

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

ACN 057 793 834

## Explanatory Statement

4 October 2018

This Explanatory Statement provides information to shareholders (**Shareholders**) of BCD Resources NL (Subject to a Deed of Company Arrangement) (**BCD/the Company**) 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 AU\$2 million, payable by instalments (most of which are due in the future), which will be applied to reduce BCD's existing debt owed to MKS Precious Metals (Australia) Pty Limited ACN 083 133 260 (**MKS**) and repay Aggreko Generator Rentals Pty Limited (**Aggreko**). 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 Administrator under section 444GA of the Corporations Act to enable the transfer to occur (**s444GA Application**).

An initial directions hearing for the s444GA Application was held at the Supreme Court of New South Wales on 28 September 2018.

A final hearing has been scheduled for 23 October 2018, where the Deed Administrator will seek final orders.

If you wish to appear at the hearing on 23 October 2018, to make submissions and/or oppose the s444GA Application, you will need to comply with Rule 2.13 of the *Supreme Court (Corporations) Rules 1999* (NSW) and seek leave to be heard.

The s444GA Application and the Independent Expert's Report dated 31 August 2018 (**Independent Expert's Report**) and prepared by Mr David McCourt of BDO Corporate Finance (East Coast) Pty Limited (**BDO**) can be viewed using the following electronic link <http://obp.com.au/creditor-information/> or by requesting copies, together with the Affidavits in Support, from the Deed Administrator's solicitor, whose details are:

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**This is an important document. Shareholders (and their advisors and any other interested parties) should read this Explanatory Statement and the Independent Expert's Report 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 about the information in this document, you should consult your legal or other professional advisor.**

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## **1. Important Information**

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### **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) the effect of the transaction on you as a Shareholder;
- (c) the steps which you need to take if you wish to appear and be heard at the Court hearing of the s444GA Application; and
- (d) additional information which may assist you in deciding whether to take action in respect of the s444GA Application.

The Independent Expert's Report contains a valuation of the shares. 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, it is recommended that you 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, the negative consequence for Shareholders is that your entire shareholding in BCD will be transferred to Moina Gold for \$nil consideration.

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 Shareholders is set out in section 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 (and 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 is subject to the regulatory requirements of Australian securities laws.

## 2. Background to the administration of BCD

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### 2.1 Introduction/Dramatis personae

On 16 October 1992, BCD was incorporated under the name "BCD Resources NL". BCD owns a precious metals processing facility at Beaconsfield, Tasmania. At the date of this Explanatory Statement its sole director is Clive Carroll who was appointed on 24 July 2012.

On 25 June 1998, MKS was incorporated in New South Wales. MKS is a wholly owned subsidiary of MKS Pamp Group B.V. The MKS Pamp Group B.V. is an industrial and trading services group specifically in all aspects of precious metals business. It was established in 1979 and has its head office in Switzerland.

Between 25 June 1998 and 30 September 2018, Clive Carroll was a director of MKS. Other directors are Julie Chittick (appointed 1 July 2014), Venkatasubramanian Gopalakrishnan (appointed 1 July 2014) and Jason Cerisola (appointed 8 May 2018).

On 20 August 2015, Moina Gold was incorporated in Tasmania. It is controlled by Geoffrey Summers and Greg Byrne who are the sole directors and shareholders. Both have experience in the precious metals industry and intend to restore the processing plant at Beaconsfield and remediate environmental degradation of the mining lease.

The Plaintiff has been assured by Geoffrey Summers that Moina Gold will be ready, willing and able to complete the Moina Gold SSA (as defined below) in accordance with that agreement as varied. After completing the Moina Gold SSA, Moina Gold has stated it will expend at least \$6,000,000 in restoring the processing mill at Tasmania Mine and carrying out environmental remediation.

Malachite Resources Limited (**MAR**) is a public company based in Sydney and is an Australian resources company focused on gold in eastern Australia. MAR holds 6 mining leases and 2 exploration permits at a site located about 15kms east of Cloncurry, NW Queensland, known as the Lorena Gold Project. Its directors are Terry Cuthbertson, James Dean and Andrew McMillan.

Eclectic Investments Pty Limited (**Eclectic**) is an investment company controlled by Clive Carroll who is its sole director and shareholder. It was incorporated on 17 May 1991.

Keen Pacific Limited (**KPL**) is a company registered in Hong Kong and has a wholly owned Australian subsidiary named Ivy Resources Pty Ltd (**Ivy**) and in turn Ivy is the sole shareholder of Hellyer Gold

Mines Pty Ltd (**Hellyer**). Hellyer owns the Hellyer Gold Mine in Tasmania. On 21 April 2017 NQ Minerals Plc announced that it had entered into an agreement to acquire all of the issued and outstanding shares in KPL, Ivy and Hellyer. As at November 2015, the directors of Ivy and Hellyer were Jay Chen and Adrian Lungan (both respectively appointed on 29 January 2013 and on 23 February 2013 and both ceasing on 18 May 2018).

Ore Processing Services Pty Limited (**OPS**) was registered on 26 September 2013. The sole director is Matthew Johnson and the shareholders are Matthew Johnson and Jonathan and Martine Whalley. OPS is a joint venture partner in the Lorena Gold Project. The equity interests of Stage 1 Open Cut – Lorena Gold Project are:

Malachite	55%
CGR	30%
OPS	15%

Cloncurry Gold Recovery Management Pty Ltd (**CGR**) was registered on 12 May 2017. The directors are Brendan James and Brent Jiang. OPS is the manager and joint venture partner of the Lorena Gold Project.

## 2.2 Appointment of Deed Administrators

The following background facts are based upon the knowledge of the Plaintiff in the s444GA Application, including as derived from the evidence prepared and filed in support of that application. Matters not within the personal knowledge of the Plaintiff have not been independently verified.

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, MAR formally terminated the Lorena JV Project. The Lorena JV Project was a joint venture between MAR (which provided the mining leases and the mining processing site) and BCD (which was to build the processing plant and manage the joint venture). 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 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 \$5,200,000 by December 2017. Loan variation documents were executed on 14 September 2015 and September 2016.

The extra loan facility moneys advanced by MKS were used 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.

Monies were expended in accordance with the purposes of the loan facility, 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 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 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 a secured but sub-ordinated loan facility of \$750,000 (**KPL Facility**).

The MIA provided for KPL and the Company 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 Hellyer 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 allowed the MIA to lapse as milestones had not been achieved by the 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 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 KPL allowing the MIA to lapse, 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 in Tasmania.

On 24 July 2017, MAR and OPS entered into a venture/funding arrangement with 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 Lorena. 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 Term 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 may receive additional funds up to \$2,000,000 plus, the possibility of, 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 Report issued pursuant to Rule 75-225 of the *Insolvency Practice Rules (Corporations) 2016* (**Administrators Report**) which outlined a proposal from Moina Gold for a Deed of Company Arrangement.

From the Administrators Report 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 20 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 the Plaintiff in the s444GA Application acting as an Administrator 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 s444GA Application to complete the Moina Gold SSA 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. 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\$6,700,000.

<b>Creditor</b>	<b>Details</b>
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 (unsecured as to \$1,280,000 and secured but sub-ordinate to MKS as at \$500,000)</b>	\$1,780,000
<b>KPL (secured but sub-ordinate to MKS)</b>	\$621,352
<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, if implemented, involve the transfer of shares in BCD from current 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 of the sum of \$2,000,000 (the **Deed Fund**), MKS and Aggreko will release and waive their 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 of the Deed Fund 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 Expert's 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 (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, the priority 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 (now varied to 31 October 2018).

If the Court grants the s444GA Application and Moina Gold defaults in completing the Moina Gold SSA, the Administrator will be entitled to terminate the agreement, forfeit monies already paid (\$170,000) and sue Moina Gold for the balance of the sale price (\$1,830,000).

If the Court refuses the s444GA Application, Moina Gold will be entitled to terminate the Moina Gold SSA and demand a refund of the part purchase price paid (\$170,000). The Company would then be wound up as the Moina Gold DOCA could not be effectuated.

#### 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 (including secured 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 Application 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 the shares of BCD are worth \$nil.

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

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#### 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 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 effectuated. 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. Disadvantages for Shareholders**

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This section sets out the key 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 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**

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

The s444GA Application was filed in the Supreme Court of New South Wales in September 2018 and a directions hearing was held on 28 September 2018 before Justice Black.

A final hearing date has been fixed for 23 October 2018. Any interested person who objects to the s444GA Application should comply with Rule 2.13 of the *Supreme Court (Corporations) Rules 1999* (NSW).

### **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 comply with Rule 2.13 of the *Supreme Court (Corporations) Rules 1999* (NSW), seek leave to be heard and 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's 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 Application 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 the following documents can be located on the Deed Administrator's website: <http://obp.com.au/creditor-information/>:

- (a) the s444GA Application (the Originating Process);
- (b) the Administrators' Report; and
- (c) the Independent Expert's Report.

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 Shareholder. Each 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 28 September 2018 the Court made orders (**Orders**) that:

1. Note that the Plaintiff proposes, on or before 5 October 2018, to dispatch to each shareholder of BCD Resources NL (Subject to Deed of Company Arrangement) ACN 057 793 834 (BCD Shareholder) by hand at, or prepaid post or courier (or such other method as it is advised) to the address of that BCD Shareholder as set out in the register of members of BCD Resources NL (Subject to Deed of Company Arrangement) (BCD), a copy of the Originating Process and Explanatory Statement attached to the Originating Process (as amended), in accordance with paragraphs 17 to 19 of the Affidavit of Richelle Anne Greenwood made 24 September 2018.
2. Note that the Plaintiff proposes to give, on or before 5 October 2018, notice of the hearing of an application pursuant to section 444GA of the Corporations Act 2001 (Cth) (Act) for orders approving that all of the issued shares in BCD be transferred by the Plaintiff to Moina Gold Pty Limited ACN 607 767 055 (Moina Gold) by publishing an advertisement in the Australian newspaper substantially in the form of Annexure "A" to this order.
3. The directions hearing on 9 October 2018 be vacated.
4. 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, or be heard in, this proceeding by no later than 12 October 2018.
- 4A. The Plaintiff file and serve any further evidence, and its submissions, on the Australian Securities and Investments Commission and any intervening shareholder by 4pm on 18 October 2018, and send copies of those documents to the Associate to Parker J.
5. The Originating Process filed 25 September 2018 is adjourned for hearing before Parker J at 10am on 23 October 2018.
6. Liberty to apply on 2 days' notice, specifying the relief sought.

Annexed to this Explanatory Statement and marked "A" is a copy of Annexure "A" as referred to in the Orders.

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 Application to Moina Gold and you will cease to own those Shares.

## **7. Additional information**

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### **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 Application.

At the time of issuing this Explanatory Statement, that application has not been determined by ASIC. ASIC has received and commented on the Independent Expert's Report and at the date of this Statement, ASIC have no further comments to make concerning the report. The Deed Administrator 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, 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 2.75% 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 was approved, Eclectic will have all of its Shares transferred to the Moina Gold for no consideration, consistent with all other Shareholders, and its loan will remain unpaid.

In addition, until 30 September 2018, Clive Carroll was a director of the secured creditor MKS, a wholly owned subsidiary of MKS Switzerland.

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

By letter dated 15 November 2017, the Plaintiff in the s444GA Application convened a first meeting of creditors and attached a declaration of independence, a copy of which is attached to this Explanatory Statement and marked "B".

### 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**

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This Explanatory Statement has been signed by BCD.

A handwritten signature in black ink, appearing to read "C. Palmer", written over a horizontal line.

Christopher John Palmer

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

**This is Annexure "A"**

**referred to in the Explanatory  
Statement**

**dated 4 October 2018**

Annexure A

IN THE SUPREME COURT OF NEW SOUTH WALES

No. 292882 of 2018

DIVISION: EQUITY

REGISTRY: SYDNEY

IN THE MATTER OF: BCD RESOURCES NL (Subject to Deed of Company Arrangement) ACN  
057 793 834

CHRISTOPHER JOHN PALMER

Plaintiff

NOTICE OF HEARING TO AUTHORISE TRANSFER OF SHARES

TO: All shareholders of BCD Resources NL (Subject to Deed of Company Arrangement) ACN  
057 793 834

TAKE NOTICE that at 10am, on 23 October 2018, the Supreme Court of New South Wales, Law Courts Building, Queens Square, Sydney, New South Wales, will hear an application by Mr Christopher John Palmer, deed administrator of BCD Resources NL (**BCD**), seeking the approval of the transfer of all the issued shares in BCD to Moina Gold Pty Limited ACN 607 767 055 (**Moina Gold**).

If you wish to oppose the approval of the transfer of all issued shares from BCD to Moina Gold, you must file and serve on the plaintiff a Notice of Appearance in the prescribed form together with any affidavit on which you wish to rely at the hearing. The Notice of Appearance and Affidavit must be served on the plaintiff at its Address of Service at least one day before the date fixed for the hearing of the application.

The Address for Service of the plaintiff is Macpherson Kelley, Level 21, 20 Bond Street, Sydney, New South Wales 2000.

Name of person giving notice or of person's legal practitioner: Timothy Fulton Edwards.

**This is Annexure "B"**

**referred to in the Explanatory  
Statement**

**dated 4 October 2018**



**O'BRIEN  
PALMER**

**INSOLVENCY & BUSINESS ADVISORY**

**DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND  
INDEMNITIES ("DIRRI")**

**BCD RESOURCES NL (ADMINISTRATORS APPOINTED)  
ACN 057 793 834 ("the Company")**

This document requires the Practitioners appointed to an Insolvent entity, to make declarations as to:

- A. their independence generally;
- B. relationships, including:
  - 1) the circumstances of the appointment;
  - 2) any relationships with the insolvent entity and others within the previous 24 months;
  - 3) any prior professional services for the insolvent entity within the previous 24 months;
  - 4) that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of Messrs Christopher Palmer and Liam Bailey and O'Brien Palmer.

**A. INDEPENDENCE**

We, Christopher Palmer and Liam Bailey of O'Brien Palmer have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as Administrators of the Company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

**B. DECLARATIONS OF RELATIONSHIPS**

**1. Circumstances of Appointment**

**1.1 Referrer for the Appointment**

Mr Timothy Edwards of Macpherson Kelley Lawyers ("**Macpherson Kelley**") contacted Mr Bailey, to discuss the financial affairs of the Company and to enquire as to whether we would consent to act as joint and several administrators of the Company.

We have no connection to Macpherson Kelly except that they may on occasion, refer insolvency matters to us and that we may on occasion refer recovery matters to them. Macpherson Kelly has not and will not receive a fee or any other benefit for this referral. It is our opinion that the relationship with Macpherson Kelly does not affect our independence or the perception of our independence in accordance with the ARITA standards.

## 1.2 Pre-Appointment Discussions

Pre-appointment discussions with key stakeholders in the business of the Company are summarised in the table below: -

Date	Parties	Purpose of Meeting/Discussion
31/10/2017	Mr Liam Bailey Mr Timothy Edwards (Macpherson Kelley)	Mr Bailey was contacted by Mr Edwards of Macpherson Kelley to discuss whether we would consent to an appointment as joint and several administrators of the Company.
02/11/2017 – 09/11/2017	Mr Liam Bailey Mr Clive Sidney Carroll (the Director)	Mr Bailey engaged in a number of emails with Mr Carroll pertaining to the terms of the engagement and indemnities to be provided in respect of the administrators' remuneration.
13/11/2017	Mr Liam Bailey Mr Clive Sidney Carroll	Mr Bailey and Mr Carroll exchanged a number of emails and had a number of conversations to discuss and effect our appointment as Administrators.

We have not and will not issue an invoice for time spent in dealing with the matters listed above.

In our opinion the communications referred to in the above table do not affect our independence for the following reasons:-

- (i) The Courts and the Code of Professional Practice issued by ARITA specifically recognise the need for practitioners to explain the insolvency process and provide information on the options available. It is considered that the provision of such explanations and information does not result in a conflict or is an impediment to accepting the appointment provided that it is restricted to the financial position of the Company; the solvency of the Company; the consequences of insolvency and the alternative courses of action available to the Company.
- (ii) The pre-appointment advice will not influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the administration in an objective and impartial manner.

We have provided no other information or advice to the Director of the Company or its advisors prior to our appointment beyond that outlined in this DIRRI.

## 2. Relevant Relationships (excluding Professional Services to the Insolvent)

We, or a member of our firm have had within the preceding 24 months, the following relationships:

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)

Name	Nature of Relationship
MKS Precious Metals (Australia) Pty Limited ("MKS")	MKS holds a security over the whole or substantially the whole of the Company's property. On 17 March 2017, Mr Palmer was appointed by MKS to investigate and report to MKS on the financial position of the Company. On 22 March 2017, Mr Palmer issued an email to MKS summarising the enquiries that had been undertaken. There were no further communications with MKS nor did Mr Palmer issue an invoice for the work that had been carried out.
Australian Taxation Office ("ATO")	Mr Palmer and Mr Bailey, and O'Brien Palmer, have been a member of the now defunct panel of approved insolvency practitioners to accept appointments where the ATO is the petitioning creditor. We continue to consent to potential appointments in this regard.

We are of the opinion that these relationships do not result in a conflict of interest of duty because:

- There are no conditions on the conduct or outcome of the Administration by virtue of these relationships;
- There has been no fee received or payable to any of the above parties by virtue of this appointment; and
- The relationships will not influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the administration of the Company in an objective and impartial manner.

In addition to the forgoing, Mr Palmer and Bryan Collis (a former partner of O'Brien Palmer) were appointed as Receivers and Managers of the Company by MKS on 21 January 2015. The appointment was terminated on 30 October 2015.

There are no other professional or personal relationships that should be disclosed.

### 3. Prior Professional Services to the Insolvent

Neither we, nor our firm, have provided any other professional services to the Company in the previous 24 months.

### 4. No Other Relevant Relationships to Disclose

There are no other known relevant relationships, including personal, business and professional relationship, from the previous 24 months with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company or any person or entity that has security over the whole or substantially the whole of the property of the Company that should be disclosed.

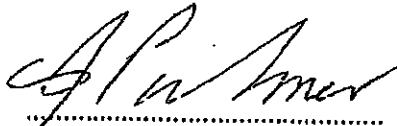
## C. INDEMNITIES AND UP-FRONT PAYMENTS

We have been provided with an indemnity by the Director of MKS, in the amount of \$30,000. This indemnity will be called upon in the event that creditors do not resolve to accept any Deed of Company Arrangement and that there are insufficient assets of the Company from which to meet our remuneration and disbursements.

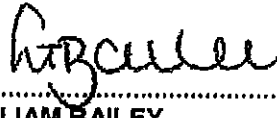
We have not been otherwise indemnified in relation to this administration, other than any indemnities that we may be entitled to under statute.



Dated: 15 November 2017



CHRISTOPHER J. PALMER  
JOINT & SEVERAL ADMINISTRATOR



LIAM BAILEY  
JOINT & SEVERAL ADMINISTRATOR

**Notes:**

1. If circumstances change, or new information is identified, we are required under the *Corporations Act 2001* pursuant to subsection 436DA(6) of the *Corporations Act 2001* and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the Company's creditors.
2. Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.