

|ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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 CRYSTALLEX INTERNATIONAL CORPORATION

THIRTY-NINTH REPORT OF THE MONITOR

May 18, 2022

INTRODUCTION

1. This Court granted Crystallex International Corporation (“**Crystallex**” or the “**Applicant**”) protection under the *Companies’ Creditors Arrangement Act (Canada)* (the “**CCAA**”) pursuant to the Initial Order of Justice Newbould dated December 23, 2011 (the “**Initial Order**”). Also pursuant to the Initial Order, this Court appointed Ernst & Young Inc. as the monitor (the “**Monitor**”) of the Applicant and granted a stay of proceedings, which was most recently extended to November 18, 2021.
2. On the same date as the Initial Order, Crystallex also commenced a proceeding before the United States Bankruptcy Court in the District of Delaware (the “**Delaware Bankruptcy Court**”) pursuant to Chapter 15 of the United States Bankruptcy Code to obtain an order recognizing this CCAA proceeding as the foreign main proceeding and providing a stay of proceedings in the United States (the “**Chapter 15 Proceedings**”). On January 20, 2012, the Delaware Bankruptcy Court granted an order approving the recognition of the CCAA proceeding as a foreign main proceeding and giving full force and effect in the United States to the Initial Order, including any extensions or amendments authorized under the CCAA proceeding.
3. To provide the necessary financing for its CCAA proceeding and to pursue its arbitration claim against the Bolivarian Republic of Venezuela (“**Venezuela**”) in relation to certain mine sites that it alleged were expropriated, Crystallex obtained debtor-in-possession financing (“**CCAA Financing**”) from Luxembourg Investment Company 31 S.à.r.l. (successor to Tenor Special

Situation I. LP.) (“**Tenor**” or the “**DIP Lender**”). This Court granted an Order dated April 16, 2012 approving the CCAA Financing (“**CCAA Financing Order**”). The current outstanding principal owed to the DIP Lender is \$75,733,333. The Applicant and the DIP Lender have advised the Monitor that the balance of the CCAA Financing was approximately \$164 million as at September 30, 2021.

4. On April 4, 2016, an arbitral tribunal constituted under the auspices of the Additional Facility of the International Center for Settlement of Investment Disputes granted an award (the “**Award**”) in favour of the Applicant. The Award against Venezuela includes:
 - a) US\$1.202 billion in damages;
 - b) interest accrued at 6-month average U.S. dollar LIBOR plus 1%, compounded annually, from April 13, 2008 to the date of the Final Award Order; and
 - c) post judgment interest from the date of the Final Award Order.
5. Pursuant to the stay extension order dated November 18, 2021 (the “**November 2021 Stay Extension Order**”), the Applicant or Monitor is directed to provide to the Court and stakeholders regular public reporting with respect to the Applicant’s then-current cash balance and the DIP balance as well as its enforcement activities. Such reporting is required to be provided no less frequently than every six months.

PURPOSE

6. The Monitor is filing this thirty-ninth report (the “**Thirty-Ninth Report**”) pursuant to the November 21 Stay Extension Order to provide the Court and the stakeholders of Crystallex an update on:
 - a) the Applicant’s cash balance and the DIP balance as of March 31, 2022;
 - b) the Applicant’s actual receipts and disbursements for the period from October 1, 2021 to March 31, 2022 on a confidential basis; and
 - c) the Applicant’s cash flow projection from April 1, 2022 to September 30, 2022 on a confidential basis.
7. In preparing this Thirty-Ninth Report and making the comments herein, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records prepared by Crystallex, and discussions with and information from management of the Applicant (“**Management**”) (collectively, the “**Information**”).

8. The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“GAAS”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
9. Capitalized terms not defined in this Thirty-Ninth Report are as defined in previous reports of the Monitor. Unless otherwise stated, all monetary amounts contained herein are expressed in U.S. Dollars.

DEVELOPMENTS IN CRYSTALLEX’S U.S. AND CCAA PROCEEDINGS

10. The status of Crystallex’s activities to realize on the Award is described in greater detail in, among other things, the Thirty-Fifth Report of the Monitor dated October 30, 2020 and the Thirty-Eighth Report of the Monitor dated November 9, 2021. Since then, there have been several developments in the U.S., as described in the Applicant’s updated public report dated May 18, 2022.
11. In accordance with paragraph 4 (d) of the November 2021 Stay Extension Order, the Applicant had quarterly meetings among the Applicant, the Monitor, the DIP lender, representatives of the Ad Hoc Committee and their respective counsel on February 18, 2022 and May 18, 2022 to provide the participants updates of non-confidential information with respect to the Applicant, including its enforcement activities.
12. The Applicant has also kept the Monitor, the DIP Lender and the Ad Hoc Committee apprised of the progress of communications with CRA.

THE APPLICANT’S LIQUIDITY POSITION AND CASH FLOW PROJECTION

13. Attached as **Appendix “A”** is a summary of the Applicant’s actual receipts and disbursements for the period from October 1, 2021 to March 30, 2022 compared to the cash flow projection included in the Thirty-Eighth Report. For reasons set out in the affidavit of Robert Fung sworn October 25, 2021 (the “**Fung Affidavit**”) and in accordance with the November 21 Stay Extension order, this document is not being made public until September 30, 2022.

14. The balance of the Applicant's cash and cash equivalents as at March 30, 2022 was approximately \$ 85.7 million, which was \$4.1 million higher than forecast. The favourable variance is primarily due to lower than forecast Arbitration and CCAA costs.
15. The Monitor is advised by the Applicant and the DIP Lender that the Applicant's outstanding principal and interest balance owed to the DIP Lender was approximately \$172.6 million as at March 30, 2022.
16. Attached as **Confidential Appendix "B"** to this Thirty-Ninth Report is an updated cash flow projection for the period from April 1, 2022 to September 30, 2022 (the "**Cash Flow Projection**"). For reasons set out in the Fung Affidavit and in accordance with the November 21 Stay Extension order, the Cash Flow Projection is not being made public until March 31, 2023.
17. The Cash Flow Projection represents the estimates of Management of the projected cash flow during the period from April 1, 2022 to November 30, 2022 (the "**Period**"). The Cash Flow Projection has been prepared by Management using the probable and hypothetical assumptions set out in the notes to the Cash Flow Projection (the "**Probable and Hypothetical Assumptions**" or the "**Assumptions**").
18. The Cash Flow Projection contains Management's Assumption that the Applicant will not receive any payments from Venezuela during the Period. In addition, Management assumes that the Applicant will not make any payments in respect of the DIP Credit Agreement even if the DIP Credit Agreement matures during the Period. The Applicant projects that it will have the ability to sustain its operations through the Proposed Stay Period to advance all necessary strategic initiatives related to asset preservation and enforcement strategies in connection with the Award.
19. The Monitor has reviewed the Cash Flow Projection to the standard required of a Court-appointed Monitor stipulated by section 23(1) (b) of the CCAA.
20. Pursuant to this standard, the Monitor's review of the Cash Flow Projection consisted of inquiries, analytical procedures and discussions related to information supplied to it by certain key members of Management and employees and legal counsel of the Applicant. Since the Hypothetical Assumptions need not be supported, the Monitor's procedures with respect to

them were limited to evaluating whether they were consistent with the purpose of the Cash Flow Projection. The Monitor also reviewed the support provided by Management for the Probable Assumptions and the preparation and presentation of the Cash Flow Projection.

21. Based on this review, nothing has come to the Monitor's attention that causes it to believe, in all material respects, that:
 - a) the Probable and Hypothetical Assumptions are inconsistent with the purpose of the Cash Flow Projection;
 - b) as at the date of this Report, the Probable Assumptions are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow Projection, given the Hypothetical Assumptions; or
 - c) the Cash Flow Projection does not reflect the Probable and Hypothetical Assumptions.
22. The Cash Flow Projection has been prepared by Management solely for the purpose described above, and readers are cautioned that it may not be appropriate for other purposes.

All of which is respectfully submitted this 18th day of May 2022.

ERNST & YOUNG INC.

In its capacity as Court-appointed Monitor of
Crystallex International Corporation

Per:

A handwritten signature in black ink that reads "Brian Denega". The signature is written in a cursive, flowing style.

Brian M. Denega
Senior Vice President

Appendix A

Cash Flow Statement
October 1, 2021 to March 31, 2022
US \$000

	Notes	<i>Actual</i>	<i>Forecast</i>	<i>Variance</i>
Opening Cash Balance		95,205	95,205	-
Receipts				
Venezuela and Other Receipts	1	(33)	-	(33)
Total Receipts		(33)	-	(33)
Disbursements				
General Corporate Expenses	2	(1,193)	(1,413)	220
Arbitration and CCAA Costs	3	(8,342)	(12,299)	3,956
Total Disbursements		(9,535)	(13,711)	4,176
Net Cash Flow		(9,568)	(13,711)	4,143
Ending Cash Balance		85,637	81,494	4,143

** Certain numbers in the Cash Flow Statement are rounded.*
Unaudited- see accompanying notes.

1. The unfavourable variance in Venezuela and Other Receipts is mainly due to foreign exchange losses on transferring cash to pay general corporate expenses and certain professional firms. The Applicant has not received any Venezuela Receipts during the period from October 1, 2021 to March 31, 2022.

[REDACTED]

2. The favourable variance in General Corporate Expenses is mainly due to a timing difference in payroll and benefits, which is expected to be reversed in the following months.
3. The favourable variance in Arbitration and CCAA Costs is due to lower-than-expected US and Canadian professional fees.

Confidential Appendix B