

NOV 06 2013



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**IN THE MATTER OF SECTION 133(3) OF THE  
CANADA BUSINESS CORPORATIONS ACT, R.S.C. 1985, c.C.44, AS AMENDED**

**MONUMENT MINING LIMITED**

**PETITIONER**

**PETITION TO THE COURT**

**This proceeding has been started by the petitioner for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner,

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (d) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (e) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR SERVICE of the petitioner is:	Stikeman Elliott LLP Barristers and Solicitors 1700 - 666 Burrard Street Vancouver, BC V6C 2X8 (604) 631-1300  Attention: Hein Poulus Q.C./Joseph Ensom
	Fax number address for service (if any) of the petitioner:	n/a
	E-mail address for service (if any) of the petitioner:	hpoulus@stikeman.com and jensom@stikeman.com
(3)	The name and office address of the petitioner's lawyer is:	Stikeman Elliott LLP Barristers and Solicitors 1700 - 666 Burrard Street Vancouver, BC V6C 2X8 (604) 631-1300  Attention: Hein Poulus Q.C./Joseph Ensom

**CLAIM OF THE PETITIONER**

**Part 1: ORDERS SOUGHT**

1. Orders:

- (f) Permitting Monument to serve this Petition and supporting materials by issuing a news release and by posting the news release and the Petition and supporting materials on the system for Electronic Document Analysis and Retrieval ("SEDAR") and on Monument's website;
- (g) Abridging the time for responses to this Petition such that this application is properly returnable before Friday, November 15, 2013; and
- (h) Extending the time for holding the annual meeting of shareholders of Monument Mining Limited to March 31, 2014.

**Part 2: FACTUAL BASIS**

2. The Petitioner, Monument Mining Limited ("Monument") is incorporated under the *Canada Business Corporations Act*, R.S.C. 1984 C. 44 (the "Act") and has its head office located at 910, 688 West Hastings Street in Vancouver, British Columbia.
3. Monument is a natural resource company focused on the acquisition, exploration and development of properties bearing gold and other base metals, and the production of gold and other base metals.
4. Monument has an operating mine in Malaysia named Selinsing. Selinsing is the source of Monument's revenue and earnings.
5. Additionally Monument owns a 100% interest in a mining property, also in Malaysia, named Mengapur. Mengapur holds a major polymetallic deposit that Monument plans to develop.
6. Monument's shares are traded on the TSX Venture Exchange (the "TSX-V").
7. Monument held its last general meeting of shareholders on March 28, 2013 (the "Fiscal 2012 Meeting"), having obtained permission of this court to extend the time for holding that meeting from December 31, 2012 to March 31, 2013. No stakeholder opposed the extension.
8. Monument's financial year end is June 30. Monument's last audited financial statements were for the period ended June 30, 2013 (the "Financial Statements").
9. Without an order, Monument must call its next general meeting of shareholders (the "Annual Meeting") by December 30, 2013.
10. At the Annual Meeting, the shareholders will:
  - (a) receive and consider the Financial Statements and the auditor's report thereon;
  - (b) elect directors for the ensuing year;

- (c) approve the auditors for the ensuing year;
  - (d) approve an incentive stock option plan; and,
  - (e) transact such further or other business as may properly come before the meeting.
11. The Financial Statements and auditors' report were filed on SEDAR on September 30, 2013. The Financial Statements are also available on Monument's website.
  12. The composition of Monument's board of directors has not changed since the Fiscal 2012 Meeting. Monument expects that the current board will stand for re-election at the Annual Meeting.
  13. At the Fiscal 2012 Meeting, shareholders appointed Grant Thornton LLP to serve as Monument's auditors. Grant Thornton LLP will be put forward for reappointment at the Annual Meeting.
  14. At the Fiscal 2012 Meeting, shareholders approved a rolling incentive stock option plan. At the Annual Meeting, shareholders will be asked to approve a fixed incentive stock option plan (the "Option Plan") to replace the rolling incentive stock option plan. Monument expects that the Option Plan will be approved and ratified without issue.

#### **Financing and Calling the Annual Meeting**

15. As was the case in 2012, the senior management of Monument has been, and continues to be, very active in 2013. Monument is currently pursuing various transactions (the "Initiatives") in North America, Europe, and Asia. Monument is unable to divulge particulars of the Initiatives at this time, but will continue to make disclosure regarding financing and material developments through its news releases and SEDAR filings.
16. One of the Initiatives that management is actively pursuing is expected to require shareholder approval. It is Monument's opinion that the Initiative cannot come to

fruition in time to be approved at a regularly scheduled Annual Meeting. Accordingly, unless the Annual Meeting is moved to a later date, there would likely have to be a special meeting of shareholders, to deal with the Initiative, in the first quarter of 2014.

17. In Monument's view the Initiative described in the preceding paragraph only very recently acquired sufficient probability of success to justify deferring the Annual Meeting
18. Management is currently addressing the continuing development of Monument's producing mine at Selinsing - which itself is a source of operating and financing challenges - as well as the operating and financing challenges of Mengapur. Dealing with operational issues in Malaysia at the same time as pursuing the Initiatives in Europe, North America and Asia, is placing substantial burdens on Monument's lean senior management team. The preparations associated with having a second meeting of shareholders would add unnecessarily to those burdens, as well as adding the expense of preparing, printing and mailing a second set of meeting materials.
19. In Monument's view, a three-month extension of the time for the Annual Meeting will allow Monument to avoid those additional burdens and expenses, to the benefit of Monument and its shareholders.
20. On November 5, 2013, the Executive Committee of the board of directors of Monument authorised Monument to apply for an extension of the time for the Annual Meeting.

#### **Logistics of the Annual Meeting**

21. To hold an annual general meeting on December 30, 2013, Monument would need to begin preparing as soon as possible and no later than approximately 45 days in advance of the annual general meeting - around November 15, 2013.

22. In preparation for an annual meeting of shareholders, Monument must send notification of the meeting and record date to all depositories and applicable securities regulatory authorities and conduct searches through its depositories. These searches can take a week or more to complete. Monument must also print and mail proxy materials to its shareholders approximately 30 days prior to the date of the Annual Meeting.

#### **Costs of the Annual Meeting**

23. The total cost of Fiscal 2012 Meeting, including printing and mailing costs, was approximately \$107,000. The cost of holding the Annual Meeting is expected to be at least that much.
24. In preparation for a special meeting of shareholders, Monument would follow a similar process by printing and mailing proxy materials to its shareholders in advance of the special meeting.
25. The total cost of holding a special meeting of shareholders is expected to be at least \$107,000.

#### **Monument Shareholders**

26. It is the opinion of management that Monument shareholders will not be prejudiced by the proposed extension.
27. The Financial Statements have been available on SEDAR and Monument's website since September 30, 2013. Monument will continue to make full disclosure of material developments and financial information through news releases, SEDAR and its website.
28. Monument is not aware of any pending movement to oust the current board or management and the requested extension is not an effort to entrench the existing board or management.

29. The matters to be discussed at the Annual Meeting, described at Paragraph 10, are not expected to be controversial.
30. There is no prejudice or risk to the shareholders if the time for the Annual Meeting is extended from December 30, 2013 to March 31, 2014. The only consequence of extending the time for calling the Annual Meeting is that the shareholders' opportunity to re-elect directors, re-appoint auditors and ratify the Option Plan will be delayed by three months.

**Part 3: LEGAL BASIS**

31. This Court has the power to make an order extending the time for the Annual Meeting. Section 133 of the Act provides that:

(1) The directors of a corporation shall call an annual meeting of shareholders

- (a) not later than eighteen months after the corporation comes into existence; and
- (b) subsequently, not later than fifteen months after holding the last preceding annual meeting but no later than six months after the end of the corporation's preceding financial year.

(2) The directors of a corporation may at any time call a special meeting of shareholders.

**(3) Despite subsection (1), the corporation may apply to the court for an order extending the time for calling an annual meeting. [Emphasis added]**

*Canada Business Corporations Act, R.S.C. 1984 c.44 s.133.*

32. In considering s. 133(3), the Ontario Superior Court of Justice has held that such an order is warranted where the company has established a legitimate and compelling reason for requesting the extension and the extension is in the best interests of the company. In making this determination, practicality (including the efficient use of the company's resources) will be considered. A potentially countervailing factor is whether the requested extension poses a meaningful risk to the shareholders, and whether that risk outweighs the benefits to the company.

*Imax Corp., Re* (2007), 41 B.L.R. (4<sup>th</sup>) 289 (Ont. S.C.J.) at paras. 23 and 25.  
*Canwest Global Communications Corp., Re* (2009), 59 C.B.R. (5<sup>th</sup>) 72 at para. 54.

33. Granting an extension would allow Monument to make efficient use of its resources and avoid the unnecessary disruption and cost of holding two shareholder meetings within three months, both in terms of out-of-pocket costs and management time and effort in organising and dealing with both meetings.
34. There was no objection by any stakeholder when Monument requested permission of this court to have the deadline to hold the Fiscal 2012 Meeting extended to March 31, 2013, in similar circumstances to the present petition.
35. As a result of that prior extension, if the Annual Meeting is held in December, 2013, it will only have been nine months since the Fiscal 2012 Meeting was held. An Annual Meeting in March, 2014 would be twelve months since the Fiscal 2012 Meeting.
36. There is no prejudice or risk of harm to the shareholders if the extension is granted. The Financial Statements have been available on SEDAR and Monument's website since September 2013 and Monument will continue to make timely disclosure of material developments.
37. The sole consequence of the extension is that the shareholders' opportunity to elect directors, appoint auditors and ratify the Option Plan will be delayed by three months, while the consequence of refusing the extension is that Monument may be required to hold two shareholder meetings within a short time at significant cost. Accordingly, it is in the interests of Monument and its shareholders that the time for the Annual Meeting be extended to March 31, 2014.
38. Monument may also rely on such other legal bases as counsel may advise.


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

39. Affidavit of Cathy Zhai, sworn November 5, 2013; and,
40. Such further material as counsel may advise.



The Petitioners estimate that the hearing of the petition will take 15 minutes.

Dated: November 5, 2013

  
\_\_\_\_\_  
Signature of Joseph Ensom

- Petitioner
- Lawyer for petitioner

Hein Poulus Q.C./Joseph Ensom  
Stikeman Elliott LLP  
Barristers and Solicitors  
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Vancouver, BC V6C 2X8  
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Fax: 604-681-1825

*To be completed by the court only:*

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of this petition
- with the following variations and additional terms:

Date: \_\_\_\_\_

Signature of  Judge  Master