

# ORIGINATING PROCESS

(rule 2.2 and 15A.3)

IN THE SUPREME COURT OF NEW SOUTH WALES  
DIVISION: EQUITY  
REGISTRY: SYDNEY

No. 292822 of 2018

FILED

25 SEP 2018

L.H.



BCD RESOURCES NL (Subject to Deed of Company Arrangement) ACN 057 793 834

CHRISTOPHER JOHN PALMER

Plaintiff

## A. DETAILS OF APPLICATION

This application is made under sections 444GA and 447A of the *Corporations Act 2001 (Cth)* (Act) and clause 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 to the Act (Schedule).

The Plaintiff, in his capacity as administrator of the Deed of Company Arrangement dated 11 January 2018 executed by the Company and others (DOCA), seeks an order that leave be granted to him pursuant to section 444GA of the Act to transfer all issued shares in BCD Resources NL ACN 057 793 834 (the Company) to Moina Gold Pty Limited ACN 607 767 055 (Moina Gold) in accordance with the terms of the DOCA.

On the facts stated in the supporting affidavits, the plaintiff claims:

### *At the First Court Hearing*

1. An order pursuant to section 447A of the Act and clause 90-15(1) of the Schedule that the Explanatory Statement attached and marked "A" (Explanatory Statement) be approved for distribution to the shareholders of the Company.
2. An order that service of the Explanatory Statement and Originating Process be deemed effected on shareholders if effected pursuant to paragraphs 17 to 19 of the Affidavit of Richelle Anne Greenwood dated 24 September 2018.
3. Any persons who are entitled to oppose this application pursuant to section 444GA(2) of the Act may apply to be joined as a defendant to this proceeding by no later than a date to be fixed by the Court.

Filed on behalf of the plaintiff

Macpherson Kelley  
Level 21, 20 Bond Street  
Sydney NSW 2000

DX: 59, Sydney  
Tel: +61 2 8298 9533  
Fax: +61 2 8298 9599  
Ref: TFE:276480

4. The application be listed for hearing on such date as the Court thinks fit.

***At the Second Court Hearing***

5. An order that leave be granted to the Plaintiff pursuant to section 444GA of the Act to transfer all issued shares in the Company to Moina Gold in accordance with the DOCA.
6. An order pursuant to section 447A of the Act and clause 90-15(1) of the Schedule that the Plaintiff may:
- (a) execute on behalf of the Members share transfer forms and any other documents ancillary or incidental to effecting the transfer referred to in Order 5;
  - (b) enter or procure the entry of the name of Moina Gold in the Share register for the Company in respect of all Shares transferred to Moina Gold in accordance with Order 5.
7. The Plaintiff's costs of and incidental to this application be costs and expenses of the DOCA.

***At both Court Hearings***

8. Any further or other relief as the Court thinks fit.

Dated: 25 September 2018



.....  
 Timothy Fulton Edwards  
 Solicitor for the plaintiff

This application will be heard by the Supreme Court of New South Wales at Court [     ], Law Courts Building, Queens Square Sydney on [     ] 2018 at [     ] a.m.

**B. NOTICE TO DEFENDANT (IF ANY)**

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note: Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.*

**C. FILING**

Date of filing: 25 September 2018

This originating process is filed by Timothy Fulton Edwards, solicitor for the plaintiff.

**D. SERVICE**

The plaintiff's address for service is:

C/- MACPHERSON KELLEY  
Level 21, 20 Bond Street  
SYDNEY NSW 2000  
DX 59 SYDNEY

Tele: (02) 8298 9533 Fax: (02) 8298 9599 Email: [timothy.edwards@mk.com.au](mailto:timothy.edwards@mk.com.au)

It is intended to serve a copy of this originating process on:

AUSTRALIA SECURITIES AND INVESTMENTS COMMISSION  
100 Market Street  
SYDNEY NSW 2000

**THIS IS ANNEXURE 'A' REFERRED  
TO IN THE ORIGINATING PROCESS  
DATED<sup>25</sup> SEPTEMBER 2018**

BCD RESOURCES NL (Subject to a Deed of Company  
Arrangement)

ACN 057 793 834

## Explanatory Statement

[ ] September 2018

This Explanatory Statement provides information to shareholders of BCD Resources NL (Subject to a Deed of Company Arrangement) ACN 057 793 834 (**BCD/the Company**) (formerly MKS Capital Pty Ltd) on a proposed transfer of BCD's issued shares to Moina Gold Pty Limited ACN 607 767 055 (**Moina Gold**) pursuant to a Deed of Company Arrangement dated 8 December 2017 between the Administrators of BCD and Moina Gold (**Moina Gold DOCA**).

If the DOCA is implemented, all of the issued shares in BCD will be transferred to Moina Gold in exchange for AUS\$2mill which will be applied to reduce BCD's existing debt owed to MKS Precious Metals (Australia) Pty Limited ACN 083 133 260 (**MKS**). Upon receipt of these monies, MKS will release its security interests over BCD's assets. Leave will be sought from the Supreme Court of New South Wales by the Deed Administrators under section 444GA of the Corporations Act to enable the transfer to occur (**s444GA Application**).

An initial directions hearings for the s444GA Application was held at the Supreme Court of New South Wales on [ ], [ ] September 2018.

A final hearing has been scheduled for [ ] September 2018, where the Deed Administrators will seek a final orders.

If you wish to appear at the hearing on [ ] September 2018, to make submissions and/or oppose the s444GA Application, you will need to file with the Court, and serve on the Deed Administrator, a notice of appearance in the prescribed Court form and any affidavit evidence on which you intend to rely.

The s444GA Application and the Independent Experts Report (**Appendix 1**) can be viewed using the following electronic link [ ] or by requesting copies, together with the Affidavits in Support from the Deed Administrator's solicitor whose details are:

Timothy Edwards  
Macpherson Kelley  
Level 21  
20 Bond Street  
SYDNEY NSW 2000

Email address: [Timothy.Edwards@mk.com.au](mailto:Timothy.Edwards@mk.com.au)

Telephone No: (02) 8928 9533

**This is an important document. Shareholders (and their advisors and any other interested parties) should read this Explanatory Statement and accompanying Independent Expert's Report (In **Appendix 1**) carefully and in their entirety before making a decision regarding whether or not to take any action in respect of the s444GA Application. If you have any questions on the information in this document, you should consult your legal or other professional advisor.**

## TABLE OF CONTENTS

Explanatory Statement .....		1
<b>1. Important Information .....</b>		<b>3</b>
1.1 Purpose of this document .....		3
1.2 Effect of the Proposal on Shareholders .....		3
1.3 Status of this document .....		4
<b>2. Background to the administration of BCD .....</b>		<b>4</b>
2.1 Introduction .....		4
2.2 Appointment of Deed Administrators .....		4
2.3 Summary of current debt arrangements .....		8
<b>3. What is the Moina Gold DOCA? .....</b>		<b>9</b>
3.1 Overview .....		9
3.2 Terms of the Moina Gold DOCA .....		9
3.3 Conditions precedent to the Moina Gold DOCA .....		10
3.4 Effect of the Moina Gold DOCA .....		10
3.5 No consideration is payable for the transfer of Shares .....		11
3.6 What must the court be satisfied of in making an order under s444GA? .....		11
<b>4. Effect of the Proposed Restructure on BCD .....</b>		<b>11</b>
4.1 Current structure .....		11
4.2 Why is the Proposed Restructure required? .....		11
4.3 Effect of Moina Gold DOCA on assets and liability of BCD .....		12
4.4 Substantial Shareholders after the Moina Gold DOCA .....		12
<b>5. Advantage and disadvantages for Shareholders .....</b>		<b>12</b>
5.1 Advantages of the Moina Gold DOCA for Shareholders .....		12
5.2 Disadvantages of the Moina Gold DOCA for Shareholders .....		13
<b>6. S444GA Application – what you need to know .....</b>		<b>13</b>
6.1 What is the status of the s444GA Application? .....		13
6.2 How can you participate at the Court hearing? .....		13
6.3 What is the independent Expert's conclusion? .....		13
<b>7. Additional information .....</b>		<b>15</b>
7.1 ASIC relief .....		15
7.2 Tax consequences .....		15
7.3 Material interests of the directors of BCD .....		15
7.4 Material interests of the Deed Administrators .....		16
7.5 Further information .....		16
<b>8. Signature of BCD .....</b>		<b>16</b>

## **1. Important Information**

---

### **1.1 Purpose of this document**

This document is an Explanatory Statement issued by BCD in connection with the DOCA.

If the s444GA Application is approved and the DOCA implemented, all of the issued shares you own in BCD will be transferred to Moina Gold for nil consideration to you in accordance with the terms of the DOCA and you will cease to own your shares.

This Explanatory Statement has been provided to you by BCD, to assist you to understand:

- (a) the s444GA Application to the Court for approval to transfer all of your BCD shares as part of the DOCA approved at the second meeting of creditors held on 18 December 2017;
- (b) effect of the transaction on you as a Shareholder;
- (c) the steps which you need to take if you wish to appear at the Court hearing on the s444GA Application; and
- (d) further information which may assist you in deciding whether to take action in respect of the s444GA Application.

An Independent Expert's Report prepared by BDO Australia, which contains an objective valuation of the shares, is attached to this document at Appendix 1 for those receiving this statement by mail and at [www.\[ \] \(Independent Experts Report\)](#). The opinion set out in the Independent Expert's Report is that the shares have \$nil value.

Shareholders should carefully read this Explanatory Statement and the Independent Expert's Report in their entirety before making a decision regarding the s444GA Application.

If you are in any doubt as to the action you should take, you are recommended to obtain your own personal financial advice from your stockbroker, bank manager, solicitor, accountant and/or other independent professional adviser.

### **1.2 Effect of the Proposal on Shareholders**

If the share transfer is implemented, there are a number of negative consequences for Shareholders. Your shareholding will be \$nil and all of your shares will be transferred to Moina Gold.

However, through implementation of the DOCA, BCD will avoid liquidation. As announced by the ASX, BCD's shares were delisted on 22 January 2018.

Further information regarding the effect of the DOCA on BCD and the advantages and disadvantages for Shareholders are set out in sections 4 and 5 below.

### 1.3 Status of this document

This document is not a prospectus or other disclosure document under Chapter 6D of the Corporations Act or equivalent foreign laws and has not been filed, registered or approved in any foreign jurisdiction.

A copy of this Explanatory Statement (including the Independent Expert's Report) has been given to ASIC for the purposes of obtaining the ASIC relief referred to in section 7.1 below. Neither ASIC nor any of its officers takes any responsibility for its contents.

BCD owns a precious metals processing facility at Beaconsfield, Tasmania. BCD is subject to the regulatory requirements of Australian securities laws.

## 2. Background to the administration of BCD

---

### 2.1 Introduction

On 16 November 1992, BCD was incorporated under the name "BCD Resources NL".

BCD owns a precious metals processing facility at Beaconsfield, Tasmania.

### 2.2 Appointment of Deed Administrators

On 21 January 2015, Christopher Palmer and Bryan Collis of O'Brien Palmer were appointed Receivers and Managers by MKS (**Receivers and Managers**)

On 10 April 2015, Messrs Greg Hall and Will Honner of PriceWaterhouseCoopers (**PWC**) (**Administrators**) were appointed as voluntary administrators of the Company.

On 11 May 2015, Malachite Resources Limited (**MAR**) formally terminated the Lorena JV Project. Various proposals were then developed and considered by the various Lorena JV Project stakeholders. Meanwhile the Receivers and Managers continued to run the Company's business on care and maintenance basis.

In July 2015 MAR and MKS entered into a new financing arrangement to complete the development and commissioning of the Lorena JV Project under a restructured JV arrangement. Unfortunately, MAR was unable to meet the Conditions Precedent and the financing arrangement was not completed.

On 5 August 2015, the Administrators issued their Section 439A Report which contained a proposal by Eclectic Investments Pty Ltd (**Eclectic**) for a Deed of Company Arrangement (**Eclectic DOCA**).

The Eclectic DOCA proposal was:

- (a) for the payment of \$750,000 to the Administrators to establish a deed fund;
- (b) for the employees entitlements to be paid in full;
- (c) that both MKS and Eclectic would defer payment of their loans to the Company.



On 13 August 2015 separate meetings of the Company's employees and creditors were held. Each meeting resolved to accept the Eclectic DOCA proposal.

On 23 September 2015 the Eclectic DOCA was executed. The Receivers and Managers continued to run the Company's on a care and maintenance basis.

On 30 October 2015, the Receivers and Managers retired and with the Eclectic DOCA executed, control of the Company was effectively returned to the Directors.

After January 2015, MKS advanced further funds to the Company, so that the loan facility increased from \$3,000,000 to approximately \$4,300,000 in December 2017. There are no written loan variation documents. Rather MKS advanced additional monies on a needs basis relying upon covenants in the existing security interest pursuant to the General Security Deed and Project Loan Agreement dated 13 November 2014.

The extra loan facility moneys advanced by MKS were for the following purposes:

- (a) to fund ongoing care and maintenance of the Processing Mill at Tasmania Mine while the Receivers and Managers controlled the Company;
- (b) payment for certain plant and equipment at both Beaconsfield and Lorena;
- (c) payment of fees and remuneration of both the Receivers and Managers and the Administrators.

Payments were generally made directly to the relevant service providers during the periods of Receivership and Management and Administration were supported by an invoice.

Between November 2015 and September 2016, the Company was able to function on a care and maintenance basis through a combination of loan funds provided by MKS and Eclectic and the sale from time to time of various assets, generally from the Tasmania Mine. Assets sold included plant and equipment, such as pumps, piping and vehicles.

In November 2015, the Company signed Heads of Agreement with Ivy Resources Pty Limited (Ivy) to acquire the Hellyer Project Tailings and Processing Plant Assets in northwest Tasmania (Hellyer Project Assets). Implementation of this agreement would have seen the Company and Ivy merge their respective assets, which in turn would have led to a change in control of the Company, with Ivy holding approximately 90% of the shares in the Company.

In December 2015, the Company executed Heads of Agreement followed by a Merger Implementation Agreement (MIA) with Keen Pacific Limited (KPL), to acquire KPL's wholly owned subsidiary Ivy and the Hellyer Project Assets.

A condition of the MIA was that KPL would contribute to the operating costs of the Company by providing an unsecured loan facility of \$750,000 (KPL Facility).

The MIA provided for KPL and Ivy to merge and combine their assets, allowing the recommencement of processing and recovery of tailings material at the Hellyer site which would be used to produce a suite of base metal and precious metal concentrate products. In particular, the production of

significant quantities of saleable Pyrite by-product for export was a main feature of the Heliyer Project Assets.

Completion of the MIA was anticipated in early 2016.

Between December 2015 and June 2016, the Company drew down the KPL Facility to assist in payment of the operating costs of the Company.

However, in June 2016, KPL terminated the MIA as milestones had not been achieved by agreed dates.

On termination of the MIA, the Company continued the care and maintenance of the Tasmania Mine, relying heavily on the further sale of assets located at Tasmania Mine to fund expenses.

At about that time, June 2016, all employees of the Company were offered redundancy packages to minimise cost. In September 2016, all employees were made redundant and agreed redundancy payments paid.

On 13 September 2016, MKS and Ore Processing Services Pty Limited (OPS), with the consent of the Company and MAR, executed draft Heads of Agreement for the sale of assets at the Lorena Processing Plant over which MKS held security.

On 23 September 2016, the Eclectic DOCA was fully effectuated.

#### **Post Eclectic DOCA Effectuation**

Following the termination of the MIA by KPL, the effectuation of the Eclectic DOCA and the redundancy of employees, the Company continued to maintain its assets on a care and maintenance basis using contractors.

From October 2016, and on the assumption that MKS and OPS would enter into a binding sale agreement of the Lorena assets, the Company actively sought interest from various parties to acquire the remaining assets of the Company, namely:

- (a) the Processing Mill at the Tasmania Mine; and
- (b) the Mining Lease relating to the Tasmania Mine.

On 6 April 2017, OPS executed Heads of Agreement with MAR for a joint venture of the Lorena Gold Project.

In about June 2017, the Company entered into negotiations with Moina Gold and other interested parties to dispose of the Company's remaining assets.

On 24 July 2017, MAR and OPS entered into a venture/funding arrangement with Cloncurry Gold Recovery Management Pty Ltd (CGR), with CGR being the manager of a new Lorena Gold Project JV.

On 16 August 2017, MKS and OPS entered into a Sale and Purchase of Assets Agreement (**Lorena SPA Agreement**) for the sale and purchase of the assets located at Loren. The terms of the Lorena SPA Agreement relevantly provided for:

- (a) payment of a deposit of \$25,000 to be released unconditionally to MKS;
- (b) MKS to be paid Vendor Project Payments (**VPP**);
  - 1. accrued from the processing of the first ore at the project once milestones had been reached but capped at \$2,000,000 excluding GST;
  - 2. such payments to come from the distributions payable to OPS on the achievement of Milestone 2;
  - 3. which were to be from the funds generated first, when Milestone 2 was achieved and second, from other JV distributions payable to OPS from Recovered Gold;
- (c) the maximum amount payable by OPS to MKS was/is;
  - 1. the purchase price of assets of \$525,000.00 (exc GST);
  - 2. the sum of \$2,000,000.00, payable as VPP; and
  - 3. The Shared Benefit Payment for the Shared Benefit Team being an amount currently unqualifiable, wholly reliant and subject to the overall performance of the Project).

The Lorena SPA Agreement was completed on or about 21 August 2017 and MKS received the sum of \$525,000 in partial reduction of its debt.

If the Lorena SPA Agreement achieves its objectives, MKS will receive additional funds of \$2,000,000 plus, possibly, a Shared Benefit Payment.

To date only the Purchase Price of \$525,000 has been paid by OPS to MKS.

Following protracted negotiations, on about 30 October 2017, Moina Gold submitted an offer to purchase all the issued shares of the Company and its subsidiary companies for the sum of \$2,000,000, payable by instalments.

#### **Appointment of Palmer and Bailey as Voluntary Administrators**

On 13 November 2017, MKS appointed Messrs Christopher J Palmer and Liam T Bailey of O'Brien Palmer as Voluntary Administrators of the Company (**Administrators**). The Administrators immediately took control of the Company's assets including its bank accounts.

On about 13 November 2017, Clive Carroll in his capacity as a Director of the Company, completed a Report as to Affairs (**RATA**) outlining his understanding of the estimated financial position of the Company, based on the records of the Company available to me at the time. The RATA noted, inter alia, the claims of MKS as the secured creditor to be approximately \$4,300,000 and Eclectic of \$1,750,000.

On 15 November 2017, the Administrators gave notice of a first meeting of creditors of the Company to be held on 23 November 2017.

On 23 November 2017, the first meeting of creditors of the Company was held.

On 8 December 2017, the Administrators gave notice of a second meeting of creditors (**Second Meeting**) of the Company to be held on 18 December 2017. Accompanying the notice was a section 439A Report which outlined a proposal from Moina Gold for a Deed of Company Arrangement.

From the section 439A Report dated 8 December 2017 it appears that the RATA dated 5 December 2017 estimated the deficiency between assets and liabilities at between (\$5,665,744) and (\$4,173,044) and a contingent asset of available tax losses of about (\$46m).

On 18 December 2017, the Second Meeting of creditors of the Company was held and it was resolved that the Company execute a Deed of Company Arrangement to give effect to the Moina Gold DOCA.

On [ ] July 2018, Liam Bailey retired as a Deed Administrator, leaving Christopher Palmer as the sole Deed Administrator.

#### **Moina Gold DOCA**

On 11 January 2018, the Moina Gold DOCA was executed by all relevant parties, including myself acting as a Director of the Company. The terms of the Moina Gold DOCA are set out in clauses 3.2 and 3.3 below.

Upon execution of the Moina Gold DOCA, the Administrators became the Deed Administrators and the affairs of the Company were returned to the Directors.

On 17 January 2018, an announcement was made by the Company to the ASX, advising of the execution of the Moina Gold DOCA and the handing back of control of the Company to the Directors. The announcement also advised that the Deed Administrators would be responsible for the preparation and approval of a section 444GA Application to complete the Share Sale Agreement referred to in the DOCA.

On 22 January 2018, the Company was removed from the ASX official list following the Company's 3-year continuous period of suspension from the ASX.

On 8 February 2018, the Company and the Deed Administrators exchanged a Share Sale Agreement (**Moina Gold SSA**) with Moina Gold. As mentioned, the Moina Gold SSA is conditional upon a successful application to the Court by the Deed Administrators for leave to transfer all of the issued shares of the Company to Moina Gold pursuant to leave of the Court granted under section 444GA of the Act.

### **2.3 Summary of current debt arrangements**

When BCD entered voluntary administration on 13 November 2017, it had debt commitments of approximately AUS\$6 million.

Creditor	Details
The details of BCD's key creditors and amounts owing to them are set out below:	
<b>MKS (secured)</b>	\$4,302,006.43
<b>Aggreko (secured)</b>	\$3,891.83
<b>Aurora Energy Pty Ltd (unsecured)</b>	\$5,299.81
<b>Eclectic Investments Pty Ltd (unsecured)</b>	\$1,750,000
<b>Veolia Environmental Services (unsecured)</b>	\$2,719.96

### 3. What is the Moina Gold DOCA?

#### 3.1 Overview

The Moina Gold DOCA is a statutory compromise of certain claims of creditors of BCD that arose on or before 12 November 2017. The Moina Gold DOCA will implement the transfer of shares from shareholders to Moina Gold.

On 18 December 2017, the creditors of BCD resolved that the Moina Gold DOCA be executed: it was executed by all parties on 11 January 2018.

#### 3.2 Terms of the Moina Gold DOCA

The Moina Gold DOCA contemplates a transfer of all of the issued shares in BCD to Moina Gold, and includes the following:

- (a) Upon payment to MKS, a secured creditor, of the sum of \$2,000,000, MKS agrees to release and waive its entitlement under any security in respect of the BCD's property.
- (b) The transfer of all of BCD's shares to Moina Gold and the appointment of new Directors and other office bearers in BCD as nominated by Moina Gold.
- (c) The payment by Moina Gold in the sum of \$2,000,000 by instalments in the manner set out in section 3.3(c) of this Explanatory Statement below.
- (d) That all permits, licences, leases and other authorities necessary for the operation of the processing plan previously operated by BCD at Beaconsfield, Tasmania are current contemporaneously with the transfer of shares referred to above.
- (e) That all plant and equipment and other assets of BCD remain vested in BCD and will not be sold, transferred or otherwise disposed of.
- (f) That an application to a Supreme Court for approval (and such approval given) for the transfer of all BCD's issued shares to Moina Gold.

### 3.3 Conditions precedent to the Moina Gold DOCA

The implementation of the Moina Gold DOCA is subject to the satisfaction of certain conditions, including:

- (a) a Share Sale Agreement being exchanged within 14 days from the date of the Moina Gold DOCA (the sale agreement has been exchanged);
- (b) an application by the Deed Administrators to the Court for approval of the transfer of the Shares and the making of the Court Order on or before the Condition Satisfaction Date, that being 29 June 2018 or such other date as may be agreed by the parties (the Condition Satisfaction Date has been extended to 31 October 2018 occasioned by delays in finalising the Independent Experts Report);
- (c) Moina Gold making the following payments:
  - (i) the sum of \$20,000 (the receipt of which is acknowledged by the Deed Administrators);
  - (ii) on exchange of the Share Sale Agreement, the sum of \$150,000 (this amount has been paid);
  - (iii) within 30 days of the Court's Order, the sum of \$330,000;
  - (iv) on completion of the Share Sale Agreement which shall occur on or before 29 June 2018, or such other date as may be agreed, the sum of \$1,500,000 (note the completion date has been varied and is now 31 October 2018);
- (d) on or before completion of the Share Sale Agreement:
  - (i) MKS and Aggreko Generator Rentals Pty Limited (Aggreko), the sole secured creditors releasing or waiving, any entitlement under any security over BCD's assets: in the case of MKS it will be sufficient compliance with this condition if any release is made conditional on its receipt of the sum of \$2,000,000 pursuant to clause 8.1 of the Moina Gold DOCA, or such lesser sum as it may agree to accept; and
  - (ii) BCD ensuring that between the date of the Moina Gold DOCA and the Condition Satisfaction Date the plant and equipment and other assets of BCD remain vested in BCD and have not been sold, transferred or otherwise disposed of.
- (e) Completion of the Share Sale Agreement on or before 29 June 2018.

### 3.4 Effect of the Moina Gold DOCA

On effectuation of the Moina Gold DOCA, the business, property and affairs of BCD will be administered in a way that:

- (a) facilitates the sale of all issued shares in BCD to Moina Gold pursuant to Section 444GA(1) of the Act;
- (b) has the sum of \$2,000,000 paid to MKS, in return for a release of its security interests over BCD's assets;
- (c) resolves fully and finally all Claims of Admitted Creditors in accordance with the Moina Gold DOCA;
- (d) allows Moina Gold to appoint directors and officers of BCD.

### 3.5 **No consideration is payable for the transfer of Shares**

Shareholders will not receive any consideration for the transfer of shares. If leave is given by the Court pursuant to the s444GA Application and the other conditions precedent to implementation of the DOCA are satisfied, all of shares will be automatically transferred to Moina Gold.

### 3.6 **What must the court be satisfied of in making an order under s444GA?**

The Court may only give leave for the transfer of Shares under s444GA where it is satisfied that doing so would not *unfairly prejudice* Shareholders. The Administrators engaged the Independent Expert to prepare an Independent Expert's Report for the purposes of assisting the Court to determine whether the proposed s444GA Transfer would be unfairly prejudicial to Shareholders. The Independent Expert's Report should be read carefully and in its entirety by Shareholders (and their advisors and any other interested parties).

The key findings of the Independent Expert are that on either valuation method adopted the shares of BCD are worth \$nil.

## 4. **Effect of the Proposed Restructure on BCD**

---

### 4.1 **Current structure**

As outlined above, BCD is a registered Australian corporation and subject to the Moina Gold DOCA.

### 4.2 **Why is the Proposed Restructure required?**

The Moina Gold DOCA should be progressed because:

- (a) it presents the only opportunity open to BCD to deal with its existing debt arrangements and in particular to reduce the indebtedness of BCD to MKS, as none of the alternatives investigated by the Administrators provided a solution which would return BCD to its usual operations and the Deed Administrators received no alternative proposals;
- (b) if the Moina Gold DOCA is implemented, Moina Gold will take control of the business and its assets, under the changed ownership structure set out in this Explanatory Statement;
- (c) implementation of the Proposed Restructure will eliminate any rehabilitation liabilities for the Beaconsfield facility site and surrounding areas.

Prior to the appointment of the Administrators, BCD undertook extensive efforts to seek to achieve a solvent restructure of BCD debts. A summary of the steps taken are set out in section 2.2 above.

If the Moina Gold DOCA is not implemented, BCD will be liquidated. In this scenario, the Independent Expert has opined in the Independent Expert's Report that the Shares have no value and hence there will be no return to creditors and Shareholders.

The Deed Administrators have obtained the Independent Expert's Report (in **Appendix 1**) which is an independent assessment of the value of existing outstanding Shares. The Independent Expert's opinion is that BCD's shares have \$nil value.

The Proposed Restructure has no direct effect on employees of the BCD who have all been made redundant and their entitlements paid out in full.

#### **4.3 Effect of Moina Gold DOCA on assets and liability of BCD**

On implementation of the Moina Gold DOCA:

- (a) the DOCA will be terminated. New directors will be appointed before termination of the DOCA and the new directors will assume control of BCD on effectuation;
- (b) there will be no effect on the assets of BCD - it will continue to own and operate all of the assets it currently has; and
- (c) the secured and unsecured debts of BCD will be extinguished.

#### **4.4 Substantial Shareholders after the Moina Gold DOCA**

The sole shareholder after the Proposed Restructure will be Moina Gold.

### **5. Advantage and disadvantages for Shareholders**

---

This section sets out the key advantages and disadvantages of the Moina Gold DOCA for Shareholders. Shareholders should also consider information provided about taxation consequences in section 7.2 and should read this Explanatory Statement in full.

#### **5.1 Advantages of the Moina Gold DOCA for Shareholders**

##### ***Avoidance of uncertainties associated with liquidation or receivership***

The Moina Gold DOCA when effectuated will:

- (a) provide a means by which:
  - (i) MKS will receive a payment in reduction of its debt, and will otherwise release its security interests;
  - (ii) Aggreko will be paid out in full; and
  - (iii) all unsecured debt (including that to Eclectic) will be extinguished;



with minimal disruption to the business of the BCD; and

(b) avoid costs, delays and uncertainty that could result from liquidation of BCD.

## 5.2 **Disadvantages of the Moina Gold DOCA for Shareholders**

### ***Loss of Shares***

The Administrators' Report states that on liquidation of BCD, there would be no return to Shareholders and no return to unsecured creditors and a much diminished return to secured creditors of BCD. In addition, the Independent Expert has concluded that the Shares have \$nil value. Therefore, the shareholders only disadvantage is that they lose the shares, which are valueless. Shareholders (and their advisors and any other interested parties) should read the Independent Expert's Report carefully and in its entirety.

## 6. **S444GA Application – what you need to know**

---

### 6.1 **What is the status of the s444GA Application?**

The s444GA Application was filed in the Supreme Court of New South Wales on [ ] 2018 and a directions hearing was held on that date before Justice [ ].

Unless an interested person objects to the s444GA Application, a final hearing date has been fixed for [ ] 2018.

If required the Deed Administrator will publish a notice setting out the orders made by the Court at the directions hearing held on [ ] 2018 including the timetable for preparation of the application for hearing, confirming the date and time for the final hearing and the date by which any appearance and affidavit must be filed and served by an interested party who wishes to oppose the s444GA Application.

### 6.2 **How can you participate at the Court hearing?**

If you wish to appear at the hearing to make submissions to the Court and/or oppose the s444GA Application at the final hearing, you will need to file at the Court and serve on the Deed Administrator a notice of appearance in the prescribed Court form and any affidavit on which you intend to rely.

The Deed Administrator email address for service is [timothy.edwards@mk.com.au](mailto:timothy.edwards@mk.com.au).

### 6.3 **What is the Independent Expert's conclusion?**

The Deed Administrators engaged the Independent Expert to provide a valuation of the Shares to assist the Court in determining whether the s444GA Transfer will unfairly prejudice Shareholders. The Independent Expert's Report was also prepared for the purpose of applying to ASIC for technical relief from the takeover provisions of the Corporations Act.

The Independent Expert has concluded that BCD Shares have \$nil value. The Independent Expert's Report should be read carefully and in its entirety by Shareholders (and their advisors and any other interested parties).

**What other information is available to assist you?**

To assist you in deciding whether to appear at the Court hearing, and in addition to this Explanatory Statement and the Independent Expert's Report:

- (a) A copy of the Originating Process filed by the Deed Administrators in relation to the s444GA Application is available on the Deed Administrator's website: [www. ]; and
- (b) the Administrators' Report provided under section 439A of the Corporations Act dated 8 December 2017 is available on the Deed Administrators' website [www. ]).

Alternatively, you may request copies of those documents from us and they can be emailed to you free of charge. You can request copies by calling Timothy Edwards, the Deed Administrator's solicitor on (02) 8298 9533 or by email at [timothy.edwards@mk.com.au](mailto:timothy.edwards@mk.com.au).

This document does not constitute financial product advice and has been prepared without reference to the investment objectives, financial situation, taxation position or particular needs of any BCD shareholder. Each BCD shareholder's decision whether to take any action in relation to the Moina Gold DOCA will depend on an assessment of the Shareholder's individual circumstances. As the financial, legal and taxation consequences of that decision may be different for each shareholder, Shareholders should seek professional financial, legal and taxation advice before making their decision.

**What is the timetable for the s444GA Application?**

Following the initial directions hearings held on [ ] 2018 it is expected that:

- (a) a revised timetable will be made available for the filing and service of evidence (including the date by which any interested party must file a notice of appearance seeking to oppose the s444GA Application); and
- (b) the Court will confirm the final hearing date and time.

At the time of issuing this Explanatory Statement, the Deed Administrator intends to seek the earliest practical date for a final hearing of the s444GA Application.

Unless otherwise stated, all times referred to in this Explanatory Statement are Sydney times. The dates referred to are indicative only and subject to change. BCD reserves the right to vary the times and dates, subject to the Corporations Act and the approval of any variations by the court or ASIC where required.

**What if I do nothing?**

If you take no action in respect of the s444GA Application, and the conditions to the Moina Gold DOCA are satisfied, all of your shares will be automatically transferred under the s444GA Transfer to Moina Gold and you will cease to own those Shares.

## 7. Additional information

---

### 7.1 ASIC relief

On 13 April 2018, the Administrators applied to ASIC for an exemption from the operation of section 606 of the Corporations Act to allow certain Share Recipients to acquire voting power of more than 20% in BCD as a result of the s444GA Transfer.

At the time of issuing this Explanatory Statement, that application has not been determined by ASIC. ASIC has received and commented on the Independent Experts Report and at the date of this Statement, ASIC have no further comments to make concerning the report. The Deed Administrators will issue further statements in relation to the ASIC application as updates and developments occur.

### 7.2 Tax consequences

This section of this Explanatory Statement is provided for general information of Shareholders who are Australian resident taxpayers holding their shares on capital account, not as trading stock, and who are not subject to the Taxation of Financial Arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (Cth) for the purposes of calculating any gains or losses arising from financial arrangements. It does not take account of the circumstances of any individual Shareholder. You should seek your own tax advice on the consequences for you of the Proposed Restructure being implemented.

On effectuation of the Moina Gold DOCA, the transfer of Shares may give rise to a capital gains tax event for the Shareholders. The Australian Shareholders who hold their Shares on capital account will incur a capital loss to the extent the reduced cost base in the Shares transferred exceeds the market value of the Shares.

The reduced cost base in the Shares includes:

- (a) the acquisition cost of the Shares;
- (b) incidental acquisition costs incurred to acquire and hold the Shares;
- (c) expenditure incurred to increase or preserve the value of the Shares; and
- (d) capital expenditure incurred to establish, preserve or defend their title to the Shares.

Given the transfer will occur by way of a court order, and not a contract, the time of the CGT Event for the Shareholders will be when the 444GA transfer takes effect upon effectuation of the Moina Gold DOCA.

Non-Australian resident shareholders should not get the benefit of the capital loss on the basis that their Shares should not constitute taxable Australian property.

### 7.3 Material interests of the directors of BCD

As at the date of this Explanatory Statement, Mr Clive Sidney Carroll (the sole director of BCD) has the following interests in BCD securities through Eclectic, a company of which he is a director and which he controls:

- (a) in its own capacity as beneficial owner, Eclectic holds 26.1% of issued shares;
- (b) in its capacity as trustee of the Clive Sidney Carroll Superannuation Fund, Eclectic holds approximately 2.6% of the issued shares.

Eclectic is an unsecured creditor of BCD.

If the s444GA Application is approved, Eclectic will have all of its Shares transferred to the Moina Gold for no consideration, consistent with all other Shareholders.

In addition, Mr Carroll is a director of the secured creditor MKS, a wholly owned subsidiary of MKS Switzerland.

#### **7.4 Material Interests of the Deed Administrators**

See Annexure B of the section 439A Report.

#### **7.5 Further Information**

If you have further questions, it is recommended that you:

- (a) contact your stockbroker, bank manager, solicitor, accountant and/or other professional adviser;
- (b) call the Deed Administrator's solicitor, Timothy Edwards for further information on (02) 8298 9533.

### **8. Signature of BCD**

---

This Explanatory Statement has been signed by BCD.

---

Christopher John Palmer

in his capacity as deed administrator of BCD Resources NL (Subject to Deed of Company Arrangement).