental obligations, meeting obligations arising in respect of the Company's water licence, maintaining equipment, the underground mine and the mine site, including roads, and meeting with various stakeholder groups, including First Nations.
5. A detailed summary of the Company's care and maintenance activities since September 1, 2016 are set out in section 4 in each of the Monitor's Fifteenth Report to the Court dated March 20, 2017 and the Sixteenth Report.
6. Significantly, the Company has engaged a firm, Tetra Tech Canada Inc., to perform a Phase III Environmental Site Assessment (the "**Phase III ESA**"). The assessment, which is anticipated to be completed by the end of March 2019, will assist with the determination and calculation of the Company's reclamation liabilities and enhance its prospects of effecting a successful restructuring transaction or sale of the Cantung mine

## **PRESERVATION AND RETURN OF EQUIPMENT**

7. In consultation with the Company's primary secured creditor, Callidus Capital Corporation, the Company has moved certain mobile equipment and parts comprising part of Callidus' collateral from the underground mine and arranged them in the laydown yard of the Cantung mine site.
8. Callidus is considering what to do with its equipment collateral. If any of the equipment is to remain on site over the winter, the Company may need to winterize and insure the equipment, the costs of which will have to be funded by Callidus either directly or from the Pre-Transition Funds (as defined in the Sixth Report) in the possession of the Monitor.

## **EXTENSION OF THE STAY PERIOD AND NEXT STEPS**

9. The Company seeks to extend the Stay Period until March 31, 2019. The Monitor supports the application, including for the following reasons:
  - (a) the Company and DIAND require additional time to assess alternative commercialization or transactional strategies with respect to the Cantung mine and related assets;
  - (b) the extension provides for the ongoing care and maintenance of the Cantung mine site to preserve the asset and ensure continued compliance with the Company's environmental obligations and terms of its water licence;
  - (c) the extension will enable the Company to continue undertaking certain regulatory initiatives in order to position the Cantung assets for a potential future transaction including carrying out studies to investigate the potential for reducing reclamation liabilities and completion of the Phase III ESA, which is scheduled to be concluded in March 2019;
  - (d) DIAND has committed to fund the care and maintenance expenses of the Company through to the proposed extension date, and the tenth cash flow statement included in the Sixth Report indicates that the Company will have sufficient liquidity during that period;
  - (e) the Monitor does not believe there will be material financial prejudice to any of NATC's creditors, employees, suppliers or other stakeholders, including affected First Nations, as a result of the extension of the stay of proceedings; and

- (f) the Company's prospects of affecting a viable restructuring and/or transaction involving the Cantung mine would be enhanced by the extension as sought.

**Part 3: LEGAL BASIS**

1. Sections 11 and 11.02, of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "CCAA") and the inherent jurisdiction and statutory discretion of this Honourable Court.
2. The Petitioner has been, and is, acting in good faith and with due diligence.

**Part 4: MATERIAL TO BE RELIED ON**

1. Amended and Restated Initial Order, made July 9, 2015;
2. Monitor's Fifteenth Report to the Court dated March 20, 2017;
3. Monitor's Sixteenth Report to the Court dated September 1, 2017; and
4. Such further and other materials as counsel may advise and as this Court deems admissible.

The applicant(s) estimate(s) that the application will take <sup>10 minutes</sup> 1 hour.

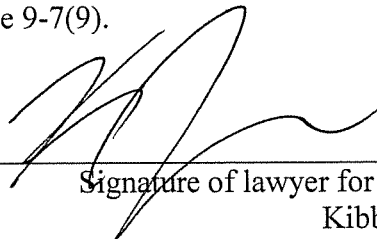
☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master. Mr. Justice Butler is seized of these proceedings and this application has been scheduled to be heard before Mr. Justice Butler by Trial Scheduling.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days of service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i). a copy of the filed Application Response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: September 1, 2017



Signature of lawyer for filing party  
Kibben Jackson

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
<input type="checkbox"/>	with the following variations and additional terms:
 _____	
 _____	
 _____	
Date:	
Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master	

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## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts

SCHEDULE "A"

No. -154746  
Vancouver Registry

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AND

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PETITIONER

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE

MR. JUSTICE BUTLER

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SEPTEMBER 11, 2017

THE APPLICATION of Alvarez & Marsal Canada Inc. in its capacity as court-appointed monitor of the Petitioner (the "**Monitor**") coming on for hearing at Vancouver, British Columbia on this day, and ON HEARING Kibben Jackson, counsel for the Monitor, and those other counsel listed on Schedule "A" hereto; AND UPON READING the material filed, including the Monitor's Fifteenth Report to the Court dated March 20, 2017 and the Monitor's Sixteenth Report to Court dated September 1, 2017 (the "**Sixteenth Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. The relief granted in the Initial Order made herein on June 9, 2015, as amended and restated by the Amended and Restated Initial order made herein on July 9, 2015, and as extended by Orders of this Court made herein on July 17, October 14, November 16,

2015, February 26, 2016 and September 12, 2016, is hereby continued and extended to 11:59 p.m. on March 31, 2019.

2. Her Majesty In Right of Canada as represented by the Department of Indian Affairs and Northern Development Canada (“**DIAND**”) shall fund the Petitioner’s expenditures as set out in the operating budget as set out in Appendix “A” to the Sixteenth Report (the “**Updated Budget**”) for the period August 26, 2017 to March 31, 2019 (the “**Budget Period**”), including any Budget Adjustment (as defined herein) consented to by DIAND in accordance with paragraph 3 hereof.
3. If the Monitor anticipates any material increase in the cumulative amount to be spent by the Petitioner during the Budget Period, including without limitation with respect to the operating costs and environmental costs of the Petitioner and the fees and disbursements of the Petitioner, the Monitor and their respective counsel incurred during the Budget Period (a “**Budget Adjustment**”), the Monitor shall notify DIAND of such Budget Adjustment and DIAND shall notify the Monitor within three business days of such notice whether DIAND consents to an amendment to the Updated Budget to include the Budget Adjustment.
4. The need for endorsement of this Order by counsel appearing on this application, other than counsel for the Monitor, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Kibben Jackson  
Lawyer for the Monitor, Alvarez & Marsal Canada Inc.

BY THE COURT

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REGISTRAR

**Schedule "A"**

(List of Counsel)

<b>COUNSEL</b>	<b>APPEARING FOR:</b>