

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION**

This document comprises an explanatory statement in relation to linked and inter-conditional schemes of arrangement proposed by Winsway Enterprises Holdings Limited pursuant to section 673 of the Companies Ordinance (Cap 622) of Hong Kong and pursuant to section 179A of the BVI Business Companies Act (2004) (the "**Explanatory Statement**"). It is being sent to persons who it is believed are or may be Scheme Creditors at the date of this Explanatory Statement. If you have assigned, sold, or otherwise transferred, or assign, sell or otherwise transfer, your interests as a Scheme Creditor before the Record Time you must forward this Explanatory Statement and the accompanying documents at once to the person or persons to whom you have assigned, sold or otherwise transferred, or assign, sell or otherwise transfer, your interests as a Scheme Creditor.

**WARNING** – The contents of this Explanatory Statement have not been reviewed by any regulatory authority in Hong Kong, the BVI or any other jurisdiction. You are advised to exercise caution in relation to any offer pursuant to the schemes of arrangement set out in this Explanatory Statement. If you are in any doubt as to the contents of this Explanatory Statement or the documents that accompany it or what action you should take, you are recommended to seek your own independent financial, legal and tax advice immediately from your financial, legal and/or tax adviser.

This Explanatory Statement is accompanied by the Solicitation Packet, as set out at Appendix 5 (*Solicitation Packet*), which is also available on the Scheme Website for Scheme Creditors. The Solicitation Packet contains (i) the Account Holder Letter (which also encloses the Election Form, the Designated Recipient Form and the Distribution Confirmation Deed) and (ii) instructions and guidance for Scheme Creditors and any person with an interest in the Notes as to how to complete those documents.

Further copies of this Explanatory Statement can be obtained by contacting the Information Agent on +1 888-385-2663 or by e-mail to [WCole@BondCom.com](mailto:WCole@BondCom.com).

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**EXPLANATORY STATEMENT IN RELATION TO INTER-CONDITIONAL SCHEMES OF  
ARRANGEMENT**

**BETWEEN**

**WINSWAY ENTERPRISES HOLDINGS LIMITED (FORMERLY KNOWN AS WINSWAY  
COKING COAL HOLDINGS LIMITED) (A COMPANY INCORPORATED WITH LIMITED  
LIABILITY UNDER THE LAWS OF THE BRITISH VIRGIN ISLANDS AND REGISTERED  
AS A NON-HONG KONG COMPANY IN HONG KONG UNDER PART XI OF THE THEN  
COMPANIES ORDINANCE (CAP 32))**

**AND**

**THE SCHEME CREDITORS  
(AS DEFINED IN THIS EXPLANATORY STATEMENT)**

**IN THE HIGH COURT OF HONG KONG UNDER SECTIONS 673 AND SECTION 674 OF  
THE COMPANIES ORDINANCE (CAP 622)**

**AND**

**IN THE COMMERCIAL COURT OF THE BRITISH VIRGIN ISLANDS UNDER SECTION  
179A OF THE BVI BUSINESS COMPANIES ACT (2004)**

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The Record Time for the Schemes will be 5:00 p.m. New York time on 29 April 2016, the equivalent being 5:00 p.m. BVI time on 29 April 2016 / 5:00 a.m. Hong Kong time on 30 April 2016.

The Hong Kong Scheme Meeting and the BVI Scheme Meeting, at which the Scheme Creditors will consider and vote on the Hong Kong Scheme and the BVI Scheme respectively, will be convened as one meeting at the same time and place (the "**Scheme Meeting**").

The Scheme Meeting will be held at the offices of Stephenson Harwood at 18/F, United Centre, 95 Queensway, Hong Kong, with any adjournment as may be appropriate, at 10:00 a.m. on 3 May 2016 (Hong Kong time) / 10:00 p.m. on 2 May (BVI time). Scheme Creditors will be able to attend in person, and will also be able to join by telephone using the dial-in details published on the Scheme Website.

A notice convening the Scheme Meeting is set out in Appendix 4 (*Notice of Scheme Meeting*) of this Explanatory Statement.

The hearing before the BVI Court to determine whether or not the BVI Court will sanction the BVI Scheme will take place at 10:00am (BVI time) on 11 May 2016. The hearing before the Hong Kong Court to determine whether or not the Hong Kong Court will sanction the Hong Kong Scheme will take place at 10:00am (Hong Kong time) on 17 May 2016. Scheme Creditors will have the right to attend and be heard at both hearings.

Instructions about actions to be taken by the Scheme Creditors before the Scheme Meeting are set out in Section 8 (*Scheme Creditors and actions to be taken*), along with Appendix 5 (*Solicitation Packet*) of this Explanatory Statement.

Whether or not you intend to attend the Scheme Meeting:

- If you wish to vote in respect of the Schemes, please ensure that an Account Holder Letter is duly completed, executed and returned in accordance with the instructions set out therein so that it is received by the Information Agent as soon as possible and in any event by **the Scheme Meeting Deadline**, being 5:00 p.m. New York time on 29 April 2016, the equivalent being 5:00 p.m. BVI time on 29 April 2016 / 5:00 a.m. Hong Kong time on 30 April 2016.
- If you wish to participate in the initial distribution of Scheme Consideration on the Initial Distribution Date, please ensure that an Account Holder Letter (to the extent not already submitted by you by the Scheme Meeting Deadline) and Distribution Confirmation Deed are duly completed, executed and returned in accordance with the instructions set forth therein so that they are received by the Information Agent by the **Initial Scheme Consideration Deadline**, being 5:00 p.m. New York time on 17 May 2016, the equivalent being 5:00 p.m. BVI time on that day / 5:00 a.m. Hong Kong time on the following day or, in the event that the Scheme Meeting is adjourned to a date beyond such time, being such later time and date as may be agreed between the Company and the Steering Committee Majority and notified to Scheme Creditors in the same manner in which the notice of the Scheme Meeting was notified to them.
- If you wish to make an election with respect to the Elective Scheme Consideration that you will receive if the Schemes become effective, please ensure that in addition to submitting a duly completed Account Holder Letter and Distribution Confirmation Deed in the manner described above, an Election Form is duly completed, executed and returned in accordance with the instructions set forth therein so that it is received by the Information Agent by the **Initial Scheme Consideration Deadline**.
- If you wish to nominate a Designated Recipient to receive any Scheme Shares and Contingent Value Rights to which you may be entitled, please ensure that a Designated Recipient Form is also returned with the other documents to be submitted to the Information Agent.

Save for the purposes of voting at the Scheme Meeting, you will also need to ensure corresponding electronic instructions are submitted via DTC's ATOP system in respect of your Notes by 5:00 p.m. New York time on **the day before the Initial Scheme Consideration Deadline**.

Further important information is set out under the sections entitled *Important Notice to Scheme Creditors* and *Important Securities Law Notice* to this Explanatory Statement.

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## 1 EXPECTED TIMETABLE OF PRINCIPAL EVENTS<sup>1</sup>

Scheme Creditors should observe any deadlines set by any institution or settlement system through which they hold interests in the Notes to ensure that any voting instructions given by them are taken into account at the Scheme Meeting and that they can participate in the distributions of Scheme Consideration on the Initial Distribution Date and/or the Final Distribution Date.

We would strongly urge each Scheme Creditor to contact its relevant Account Holder or Intermediary as soon as possible to ensure they are aware of this Explanatory Statement and the process and timetable set out in it.

Event	Expected date	BVI Time	HK Time	New York time
Scheme Meeting Deadline – latest time and date for delivery of duly completed Account Holder Letter to vote at the Scheme Meeting.		17:00 29 April 2016	05:00 30 April 2016	17:00 29 April 2016
Record Time <sup>2</sup>		17:00 29 April 2016	05:00 30 April 2016	17:00 29 April 2016
Scheme Meeting <sup>3</sup>		22:00 2 May 2016	10:00 3 May 2016	-
Recognition Hearing	Week commencing 2 May 2016	-	-	-
Chapter 15 Order Date	As soon as possible after Recognition Hearing	-	-	-
BVI Court Sanction Hearing		10:00 11 May 2016	22:00 11 May 2016	-
ATOP Instruction Deadline - latest time for submitting electronic		17:00	05:00	17:00

<sup>1</sup>The dates in this timetable and mentioned throughout this Explanatory Statement assume that none of the court hearings or the Scheme Meeting are adjourned or delayed. It is also possible that the drawing up or registration of the Court Orders may be delayed if any person appeals either order.

<sup>2</sup>All Scheme Claims are determined as at the Record Time. The Company will be entitled to exercise discretion as to whether it recognises any assignment or transfer of Scheme Claims after the Record Time.

<sup>3</sup>The Scheme Meeting will commence at the time stated. Any Scheme Creditor that wishes to attend the Scheme Meeting should produce a duplicate copy of the Account Holder Letter that was executed and delivered on their behalf, evidence of personal identity (for example, a passport or other picture identification) and, in the case of a corporation, evidence of corporate authority (for example, a valid power of attorney and/or board minutes) at the registration desk **by no later than one hour before the scheduled time of the Scheme Meeting.**

<b>Event</b>	<b>Expected date</b>	<b>BVI Time</b>	<b>HK Time</b>	<b>New York time</b>
instructions for the purposes of receiving Scheme Consideration on the Initial Distribution Date.		16 May 2016	17 May 2016	16 May 2016
Hong Kong Court Sanction Hearing		22:00  16 May 2016	10:00  17 May 2016	-
Initial Scheme Consideration Deadline - latest time and date for delivery of duly completed documentation necessary to receive any Scheme Consideration on the Initial Distribution Date and/or make an election with respect to the Elective Scheme Consideration. <sup>4</sup>		17:00  17 May 2016	05:00  18 May 2016	17:00  17 May 2016
Scheme Effective Date	Day on which the Court Orders are filed with the Company Registrars	-	-	-
Restructuring Effective Date	Day on which all Scheme Conditions are satisfied	-	-	-
Initial Distribution Date	3 Business Days after Restructuring Effective Date	-	-	-
Scheme Longstop Date	17 June 2016 <sup>5</sup>	-	-	-
2 <sup>nd</sup> ATOP Instruction Deadline - latest time for submitting electronic instructions for the purposes of receiving Scheme Consideration on the Final Distribution Date.	1 Business Day before the Bar Date	17:00	05:00 (Bar Date)	17:00
Bar Date – latest time and date for delivery of duly completed documentation necessary to receive	3 months after Restructuring	17:00	05:00 (Bar Date)	17:00

<sup>4</sup> In the event that the Scheme Meeting is adjourned to a date beyond such time, the Initial Scheme Consideration Deadline shall be such later time and date as may be agreed between the Company and the Steering Committee Majority and notified to Scheme Creditors.

<sup>5</sup> Or such later date as may be agreed between the Company and the Steering Committee Majority, in accordance with the RSA.

<b>Event</b>	<b>Expected date</b>	<b>BVI Time</b>	<b>HK Time</b>	<b>New York time</b>
any Scheme Consideration.	Effective Date		+ 1)	
Final Distribution Date	10 Business Days after Bar Date	-	-	-

## **2 IMPORTANT NOTICE TO SCHEME CREDITORS**

Unless the context otherwise requires, all capitalised terms used in this Explanatory Statement shall have the meanings set out in Appendix 1 (*Definitions and Interpretation*) of this Explanatory Statement.

### **Information**

This Explanatory Statement has been prepared in connection with schemes of arrangement under:

- (a) section 673 of the Companies Ordinance in relation to the Hong Kong Scheme between the Company and the Scheme Creditors; and
- (b) section 179A of the BVI Companies Act in relation to the BVI Scheme between the Company and the Scheme Creditors,

and has been prepared solely for the purpose of providing information to Scheme Creditors in relation to the Schemes.

Nothing in this Explanatory Statement or any other document issued with or appended to it should be relied on for any purpose other than for Scheme Creditors to make a decision on the Schemes. In particular and without limitation, nothing in this Explanatory Statement should be relied on in connection with the purchase or acquisition of any Scheme Claim or any other financial instruments, securities, assets or liabilities of the Company or any other Group Company.

Nothing contained in this Explanatory Statement constitutes a recommendation, or the giving of advice, by the Company or any other member of the Group to take a particular course of action or to exercise any right conferred by the Notes in relation to, buying, selling, subscribing for, exchanging, redeeming, holding, underwriting, disposing of, or converting Notes or any other financial instruments, securities, assets or liabilities of the Company or any other Group Company.

### **Scheme Creditors**

This Explanatory Statement is to be distributed to Scheme Creditors. Information on the actions that Scheme Creditors are required to take under the Schemes are set out in Section 8 (*Scheme Creditors and actions to be taken*) of this Explanatory Statement.

### **Notice to Scheme Creditors**

Without prejudice to any representations and warranties to be given by the Company in the Restructuring Documents, nothing contained in this Explanatory Statement shall constitute a warranty, undertaking or guarantee of any kind, express or implied, nor any admission of any fact or liability on the part of the Company with respect to any asset to which it may be entitled or any claim against it. Without prejudice to the generality of the foregoing, nothing in this Explanatory Statement or the distribution thereof evidences to any person, or constitutes any admission by the Company, that a liability is owed to any person in respect of any claim (including without limitation any Scheme Claim) or that any person is or may be a Scheme Creditor. The failure to distribute this Explanatory Statement to any Scheme Creditor

shall not constitute an admission by the Company that such person is not a Scheme Creditor.

No person has been authorised by the Company to give any information or make any representations concerning the Restructuring Documents or the Schemes which is inconsistent with this Explanatory Statement and, if made, such representations shall not be relied upon as having been so authorised.

The information contained in this Explanatory Statement has been prepared based upon information available to the Company prior to the date of this Explanatory Statement. The delivery of this Explanatory Statement does not imply that the information herein is correct as at any time subsequent to the date hereof. To the best of the Company's knowledge, information and belief, the information contained in this Explanatory Statement is in accordance with the facts and does not omit anything likely to affect the import of such information, each in a material respect. The Company has taken all reasonable steps to ensure that this Explanatory Statement contains the information reasonably necessary and material to enable Scheme Creditors to make an informed decision about how the Restructuring affects them.

None of the Company's advisers have verified that the information contained in this Explanatory Statement is materially in accordance with facts and does not omit anything likely to affect the import of such information in any material way, and each of those persons expressly disclaims responsibility for such information.

Neither the Scheme Creditors nor their advisers have authorised the content of this document or any part of it, nor do they or their advisers accept any responsibility for the accuracy, completeness or reasonableness of the statements contained within it.

This Explanatory Statement has not been reviewed, verified or approved by any rating agency, the Note Trustee, or any regulatory authority. Without prejudice to any representations and warranties to be given by the Company in the Restructuring Documents, to the fullest extent permitted by law, the Company will have no tortious, contractual or any other liability to any person in connection with the use of this Explanatory Statement and the Company will not accept any liability whatsoever to any person, regardless of the form of action, for any lost profits or lost opportunity, or for any indirect, special, consequential, incidental or punitive damages arising from any use of this Explanatory Statement, its contents or preparation or otherwise in connection with it, even if the Company has been advised of the possibility of such damages.

### **Restrictions**

The distribution of this Explanatory Statement to or in certain jurisdictions may be restricted by law or regulation and persons into whose possession this Explanatory Statement comes are requested to inform themselves about, and to observe, any such restrictions. Failure to comply with any such restrictions could result in a violation of the laws of such jurisdictions.

## **Summary only**

The summary of the principal provisions of the Schemes contained in this Explanatory Statement is qualified in its entirety by reference to the BVI Scheme and the Hong Kong Scheme themselves. The full text of the BVI Scheme and the Hong Kong Scheme is set out in Appendix 2 (*Hong Kong Scheme*) and Appendix 3 (*BVI Scheme*), respectively. Each Scheme Creditor is advised to read and consider carefully the text of both the BVI Scheme and the Hong Kong Scheme. This Explanatory Statement has been prepared solely to assist Scheme Creditors in respect of voting on the Schemes.

***In the event of a conflict between the information and terms described in:***

***(a) this Explanatory Statement; and***

***(b) the Schemes;***

***the terms of the Schemes shall prevail.***

***Subject to the terms of the RSA, the Company shall be at liberty to modify the Schemes, or to propose a different scheme or schemes of arrangement, at any time prior to sanction of the Schemes and delivery of the relevant Court Order to the relevant Company Registrar. The Company shall enjoy such liberty notwithstanding any actions in reliance on the Schemes or this Explanatory Statement by a Scheme Creditor or any other person.***

## **Forward-looking Statements**

Nothing in this Explanatory Statement shall be deemed to be a forecast, projection or estimate of the future financial performance of the Company and/or any Group Company except where otherwise specifically stated.

This Explanatory Statement contains statements, estimates, opinions and projections with respect to the Company and the Group and certain plans and objectives of the Company and the Group. These forward-looking statements can be identified by the fact that they do not relate only to historical or current facts. Forward-looking statements often use words such as "*anticipate*", "*target*", "*expect*", "*estimate*", "*intend*", "*plan*", "*goal*", "*believe*", "*will*", "*may*", "*should*", "*would*", "*could*" or other words of similar import. These statements are based on numerous assumptions and assessments made by the Company as appropriate in light of its experience and perception of historical trends, current conditions, expected future developments and other factors which it believes appropriate. No assurance can be given that such expectations will prove to be correct. Forward-looking statements involve significant risks and uncertainties, should not be read as guarantees of future performance or results, and will not necessarily be accurate indications of whether or not such results will be achieved. Such forward-looking statements only speak as at the date of this Explanatory Statement. A number of factors could cause actual results to differ materially from the results discussed in the forward-looking statements, including, but not limited to, the factors and uncertainties set out in Section 12 (*Risk Factors*) of this Explanatory Statement. Each Scheme Creditor is urged to make its own assessment of the validity of such forward-looking statements and their underlying assumptions and no liability is accepted by the Company in respect of the

achievement or failure thereof of such forward-looking statements and assumptions. Without limiting the above, none of the boards of the directors of the companies within the Group assumes any obligation to update or correct any forward-looking statements contained in this Explanatory Statement to reflect any change of expectations with respect thereto or any change in event, situation or circumstances on which any such forward-looking statement was based.

## **Risk Factors**

**Scheme Creditors' attention is drawn to certain risks and uncertainties associated with the Restructuring that are set out in Section 12 (*Risk Factors*) of this Explanatory Statement.**

These important risk factors could cause the Group's actual results and future prospects to differ materially from those expressed in this Explanatory Statement (including any forward-looking statements).

***Each Scheme Creditor should carefully read and analyse such risk factors and uncertainties, and fully understand their impact, which may be material and adverse, on its financial condition and prospects. The statement of risk factors is not and is not intended to be an exhaustive statement of such factors or of all possible factors which might influence the decision of Scheme Creditors as regards the Schemes or any investment decision.***

## **Liquidation Analysis**

AlixPartners Services UK LLP ("**AlixPartners**") is acting as an adviser to the Company in connection with the preparation of the Liquidation Analysis (as defined and described further below). AlixPartners' sole duty of care is to the Company. AlixPartners is not responsible to and does not owe any duty to any other person, and is not responsible for providing advice to and is not purporting to advise any other person, in connection with such matters.

At the request of the Company, AlixPartners has prepared a high level liquidation analysis of the potential outcome for creditors of the Company in the event that a debt restructuring is not completed (the "**Liquidation Analysis**"). The Liquidation Analysis is based on the Company's instructions and with only the Company's interests in mind. By accepting the Liquidation Analysis, the Company's creditors and any other party who gains access to the Liquidation Analysis ("**Third Parties**") will be taken to have represented, warranted and undertaken that they have read and agree to comply with the contents of this disclaimer.

The Liquidation Analysis has been prepared by AlixPartners solely for the benefit of the Company, and is disclosed in this Explanatory Statement strictly on a non-reliance basis, for information only. No reliance may be placed for any purpose whatsoever on the Liquidation Analysis and any reliance Scheme Creditors and/or other Third Parties choose to place on such information is a matter for their judgment exclusively and at their own risk. To the fullest extent permitted by law, no liability or responsibility whatsoever is accepted by AlixPartners for any loss howsoever arising from any use of or reliance on the Liquidation Analysis contained in this Explanatory Statement or in connection therewith.

The Liquidation Analysis is based on information and explanations provided by the Company which have not been subject to independent verification, audit or checking. Accordingly, AlixPartners assumes no liability whatsoever and makes no representations or warranties, express or implied, in relation to the contents of this Explanatory Statement, including its accuracy, completeness or verification or for any other statement made or purported to be made by or on behalf of the Company or AlixPartners. Additionally, AlixPartners has identified a number of limitations to its Liquidation Analysis. A full list of these limitations can be found in Section 3 (*Key assumptions and limitations*) of Appendix 7 (*Liquidation Analysis*).

This Explanatory Statement contains certain statements, estimates, statistics and projections that are, or may be, forward-looking. The accuracy and completeness of all such statements, including, without limitation, statements regarding the Company's future financial position, strategy, plans and objectives for the management of future operations, is not warranted or guaranteed. Nothing contained in this Explanatory Statement is, or shall be, relied on as a promise or representation whether as to the past or the future, in connection with the Company or the Schemes.

The Liquidation Analysis is based on a review of the current and forecast financial position of the Company (and other Group companies) as at 30 November 2015. For the avoidance of any doubt, the work AlixPartners has been engaged to carry out does not constitute an audit of the Company's financial position and AlixPartners is not in a position to provide an opinion as to the veracity of information received nor should any opinions of AlixPartners be regarded as a substitute for an audit opinion which can only be provided by KPMG, the Company's auditors.

The Liquidation Analysis does not constitute or form part of, and should not be construed as, an offer to sell or issue, or the solicitation of an offer to purchase, subscribe to or acquire, securities of the Company, or an inducement to enter into investment activity in the United States or in any other jurisdiction in which such offer, solicitation, inducement or sale would be unlawful prior to registration, exemption from registration or qualification under the securities laws of such jurisdiction. No part of the Liquidation Analysis nor the fact of its distribution, should form the basis of, or be relied on in connection with, any contract or commitment or investment decision whatsoever. The Liquidation Analysis does not constitute a recommendation regarding any decision to sell or purchase securities in the Company.

Any person who is in any doubt about the subject matter of the Liquidation Analysis should consult a duly authorised person. Nothing in the Liquidation Analysis should be relied upon in connection with the purchase of any shares, debt participations or other assets.

The statements made in the Liquidation Analysis are current as the date of this Explanatory Statement and delivery of this Explanatory Statement should not give rise to any implication that there has not been any change in the information set out in this Explanatory Statement.

## **Legal, tax and financial advice**

Without limiting any of the above, Scheme Creditors should not construe the contents of this Explanatory Statement as legal, tax or financial advice.

This Explanatory Statement has been prepared without taking into account the objectives, financial situation or needs of any particular recipient of it, and consequently, the information contained in this Explanatory Statement may not be sufficient or appropriate for the purpose for which a recipient might use it. Each Scheme Creditor should conduct its own due diligence and consider the appropriateness of the information in this Explanatory Statement having regard to its own objectives, financial situations and needs. Scheme Creditors are also recommended to consult their own professional advisers as to legal, tax, financial or other aspects relevant to any action Scheme Creditors might take in relation to the Schemes and the Restructuring Transactions, or the implications/consequences of such action.

This Explanatory Statement is addressed to Scheme Creditors for their information only and no person should rely on it in formulating or reaching any investment decision. ***Scheme Creditors must rely on their own due diligence and their professional advisers in their decisions with respect to the Schemes and the Restructuring Transactions.***

## **Other Jurisdictions**

The implications of the Restructuring Transactions for Scheme Creditors who are residents or citizens of jurisdictions other than the BVI and Hong Kong may be affected by the laws of the relevant jurisdictions. Such overseas Scheme Creditors should inform themselves about and observe any applicable legal requirements in their respective jurisdictions. Any person outside the BVI or Hong Kong who is resident in, or who has a registered address in, or is a citizen of, an overseas jurisdiction should consult independent professional advisers and satisfy themselves as to the full observance of the laws of the relevant jurisdiction in connection with the Schemes and the Restructuring Transactions, including obtaining any requisite governmental or other consents, observing any other requisite formalities and paying any issue, transfer or other taxes due in such jurisdiction.

### **3 IMPORTANT SECURITIES LAW NOTICE**

#### **U.S Securities Law Considerations**

The Company intends to rely on the exemption from the registration requirements of the US Securities Act provided in Section 3(a)(10) thereof for the issuance of the Scheme Consideration to Scheme Creditors in exchange for their Scheme Claims, specifically the Scheme Shares and Contingent Value Rights, as applicable to Scheme Creditors, as contemplated in the Schemes. This exemption is available subject to the following conditions:

- the relevant Scheme Consideration must be issued in exchange for Scheme Claims; and
- the BVI Court and the Hong Kong Court, having been previously advised of the Company's reliance on their respective determinations on the Section 3(a)(10) exemption, must hold an open hearing and approve the fairness of the terms and conditions of the exchange.

In connection with the possible issuance of CVR Shares in respect of the settlement of the Contingent Value Rights following the occurrence of the CVR Trigger Event, the Company intends to rely on the exemption from the registration requirements of the US Securities Act provided in Section 3(a)(9) thereof. This exemption is available subject to the following conditions:

- the holders of the Contingent Value Rights are not required to give up any additional consideration (other than the surrender of the Contingent Value Rights Instrument itself) in respect of the settlement of such rights; and
- no payment of commissions or other remuneration shall be made (directly or indirectly) in connection with the solicitation of such exchange.

The public resale of CVR Shares may be registered under the US Securities Act or such securities may be resold or transferred pursuant to an applicable exemption from the registration requirements to the extent available under the US Securities Act and other securities or blue sky laws of any State of the United States.

The Company is relying on each of the following in order to avail itself of the exemption described above:

- under the laws of the BVI and Hong Kong, the BVI Court and the Hong Kong Court will not approve the Schemes for the issuance of the Scheme Consideration to Scheme Creditors in exchange for their Scheme Claims unless each court finds, at the Sanction Hearings, the transaction to be fair to the persons who will receive the Scheme Consideration;
- the Scheme Creditors have received notice of, and have the right to attend or appear by Counsel at, the Sanction Hearing of the BVI Court and the Hong Kong Court; and
- the Company will advise the BVI Court and the Hong Kong Court before the Sanction Hearing that it will rely on the Section 3(a)(10) exemption and not register under the US Securities Act the Scheme Consideration to be issued

to the Scheme Creditors in exchange for their Scheme Claims based on the BVI Court's and the Hong Kong Court's sanctioning the Schemes at the Sanction Hearing.

The Scheme Shares and Contingent Value Rights will not be registered under the securities laws of any state of the United States, and will be issued pursuant to the Schemes in reliance on available exemptions from such state law registration requirements or the pre-emption of such requirements by the US Securities Act.

The Scheme Shares and Contingent Value Rights will not be "restricted securities" within the meaning of Rule 144(a)(3) under the US Securities Act and may be immediately resold without restriction under the US Securities Act by holders who are not "affiliates" (as defined under the US Securities Act) of the Company and have not been affiliates of the Company within 90 days prior to the issuance of the Scheme Shares and Contingent Value Rights under the Schemes.

Under the US Securities Act, a Scheme Creditor who is an affiliate of the Company at the time or within 90 days prior to any resale of Scheme Shares and Contingent Value Rights received under the Schemes will be subject to certain transfer restrictions relating to such shares to the extent they wish to sell such securities in the United States. In particular, such Scheme Shares and Contingent Value Rights may not be sold in the United States without registration under the US Securities Act, except pursuant to any available exemptions from the registration requirements or in a transaction not subject to such registration requirements (including a transaction that satisfies the applicable requirements for re-sales outside the United States pursuant to Regulation S).

Whether a person is an affiliate of the Company for such purposes depends on the circumstances, but affiliates could include certain officers and directors and significant shareholders. A Scheme Creditor who believes that it may be an affiliate of the Company should consult its own legal advisers prior to any sales of Scheme Shares and Contingent Value Rights received pursuant to the Schemes.

Neither the United States Securities and Exchange Commission (the "**SEC**") nor any other United States federal or state securities commission or regulatory authority has approved or disapproved of the Scheme Shares and Contingent Value Rights or passed comment upon the accuracy or adequacy of this Explanatory Statement. Any representation to the contrary is a criminal offence in the United States.

Scheme Creditors who are citizens or residents of the United States should consult their own legal, financial and tax advisers with respect to the legal, financial and tax consequences of the Schemes, the Scheme Consideration and the Restructuring in their particular circumstances.

### **Securities Law Considerations in Other Jurisdictions**

#### *European Economic Area*

This Explanatory Statement is only being distributed to and is only directed at Scheme Creditors: (i) who are not incorporated or situated in any member state of the European Economic Area, (ii) who are "qualified investors" within the meaning of Article 2(1)(e) of the Prospectus Directive, or (iii) in compliance with any other

circumstances falling within Article 3(2) of the Prospectus Directive (all such persons together being referred to as "**Relevant Persons**"). This Explanatory Statement has been prepared on the basis that all offers of the Scheme Consideration will be made pursuant to an exemption under the Prospectus Directive from the requirement to produce a prospectus for offers of the Scheme Consideration. Accordingly, any person making or intending to make any offer within the EEA of the Scheme Consideration should only do so in circumstances in which no obligation arises for the Company to produce a prospectus for such offer. The Company has not authorised the making of any offer of any of the Scheme Consideration through any financial intermediary other than offers made by the Company as contemplated by this Explanatory Statement.

The Scheme Consideration is only available to the Scheme Creditors (or their Designated Recipients) in accordance with the terms of the Schemes and any invitation, offer or agreement to subscribe for, purchase or otherwise acquire such Scheme Consideration will only be engaged in with a Relevant Person; provided that if any such Relevant Person is a qualified investor acting as a "financial intermediary" (as such terms are used in the Prospectus Directive), it has not elected for any Scheme Consideration and will not subscribe for the Scheme Consideration on a non-discretionary basis on behalf of, nor will the Scheme Consideration be acquired with a view to its offer or resale to, persons in circumstances which may give rise to an offer of shares to the public, provided also that no such offer of any of the Scheme Consideration shall require the Company to publish a prospectus pursuant to the Prospectus Directive. Any person who is not a Relevant Person should not act or rely on this Explanatory Statement or any of its contents.

For the purposes of this provision, the expression "offer of Scheme Consideration to the public" in relation to the Scheme Consideration in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the Scheme Consideration to be offered so as to enable an investor to decide to purchase or subscribe for the Scheme Consideration, as the same may be varied in that Relevant Member State by any measure implementing the Prospectus Directive in that Relevant Member State and the expression "Prospectus Directive" means Directive 2003/71/EC (and amendments thereto, including the 2010 PD Amending Directive) and includes any relevant implementing measure in each Relevant Member State and the expression "**2010 PD Amending Directive**" means Directive 2010/73/EU.

#### *United Kingdom*

In the United Kingdom, this Explanatory Statement is only being distributed to and is only directed at (i) persons who have professional experience in matters relating to investments and who qualify as Investment Professionals in accordance with Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "**Order**"); (ii) high net worth companies, unincorporated associations, partnerships or trustees in accordance within Article 49(2) of the Order; and (ii) Scheme Creditors falling within Article 43(2) of the Order (together, "relevant persons"). This Explanatory Statement must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this Explanatory Statement relates, including the Scheme Consideration, is available only

to relevant persons and will be engaged in only with relevant persons. Any persons other than relevant persons should not act or rely on this Explanatory Statement.

#### *Hong Kong*

The arrangements for the issue of the Scheme Consideration have not been authorised by Hong Kong's Securities and Futures Commission ("**SFC**"), nor has this Explanatory Statement (for this purpose including the Solicitation Packet) been approved by the SFC pursuant to section 105(1) of Hong Kong's Securities and Futures Ordinance ("**SFO**") or section 342C(5) of Hong Kong's Companies Ordinance ("**CO**") or registered by Hong Kong's Registrar of Companies pursuant to section 342C(7) of CO. Accordingly, the content and use of this Explanatory Statement must comply with each of the following SFO and CO restrictions, so:-

- (a) SFO: this Explanatory Statement is not and does not contain, contrary to section 103 of SFO, an invitation to the public of Hong Kong to acquire or subscribe for the Scheme Consideration, other than (1) an invitation only to professional investors (as defined in SFO) to do so or (2) to the extent that this Explanatory Statement is not a prospectus (as defined in the CO) by virtue of any of the maximum offeree number, minimum investment amount or other exclusions set out in the 17th Schedule to the CO ("**Prospectus Exclusions**"); and
- (b) CO: this Explanatory Statement must not, contrary to sections 342 and 342C of CO, be issued, circulated or distributed to any person in Hong Kong other than (1) to persons whose ordinary business is to buy or sell shares or debentures, whether as principal or agent, or (2) to professional investors (as defined in the SFO) or (3) in circumstances in which this Explanatory Statement is not a prospectus (as defined in the CO) by virtue of any of the Prospectus Exclusions or (4) otherwise in circumstances that do not constitute an offer to the public.

#### *People's Republic of China*

The Scheme Consideration has not been and will not be registered under the relevant laws of the PRC. Accordingly, no offer, promotion, solicitation for sales or sale of or for, as the case may be, any Scheme Consideration in the PRC will be made, except where permitted by the China Securities Regulatory Commission or where the activity otherwise is permitted under the laws of the PRC.

#### *Singapore*

This Explanatory Statement has not been and will not be registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this Explanatory Statement and any other document or material in connection with the Schemes, the Scheme Shares, the Contingent Value Rights, or the offer or sale or invitation for subscription of the Scheme Shares and the Contingent Value Rights may not be circulated or distributed, nor may the Scheme Shares or Contingent Value Rights be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) "institutional investors" (as defined in the Securities and Futures Act, Chapter 289 (the "**SFA**")), or (ii)

otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

#### *Taiwan*

None of the Scheme Consideration has been nor will be registered under the relevant securities laws of Taiwan. Accordingly, the Company and its affiliates have not made, and will not make, any offer, promotion, solicitation for sales or sale of or for, as the case may be, any Scheme Consideration in Taiwan. The Scheme Shares and Contingent Value Rights, upon issue and delivery, will be deemed privately placed securities to Scheme Creditors resided in Taiwan and therefore may not be offered, sold or otherwise transferred except: (a) pursuant to an effective registration statement under Taiwan's Securities and Exchange Act or (b) in accordance with another exemption from registration under, or transaction not subject to Taiwan's Securities and Exchange Act.

#### **General**

There will be no offer of Scheme Consideration in any state or jurisdiction in which such offer would be unlawful prior to qualification under securities law of such state or jurisdiction.

The implications of the Schemes for Scheme Creditors who are resident in, have a registered address in or are citizens of any other jurisdictions may be affected by the laws of such jurisdictions. Such Scheme Creditors should inform themselves about and observe any applicable legal requirements and should consult his, her or its professional advisers and satisfy himself, herself or itself as to the full observance of the laws of the relevant jurisdiction in connection with the Schemes including obtaining any requisite governmental or other consents, observing any other requisite formalities and paying any issue, transfer or other taxes due in such jurisdiction.

In the absence of bad faith, none of the Company, the Information Agent or any person appointed to distribute the Scheme Consideration shall have any liability for any loss or damage arising as a result of the timing or terms of such a sale or as a result of any remittance made pursuant to such distribution.

#### **Disqualified Persons and Prohibited Transferees**

Without limiting the information set out in this section (*Important Securities Law Notice*), the Scheme Shares and Contingent Value Rights will not be issued to a Scheme Creditor pursuant to the Schemes where such Scheme Creditor is a Disqualified Person or Prohibited Transferee.

However, such a Scheme Creditor may designate a Designated Recipient (who itself must not be a Disqualified Person or Prohibited Transferee) to receive the Scheme Shares and Contingent Value Rights, *provided, however*, that when designating a Designated Recipient, a Scheme Creditor which is a Disqualified Person will be required to represent and warrant to the Company that it will retain no beneficial interest in the Scheme Shares and Contingent Value Rights designated to be held by the Designated Recipient.

If a Scheme Creditor is a Disqualified Person or Prohibited Transferee and fails to designate a Designated Recipient prior to the Bar Date, all of the Scheme Shares and Contingent Value Rights that would otherwise have been distributed to such Scheme Creditor will be distributed to the other Participating Scheme Creditors that are not Disqualified Persons or Prohibited Transferees or who have designated a Designated Recipient in accordance with the terms of the Scheme.

### **Certain ERISA and Related Considerations**

**TO COMPLY WITH TREASURY DEPARTMENT CIRCULAR 230, PROSPECTIVE INVESTORS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS EXPLANATORY STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY PROSPECTIVE INVESTORS, FOR THE PURPOSES OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE CODE; (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING BY US OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) PROSPECTIVE INVESTORS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISER.**

The U.S. Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), imposes certain fiduciary and related requirements on employee benefit plans (as defined in Section 3(3) of ERISA) that are subject to Part 4 of Subtitle B of Title I of ERISA ("**ERISA Plans**"), and on the persons charged with administering and investing the assets of ERISA Plans, called "fiduciaries" under ERISA. Section 406 of ERISA and Section 4975 of the Code prohibit certain transactions involving the assets of an ERISA Plan, or the assets of a plan, account or arrangement that is not subject to ERISA but is subject to Section 4975 of the Code, such as a U.S. individual retirement account (a "**Tax Advantaged Arrangement**"), and certain persons (referred to as "parties in interest" under ERISA and "disqualified persons" under the Code) having certain relationships to the ERISA Plan or Tax Advantaged Arrangement, unless a statutory or administrative exemption applies to the transaction. A party in interest or Disqualified Person who engages in a non-exempt prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and Section 4975 of the Code. In addition, a fiduciary of an ERISA Plan who engages in or causes the ERISA Plan to engage in a non-exempt prohibited transaction may be subject to penalties and liabilities under ERISA and the Code.

In circumstances described in regulations promulgated by the U.S. Department of Labor, 29 C.F.R. Section 2510.3 101 (as modified by Section 3(42) of ERISA, the "**Plan Asset Rules**"), if an ERISA Plan or Tax Advantaged Arrangement (each, a "**Plan**") invests in an "equity interest" of an entity that is neither a "publicly offered security" under U.S. law nor a security issued by an investment company registered under the U.S. Investment Company Act, the Plan's assets will include both the equity interest and an undivided interest in each of the entity's underlying assets, unless it is established that the entity is an "operating company" or that equity participation in the entity by Plans or entities themselves holding "plan assets" under the Plan Asset Rules (collectively, "**Benefit Plan Investors**") is not "significant". Equity participation in an entity by Benefit Plan

Investors will be "significant" if 25% or more of the value of any class of equity interest in the entity is held by Benefit Plan Investors, excluding interests held by certain persons managing or providing investment advice to the entity and by certain of their affiliates. An "equity interest" is defined under the Plan Asset Rules as any interest in an entity other than an instrument that is treated as indebtedness under applicable local law and that has no substantial equity features. If an entity is subject to "look through" treatment in this manner under the Plan Asset Rules, the entity and its operations and investments will be directly subject to ERISA and to the prohibited transaction provisions of the Code, and the persons charged with managing the entity and investing its assets will be treated as "fiduciaries" under ERISA and the prohibited transaction provisions of the Code.

U.S. based governmental plans, certain church plans, non U.S. plans and other plans, while not subject to the fiduciary responsibility provisions of Title I of ERISA or the provisions of Section 4975 of the Code, may nevertheless be subject to state, local, federal or non U.S. laws that are substantially similar to the foregoing provisions of ERISA and the Code ("**Similar Laws**").

The foregoing discussion regarding ERISA and the Code is general in nature and does not purport to be complete.

Fiduciaries of any Scheme Creditor that is a plan, arrangement or entity subject to Section 406 of ERISA or Section 4975 of the Code or to any Similar Law should consult with their counsel concerning the matters described in this section.

**None of the securities referred to in this Explanatory Statement may be sold, issued or transferred in any jurisdiction in contravention of applicable law.**

## **4 LETTER FROM THE DIRECTORS OF THE COMPANY (THE "DIRECTORS") TO THE SCHEME CREDITORS**

26 February 2016

Dear Scheme Creditor,

### **4.1 Introduction**

The Directors write to you in your capacity as a Scheme Creditor.

This letter forms part of the Explanatory Statement for the Schemes proposed by the Company as part of the Restructuring, the details of which are explained below.

Please note that the information in this letter is not intended to be exhaustive or complete. Scheme Creditors should read the Explanatory Statement as a whole, in conjunction with the documents that accompany it (including the Account Holder Letter).

Defined terms used in this letter are included in Appendix 1 (*Definitions and Interpretation*) of this Explanatory Statement.

### **4.2 The purpose of the Explanatory Statement**

The Board has been exploring various ways to secure the financial position of the Group and the future of its business.

Following extensive negotiations with the Steering Committee, the Board has now come to a decision that the Restructuring, as described in Section 9 (*Overview of the Debt Restructuring*) of this Explanatory Statement, is in the best interests of the Company and those with an economic interest in the Group (including, in particular, the Scheme Creditors). The Explanatory Statement explains why the Board believes this to be the case.

It is proposed that the implementation of the Restructuring will involve (among other things):

- (a) the implementation of the Hong Kong Scheme, being a court approved scheme of arrangement in Hong Kong for the Company pursuant to section 673 of the Companies Ordinance;
- (b) the implementation of the BVI Scheme, being a court approved scheme of arrangement in the BVI for the Company pursuant to section 179A of the BVI Companies Act; and
- (c) the Recognition Filings, being a petition under Chapter 15 of the US Bankruptcy Code for recognition of the compromise and arrangement of the Hong Kong Scheme and a request for the US Bankruptcy Court to grant a Chapter 15 Recognition Order.

The Explanatory Statement, which is provided to you pursuant to section 671 of the Companies Ordinance and section 179A of the BVI Companies Act, is distributed for the purpose of providing Scheme Creditors with all the information reasonably necessary to enable them to make an informed decision on whether to approve the Schemes. A short explanation of the reasons for the Restructuring and the proposed Schemes is included below, as part of this letter.

UBS and AlixPartners have acted as financial advisers, and Stephenson Harwood, Reed Smith and Walkers have acted as legal advisers, to the Company in relation to the Schemes and the Restructuring.

#### **4.3 Background to the Group**

The Company is incorporated in the BVI as a limited liability company and is listed on the HKEx with stock code 1733.

The Company and its subsidiaries are principally engaged in the processing and trading of coking coal and other products and the rendering of logistics services.

The Group previously engaged in the development of coal mills and production of coking coal through its subsidiary, GCC. However, from March 2014, the Group ceased to provide financial support to GCC and sought purchasers for its equity interest in GCC. In September 2015, the Company completed the disposal of part of its interest in GCC, leaving it with a minority 14.69% interest.

#### **4.4 Overview of the Restructuring**

##### *The RSA*

The Company and the Subsidiary Guarantors have entered into the RSA with the Consenting Scheme Creditors.

As at the date of this Explanatory Statement, Scheme Creditors holding Notes in an aggregate principal amount of approximately US\$257,281,000, representing approximately 83.2% by value of the outstanding principal amount of the Notes, have acceded to, and are bound by the terms of, the RSA. Pursuant to the RSA, the parties thereto have agreed (among other things) to take all actions reasonably necessary to take in order to support, facilitate, implement or otherwise give effect to the Restructuring (provided that such action is consistent in all material respects with the Term Sheet) as soon as reasonably practicable and by no later than 17 June 2016 (or such later date as may be agreed by the Company and Steering Committee Majority).

The terms of the RSA are set out in more detail in Section 5 (*Background to the Schemes and the Restructuring*) of this Explanatory Statement.

##### *The Restructuring*

The Company has proposed a Restructuring which has been approved by the Directors. This Restructuring includes various measures intended to ensure that the Group will be able to continue to operate on a going concern basis.

The Restructuring comprises two elements:

- (a) the Rights Issue, pursuant to which the Company proposes to issue new Shares to the existing Shareholders for proceeds of approximately US\$50 million (approximately HK\$387.5 million) in aggregate; and
- (b) the Debt Restructuring, pursuant to which the obligations of the Company and the Subsidiary Guarantors under and in connection with the Notes will be subject to a compromise and arrangement effected by the Schemes.

The commercial terms of the Debt Restructuring (as documented in the Schemes) provide (among other things) that the Scheme Claims of the Scheme Creditors shall be released in full. In consideration for that release, subject to the terms of the Schemes, the Scheme Creditors will be entitled to receive a proportion of the Scheme Consideration, which comprises the following:

- (a) Cash Consideration in a total amount of US\$41,703,334;
- (b) Scheme Shares representing, in aggregate number, 18.75% of the total issued shares in the Company on a fully diluted basis on the Final Distribution Date; and
- (c) Contingent Value Rights with an aggregate face value of US\$10 million.

The Cash Consideration and the Scheme Shares comprise the Elective Scheme Consideration. Scheme Creditors may choose to receive their entitlement to the Elective Scheme Consideration in the form of the Cash Consideration only, the Scheme Shares only or a combination of the two. However, this option is only open to Scheme Creditors who ensure that the required documentation is submitted such that it is received by the Information Agent on or before the Initial Scheme Consideration Deadline. **Scheme Creditors who do not do so will be deemed to have elected to receive their entitlement to the Elective Scheme Consideration in the form of Scheme Shares only.**

Even if a Scheme Creditor elects (or is deemed to have elected) to receive all of its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration or the Scheme Shares only, it may nonetheless receive the other type of Elective Scheme Consideration if there is a shortfall in the Cash Consideration or Scheme Shares (as applicable) available to satisfy its Scheme Claim.

Further information on the operation of this election mechanism is set out in paragraph 10.3 of Section 10 (*Elective Scheme Consideration*) of this Explanatory Statement.

**ANY SCHEME CREDITOR WHO FAILS TO ENSURE THAT THE REQUIRED DOCUMENTATION IS SUBMITTED SUCH THAT IT IS RECEIVED BY THE INFORMATION AGENT ON OR BEFORE THE BAR DATE WILL RECEIVE ZERO SCHEME CONSIDERATION BUT SHALL HAVE ITS SCHEME CLAIMS COMPROMISED IRREVOCABLY AND SHALL BE BOUND BY THE RELEASES UNDER THE SCHEMES.**

A copy of the Account Holder Letter, which encloses the Election Form, the Designated Recipient Form and the Distribution Confirmation Deed, is included in the

Solicitation Packet. The Solicitation Packet has also been made available to Scheme Creditors on the Scheme Website.

#### **4.5 Purpose and effect of the Restructuring (including the Schemes)**

The Directors believe that, as part of the Restructuring, the successful implementation of the Schemes will reduce the debt burden of the Group, leaving it with a sustainable capital structure that will allow the Company and its subsidiaries to comply with their post-restructuring obligations and liabilities and to trade on a going concern basis.

#### **4.6 Whose rights will be affected by the Schemes?**

The Schemes will affect the rights of the Company and the Scheme Creditors only.

Certain other parties will also receive the benefit of certain releases given under, and in connection with, the Schemes.

#### **4.7 Inter-conditionality of the Rights Issue and the Debt Restructuring**

The Cash Consideration to be distributed to the Scheme Creditors under the terms of the Schemes is to be funded by the proceeds of the Rights Issue. The Company has no other source of available cash with which to pay the Cash Consideration.

The Rights Issue and the Debt Restructuring are therefore inter-conditional. Specifically, the occurrence of the Restructuring Effective Date will be conditional on completion of the Rights Issue and the receipt into a designated custodian account of the gross proceeds thereof.

The Rights Issue is fully underwritten by the Underwriter pursuant to the Underwriting Agreement dated 11 March 2016. However, their agreement thereunder to subscribe for the Underwritten Shares is subject to a number of material conditions, which must be fulfilled (or otherwise waived) before their commitment becomes unconditional and fully binding. If any of these conditions cannot be satisfied, it is highly likely that the Restructuring will fail.

A summary of the risks and uncertainties relating to the Rights Issue and the conditions thereto are set out in Section 12 (*Risk Factors*) of this Explanatory Statement. A summary of the background to and terms of the Rights Issue is set out in Section 7 (*Overview of the Rights Issue*) to this Explanatory Statement.

#### **4.8 What happens if the Restructuring fails?**

The Directors believe that, should the Restructuring not proceed, the Company will be unable to comply with its obligations under the Indenture.

The Company (and the Group) has very limited available cash and, if the Restructuring should fail, would suffer a cashflow shortfall in short order (having regard to, in particular, the maturity of the Notes on 8 April 2016) such that it is likely it would be unable to pay its debts.

The Directors consider that, in those circumstances, successfully implementing an alternative financial restructuring would be very unlikely, given the time and cost of

negotiating the Restructuring and the fact that previous efforts to identify and secure investment from new investors were unsuccessful.

Accordingly, the Directors believe there is a material risk that certain of the Scheme Creditors would seek to pursue enforcement action against the Company and/or the Subsidiary Guarantors in respect of their outstanding obligations. In that event, the Directors think it likely that they would be required to make, or cause the Company to make, an application to the BVI Court and/or the Hong Kong Court to place the Company into liquidation or other appropriate insolvency proceedings.

As such, the Directors believe it is appropriate to conclude that an insolvent liquidation of the Company is the most likely alternative outcome if the Restructuring does not proceed.

The cash and balance sheet position in such scenario is described in the Liquidation Analysis at Appendix 7 (*Liquidation Analysis*) to this Explanatory Statement.

#### **4.9 The Directors and the effects of the Schemes on their interests**

The current members of the Board are listed in paragraph 11.8 in Section 11 (*Overview of the Group*).

The interests of the Directors as at the date of this Explanatory Statement, including in the share capital of the Company, are set out in paragraph 11.9 of that section.

#### **4.10 Shareholders**

A list of the material Shareholders as at the date of this Explanatory Statement is set out in paragraph 11.1.6 in Section 11 (*Overview of the Group*).

#### **4.11 Risk factors**

The Company and the Group of which it is a part, like many in the same industry in the current business environment, are faced with significant business risks.

Since the Company is the ultimate holding company of the Group, its financial condition and results of operations are necessarily affected by the operations and financial condition of its subsidiaries. In addition to the risks associated with the implementation of the Restructuring, the Directors have identified a number of factors that may affect the Group's operating results, liquidity and financial condition. The Directors believe that the successful implementation of the Restructuring is a key step towards mitigating these risks and will allow the Group to focus on its operations and principal business activities.

The principal risk factors that the Group will likely face after the Restructuring are set out in Section 12 (*Risk Factors*). However, those risk factors are not an exhaustive list of all the potential risks and uncertainties which may be involved.

#### **4.12 Actions to be taken**

The BVI Court and the Hong Kong Court have granted the Company permission to convene the Scheme Meeting (as one meeting at the same time and place) for the Scheme Creditors to consider and, if thought fit, approve both Schemes.

The Scheme Meeting will be held at the offices of Stephenson Harwood at 18/F, United Centre, 95 Queensway, Hong Kong. Scheme Creditors will be able to attend in person and will also be able to join the Scheme Meeting by telephone using the dial-in details published on the Scheme Website.

Scheme Creditors should refer to Section 1 (*Expected Timetable of Principal Events*) of this Explanatory Statement for the timing of the Scheme Meeting.

#### *Voting at the Scheme Meeting*

Scheme Creditors may vote at the meeting in person (or, in the case of a corporation, by a duly authorised representative) or by proxy, in each case, by completing the Account Holder Letter.

In order to vote on the Schemes and attend the Scheme Meeting, it is important that Scheme Creditors ensure they follow the voting instructions set out below and throughout this Explanatory Statement.

The Solicitation Packet will be made available to Scheme Creditors on the Scheme Website and at Appendix 5 (*Solicitation Packet*) of this Explanatory Statement. Details of the actions the Scheme Creditors need to take are also set out in Section 8 (*Scheme Creditors and actions to be taken*) of this Explanatory Statement.

This Solicitation Packet includes:

- (a) An **Account Holder Letter**. Among other things, this is the document that allows Scheme Creditors to vote on the Schemes and to become eligible to receive Scheme Consideration should the Restructuring Effective Date occur. As set out in more detail in Section 8 (*Scheme Creditors and actions to be taken*) and in the Solicitation Packet, Scheme Creditors should be aware that failure to submit a valid Account Holder Letter by the Scheme Meeting Deadline will mean that the voting instructions contained in that Account Holder Letter will be disregarded for the purposes of voting at the Scheme Meeting and the relevant Scheme Creditors will, subject to the Chairperson's discretion, not be entitled to vote at the Scheme Meeting. Further, failure to submit a valid Account Holder Letter by the Bar Date will mean that a Scheme Creditor does not receive any Scheme Consideration under the Schemes, even though its Scheme Claims are released.
- (b) An **Election Form** to be completed by (or on behalf of) any Scheme Creditor wishing to elect to receive its entitlements to the Elective Scheme Consideration in the form of the Cash Consideration and/or the Scheme Shares. The Election Form is located at Appendix 1 to the Account Holder Letter.
- (c) A **Designated Recipient Form**, being a form that Scheme Creditors may complete in order to appoint a Designated Recipient to be the recipient of the Scheme Shares and Contingent Value Rights that would otherwise be issued to a Scheme Creditor. Any Scheme Creditor that is a Disqualified Person or Prohibited Transferee will only be entitled to have its Scheme Shares and Contingent Value Rights issued to a Designated Recipient. The

Designated Recipient Form is located at Appendix 2 to the Account Holder Letter.

- (d) A **Distribution Confirmation Deed**, being a deed that Scheme Creditors must complete in order to confirm (among other things) that the Scheme Creditor (or its Designated Recipient) may lawfully be issued the Scheme Shares and the Contingent Value Rights. The Distribution Confirmation Deed is located at Appendix 3 to the Account Holder Letter.

There are three relevant deadlines of which Scheme Creditors should be aware for the purposes of the Schemes:

*Scheme Meeting Deadline*

If a Scheme Creditor wishes to vote in respect of the Schemes, it must ensure that the Account Holder Letter is duly completed, executed and returned in accordance with the instructions set out therein so that it is received by the Information Agent by the **Scheme Meeting Deadline**, being no later than 5:00 p.m. New York time on 29 April 2016, the equivalent being 5:00 p.m. BVI time on 29 April 2016 / 5:00 a.m. Hong Kong time on 30 April 2016.

*Initial Scheme Consideration Deadline*

If a Scheme Creditor wishes to do any of the following, it must ensure that the documents specified below are duly completed, executed and returned in accordance with the instructions set out therein so that they are received by the Information Agent by **the Initial Scheme Consideration Deadline**, being no later than 5:00 p.m. New York time on 17 May 2016, the equivalent being 5:00 p.m. BVI time on 17 May 2016 / 5:00 a.m. Hong Kong time on 18 May 2016:

- (a) if the Scheme Creditor wishes to participate in the initial distribution of Scheme Consideration on the Initial Distribution Date, the Account Holder Letter (to the extent not already submitted by the Scheme Meeting Deadline) and the Distribution Confirmation Deed;
- (b) if the Scheme Creditor wishes to make an election with respect to the Elective Scheme Consideration that it will receive if the Restructuring Effective Date occurs, the Account Holder Letter, the Distribution Confirmation Deed and the Election Form; and
- (c) if the Scheme Creditor wishes to nominate a Designated Recipient to receive any Scheme Shares and Contingent Value Rights to which it may be entitled, the Designated Recipient Form (together with the relevant document(s) outlined above).

If the relevant documents are not delivered by the Initial Scheme Consideration Deadline, a Scheme Creditor will be unable to take the relevant action(s) specified above. A Scheme Creditor will also need to ensure corresponding electronic instructions are submitted via DTC's ATOP system in respect of its Notes by 5:00 p.m. New York time on **the day before the Initial Scheme Consideration Deadline**. Further information in this regard is set out in Appendix 5 (*Solicitation Packet*).

If a duly completed Account Holder Letter and Distribution Confirmation Deed are not submitted by or on behalf of a Scheme Creditor so they are received by the Information Agent by the Initial Scheme Consideration Deadline (and ATOP instructions are not submitted to DTC at least 24 hours earlier), that Scheme Creditor will not receive any Scheme Consideration on the Initial Distribution Date. Its entitlement to the Cash Consideration (if any) will be held on trust by the Scheme Consideration Trustee, and the Company will not issue the Scheme Shares and Contingent Value Rights to which it is otherwise entitled, until the Final Distribution Date. Further details of this arrangement are set out in Section 9 (*Overview of the Debt Restructuring*) of this Explanatory Statement.

**Accordingly, we would encourage all Scheme Creditors to start the process for submitting their votes for the Scheme Meeting and completing the forms, confirmations and instructions necessary to receive Scheme Consideration, as soon as possible.**

#### *Bar Date*

The final deadline for a Scheme Creditor to submit to the Information Agent the documentation required to receive any Scheme Consideration under the Schemes is the Bar Date, being 5:00 p.m. New York time on the date falling three months after the Restructuring Effective Date (or, if such date is not a Business Day, on the next Business Day thereafter), the equivalent being 5:00 p.m. BVI time on that day / 5:00 a.m. Hong Kong time on the next day. Corresponding electronic instructions will also need to have been submitted via DTC's ATOP system in respect of the Scheme Creditor's Notes by 5:00 p.m. New York time on the previous Business Day.

**IMPORTANT: IF A DULY COMPLETED ACCOUNT HOLDER LETTER AND DISTRIBUTION CONFIRMATION DEED (AND CORRESPONDING ELECTRONIC INSTRUCTIONS) ARE NOT SUBMITTED BY OR ON BEHALF OF A SCHEME CREDITOR SO THEY ARE RECEIVED BY THE INFORMATION AGENT BY THE BAR DATE, THAT SCHEME CREDITOR WILL RECEIVE ZERO SCHEME CONSIDERATION AND SHALL HAVE ITS SCHEME CLAIM RELEASED.**

**Accordingly, even if a Scheme Creditor does not wish to participate in the Schemes before they become effective in accordance with their terms, we strongly recommend submitting the forms, confirmations and instructions necessary to receive Scheme Consideration as soon as possible thereafter and, in any event, by no later than the Bar Date.**

#### **4.13 Recommendation**

For the reasons set out in the Explanatory Statement, the Directors consider the Restructuring to be in the best interests of the Scheme Creditors. **Accordingly, the Directors recommend that Scheme Creditors vote in favour of the Schemes at the Scheme Meeting.**

Yours faithfully

.....

Cao Xinyi

**Chief Executive Officer and Company Secretary  
for and on behalf of Winsway Enterprises Holdings Limited**

## **5 BACKGROUND TO THE SCHEMES AND THE RESTRUCTURING**

### **5.1 The Group**

- 5.1.1 The Company was incorporated in the BVI on 17 September 2007 as a limited liability company pursuant to the BVI Companies Act. The Company was also registered in Hong Kong on 6 September 2010 as a non-Hong Kong company by the Hong Kong Registrar of Companies. It is listed on the HKEx with stock code 1733.
- 5.1.2 The Company is the ultimate parent of the Group and its subsidiaries include companies incorporated in the BVI, Hong Kong, Singapore, Australia and the PRC. The structure of the Group as at the date of this Explanatory Statement is set out in the diagram at Appendix 6 (*Group Structure Chart*).

### **5.2 Principal activities of the Group**

- 5.2.1 The principal activities of the Group are the processing and trading of coking coal and other products and the rendering of logistics services.
- 5.2.2 The Company maintains a number of logistics parks and coal processing plants strategically located at the three major China-Mongolia border crossings (being the Ceke, Gants Mod and Erlianhot border crossings), and also maintains facilities at the Bayuquan and Longkou ports which allow it to process seaborne coal and service customers in Northeast China and the Shandong province.
- 5.2.3 Previously, the Group was also engaged in the development of coal mills and production of coking coal through its subsidiary, GCC. However, as noted in paragraph 5.3.17 below, the Company sold its interest in 45.31% of GCC in September 2015. As a result, the Company currently holds an interest of 14.69% in GCC.

### **5.3 The Group's deteriorating financial condition and mitigating actions taken**

#### *General*

- 5.3.1 As mentioned in the Company's 2014 annual report, the Company's financial and liquidity position has been adversely impacted due to the depressed price of coking coal and the ongoing oversupply and declining demand in the PRC coal market. These market forces contributed to a very difficult trading environment.
- 5.3.2 Against the backdrop of the softening Chinese macro economy and real estate market, the coal industry in China has been facing increasing challenges. Global commodity prices have decreased significantly over the past few years. Mongolian and seaborne coal sales prices in China dropped 54.68% and 57.47%, respectively, from 2011 through the first half of 2015.
- 5.3.3 The Company's only three operating assets that are currently generating cash flows are the border crossing centres at Ceke, Grants Mod and Erlianhot.

- 5.3.4 As outlined in the 2015 Interim Report,<sup>6</sup> the Company generated revenue of approximately HK\$3,396 million in the first half of 2015. However, without a significant change in its operations, this is expected to fall significantly in the second half of the year. Without implementing the Company's new business plan (see below), it is estimated that annual revenue will remain depressed for the foreseeable future.
- 5.3.5 The Company incurred losses of approximately HK\$1,581 million from continuing operations in the first half of 2015, in contrast with losses of HK\$421 million from continuing operations in the first half of 2014. The increase in losses was mainly due to an impairment provision made to non-current assets of the Company in an amount of HK\$1,215 million, primarily comprising the following:
- (a) An approximately HK\$633 million impairment loss for buildings, plant, machinery, and railway special assets in respect of the Company's coal processing factories and logistics facilities in PRC. This was due to the unfavourable future prospects of the coking coal business and low utilisation of the coal processing factories and logistics facilities.
  - (b) An approximately HK\$177 million impairment loss for the construction in progress in respect of certain logistics and coal processing projects under construction in the PRC. The Directors of the Company decided to abandon these projects in 2015 given unfavourable future prospect of the coking coal business.
  - (c) An approximately HK\$266 million impairment loss to write down the group's investments in the equity securities of certain third party companies engaged in railway logistics, ports management and coal storage business, taking into account (among other things) their poor performance in the first half of 2015.
  - (d) An approximately HK\$120 million impairment loss to a loan balance owed by Moveday to the Group. This is to take into account the adverse financial and operating circumstances of Moveday, which resulted in Moveday being unable to repay the loan when due in 31 December 2015, resulting in its deferral to 31 December 2019.
- 5.3.6 Under such circumstances, the Group has been streamlining its current operations to lower its operational costs in the logistics and mining sector as well as strictly controlling the cash flow of the Group to maintain the Group's daily operations.

*Reducing coal inventory and Mongolian coal procurement*

- 5.3.7 In order to strengthen its cash flow management to support daily operations, the Group has taken several measures including reducing inventory and maintaining a low inventory of coal.

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<sup>6</sup> Available on the company's website at [http://www.winsway.com/html/ir\\_announce.php](http://www.winsway.com/html/ir_announce.php).

- 5.3.8 Specifically, due to the difficulty in obtaining working capital, the Group implemented a strategy to draw on existing inventory levels and very significantly reduced the volume of procurement of Mongolian coal in 2014 and much of 2015.
- 5.3.9 However, in late 2015, the Inner Mongolian Railway Bureau started to deeply discount coal railway transportation fees, presenting the Group with a potential new opportunity to render integrated supply chain services of Mongolian coal to end customers (procurement, customs clearance, transportation and sales). This has reversed the trend mentioned above to some extent.

*Efforts to maintain seaborne coal volumes and the market share occupied by the Group*

- 5.3.10 Facing a decreasing market demand for Mongolian coal in China, the Group has made great efforts to maintain seaborne coal volumes and its market share despite the slim margins generated.
- 5.3.11 However, as a result of the Group's continuous losses over recent years and worsening asset and liability position, the Group started to lose meaningful banking facility support from 2013, which has adversely impacted the sustainability of its high-volume seaborne coal business since the seaborne coal sector relies heavily on credit facilities.

*On-shore financing facilities*

- 5.3.12 The Group has experienced difficulties in maintaining and expanding its business given the limited availability of financing from onshore lenders.
- 5.3.13 Since the beginning of 2015, the Group has been in negotiations with on-shore banks to maintain or extend the on-shore financing facilities. While some of these banks ceased to make their facilities available to the Group, the Group was able to agree extensions of other facilities semi-yearly by monitoring the performance of the Group and the market and providing additional security.
- 5.3.14 As at 30 November 2015, the Group had total on-shore bank debt of approximately HK\$1.205 billion, approximately HK\$847 million of which was secured against credit guarantees and fixed assets and approximately HK\$358 million of which was secured against restricted bank deposits and receivables. This compares with total on-shore bank debt of approximately HK\$1.62 billion one year earlier.

*Disposal of GCC business*

- 5.3.15 GCC, which the Company and Marubeni had acquired jointly in March 2012, was engaged in the production and sales of premium hard coking coal.
- 5.3.16 In 2014, due to the depressed coking coal market, GCC incurred losses before taxation of HK\$321 million and net cash outflow of HK\$21 million from operating and investing activities. This had a significant negative impact on the Company's financial results including leading to the loss of

bank facilities. GCC also had significant liquidity issues which resulted in it drawing on the cash resources of the Company.

- 5.3.17 As a result, the Group did not have sufficient cash to meet the substantial capital requirements of its upstream coal mining business. From March 2014, the Company therefore ceased any financial support to GCC and proactively sought suitable purchasers to take over its equity interest in GCC. The Company completed the disposal of a 45.31% interest in GCC on 2 September 2015, leaving the Company with its current interest of 14.69%.

*Further cost control measures*

- 5.3.18 The Group has also implemented a number of other cost control measures during 2014 and 2015, with a view to sustaining its operations. These include:

- (a) selling coal inventories at various onshore entities (as noted above);
- (b) factoring accounts receivables to bolster short-term liquidity;
- (c) relocating to less expensive office premises; and
- (d) making redundancies (the total number of full-time employees has reduced from 764 in December 2014 to 275 in December 2015).

## **5.4 Further mitigating actions to be taken by the Group**

*Development of new business model*

- 5.4.1 In response to prevailing market conditions and the challenges to the existing business model of the Group, the Company is planning to expand its business activities to embrace a broader model in which the Company will also provide an integrated e-commerce supply chain services such as trading and matching, logistics and distribution, collateral management and financing services to small and medium-sized end-customers as well as banks.
- 5.4.2 The Company plans in future to continue to monitor market conditions and balance volumes of imports of Mongolian coking coal and seaborne coking coal accordingly. However, with the logistics infrastructure and storage facilities owned by the Company, its expertise in commodity trading and specialised industry experience, the Company is aiming to expand its existing trading and logistics platform and transform itself into a one-stop service centre providing an integrated services proposition to its customers.
- 5.4.3 Under the new expanded business model, the Company plans to evolve to provide a total supply chain solution to a greater market including small and medium-sized customers engaged in bulk commodity trading. In particular, it is expected that the one-stop integrated e-commerce platform will (i) improve supply chain management and enhance efficiencies for end-customers; (ii) provide end-customers with facilities without the need to

provide additional collateral and at reasonable low cost, and enable banks to enhance effective collateral management to control risks; (iii) provide matching services in connection with the provision of existing trading services and facilitate the sharing of relevant information and data between the customers and suppliers through the whole bulk commodity transaction process; and (iv) provide timely information in relation to suppliers' and customers' backgrounds, transaction records, credit records, financial strength and market information to all related parties in the value chain and to facilitate the logistics process. Through implementing the abovementioned changes, the Company will strive to enhance the utilization and profitability of its existing logistics facilities.

- 5.4.4 Using the proposed one-stop integrated platform the Company plans to explore opportunities to expand its trading services to include other commodities such as oil, chemicals, iron ore and copper, in addition to its existing coking coal trading services. It also plans to engage in back-to-back transactions both for coking coal and also for an expanded range of commodities with the use of hedging derivatives to control price risks. The expanded services would be complemented by (i) matching services in connection with the expanding range of trading services that include, connecting customers with suppliers of various types from different locations, providing market information and transaction-related data; (ii) logistics and distribution services that include, utilizing the Company's current logistics infrastructure, leveraging its internal Enterprise Resource Planning (ERP) system to provide warehousing and logistics management, storage, allocation, transportation, handling, transshipment, processing, blending, customs clearance, quality inspection and distribution services; (iii) financing services that include, providing settlement, stock financing, commercial invoice discounting and factoring services; and (iv) collateral management services in connection with financing services that including comprehensive monitoring of collateral assets, providing collateral management services to banks which would be able to provide facilities otherwise not available without the Company's services.

- 5.4.5 A one-stop integrated platform with an expanded and broadened trading portfolio will afford the Company the opportunities to provide better supply-chain management solutions as well as improve and diversify its cash-generating ability through a its established logistics infrastructure.

*Disposal of further non-core assets*

- 5.4.6 The Company is also in the process of identifying further idle and non-core assets that are not essential to the Group's business going forward.
- 5.4.7 The Company is carefully considering opportunities to dispose of these assets, and it is expected that the Company will do so in order to support near-term liquidity requirements and the transformation of the existing business model into the proposed new business model.

## 5.5 The appointment of Advisers and the formation of the Steering Committee

- 5.5.1 In its annual results announcement for the year ended 31 December 2014, published on 26 March 2015, the Company announced that in view of the financial performance of the Company and in circumstances where the Notes were due to mature on 8 April 2016, it was considering the future liquidity and performance of the Group. The Company announced that it was considering a possible restructuring of the Notes with cash, equity or another form of consideration offered at a discount to the principal amount, and that this potential restructuring would likely be inter-conditional with the completion of a new capital raising.
- 5.5.2 For these purposes, the Company appointed UBS and AlixPartners to act as its financial advisers, and Stephenson Harwood, Reed Smith and Walkers to act as its legal advisers, to review its potential options (including as to process and any sources of financing). The Company also engaged Bondcom to undertake a process to identify as many Scheme Creditors as possible for informational purposes.
- 5.5.3 The Company then approached a number of Scheme Creditors with significant holdings in the Notes with a view to discussing options with respect to a restructuring. This was followed by the publication of the announcement by the Company in early April 2015 in which it called for Scheme Creditors to come forward and form a group for the purposes of facilitating such discussions.
- 5.5.4 Around the same time, the Steering Committee was formed and appointed Houlihan Lokey as its financial advisers and Akin Gump as its legal advisers (together, the "**Steering Committee Advisers**"). Following their appointment, the Steering Committee Advisers held discussions with the Scheme Creditors to gather their views and priorities.
- 5.5.5 The Company did not make the scheduled interest payment on the Notes of US\$13,150,000 when due on 8 April 2015, or within the 30-day grace period provided for in the Indenture, and this amount remains unpaid. As a result, an event of default occurred and is continuing under the Indenture. The Company has also failed to make a further scheduled interest payment (of an equal amount) which fell due on 8 October 2015.
- 5.5.6 Under the terms of the Indenture, if an event of default occurs and is continuing, the Note Trustee may, and upon the request of holders of 25% in principal amount of the outstanding Notes shall:
- (a) declare the unpaid principal (and premium, if any) and accrued interest to be immediately due and payable; and
  - (b) instruct the Collateral Agent to foreclose on the Collateral in accordance with the terms of the Security Documents and the Indenture.
- 5.5.7 On or around 8 May 2015, the Company entered into a standstill agreement with certain Scheme Creditors comprising the Steering Committee, pursuant

to which those Scheme Creditors agreed to (among other things) withhold from commencing enforcement action under the Indenture. This standstill agreement was extended on a rolling basis until 27 November 2015.

- 5.5.1 To date, no action has been taken by the Note Trustee to accelerate the Notes or to instruct the Collateral Agent to foreclose on the Collateral.
- 5.5.2 On or around 15 May 2015, the Steering Committee Advisers convened a conference call to inform other Scheme Creditors of the formation of the Steering Committee and their intention to engage in restructuring discussions with the Company and its advisers.
- 5.5.3 As is customary in such discussions concerning the terms of a proposed restructuring, the Steering Committee Advisers were given access by the Company to non-public price-sensitive information, provided that they signed a confidentiality agreement. The negotiations concerning a restructuring were initially carried out between the Company, the Steering Committee and their respective advisers.

## **5.6 Exploration of potential funding and restructuring options**

- 5.6.1 Since the fourth quarter of 2014, the Company has made extensive efforts to identify, engage and negotiate with potential equity investors to provide funding for a restructuring of the Notes and additional working capital to the Group.
- 5.6.2 In this regard, the Company and its advisers engaged in negotiations with a number of commercial entities (at least nine) over an extended period of some 10 to 12 months. Two of those parties undertook commercial and/or legal due diligence in respect of the transaction. In one instance, a term sheet was heavily negotiated between the Company and its advisers and the relevant counterparty, along with the Steering Committee. However, in each case, no commitment was ultimately made by the counterparty to provide the equity funding.
- 5.6.3 In addition to identifying and negotiating with the above commercial parties, the Company also identified and approached approximately 8 private equity firms, special situation funds and distressed debt funds as well as approximately 6 local Hong Kong investors. However, in each case, no interest was identified.
- 5.6.4 Throughout the process of negotiating with potential equity investors, the Company and its advisers continued to discuss with the Steering Committee and the Advisers a potential inter-conditional restructuring of the Notes.

## **5.7 The proposed Restructuring**

- 5.7.1 Over the course of summer 2015, in parallel with the above discussions (and as it became clear that third party investor appetite was limited), the Company and its advisers were also engaged in discussions with its existing controlling Shareholder, Mr Wang, with respect to the possibility of further investment through an underwritten rights issue.

- 5.7.2 The viability of any such transaction depended on acceptable terms also being agreed between the Company and the Steering Committee with respect to a restructuring of the Notes (in particular, the quantum of any cash consideration and/or other instruments that would need to be provided in satisfaction of the Scheme Claims) and negotiations continued.
- 5.7.3 This culminated in the parties agreeing the terms of the Restructuring, comprising an inter-conditional Debt Restructuring and Rights Issue, in November 2015.
- 5.7.4 Accordingly, on 25 November 2015, the Company, the Subsidiary Guarantors and those Scheme Creditors comprising the Steering Committee entered into the RSA, to which a term sheet reflecting the agreed terms of the Restructuring was attached.
- 5.7.5 On the same date, Mr Wang entered into an irrevocable undertaking pursuant to which, among other things (and on certain conditions), he agreed to subscribe for the Rights Shares provisionally allotted to him as part of the Rights Issue and to underwrite the Rights Shares provisionally allotted to but not subscribed by the other existing Shareholders.
- 5.7.6 On 26 November 2015, the Company published an announcement setting out (among other things) the terms of the proposed Restructuring and requesting that Scheme Creditors accede to the RSA to support the implementation of the transaction.

## 5.8 The RSA

- 5.8.1 The Consenting Scheme Creditors have agreed to be bound by the terms of the RSA.
- 5.8.2 Under the terms of the RSA, the Company has undertaken to pay on the Restructuring Effective Date the Consent Fee to the Consenting Scheme Creditors, being those Scheme Creditors who acceded to the RSA on or before 5.00 pm (Hong Kong time) on 23 December 2015 (or such later date as may be agreed between the Company and the Steering Committee Majority) (the "**Consent Fee Deadline**").
- 5.8.3 The Consent Fee is an amount equal to 2% of the outstanding principal and accrued but unpaid interest (in aggregate US\$339,833,313) on the Notes as at 25 November 2015. Each Consenting Scheme Creditor is entitled to a pro rata share of the Consent Fee, calculated by reference to the proportion that its Notes bears to the aggregate Notes held by all Consenting Scheme Creditors as at the Consent Fee Deadline.
- 5.8.4 The Company has received accession letters from Scheme Creditors holding Notes in an aggregate principal amount of approximately US\$257,281,000, representing approximately 83% by value of the outstanding principal amount of the Notes and it is anticipated that all such persons will be eligible to receive their share of the Consent Fee.

- 5.8.5 The RSA provides that, until the RSA is terminated, each Consenting Scheme Creditor will (or will procure that a duly authorised representative, proxy or nominee will) take all reasonable actions which it is reasonably requested by the Company to take in order to support, facilitate, implement or otherwise give effect to the Restructuring (provided that such action is consistent in all material respects with the Term Sheet), including:
- (a) supporting the Schemes prior and subject to the sanction of the BVI Court and the Hong Kong Court, as applicable;
  - (b) attending the Scheme Meeting by proxy or in person and voting its Notes in favour of the Schemes and any amendment or modification to the Schemes or any adjournment to the Scheme Meeting, provided that such terms are proposed by the Company and are consistent in all material respects with the terms of the Schemes without such amendments or modifications, and otherwise exercising all votes cast in respect of its Notes against any amendments or modifications;
  - (c) except where the above applies, exercising all votes cast in respect of its Notes against any amendment or modification to the Schemes or any proposal to adjourn the Scheme Meeting, or any one of them;
  - (d) supporting any filings and petitions by the Company or any Subsidiary Guarantor in such other jurisdictions as may be, in the discretion of the directors of the Company or any Subsidiary Guarantor, reasonably required to implement the Restructuring including (without limitation) in relation to such other schemes of arrangement or other compromise or arrangement proceedings as may be, in the discretion of the directors of the Company or any Subsidiary Guarantor, reasonably required to implement or give effect to the Restructuring;
  - (e) supporting any other actions as may be taken by the Company or any Subsidiary Guarantor pursuant to an order of, or sanction by, the BVI Court and the Hong Kong Court, as the case may be, as may be reasonably necessary to implement or give effect to the Restructuring;
  - (f) supporting the Recognition Filings;
  - (g) providing confirmation to any other party that it supports the Restructuring; and
  - (h) executing any document and giving any notice, order, consent, direction or information and taking such steps and actions which the Company considers reasonably necessary to support, facilitate, implement or otherwise give effect to the Restructuring, provided any such document, notice, discretion or information is reasonably satisfactory to the Steering Committee Majority.

5.8.6 The RSA imposes certain restrictions on the actions of the Consenting Scheme Creditors. In particular, it provides that, until the RSA is terminated, no Consenting Scheme Creditor shall:

- (a) intentionally take, encourage, assist or support any action which would, or would reasonably be expected to, frustrate, delay, impede or prevent the Schemes or the Restructuring or which is inconsistent with the RSA or the Term Sheet;
- (b) commence, take, support or actively assist any proceedings against the Company and/or any Group Company or any action in connection with any Default or Event of Default (as such terms are defined in the Indenture) howsoever arising; or
- (c) assign, transfer or sub-participate any of its rights and interests in respect of, or declare or create any trust of any of its rights, interests or benefits in respect of, its Notes or the RSA to, or in favour of, any person unless that person also accedes to the RSA.

5.8.7 The RSA provides that, until the RSA is terminated, the Company and the Subsidiary Guarantors will (among other things) take all such actions which in the reasonable opinion of the Steering Committee Majority are reasonably necessary to take in order to support, facilitate, implement or otherwise effect the Restructuring (provided that such action is consistent in all material respects with the Term Sheet), including without limitation:

- (a) executing and delivering (as applicable) all documents that may be necessary to give effect to the Restructuring (including, without limitation, the Restructuring Documents);
- (b) giving any notice, order, consent, direction or information and taking all such steps and actions as may be necessary or desirable to support, facilitate, implement or otherwise give effect to the Restructuring;
- (c) proposing, filing and pursuing expeditiously any legal process or proceedings contemplated by or required to implement the Restructuring, including (without limitation) the Schemes and the Recognition Filing;
- (d) calling all creditor and shareholder meetings required to implement the Restructuring including, without limitation, the Scheme Meeting;
- (e) taking any actions pursuant to any order of, or sanction by, the BVI Court and the Hong Kong Court, as the case may be, as may be required or necessary to implement or give effect to the Restructuring;
- (f) taking all reasonable steps to seek and obtain promptly any necessary or desirable consents, approvals or authorisations in connection with the Restructuring, including, without limitation,

consents, approvals or authorisations from the HKEx and any and all other relevant governmental bodies;

- (g) using reasonable efforts to obtain from Shareholders all necessary approvals and consents in respect of the Rights Issue and the Restructuring;
- (h) providing any undertakings and/or indemnities reasonably required by the Note Trustee in connection with the Schemes and/or the Restructuring; and
- (i) continuing to comply with its obligations under fee letters in favour of Akin Gump and Houlihan Lokey.

5.8.8 The RSA imposes certain restrictions on the actions of the Company and the Subsidiary Guarantors. In particular, among other things, it provides that, until the RSA is terminated, neither the Company nor any Subsidiary Guarantor shall:

- (a) intentionally take, encourage, assist or support any action which would, or would reasonably be expected to, frustrate, delay, impede or prevent the Schemes or the Restructuring or which is inconsistent with the RSA or the Term Sheet;
- (b) assign or transfer any of its rights and interests in respect of, or declare or create any trust of any of its rights, interests or benefits in respect of, the RSA;
- (c) take or consent to the taking of any action which supports or favours any proposed composition, compromise, assignment or arrangement with any creditor of the Company or the Group other than pursuant to the implementation of the Restructuring or the RSA (excluding for these purposes any proposed amendment or variation to the Restructuring);
- (d) pay or agree to pay any performance related bonus to any director or officer or may any award or grant to any director under any incentive scheme or bonus plan, other than in the normal course of business and consistent with past practice;
- (e) issue equity, or otherwise change its capital structure in any way not contemplated by the RSA or the Term Sheet including, for the avoidance of doubt, any steps which may involve the issue of any new debt, shares, warrants or options to acquire any new shares, or increase its authorised shares for any purpose other than to implement the Restructuring;
- (f) sell, transfer, lease, acquire, or otherwise dispose of any shares in any other company or of all or any material part of its present or future undertaking, material assets, rights or revenues whether by a single transaction or a series of transactions whether related or not;

- (g) pay any dividends or make other distributions to any Shareholder;
- (h) incur any new debt, or become subject to any new liens or other encumbrances, other than as may be incurred or created in the ordinary course of its trading business for working capital purposes;
- (i) adopt any management compensation schemes;
- (j) enter into any other transaction other than in the ordinary course of business, for arm's length consideration; or
- (k) terminate the fee letters in favour of Akin Gump and Houlihan Lokey.

5.8.9 The RSA will terminate immediately upon the occurrence of any of the following events (among others):

- (a) the occurrence of the Longstop Date (as such term is defined in the RSA);
- (b) the completion of the Debt Restructuring and the Rights Issue;
- (c) the entry of a final non-appealable order by any court of competent jurisdiction or other competent governmental or regulatory authority making illegal or otherwise preventing, prohibiting or materially restricting the consummation of the Restructuring;
- (d) the petitioning, applying or voting for, or the taking of any formal steps (including the appointment of any liquidator, receiver, administrator or similar officer) by any person or entity in relation to, the winding up, dissolution, administration, receivership or reorganisation of the Company or any Group entity and/or any or all of its or their respective liabilities or any suspension of payments or moratorium of any indebtedness of the Company or any Group entity, or any analogous procedure or step in any jurisdiction, other than the appointment of one or more provisional liquidators (or analogous officeholders) to the Company and/or any Subsidiary Guarantor or any steps being taken in relation thereto.
- (e) the Schemes not being approved by a majority in number representing at least 75% in value of the Scheme Creditors present and voting (either in person or by proxy) at the Scheme Meeting; or
- (f) either the Hong Kong Court or the BVI Court granting an order declining to sanction the relevant Scheme and the Company confirming that it will not appeal such order or, if an appeal is lodged, the appeal being dismissed and a final order declining the sanction of the relevant Scheme is made.

- 5.8.10 The Steering Committee Majority is also entitled to terminate the RSA by written notice to the Company if, other than due to any action taken intentionally by any Consenting Scheme Creditor, and among other things:
- (a) the Company or any Subsidiary Guarantor breaches any provision of the RSA, unless the breach is capable of remedy and is remedied within 5 Business Days (as such term is defined in the RSA) of such breach;
  - (b) the appointment of one or more provisional liquidators (or analogous officeholders) to the Company and/or any Subsidiary Guarantor or any steps being taken in relation thereto;
  - (c) any Restricted Action (as such term is defined in the RSA) is taken against any member of the Group;
  - (d) circumstances have arisen which the Steering Committee Majority reasonably believes in good faith to mean that it is likely that the Restructuring cannot be successfully completed; or
  - (e) a Whitewash Waiver is not obtained by 24 March 2016 (or such later date as may be agreed between the Company and the Steering Committee Majority).
- 5.8.11 The above is a summary only of the principal terms of the RSA made available to the Scheme Creditors.

## **5.9 Consequences of failure to implement the Restructuring**

### *Most likely alternative outcome*

- 5.9.1 The Directors believe that, should the Restructuring not proceed, the Company will be unable to comply with its obligations under the Indenture.
- 5.9.2 The Company (and the Group) has very limited available cash and, if the Restructuring should fail, would suffer a cashflow shortfall in short order (having regard to, in particular, the maturity of the Notes on 8 April 2016) such that it is likely it would be unable to pay its debts.
- 5.9.3 The Directors consider that, in those circumstances, successfully implementing an alternative financial restructuring would be very unlikely, given the time and cost of negotiating the Restructuring and the fact that previous efforts to identify and secure investment from new investors were unsuccessful.
- 5.9.4 Accordingly, the Directors believe there is a material risk that certain of the Scheme Creditors would seek to pursue enforcement action against the Company in respect of its outstanding obligations. In that event, the Directors think it likely that they would be required to make, or cause the Company to make, an application to the BVI Court and/or the Hong Kong Court (as applicable) to place the Company and certain other Group Companies into liquidation or other appropriate insolvency proceedings to

facilitate an orderly winding up and realisation of their assets for the benefit of creditors of each of the Company.

- 5.9.5 As such, the Directors believe it is appropriate to conclude that an insolvent liquidation (or similar process) of the Company (and certain other Group companies) is the most likely alternative outcome if the Restructuring does not proceed.

#### *Liquidation Analysis*

- 5.9.6 In order to enable the Directors to be reasonably satisfied that the Schemes and Restructuring are reasonably likely to benefit the creditors of the Company, and for the Directors to form a view that the Schemes and the Restructuring are in the best interests of the creditors of the Company, the Directors considered all relevant information available to them, including obtaining appropriate legal and financial advice. This included instructing AlixPartners to prepare the Liquidation Analysis.
- 5.9.7 The Liquidation Analysis comprises an illustrative analysis of the possible outcomes for Scheme Creditors in the event that the Restructuring is not implemented, resulting in a hypothetical liquidation of the Company and resulting insolvency filings by various of its subsidiaries in their respective jurisdictions. Any reference in this Explanatory Statement to the Liquidation Analysis is a summary only. The outputs, methodology and key assumptions underpinning the Liquidation Analysis, together with applicable limitations to the Liquidation Analysis, are set out in more detail in Appendix 7 (*Liquidation Analysis*) of this Explanatory Statement. Scheme Creditors are also referred to the section entitled "Liquidation Analysis" in Section 0 (*Important Notice to Scheme Creditors*) above.
- 5.9.8 The Liquidation Analysis illustrates the flow of funds that may arise from the estimated realisations from assets, on an entity by entity basis, and estimated distributions to creditors and shareholders of each entity in a hypothetical liquidation of the Company and its subsidiaries. The Liquidation Analysis reflects the governing insolvency laws and rules applicable to each individual entity based on the jurisdiction in which it is domiciled.
- 5.9.9 The Liquidation Analysis is the result of a significant amount of analysis and diligence completed by AlixPartners and management. It was prepared so that the Directors could assess the possible outcome to creditors of the Company and therefore form a view of the estimated net realisations in the event of a hypothetical liquidation. The Liquidation Analysis is based on the unaudited financial position of the Group, as assessed on the basis of individual unaudited balance sheets provided by management for each entity in the Group, as at 30 November 2015. The Liquidation Analysis is derived from a number of projections and is based upon estimates and assumptions which may vary materially from any eventual outcome in a liquidation scenario.
- 5.9.10 The Liquidation Analysis indicates that, if the Restructuring were not to proceed and the Company and its subsidiaries were to file for liquidation or equivalent insolvency proceedings, the potential return to Scheme Creditors

would range between **4.7%** and **10.4%** of the face value of their claims against the Company as at 30 November 2015 (comprising principal and interest outstanding as at that date).

- 5.9.11 It should be noted that the actual recoveries to Scheme Creditors in a liquidation of the Company and its subsidiaries will depend on a range of factors and issues and may be better or worse than the estimated returns in the Liquidation Analysis. In addition, the timing of asset realisations being achieved and distributions being made on an entity by entity basis in a liquidation scenario is unknown and likely to vary. Accordingly the Liquidation Analysis should be considered directional and illustrative in nature and the actual recovery in a liquidation scenario could vary materially from the estimates contained in the Liquidation Analysis (as summarised above).
- 5.9.12 Scheme Creditors are encouraged to review Appendix 7 (*Liquidation Analysis*) carefully in order to ensure they have a clear understanding of the methodology and key assumptions which underpin the Liquidation Analysis and the potential recoveries if the Restructuring does not proceed.
- 5.9.13 The range outlined in paragraph 5.9.11 above should be compared with the anticipated return to Scheme Creditors if the Restructuring is completed successfully, as further detailed in section 9.6 below and Appendix 12 (*Illustrative examples of Scheme Consideration allocation*), and outlined in the following tables:<sup>7</sup>

#### **Liquidation Analysis**

	<b>Low Case</b>	<b>High Case</b>
Estimated value available for Noteholders	16.0	35.3
Total Scheme Claims	340.2	340.2
<b>Estimated return to Scheme Creditors</b>	<b>4.7%</b>	<b>10.4%</b>

<sup>7</sup> NB: All values are expressed in US dollars. For indicative purposes, the "Total Scheme Claims" in both tables reflects the position as at 30 November 2015 (being the position as at the date of the Liquidation Analysis). In practice, due to the accrual of further interest, total Scheme Claims will be higher by the Record Date of 29 April 2016 and therefore estimated returns (in both scenarios) would be slightly lower.

### Successful Restructuring

Cash consideration	41.7
Scheme Share value	12.5
CVR value	0
Total value of scheme consideration	54.2
Total Scheme Claims	340.2
<b>Minimum return to Scheme Creditors<sup>8</sup></b>	<b>15.9%</b>

- 5.9.14 As anticipated returns to Scheme Creditors if the Restructuring is completed are materially higher than on a liquidation of the Company and its subsidiaries, the Directors are satisfied that the Schemes and the Restructuring are in the best interests of the Scheme Creditors.

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<sup>8</sup> As illustrated in section 9.6 below, actual returns may be higher depending on the level of participation of Scheme Creditors in the Schemes.

## **6 INTRODUCTION TO THE SCHEMES**

*This section contains a brief overview of the Schemes. The summary information contained herein does not purport to be complete and should be read in conjunction with, and is qualified in its entirety by references to, the more detailed information presented elsewhere in this Explanatory Statement and to the Schemes.*

### **6.1 Introduction**

- 6.1.1 This Explanatory Statement has been prepared by the Directors for the purpose of proposing the Schemes.
- 6.1.2 The Hong Kong Scheme and the BVI Scheme are set out in Appendix 2 (*Hong Kong Scheme*) and Appendix 3 (*BVI Scheme*), respectively.
- 6.1.3 This Explanatory Statement should not be relied upon as a substitute for reading the Schemes themselves. If there is any inconsistency between the terms of the Schemes (or any Restructuring Document) and this Explanatory Statement, the terms of the Schemes (and/or the Restructuring Document) shall prevail.

### **6.2 Why have you been sent this document?**

A copy of this document has been sent or made available to you because the Directors consider that you are or may be a Scheme Creditor. However, receipt of this document does not confirm or mean that you are a Scheme Creditor or that you will be affected by the Schemes.

### **6.3 What is a scheme of arrangement?**

- 6.3.1 A scheme of arrangement enables a company to agree with its creditors, or one or more classes of its creditors, a compromise or arrangement in respect of its debts or obligations owed to those creditors. The court will consider whether it is appropriate to convene meetings of classes of creditors and, if so, the composition of the classes necessary so as to ensure that each meeting consists of creditors whose rights against the Company which are to be released are not so dissimilar as to make it impossible for them to consult together with a view to their common interest.

#### *Hong Kong*

- 6.3.2 In Hong Kong, a scheme of arrangement requires the following to occur in order to become legally binding:
- (a) the calling of a meeting of the Company's creditors or meetings of classes of its creditors in accordance with directions given by the Hong Kong Court;
  - (b) at each meeting of creditors, the approval of a majority in number representing at least 75% in value of the relevant creditors of the Company present in person or by proxy (whether, in this case, by completing the Account Holder Letter) and voting at the meeting;

- (c) the approval of the Hong Kong Court by the making of an order sanctioning the scheme of arrangement; and
- (d) the delivery of an office copy of that order to the Hong Kong Registrar of Companies.

#### *BVI*

6.3.3 In the BVI, a scheme of arrangement requires the following to occur in order to become legally binding:

- (a) the calling of a meeting of the Company's creditors or meetings of classes of its creditors in accordance with directions given by the BVI Court;
- (b) at each such meeting, the approval of a majority in number representing at least 75% in value of the relevant creditors of the Company present in person or by proxy and voting at the meeting;
- (c) the approval of the BVI Court by the making of an order sanctioning the scheme of arrangement; and
- (d) the delivery of a sealed copy of that order to the BVI Registrar of Companies.

#### *Hong Kong and BVI*

6.3.4 If the Schemes are approved by the requisite majorities of creditors and sanctioned by each of the Hong Kong Court and the BVI Court, and the Court Orders are delivered as set out above, the Schemes will bind all Scheme Creditors, including those creditors who voted in favour of the relevant Schemes, those creditors who voted against them, and those creditors who did not vote at all.

6.3.5 A scheme of arrangement will not be sanctioned by the Hong Kong Court and/or the BVI Court unless the relevant court is satisfied, among other things, that (i) the scheme of arrangement is, in all circumstances, fair and reasonable and the classes of creditors voting in respect of the scheme of arrangement have been properly constituted, (ii) the provisions of the applicable statute have been complied with; (iii) each class was fairly represented by those who attended the meeting and the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and (iv) the arrangement is such as an intelligent and honest man, being a member of the class concerned and acting in respect of his interest, might reasonably approve.

## **6.4 Structure and objectives of the Schemes**

6.4.1 The Schemes are proposed in order to restructure the Company's indebtedness under the Notes (as constituted by the Indenture).

- 6.4.2 The principal compromise and arrangement to be given effect by the Schemes is the release in full of the Scheme Creditors' Scheme Claims, being any Claim of a Scheme Creditor in respect of a Liability of the Company or any Subsidiary Guarantor arising directly or indirectly pursuant to, under or in connection with the Note Documents, in consideration for the issue by the Company of the Scheme Consideration to the Scheme Creditors in accordance with the terms of the Schemes.
- 6.4.3 The Schemes will give effect to the Debt Restructuring, which has the following objectives:
- (a) to avoid the Company and other members of the Group potentially entering into liquidation (or other appropriate insolvency proceedings) at some point in the near future, as a result of which the anticipated recoveries for Scheme Creditors could be significantly less than if the Restructuring were to be completed successfully;
  - (b) to reduce the total indebtedness of the Group by over US\$300m, thus putting the Group's capital structure on a more sustainable footing and allowing the Company and its subsidiaries to comply with their post-restructuring obligations and liabilities and to trade on a going concern basis;
  - (c) to issue Shares and Contingent Value Rights to Scheme Creditors that will allow them to participate in any future increase in the value of the Company and the Group; and
  - (d) to increase the prospect of generating long-term value for Scheme Creditors and other stakeholders.

## **6.5 Effective implementation of the Debt Restructuring**

- 6.5.1 In order to ensure that the Debt Restructuring is given substantial effect, the Directors have identified a need to ensure that the terms of the Schemes will be binding, and that the Company and the Subsidiary Guarantors will be protected against hostile creditor actions, in each of the BVI, Hong Kong and the United States.
- 6.5.2 Having taken advice on the recognition (or otherwise) of foreign schemes of arrangement in the above jurisdictions, the Directors have concluded that it is appropriate for the Company to initiate the following processes in order to achieve the objectives outlined above:
- (a) the Hong Kong Scheme, being a Hong Kong scheme of arrangement between the Company and the Scheme Creditors under sections 673 and 674 of the Companies Ordinance;
  - (b) in parallel with the above, the BVI Scheme, being a BVI scheme of arrangement between the Company and the Scheme Creditors under section 179A of BVI Companies Act; and

- (c) the Recognition Filings in the US Bankruptcy Court for a Chapter 15 Recognition Order in respect of the Hong Kong Scheme. This is a petition made under Chapter 15 of the US Bankruptcy Code seeking recognition of certain aspects of the Hong Kong Scheme by the US Bankruptcy Court and a request for the US Bankruptcy Court to grant a Chapter 15 Recognition Order.

6.5.3 The Schemes are inter-conditional i.e. the effectiveness of the Hong Kong Scheme is conditional on the sanctioning of the BVI Scheme by the BVI Court and the effectiveness of the BVI Scheme is conditional on the sanctioning of the Hong Kong Scheme by the Hong Kong Court.

6.5.4 Further, both Schemes are conditional on the US Bankruptcy Court granting the Chapter 15 Recognition Order in respect of the Hong Kong Scheme.

## **6.6 Are you a "Scheme Creditor" for the purposes of the Scheme Meeting?**

Information on which persons constitute Scheme Creditors and on the actions that Scheme Creditors are required to take under the Schemes is set out in the following sections:

6.6.1 Section 8 (*Scheme Creditors and actions to be taken*) of this Explanatory Statement; and

6.6.2 Appendix 5 (*Solicitation Packet*) to this Explanatory Statement.

## **6.7 Third parties**

6.7.1 The Subsidiary Guarantors, the Scheme Consideration Trustee and the Information Agent shall execute a Deed of Undertaking, pursuant to which they will:

- (a) undertake to the Company, the Hong Kong Court and the BVI Court to be bound by the terms of the Schemes; and

- (b) agree, upon instructions by the Company or, if applicable, the Information Agent, to execute and do or procure to be executed and done all such documents, acts or things as may be necessary or desirable to be executed or done by them for the purposes of giving effect to the terms of the Schemes that apply to them.

## **6.8 The Scheme Meeting**

6.8.1 The Company has obtained orders from the Hong Kong Court and the BVI Court granting permission to convene a single meeting of the Scheme Creditors to consider and vote on the Schemes.

6.8.2 The Scheme Meeting will be chaired by Cao Xinyi (or, failing her, a suitable alternative nominated by the Company).

6.8.3 The Scheme Meeting will be held at the offices of Stephenson Harwood at 18/F, United Centre, 95 Queensway, Hong Kong, with any adjournment as may be appropriate, at 10:00 a.m. on 3 May 2016 (Hong Kong time) / 10:00 p.m. on 2 May (BVI time). Scheme Creditors will be able to attend in

person and will also be able to join by telephone using the dial-in details published on the Scheme Website.

- 6.8.4 Notice of the Scheme Meeting is included at Appendix 4 (*Notice of Scheme Meeting*).
- 6.8.5 To vote at the Scheme Meeting, Scheme Creditors will be required to submit an Account Holder Letter, which is included at Schedule 1 to Appendix 5 (*Solicitation Packet*) to this Explanatory Statement.
- 6.8.6 Each Scheme Creditor or its proxy will be required to register its attendance at the Scheme Meeting at least one hour prior to its commencement. Registration at the Scheme Meeting will commence at 8:00am on 3 May 2016 (Hong Kong time) / 8:00pm on 2 May 2016 (BVI time).
- 6.8.7 Any Scheme Creditor that wishes to attend the Scheme Meeting should produce a duplicate copy of the Account Holder Letter that was executed and delivered on their behalf, evidence of personal identity (for example, a passport or other picture identification) and, in the case of a corporation, evidence of corporate authority (for example, a valid power of attorney and/or board minutes). **If appropriate personal identification and authorisation evidence is not produced, that person may not be permitted to attend or vote.**
- 6.8.8 A Scheme Creditor's professional advisers will be allowed to attend the Scheme Meeting if that Scheme Creditor notifies the Chairperson of the name of the person(s) they wish to attend prior to the Scheme Meeting. The Chairperson will have the discretion to require professional advisers to leave the Scheme Meeting if he or she considers this to be necessary.

## **6.9 Approval of the Schemes at the Scheme Meeting**

- 6.9.1 The majority required to approve the Schemes is a majority in number representing at least 75 per cent (by value) of the Scheme Claims of each of the Scheme Creditors present and voting (whether in person or by proxy) at the Scheme Meeting.
- 6.9.2 The assessment of Scheme Claims for voting purposes shall be carried out by the Chairperson and, in doing so, the Chairperson will rely on the Account Holder Letters submitted by the Scheme Creditors, as verified by the Information Agent against the books and records of the Depository (to the extent that such Account Holder Letters include a VOI Number).
- 6.9.3 The Scheme Claims admitted for voting purposes by the Chairperson will be notified to the Scheme Creditors at the Scheme Meeting, but such notification does not (of itself) constitute an admission of the existence or amount of any liability of any of the Company. If a Scheme Creditor disagrees with the value of the Scheme Claim attributed to it, it must notify the Chairperson.
- 6.9.4 The Chairperson will be entitled to defer the announcement of the result of the vote.

## **6.10 Sanction Hearings**

- 6.10.1 If the requisite majorities of the Scheme Creditors vote to approve the Schemes at the Scheme Meeting, hearings will be required before the Hong Kong Court and the BVI Court to determine whether to sanction the Schemes.
- 6.10.2 Any Scheme Creditor is entitled (but not obliged) to attend these hearings, through Counsel, to support or oppose the sanction of the Schemes.
- 6.10.3 The BVI Court Sanction Hearing will take place at 10:00am (BVI time) on 11 May 2016 at the BVI Court. The Hong Kong Court Sanction Hearing will take place at 10:00am (Hong Kong time) on 17 May 2016 at the Hong Kong Court.
- 6.10.4 Upon:
- (a) the delivery of an office copy of the order of the Hong Kong Court sanctioning the Hong Kong Scheme to the Hong Kong Registrar of Companies;
  - (b) the delivery of a sealed copy of the order of the BVI Court sanctioning the BVI Scheme to the BVI Registrar of Companies,

the Scheme Effective Date will occur and certain provisions of the Schemes will become effective immediately. However, the key provisions of the Schemes that serve to compromise the Scheme Creditors' Scheme Claims will not become effective until the Restructuring Effective Date, when all Scheme Conditions have been satisfied.

## **6.11 What happens on the Scheme Effective Date?**

- 6.11.1 With effect from the Scheme Effective Date, each Scheme Creditor irrevocably authorises and instructs:
- (a) the Company to enter into, execute and deliver as a deed (or otherwise) on behalf of that Scheme Creditor in its capacity as a Scheme Creditor (including any person to whom a Scheme Creditor has transferred its rights in respect of its Scheme Claim after the Record Time) (to the extent applicable):
    - (i) the Restructuring Documents (each substantially in the form attached to the Schemes or this Explanatory Statement (as applicable), subject to any non-material modification approved or imposed by the Hong Kong Court or the BVI Court (as applicable) in accordance with the Schemes) to which such Scheme Creditors is a party; and
    - (ii) any and all such other documents that the Company and Steering Committee Majority reasonably consider necessary to give effect to the terms of the Schemes,

and in each case to promptly deliver the original executed document to the Scheme Consideration Trustee to be held in escrow by the Scheme Consideration Trustee until, or otherwise to become effective no earlier than, the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 below (provided that it shall only become effective at such time if the step described in paragraph 6.14.11 below has been completed) for the purposes of giving effect to the terms of the Schemes.

- (b) the Note Trustee and the Collateral Agent to enter into, execute and deliver as a deed (or otherwise):
  - (i) the Restructuring Documents each substantially in the form attached to the Schemes or this Explanatory Statement (as applicable), subject to any non-material modification approved or imposed by the Hong Kong Court or the BVI Court (as applicable) in accordance with the Schemes) to which such Note Trustee and/or the Collateral Agent is a party; and
  - (ii) any and all such other documents that the Company and the Steering Committee Majority reasonably consider necessary to give effect to the terms of the Schemes,

and in each case to promptly deliver the original executed document to the Scheme Consideration Trustee to be held in escrow by the Scheme Consideration Trustee until, or otherwise to become effective no earlier than, the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 below (provided that it shall only become effective at such time if the step described in paragraph 6.14.11 below has been completed) for the purposes of giving effect to the terms of the Schemes.

6.11.2 These authorities will be treated, for all purposes whatsoever and without limitation, as having been granted by deed.

6.11.3 On or as soon as possible after the Scheme Effective Date:

- (a) the Company shall carry out the steps set out in paragraph 6.11.1(a) above, acting on the instructions and pursuant to the authority of the Scheme Creditors and;
- (b) the Company and each Subsidiary Guarantor shall enter into, execute and deliver as a deed (or otherwise):
  - (i) the Restructuring Documents (each substantially in the form attached to the Schemes or this Explanatory Statement (as applicable), subject to any non-material modification approved or imposed by the High Court or the BVI Court (as applicable) in accordance with the Schemes) to which the Company and/or such Subsidiary Guarantor is a party; and

- (ii) any and all such other documents that the Company and the Steering Committee Majority reasonably consider necessary to give effect to the terms of this Hong Kong Scheme,

and in each case shall promptly deliver each original executed document to the Scheme Consideration Trustee to be held in escrow by the Scheme Consideration Trustee until, or otherwise to become effective no earlier than, the Restructuring Effective Date (in the case of the Contingent Value Rights Instrument) or the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 below (in the case of the other Restructuring Documents) (provided that they shall only become effective at such time if the step described in paragraph 6.14.11 below has been completed) for the purposes of giving effect to the terms of the Schemes.

- 6.11.4 Each Scheme Creditor (for itself and, if applicable, its Designated Recipient) on and from the Scheme Effective Date irrevocably ratifies and confirms any act or omission done, caused or purported to be done by the Company, the Subsidiary Guarantors, the Note Trustee, the Collateral Agent, the Depositary, the Information Agent, the Registrar and the Scheme Consideration Trustee, or any of their respective directors, managers, officers, partners or affiliates, pursuant to or for the purposes of giving effect to the Schemes, other than any act or omission done or made as a result of wilful default, wilful misconduct or fraud.

## **6.12 Conditions to the Schemes**

- 6.12.1 As noted in paragraph 6.10.4 above, the key provisions of the Schemes will only become effective on the date on which all of the following conditions have been satisfied:

- (a) in respect of the Hong Kong Scheme:
  - (i) the delivery of the Hong Kong Court Order to the Hong Kong Registrar of Companies;
  - (ii) the sanction with or without modification (but subject to any such modification being acceptable to the Company and in accordance with the terms of the BVI Scheme) of the BVI Scheme by the BVI Court; and
  - (iii) the delivery of the BVI Court Order to the BVI Registrar of Companies;
- (b) in respect of the BVI Scheme:
  - (i) the delivery of the BVI Court Order to the BVI Registrar of Companies;
  - (ii) the sanction with or without modification (but subject to any such modification being acceptable to the Company

and in accordance with the terms of the Hong Kong Scheme) of the Hong Kong by the Hong Kong Court; and

- (iii) the delivery of the Hong Kong Court Order to the Hong Kong Registrar of Companies;
- (c) the Chapter 15 Recognition Order having been granted;
- (d) an appropriate resolution having been passed by the Company's shareholders to approve the issuance of the Contingent Value Rights;
- (e) the Listing Committee of the Stock Exchange of Hong Kong Limited listing and granting permission to deal in the Scheme Shares;
- (f) the Rights Issue having completed and all of the proceeds therefrom (including, for the avoidance of doubt, the proceeds from any and all underwriting arrangements in respect thereof) having been transferred to the Scheme Consideration Trustee;
- (g) each of the Restructuring Documents having been executed by each of the parties thereto; and
- (h) the Company having paid all fees, costs and expenses of the Advisers, the Note Trustee, the Collateral Agent, the Registrar, and the Scheme Consideration Trustee that have been duly invoiced to the Company by 17 May 2016 (or such later date as may be agreed by the Company with the relevant party or parties), provided that (for the avoidance of doubt) such fees shall not include the Houlihan Lokey Success Fee.

6.12.2 If the Restructuring Effective Date has not occurred (i.e. the conditions above have not been fulfilled) and the Schemes have not become fully effective by the Scheme Longstop Date, the Schemes shall lapse and no provision of the Schemes shall have any force or effect.

### **6.13 What happens on the Restructuring Effective Date?**

#### *Notice of the Restructuring Effective Date*

6.13.1 The Company shall notify the Scheme Creditors in writing when the Restructuring Effective Date has occurred and, in that notice, shall specify the Initial Distribution Date and the Bar Date.

6.13.2 The notice shall be given by the Company within three Business Days of (or, in the case of notices published in accordance with sub-paragraph (d) below, as soon as reasonably practicable after) the occurrence of the Restructuring Effective Date and in the following ways:

- (a) by notice on the Scheme Website;
- (b) by notice through the Depositary;

- (c) by notice via electronic mail to each person who the Company believes may be a Scheme Creditor, and which has registered as a Scheme Creditor with the Company or the Information Agent or otherwise notified the Company or the Information Agent of its valid email address; and
- (d) by notice in the BVI Official Gazette, the BVI Beacon, South China Morning Post, the Hong Kong Economic Times, the China Business News (translated into the Chinese language), the Wall Street Journal and the international editions of the Wall Street Journal and the Financial Times.

*Authority*

6.13.3 On and from the Restructuring Effective Date, each Scheme Creditor irrevocably authorises and instructs the Scheme Consideration Trustee to act and rely upon any instructions by the Information Agent and the provisions of the Schemes, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Scheme Consideration Trustee), and to:

- (a) hold the Cash Consideration on trust for the Participating Scheme Creditors;
- (b) pay:
  - (i) the Initial Cash Amount to the relevant Initial Scheme Creditors;
  - (ii) the Houlihan Lokey Success Fee to Houlihan Lokey; and
  - (iii) the Consent Fee to the Consent Fee Recipients;
 in each case, on the Initial Distribution Date;
- (c) pay the Surplus Cash Amount (if any) to the relevant Participating Scheme Creditors on the Final Distribution Date;
- (d) release the Contingent Value Rights Instrument from escrow to the relevant parties on the Restructuring Effective Date; and
- (e) release the Restructuring Documents (other than the Contingent Value Rights Instrument) from escrow to the relevant parties upon the completion of all of the steps described in paragraph 6.16.4 below on the Final Distribution Date (provided that the step described in paragraph 6.14.11 below has been completed),

in accordance with the terms of the Schemes.

*Restructuring Effective Date Scheme Steps*

6.13.4 On the Restructuring Effective Date, the following Scheme Steps will occur:

- (a) the Contingent Value Rights Instrument shall be released from escrow by the Scheme Consideration Trustee to the CVR Registrar; and
- (b) each Scheme Creditor shall, subject to the terms of the Schemes, become entitled to receive a proportion of the Elective Scheme Consideration and the Contingent Value Rights.

#### **6.14 What happens on the Initial Distribution Date?**

6.14.1 The Initial Distribution Date is the date falling three Business Days after the Restructuring Effective Date.

##### *Authority*

6.14.2 On and from the Initial Distribution Date, each Scheme Creditor irrevocably authorises and instructs:

- (a) the Depositary to deliver the proportion of the Global Note representing the Notes of the Initial Scheme Creditors to the Registrar;
- (b) the Registrar to hold such Global Note until the completion of all of the steps described in paragraph 6.16.4 below on the Final Distribution Date (and completion of the step described in paragraph 6.14.11 below) (and not cancel, mark down or discharge such Global Note before that time); and
- (c) the Depositary and the Registrar to rely upon the provisions of the Schemes, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Depositary or the Registrar).

6.14.3 These authorities will be treated, for all purposes whatsoever and without limitation, as having been granted by deed.

##### *Distribution of certain Scheme Consideration to Initial Scheme Creditors*

6.14.4 On the Initial Distribution Date:

- (a) the Scheme Consideration Trustee shall pay the Initial Cash Amount; and
- (b) the Company shall:
  - (i) issue and allot the Initial Scheme Shares; and
  - (ii) distribute the Initial CVR Pool,

to the Initial Scheme Creditors (and/or their Designated Recipients, if applicable) in each case in accordance with their respective entitlements under the Schemes and subject to and in accordance with the terms of the Schemes.

- 6.14.5 **If a duly completed Account Holder Letter and Distribution Confirmation Deed are not submitted by or on behalf of a Scheme Creditor so they are received by the Information Agent by the Initial Scheme Consideration Deadline (and ATOP instructions are not submitted to DTC at least 24 hours earlier), such Scheme Creditor will not be an Initial Scheme Creditor and will not receive any Scheme Consideration on the Initial Distribution Date.**

*Partial discharge of Scheme Claims and partial transfer of Global Note*

- 6.14.6 On the Initial Distribution Date, the Scheme Claim of each Initial Scheme Creditor shall be partially released and discharged by an amount equal to the value of the Scheme Consideration received by that Scheme Creditor, so as to bind the Scheme Creditor (including, for the avoidance of doubt, any person who has or acquires after the Record Time any interest in or arising out of its Scheme Claim).
- 6.14.7 In addition, the Depository shall deliver the proportion of the Global Note representing the Notes of the Initial Scheme Creditors to the Registrar, to be held by the Registrar until the completion of all of the steps described in paragraph 6.16.4 below on the Final Distribution Date (and completion of the step described in paragraph 6.14.11 below) (and, for the avoidance of doubt, not cancelled, marked down or discharged before that time).

*Surplus Cash Amount, Surplus Scheme Shares and Surplus CVR Pool*

- 6.14.8 On the Initial Distribution Date, the Scheme Consideration Trustee shall retain and hold the Surplus Cash Amount (if any) on trust for the Participating Scheme Creditors in accordance with the terms of the Schemes.
- 6.14.9 The Company shall not issue the Surplus Scheme Shares or the Surplus CVR Pool on the Initial Distribution Date. These instruments shall be issued by the Company on the Final Distribution Date to the Participating Scheme Creditors in accordance with the terms of the Schemes.

*Houlihan Lokey Success Fee*

- 6.14.10 On the Initial Distribution Date, the Scheme Consideration Trustee shall pay the Houlihan Lokey Success Fee to Houlihan Lokey.

*Consent Fee*

- 6.14.11 On the Initial Distribution Date, the Scheme Consideration Trustee shall pay the Consent Fee to the Consent Fee Recipients. This obligation will be discharged by the Scheme Consideration Trustee making payment of the relevant amount to the Account Holders for onward transmission to the Scheme Creditors in accordance with directions to be provided by the Information Agent to the Account Holders.

## **6.15 What is the significance of the Bar Date?**

- 6.15.1 The Bar Date is 5:00 p.m. New York time on the date falling three months after the Restructuring Effective Date (or if such date is not a Business Day, the next Business Day after that date), the equivalent being 5:00 p.m. BVI time on that day / 5.00 am Hong Kong time on the next day.
- 6.15.2 The Company shall notify the Scheme Creditors in writing (in the ways outlined in paragraph 6.13.2 above, *mutatis mutandis*) when the Bar Date has occurred and, in that notice, shall specify the Final Distribution Date.
- 6.15.3 In order to be entitled to receive any Scheme Consideration, a Scheme Creditor must ensure that a duly completed Account Holder Letter and Distribution Confirmation Deed is provided to and received by the Information Agent on or before the Bar Date (and that corresponding electronic instructions have been provided via DTC's ATOP system at least 24 hours earlier).
- 6.15.4 **ANY SCHEME CREDITOR THAT FAILS TO TAKE SUCH ACTION SHALL NOT RECEIVE ANY SCHEME CONSIDERATION OR ANY OTHER BENEFITS UNDER THE TERMS OF THE SCHEMES BUT SHALL HAVE ITS SCHEME CLAIM RELEASED IN ACCORDANCE WITH THE TERMS OF THE SCHEMES.**
- 6.15.5 If paragraph 6.15.4 applies to a Scheme Creditor, the Scheme Consideration to which it would otherwise have been entitled shall be distributed to the Participating Scheme Creditors on the Final Distribution Date, as described in paragraph 6.16 below.

## **6.16 What happens on the Final Distribution Date?**

- 6.16.1 The Final Distribution Date is the date falling 10 Business Days after the Bar Date.

### *Authority*

- 6.16.2 On and from the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 below (and provided that the step described in paragraph 6.14.11 above has been completed), each Scheme Creditor irrevocably authorises and instructs:
- (a) the Company, the Note Trustee, the Collateral Agent, the Depositary, the Information Agent and the Registrar to take all such actions as may be necessary or appropriate to cancel, mark down and discharge the Global Note or otherwise give effect to the terms of the Schemes, including without limitation:
    - (i) the delivery by the Company (for and on behalf of the Scheme Creditors) of the Note Trustee Instruction to the Note Trustee;
    - (ii) the delivery by the Note Trustee of the Release Instructions to the Collateral Agent; and

- (iii) the delivery by the Depositary of the Global Note (or the remaining proportion thereof following the step described in paragraph 6.14.7 above) to the Registrar for cancellation,

in each case at the time prescribed in the Scheme Steps;

- (b) the Note Trustee to act and rely upon the Note Trustee Instruction and the provisions of the Schemes, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Note Trustee);
- (c) the Collateral Agent to act and rely upon the Release Instructions and the provisions of the Schemes, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Collateral Agent); and
- (d) the Depositary and the Registrar to rely upon the provisions of the Schemes, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Depositary or the Registrar).

6.16.3 These authorities will be treated, for all purposes whatsoever and without limitation, as having been granted by deed.

*Distribution of Surplus Cash Consideration, Surplus Scheme Shares and Surplus CVR Pool to Participating Scheme Creditors*

6.16.4 On the Final Distribution Date:

- (a) the Scheme Consideration Trustee shall pay the Surplus Cash Amount (if any); and
- (b) the Company shall
  - (i) issue and allot the Surplus Scheme Shares (if any); and
  - (ii) issue the Surplus CVR Pool,

to the Participating Scheme Creditors (and/or their Designated Recipients, if applicable) in each case in accordance with their respective entitlements under, and subject to the terms of, the Schemes.

*Cancellation of the Notes and release of related security*

6.16.5 On the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 above (and provided that the step set out in paragraph 6.14.11 above has been completed):

- (a) the Restructuring Documents (other than the Contingent Value Rights Instrument) shall be released from escrow by the Scheme

Consideration Trustee to the relevant parties or otherwise become effective in accordance with their terms, and the Company, acting as agent and attorney for the Scheme Creditors, shall deliver the executed Note Trustee Instruction to the Note Trustee;

- (b) the Depositary shall deliver the Global Note (or the remaining proportion thereof following the step described in paragraph 6.14.7 above) to the Registrar for cancellation and take such other action as may be required to effect the cancellation, mark down and discharge of the Notes under the Indenture;
- (c) the Note Trustee shall, upon receipt of the Note Trustee Instruction, deliver the Release Instructions to the Collateral Agent;
- (d) the Collateral Agent shall, upon receipt of the Release Instructions, carry out the steps detailed in the Release Instructions to release the security created under the Security Documents; and
- (e) the Company shall pay all duly invoiced fees, costs and expenses of the Advisers, the Note Trustee, the Collateral Agent, the Registrar, and the Scheme Consideration Trustee, provided that, with respect to each party:
  - (i) the relevant fees, costs and expenses have been incurred in accordance with the Note Documents or such other arrangement as may have been agreed between the Company and that party; and
  - (ii) that party has submitted its invoice to the Company no later than five Business Days before the Final Distribution Date.

*Full discharge of residual Scheme Claims*

6.16.6 On the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 above (and provided that the step set out in paragraph 6.14.11 above has been completed):

- (a) to the extent not already released and discharged, the Scheme Claims of all of the Participating Scheme Creditors (and for the avoidance of doubt, of any and all persons that hold Scheme Claims for the benefit of such Participating Scheme Creditors) shall be fully, irrevocably and unconditionally released and discharged in each case so as to bind the Scheme Creditors (including, for the avoidance of doubt, any person who has or acquires after the Record Time any interest in or arising out of such Scheme Claims); and
- (b) the Scheme Claims of all Non-Participating Scheme Creditors (and, for the avoidance of doubt, of any and all persons that hold Scheme Claims for the benefit of such Non-Participating Scheme Creditors) shall be fully, irrevocably and unconditionally released

and discharged, in each case so as to bind the Scheme Creditors (including, for the avoidance of doubt, any person who has or acquires after the Record Time any interest in or arising out of such Scheme Claims). For the avoidance of doubt, Non-Participating Scheme Creditors shall have no right or entitlement to receive any Scheme Consideration.

*Further releases*

6.16.7 With effect from the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 above (and provided that the step set out in paragraph 6.14.11 above has been completed), each of the Scheme Creditors on behalf of itself and each of its predecessors, successors and assigns (collectively, the "**Scheme Creditor Releasing Parties**") to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, void, acquit, forgive, extinguish and discharge unconditionally each of:

- (a) the Subsidiary Guarantors, their Personnel and Affiliates;
- (b) the Company, its Personnel and Affiliates;
- (c) the Advisers, their Personnel and Affiliates; and
- (d) the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates;

and each of their predecessors, successors and assigns, and in their capacities as such from any and all Claims and/or Liabilities (including any and all Scheme Claims) arising prior to the Final Distribution Date or that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Final Distribution Date (or in respect of paragraph (d) only, Claims and/or Liabilities which are based on actions taken or not taken by the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates pursuant to the Schemes, whether before or after the Final Distribution Date) except for:

- (i) any and all claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct;
- (ii) any liability of any Adviser, its Personnel and Affiliates arising under a duty of care to its client;
- (iii) any and all Claims or Liabilities that any Scheme Creditor Releasing Party may have against the Company and/or any Subsidiary Guarantor which do not arise directly or indirectly pursuant to, under or in connection with the Note Documents;

- (iv) any Claims against or Liabilities of any Adviser, its Personnel and Affiliates that are wholly unrelated to the RSA, the Restructuring Transactions, the Schemes, the negotiation or preparation thereof, or to any other related matter; and
- (v) in the case of the Note Trustee, the Collateral Agent, the Registrar and the Depositary and their Personnel and Affiliates, any and all Claims or Liabilities which do not relate to or arise in respect of the Notes, the Indenture or the Guarantees,

provided that the foregoing shall not prejudice or impair any right of any Scheme Creditor Releasing Party created under the Schemes and/or under or in connection with the Contingent Value Rights and/or the Scheme Shares.

6.16.8 With effect from the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 above (and provided that the step set out in paragraph 6.14.11 above has been completed), each of the Company and the Subsidiary Guarantors on behalf of itself and each of its predecessors, successors and assigns (collectively, the "**Group Releasing Parties**") to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, void, acquit, forgive, extinguish and discharge unconditionally each of:

- (a) the Scheme Creditors, their Personnel and Affiliates;
- (b) the Advisers, their Personnel and Affiliates; and
- (c) the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates;

and each of their predecessors, successors and assigns and in their capacities as such from any and all Claims and/or Liabilities arising prior to the Final Distribution Date (or in respect of paragraph (d) only, Claims and/or Liabilities which are based on actions taken or not taken by the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates pursuant to the Schemes, whether before or after the Final Distribution Date), or that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Final Distribution Date, except for:

- (i) any and all claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct;
- (ii) any and all Claims or Liabilities which do not arise directly or indirectly pursuant to, under or in connection with the Note Documents;

- (iii) the liability of any Adviser, its Personnel and Affiliates arising under a duty of care to its client;
- (iv) any Claims against or Liabilities of any Adviser, its Personnel and Affiliates that are wholly unrelated to the RSA, the Restructuring Transactions, the Schemes, the negotiation or preparation thereof, or to any related matter; and
- (v) in the case of the Note Trustee, the Collateral Agent, the Registrar and the Depositary and their Personnel and Affiliates, any and all Claims or Liabilities which do not relate to or arise in respect of the Notes, the Indenture or the Guarantees,

provided that the foregoing shall not prejudice or impair any right of any Group Releasing Party created under the Schemes.

## **6.17 How will my Scheme Consideration be remitted to me?**

### *Cash Consideration*

- 6.17.1 The Cash Consideration shall be remitted via the Depositary to those Participating Scheme Creditors entitled to receive it.
- 6.17.2 The obligations of the Scheme Consideration Trustee in this regard shall be satisfied if the Scheme Consideration Trustee has made an electronic transfer to the Depositary in respect of the relevant Notes.

### *Scheme Shares*

- 6.17.3 The obligations of the Company to distribute the Scheme Shares to each Participating Scheme Creditor entitled to receive them (or its Designated Recipient, as applicable) shall be satisfied by the Company directing the Share Registrar to, and procuring that the Share Registrar does:
  - (a) enter the name of that Participating Scheme Creditor (or its Designated Recipient, as applicable) in the Share Register in respect of the Scheme Shares to which it is entitled; and
  - (b) deliver by courier or registered post to that person a share certificate in respect of the relevant Scheme Shares.
- 6.17.4 The Company shall pay all registration fees, stamp duty, duties, taxes, fees and/or charges payable in connection with the registration of the Scheme Shares in the name of any party pursuant to the terms of the Schemes (but not, for the avoidance of doubt, in connection with the registration of subsequent transfers of those Shares).

### *Contingent Value Rights*

- 6.17.5 The obligations of the Company to distribute the Contingent Value Rights to an Initial Scheme Creditor (or, if applicable, its Designated Recipient) shall

be satisfied by the Company directing the CVR Registrar to, and procuring that the CVR Registrar does:

- (a) enter the name of that Initial Scheme Creditor (or, if applicable, its Designated Recipient) in the CVR Register in respect of the Contingent Value Rights to which it is entitled; and
- (b) deliver by courier or registered post to that Initial Scheme Creditor (or, if applicable, its Designated Recipient) a certificate in respect of the relevant Contingent Value Rights.

## **6.18 Assignments and transfers**

For the purposes of determining entitlements under the Schemes, the Company shall be under no obligation to recognise any assignment or transfer of any Scheme Claim after the Record Time, save that where the Company has received from the relevant parties written notice of an assignment or transfer of a Scheme Claim, the Company may, in its absolute discretion and subject to such evidence as it may reasonably require, agree to recognise such assignment or transfer for the purposes of determining entitlements under the Schemes.

## **6.19 Restructuring Documents**

Short descriptions of the Restructuring Documents, which are mostly mechanical documents designed to give effect to the various releases described above, are set out below.

### *Note Trustee Instruction*

6.19.1 Pursuant to (and on receipt of) the Note Trustee Instruction, on and from the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 above (and provided that the step set out in paragraph 6.14.11 has been completed), the Note Trustee shall be irrevocably authorised and instructed by the Company to issue the Release Instructions to the Collateral Agent and take such steps as may be necessary to mark down, cancel and discharge the Notes.

### *Global Deed of Release*

6.19.2 The Global Deed of Release is a deed pursuant to which the Company, the Subsidiary Guarantors and the Scheme Creditors will provide the releases referred to in paragraphs 6.16.7 and 6.16.8 of this Explanatory Statement.

### *Release Instructions*

6.19.3 Pursuant to the Release Instructions, on and from the Final Distribution Date upon completion of all of the steps described in paragraph 6.16.4 above (and provided that the step set out in paragraph 6.14.11 has been completed), the Note Trustee instructs the Collateral Agent to execute and deliver the Security Release Deeds and to take any further steps necessary to give effect to such release of security.

### *Security Release Deeds*

- 6.19.4 The Security Release Deeds are appended to the Release Instructions.
- 6.19.5 These are deeds pursuant to which the Collateral Agent will release the charges granted over the shares in the Subsidiary Guarantors in each of Australia, the BVI, Hong Kong and Singapore (as applicable).

### *Contingent Value Rights Instrument*

- 6.19.6 This is the instrument that documents the terms of the Contingent Value Rights to be distributed to the Scheme Creditors under the terms of the Schemes.
- 6.19.7 The key terms of the Contingent Value Rights Instrument are described in Section 9 (*Overview of the Debt Restructuring*) below.

## 7 OVERVIEW OF THE RIGHTS ISSUE

*This section contains a brief description of the principal terms of the Rights Issue. The summary information contained in this section does not purport to be complete and should be read in conjunction with, and is qualified in its entirety by references to, the more detailed information contained in the announcement published by the Company on or around 13 March 2016.*

### 7.1 The Rights Issue

7.1.1 On 24 February 2016, the Board resolved to raise approximately US\$50 million (approximately HK\$387.5 million) by way of a rights issue ("**Rights Issue**"). The rights issue will consist of:

- (a) 565,979,787 Consolidated Shares proposed to be provisionally allotted and issued to the Qualifying Shareholders of the Company for subscription ("**Rights Share(s)**") at the subscription price of HK\$0.69 per Rights Share, on the basis of 3 Rights Shares for every 1 Consolidated Share held at the Record Time to Qualifying Shareholders of the Company; and
- (b) the Company to issue as part of the consideration for the subscription of the Rights Shares, but for no further payment, the Anti-dilution Shares in the ratio of 3 Anti-dilution Shares for each 1 Rights Share subscribed.

7.1.2 The Rights Shares, when allotted and fully paid, the Anti-dilution Shares and the Scheme Shares will rank *pari passu* in all respects with the Shares then in issue.

7.1.3 The Rights Issue is fully underwritten by Famous Speech Limited (the "**Underwriter**").

7.1.4 The Rights Issue is conditional upon certain conditions being satisfied or waived (as appropriate) including, amongst others,

- (a) the Underwriting Agreement entered into between the Company and the Underwriter in respect of the Rights Issue having become unconditional and not having been terminated by the Underwriter or the Company on or before 4 p.m. on 30 May 2016 (or such other time and date as may be agreed by the Company, the Underwriter and the Steering Committee Majority);
- (b) a waiver under the Takeovers Code of the obligation that would otherwise arise through the underwriting arrangement on the part of Famous Speech Limited, and parties acting in concert with it to make a mandatory general offer to the Shareholders being granted by the Executive Director of the Corporate Finance Division of the Securities and Futures Commission of Hong Kong (the "**Whitewash Waiver**");
- (c) the Executive Director of the Corporate Finance Division of the Securities and Futures Commission of Hong Kong consenting to the

"Special Deal" under the Takeovers Code ("**Special Deal**") arising from certain Scheme Creditors also being Shareholders and therefore standing to benefit from the proposed Consent Fee and Cash Consideration, which are to be paid out of the proceeds of the Rights Issue and not extended to other Shareholders who are not Scheme Creditors;

- (d) all conditions precedent to the Schemes other than the completion of the Rights Issue, having been satisfied; and
- (e) the Independent Shareholders of the Company approving, amongst other things, the Rights Issue, the Underwriting Agreement, the issue of the CVRs, the Whitewash Waiver, the Special Deal and other matters subject to approval at the extraordinary general meeting of the Company.

7.1.5 The Cash Consideration, the Consent Fee and the Houlihan Lokey Success Fee will be paid from the proceeds of the Rights Issue.

## 8 SCHEME CREDITORS AND ACTIONS TO BE TAKEN

### 8.1 Are you a person with an interest in the Notes?

8.1.1 The following persons have interests in the Notes:

- (a) **Account Holders:** You are an Account Holder if you are recorded directly in the books or other records maintained by the Depositary under its electronic systems as holding an interest at the Record Time in the Global Notes in an account with the Depositary. Each Account Holder may be holding its recorded interest in the Global Note on behalf of one or more Scheme Creditors.
- (b) **Intermediaries:** You are an Intermediary if you hold an interest at the Record Time in any Notes on behalf of another person or other persons and you do not hold that interest as an Account Holder. An Intermediary is commonly a bank or a brokerage house which does not have an account with the Depositary.
- (c) **Scheme Creditors:** You are a Scheme Creditor if you have a beneficial interest as principal in the Notes held in global form through the Depositary at the Record Time and have a right, upon satisfaction of certain conditions, to be issued definitive notes in accordance with the terms of the Notes. For the avoidance of doubt, an Account Holder may also be a Scheme Creditor.
- (d) The Depositary (through its nominee (Cede & Co.)) and the Note Trustee.

#### **Scheme Creditors are entitled to take, or direct the taking of, certain actions in respect of the Schemes.**

8.1.2 The Depositary, in its capacity as depositary for the Notes and on behalf of its nominee (Cede & Co.) as registered holder of the Notes, has confirmed that it does not intend to vote in respect of the Notes at the Scheme Meeting.

8.1.3 Deutsche Bank Trust Company Americas, in its capacity as the Note Trustee, has confirmed to the Company that it does not intend to vote in respect of the Notes at the Scheme Meeting.

8.1.4 Account Holders are not Scheme Creditors unless an Account Holder has a beneficial interest as principal in the Notes held in global form through the Depositary at the Record Time and a right to the issue of definitive notes, as described above. However, as set out in this Section 8 (*Scheme Creditors and actions to be taken*) and Appendix 5 (*Solicitation Packet*), the assistance of Account Holders will be required, in accordance with their custodial duties, to attend to the following tasks:

- (a) if a Scheme Creditor wishes to vote at the Scheme Meeting, to arrange for facsimile or e-mail versions of the completed Account Holder Letter containing the voting instructions of that Scheme Creditor to be sent to the Information Agent prior to the Scheme

Meeting Deadline, in accordance with the instructions set out in the Solicitation Packet;

(b) in order for a Scheme Creditor to be entitled to receive any Scheme Consideration under the Schemes and if a Scheme Creditor wishes to make an election with respect to its entitlements to the Elective Scheme Consideration:

(i) to submit electronic instructions via DTC's ATOP system in respect of the relevant Notes; and

(ii) to arrange for facsimile or e-mail versions of the duly completed Account Holder Letter, Distribution Confirmation Deed and, if applicable, Election Form and/or Designated Recipient Form to be sent to the Information Agent,

in each case in accordance with the instructions (and by the deadlines) set out in the Solicitation Packet; and

(c) to arrange for signed originals of the completed documents to be posted to the Information Agent promptly after submission of the facsimile or e-mail version.

8.1.5 In determining whether (for voting purposes) a particular person is a beneficial owner of any Notes, and therefore a Scheme Creditor, entitled to a particular principal amount of Notes and related claims as aforesaid, the Chairperson may rely on such evidence and/or information and/or certification as he or her shall, in his or her absolute discretion, think fit and, if he or she does so rely, such evidence and/or information and/or certification shall, in the absence of manifest error, be conclusive and binding on all concerned. In the first instance, the Chairperson shall rely on the Account Holder Letter submitted by or on behalf of that Scheme Creditor, as verified by the Information Agent against the books and records of the Depository (to the extent that such Account Holder Letter includes a VOI Number).

**If you are a Scheme Creditor, you should read this Explanatory Statement carefully. If you are a Scheme Creditor who is not an Account Holder, you should contact your Account Holder (through any Intermediaries, if applicable) to ensure that your Account Holder takes the appropriate action(s) described in paragraph 8.2 below and in the Solicitation Packet.**

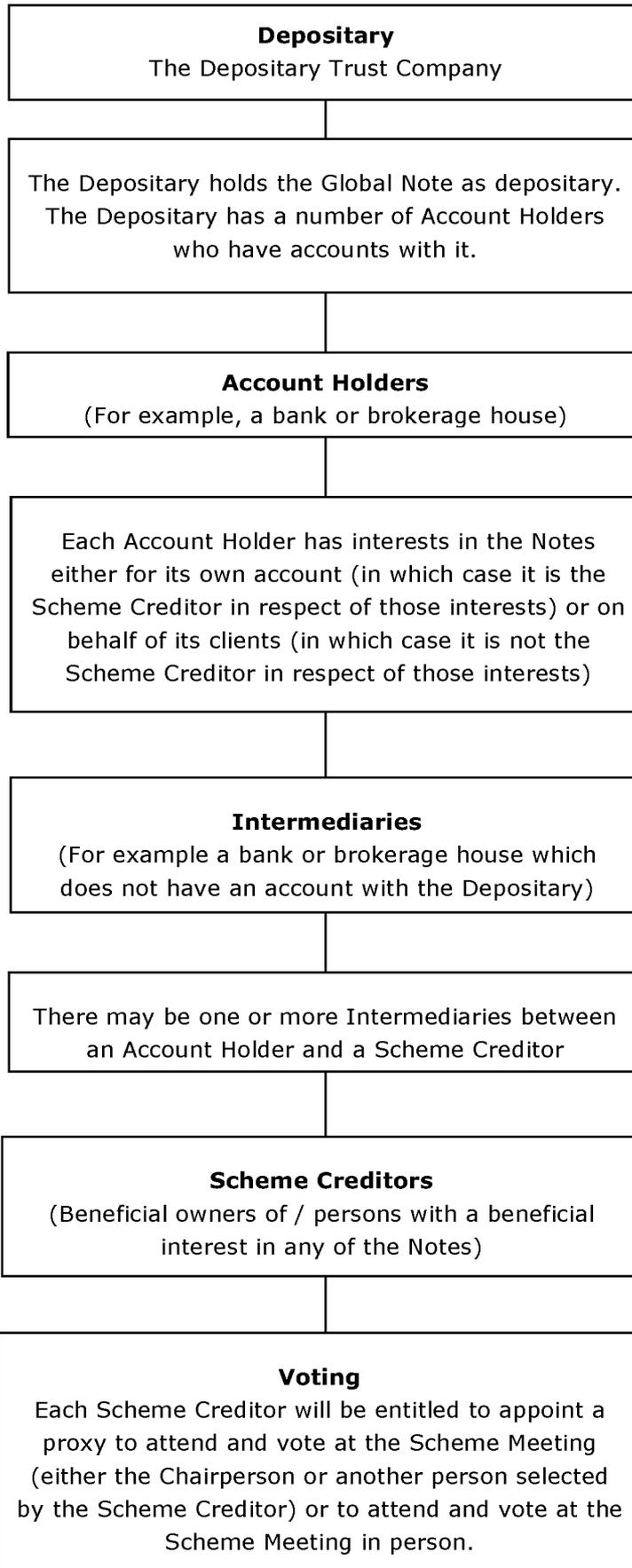
8.1.6 The number of Scheme Creditors voting and the votes cast by them will be taken into account for both value and numerosity purposes in relation to the Schemes.

8.1.7 As noted above, the Company and the Subsidiary Guarantors have to date entered into the RSA with Scheme Creditors holding approximately 83% of the Notes by value. A summary of the terms of the RSA is set out at paragraph 5.8 of Section 5 (*Background to the Schemes and the Restructuring*) of this Explanatory Statement. Scheme Creditors that have

not entered into the RSA as at the date of this Explanatory Statement may still do so and are requested to contact the Information Agent. However, such Scheme Creditors should note that they will no longer be eligible to receive a pro rata share of the Consent Fee.

- 8.1.8 For the avoidance of doubt, all Scheme Creditors are entitled to vote at the Scheme Meeting and to receive Scheme Consideration under the Schemes, whether or not they have acceded to the RSA, provided that they comply with the instructions set out in this Explanatory Statement and the Solicitation Packet at Appendix 5 (*Solicitation Packet*).

The following diagram illustrates the relationship between certain persons with interests in the Notes, which are held in global form through the Depositary:



## **8.2 Summary of actions to be taken by Scheme Creditors and any person with an interest in the Notes**

**SCHEME CREDITORS ARE INVITED TO VOTE AT THE SCHEME MEETING BY DIRECTING THEIR ACCOUNT HOLDER TO COMPLETE AND DELIVER THE ACCOUNT HOLDER LETTER SET OUT IN SCHEDULE 1 TO THE SOLICITATION PACKET TO THE INFORMATION AGENT SO THAT IT IS RECEIVED BY THE SCHEME MEETING DEADLINE.**

**IN ORDER TO RECEIVE ANY SCHEME CONSIDERATION IF THE SCHEMES BECOME EFFECTIVE IN ACCORDANCE WITH THEIR TERMS, SCHEME CREDITORS ARE REQUIRED TO ENSURE THAT A DULY COMPLETED ACCOUNT HOLDER LETTER AND DISTRIBUTION CONFIRMATION DEED, BOTH OF WHICH ARE SET OUT IN THE SOLICITATION PACKET, ARE SUBMITTED TO THE INFORMATION AGENT SO THAT THEY ARE RECEIVED BY THE BAR DATE. CORRESPONDING ELECTRONIC INSTRUCTIONS MUST ALSO HAVE BEEN SUBMITTED VIA DTC'S ATOP SYSTEM IN RESPECT OF THE RELEVANT NOTES AT LEAST 24 HOURS EARLIER.**

**SCHEME CREDITORS ARE ENTITLED TO MAKE AN ELECTION WITH RESPECT TO THE ELECTIVE SCHEME CONSIDERATION THAT THEY WILL RECEIVE IF THE SCHEMES BECOME EFFECTIVE IN ACCORDANCE WITH THEIR TERMS, BUT ONLY IF A DULY COMPLETED ELECTION FORM, TOGETHER WITH THE ACCOUNT HOLDER LETTER AND DISTRIBUTION CONFIRMATION DEED (EACH AS SET OUT IN THE SOLICITATION PACKET), IS SUBMITTED TO THE INFORMATION AGENT SO THAT IT IS RECEIVED BY THE INITIAL SCHEME CONSIDERATION DEADLINE. CORRESPONDING ELECTRONIC INSTRUCTIONS MUST ALSO HAVE BEEN SUBMITTED VIA DTC'S ATOP SYSTEM IN RESPECT OF THE RELEVANT NOTES AT LEAST 24 HOURS EARLIER.**

Detailed instructions on the actions which Scheme Creditors and Account Holders should take are set out in this Explanatory Statement and are summarised below.

**Scheme Creditors and any persons with an interest in the Notes should also read the full instructions set out in the Solicitation Packet.**

8.2.1 You should read this Explanatory Statement as a whole, in conjunction with the Solicitation Packet. The Solicitation Packet includes:

- (a) General guidance and instructions for Scheme Creditors for voting at the Scheme Meeting.
- (b) General guidance and instructions for Scheme Creditors who wish to receive any Scheme Consideration and/or make an election in respect of the Elective Scheme Consideration they wish to receive.
- (c) The Account Holder Letter, which contains the voting form relating to the Scheme Meeting.
- (d) The Election Form, being the form Scheme Creditors must complete if they wish to elect to receive their entitlement to the Elective

Scheme Consideration in the form of the Cash Consideration and/or the Scheme Shares.

- (e) The Designated Recipient Form, being the form Scheme Creditors must complete in order to appoint a Designated Recipient.
- (f) The Distribution Confirmation Deed, being a deed pursuant to which Scheme Creditors (or, if applicable, their Designated Recipient) must confirm (among other things) that they may lawfully be issued with the Scheme Shares.

Information on the steps Scheme Creditors are required to take in completing the Election Form, the Designated Recipient Form and the Distribution Confirmation Deed are set out in Section 10 (*Elective Scheme Consideration*) and in the Solicitation Packet at Appendix 5 (*Solicitation Packet*).

### **Actions to be taken in relation to the Schemes**

- 8.2.2 If you wish to vote in respect of the Schemes, please ensure that the Account Holder Letter is duly completed, executed and returned in accordance with the instructions set out therein so that it is received by the Information Agent by the **Scheme Meeting Deadline**, being no later than 5:00 p.m. New York time on 29 April 2016, the equivalent being 5:00 p.m. BVI time on 29 April 2016 / 5:00 a.m. Hong Kong time on 30 April 2016.
- 8.2.3 If you wish to do any of the following, please ensure that the documents specified below are duly completed, executed and returned in accordance with the instructions set out therein so that they are received by the Information Agent by the **Initial Scheme Consideration Deadline**, being no later than 5:00 p.m. New York time on 17 May 2016, the equivalent being 5:00 p.m. BVI time on 17 May 2016 / 5:00 a.m. Hong Kong time on 18 May 2016:
  - (a) if you wish to participate in the initial distribution of Scheme Consideration on the Initial Distribution Date, the Account Holder Letter and the Distribution Confirmation Deed;
  - (b) if you wish to make an election with respect to the Elective Scheme Consideration that you will receive if the Schemes become effective, the Account Holder Letter, the Distribution Confirmation Deed and the Election Form; and
  - (c) if you wish to nominate a Designated Recipient to receive any Scheme Shares and Contingent Value Rights to which you may be entitled, the Designated Recipient Form (together with the relevant document(s) outlined above).
- 8.2.4 In the case of the actions set out in paragraph 8.2.3, a Scheme Creditor will also need to ensure corresponding electronic instructions are submitted via DTC's ATOP system in respect of its Notes by 5:00 p.m. New York time on the day before the Initial Scheme Consideration Deadline. Further

information in this regard is set out in section 3.4 of the Solicitation Packet at Appendix 5 (*Solicitation Packet*).

- 8.2.5 Whether an Account Holder Letter, Distribution Confirmation Deed or Election Form has been duly completed shall be determined by the Information Agent at its discretion (but, if the Information Agent considers it appropriate, in consultation with the Depositary) provided that, if the Information Agent considers any such document not to have been duly completed, it shall promptly:
- (a) prepare a written statement of its reasons for that conclusion; and
  - (b) send that written statement by email to the party that provided the relevant document.

*Actions to be taken to vote at the Scheme Meeting*

- 8.2.6 If you are a **Scheme Creditor that is not an Account Holder** and wish to vote at the Scheme Meeting, you should direct your Account Holder to complete the appropriate parts of the Account Holder Letter set out in Schedule 1 to the Solicitation Packet and deliver it as soon as possible to the Information Agent and, in any event, so as to be received by the Scheme Meeting Deadline. Each Scheme Creditor must submit all relevant details to its Account Holder sufficiently in advance of the Scheme Meeting Deadline to enable its respective Account Holder to complete and return the Account Holder Letter to the Information Agent by no later than the Scheme Meeting Deadline.
- 8.2.7 If you are a **Scheme Creditor that is an Account Holder** and wish to vote at the Scheme Meeting, you should complete the Account Holder Letter set out in Schedule 1 to the Solicitation Packet and deliver it as soon as possible to the Information Agent and, in any event, so as to be received by the Scheme Meeting Deadline.
- 8.2.8 Failure to deliver a valid Account Holder Letter on behalf of a Scheme Creditor to the Information Agent by the Scheme Meeting Deadline will mean that the Scheme Creditor will, subject to the Chairperson's discretion, not be entitled to vote at the Scheme Meeting.
- 8.2.9 The Schemes require the approval of a majority in number representing at least 75% in value of the Scheme Creditors present and voting (in person, by a duly authorised representative, if a corporation, or by proxy) at the Scheme Meeting.
- 8.2.10 It is important that as many votes as possible are cast at the Scheme Meeting so that the BVI Court and the Hong Kong Court may be satisfied that there is a fair and reasonable representation of opinion of Scheme Creditors at the Scheme Meeting. You are therefore strongly urged to complete and sign, or direct your Account Holder to complete and sign, the relevant parts of your Account Holder Letter.

- 8.2.11 The amount of the Scheme Claim of each Scheme Creditor which submits a valid Account Holder Letter in respect of the Notes will be calculated for voting purposes as at the Record Time based on the Account Holder Letter submitted by or on behalf of that Scheme Creditor, as verified by the Information Agent against the books and records of the Depositary (to the extent that such Account Holder Letter includes a VOI Number). Solely with respect to the Schemes, this information will be used by the Chairperson to determine whether each resolution is passed at the Scheme Meeting.
- 8.2.12 Completed Account Holder Letters should be delivered to the Information Agent. An Account Holder Letter should not in any circumstances be delivered to the Depositary, the Note Trustee, or the Company. None of the Company, the Information Agent or any other person will be responsible for any loss or liability incurred by a Scheme Creditor as a result of any determination by the Information Agent that an Account Holder Letter contains an error or is incomplete, even if this is subsequently shown not to have been the case.
- 8.2.13 A Scheme Creditor on whose behalf a duly completed Account Holder Letter is lodged prior to the Scheme Meeting Deadline may still attend the Scheme Meeting and vote for or against the Schemes.

**If a Scheme Creditor wishes to vote at the Scheme Meeting, completed Account Holder Letters should be delivered to the Information Agent as soon as possible and in any event before the Scheme Meeting Deadline, being 5:00 p.m. New York time on 29 April 2016, the equivalent being 5:00 p.m. BVI time on 29 April 2016 / 5:00 a.m. Hong Kong time on 30 April 2016.**

If you are in any doubt as to what action you should take in connection with this Explanatory Statement, the proposals contained in it or the documents that accompany it, you are recommended to seek your own independent advice immediately from your legal, financial, tax or other independent adviser.

## 9 OVERVIEW OF THE DEBT RESTRUCTURING

*This section contains a brief description of the principal commercial terms of the Restructuring. The summary information contained in this section does not purport to be complete and should be read in conjunction with, and is qualified in its entirety by references to, the more detailed information contained in the Schemes and this Explanatory Statement.*

### 9.1 Overview of Scheme Consideration

9.1.1 In consideration for the release in full of the Scheme Claims, the following Scheme Consideration will be distributed to the Scheme Creditors in accordance with the terms of the Schemes:

- (a) Cash Consideration in a total amount of US\$41,703,334;
- (b) Scheme Shares representing, in aggregate number, 18.75% of the total issued shares in the Company on a fully diluted basis on the Final Distribution Date; and
- (c) Contingent Value Rights with an aggregate face value of US\$10 million.

9.1.2 In order to receive any Scheme Consideration under the Schemes, a Scheme Creditor must ensure that duly completed and signed copies of the Account Holder Letter, the Distribution Confirmation Deed and, if applicable, a Designated Recipient Form are delivered so that they are received by the Information Agent by the Bar Date. Corresponding electronic instructions must also have been submitted via DTC's ATOP system in respect of the relevant Notes at least 24 hours earlier.

9.1.3 **IF A SCHEME CREDITOR FAILS TO ENSURE SUCH DOCUMENTS ARE DELIVERED SO THAT THEY ARE RECEIVED BY THE BAR DATE (AND THAT ELECTRONIC INSTRUCTIONS ARE SUBMITTED AT LEAST 24 HOURS BEFORE THAT), IT WILL RECEIVE ZERO SCHEME CONSIDERATION BUT SHALL HAVE ITS SCHEME CLAIM DISCHARGED IRREVOCABLY UNDER THE TERMS OF THE SCHEMES AND SHALL BE BOUND BY THE RELEASES THEREUNDER.**

### 9.2 Timing of distribution of Scheme Consideration

9.2.1 The Scheme Consideration will be distributed on two separate dates under the terms of the Schemes:

- (a) on the Initial Distribution Date, being the date falling three Business Days after the Restructuring Effective Date, a proportion of the Scheme Consideration will be distributed among those Scheme Creditors that have submitted the documentation described in paragraph 9.1.2 above so that it is received by the Information Agent by the Initial Scheme Consideration Deadline (the "**Initial Scheme Creditors**"); and

- (b) on the Final Distribution Date, being the date falling 10 Business Days after the Bar Date, the remainder of the Scheme Consideration will be distributed among those Scheme Creditors that have submitted the documentation described in paragraph 9.1.2 above so that it is received by the Information Agent by the Bar Date (including the Initial Scheme Creditors) (together, the "**Participating Scheme Creditors**").

9.2.2 Whether they are Initial Scheme Creditors or otherwise, all Participating Scheme Creditors will receive the following Scheme Consideration under the terms of the Schemes:

- (a) a pro rata share, in the proportion that its Scheme Claim bears to the Aggregate Maximum Claim Amount, of the Contingent Value Rights and the Elective Scheme Consideration (whether in the form of Cash Consideration only, the Scheme Shares only or a combination of the two); and
- (b) a pro rata share, in the proportion that its Scheme Claim bears to the Aggregate Submitted Scheme Claim Amount, of the Surplus Scheme Consideration (i.e. the Scheme Consideration that is not taken up by Scheme Creditors who fail to submit the documentation described in paragraph 9.1.2 above so that it is received by the Information Agent by the Bar Date).

### **9.3 Elective Scheme Consideration**

9.3.1 The Cash Consideration and the Scheme Shares comprise the Elective Scheme Consideration. Scheme Creditors may choose to receive their entitlement to the Elective Scheme Consideration in the form of the Cash Consideration only, the Scheme Shares only or a combination of the two. However, this option is only open to Scheme Creditors who ensure that the required documents (including a duly completed Election Form) and instructions are submitted such that they are received by the Information Agent on or before the Initial Scheme Consideration Deadline. **Scheme Creditors who do not do so will be deemed to have elected to receive their entitlement to the Elective Scheme Consideration in the form of Scheme Shares only.**

9.3.2 The Contingent Value Rights do not form part of the Elective Scheme Consideration and a Scheme Creditor may not choose to receive any additional Elective Scheme Consideration in lieu of such Contingent Value Rights.

9.3.3 **FURTHER INFORMATION FOR SCHEME CREDITORS WITH RESPECT TO THE ELECTIVE SCHEME CONSIDERATION IS SET OUT IN SECTION 10 (ELECTIVE SCHEME CONSIDERATION) OF THIS EXPLANATORY STATEMENT.**

## 9.4 Initial Distribution Date

9.4.1 On the Initial Distribution Date, the Company (in the case of the Scheme Shares) and the Scheme Consideration Trustee (in the case of the Cash Consideration) shall distribute to each Initial Scheme Creditor an amount of the Elective Scheme Consideration equal in value to the Minimum Return.

9.4.2 The Minimum Return means, in respect of a Scheme Creditor, a value equal to  $y$  in the formula:

$$y = (a / c) * z$$

where:

$a$  is equal to the Elective Scheme Consideration Value;

$c$  is equal to the Aggregate Maximum Claim Amount; and

$z$  is equal to the value of the Scheme Claim of the relevant Scheme Creditor as at the Record Time.

9.4.3 The distribution described in paragraph 9.4.1 shall be conducted on the following basis:

(a) the Cash Consideration shall be distributed pro rata among the Initial Cash Electors (to the extent of their election to receive the Cash Consideration), provided that:

(i) no Initial Cash Elector shall, on the Initial Distribution Date, receive an amount in excess of the Minimum Return; and

(ii) no Initial Cash Elector that has elected to receive less than 100% of its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration shall, on the Initial Distribution Date, receive an amount in excess of that percentage of the Minimum Return;

(b) if the pro rata distribution of the Cash Consideration in accordance with sub-paragraph (a) above would result in an Initial Cash Elector receiving Cash Consideration with a value less than the Minimum Return (or, if an Initial Cash Elector has elected to receive less than 100% of its entitlement to Scheme Consideration in the form of Cash Consideration, a value less than the relevant percentage of the Minimum Return) (in each case, a "**Cash Shortfall**"), Scheme Shares with a value equal to the Cash Shortfall shall be issued and allotted to each such Initial Cash Elector;

(c) the Scheme Shares shall be issued and allotted pro rata to the Initial Share Electors (to the extent of their election to receive the Scheme Shares), provided that:

(i) no Initial Share Elector shall receive Scheme Shares with a value in excess of the Minimum Return; and

- (ii) no Initial Share Elector that has elected to receive less than 100% of its entitlement to the Elective Scheme Consideration in the form of the Scheme Shares shall receive Scheme Shares with a value in excess of that percentage of the Minimum Return;
  - (d) if the pro rata issue and allotment of the Scheme Shares in accordance with sub-paragraph (c) above would result in an Initial Share Elector receiving Scheme Shares with a value less than the Minimum Return (or, if an Initial Share Elector has elected to receive less than 100% of its entitlements in Scheme Shares, a value less than the relevant percentage of the Minimum Return) (in each case, a "**Share Shortfall**"), Cash Consideration with a value equal to the Share Shortfall shall be distributed to each such Initial Share Elector; and
  - (e) if, after each Initial Scheme Creditor has received Elective Scheme Consideration with a value (in aggregate) equal to the Minimum Return, any part of the Cash Consideration (the "**Surplus Cash Amount**") and/or any of the Scheme Shares (the "**Surplus Scheme Shares**") remain undistributed:
    - (i) any Surplus Cash Amount shall be retained and held on trust by the Scheme Consideration Trustee for the Participating Scheme Creditors in accordance with the terms of the Schemes; and
    - (ii) any Surplus Scheme Shares shall not be issued by the Company until the Final Distribution Date, whereupon they shall be issued to the Participating Scheme Creditors as described in section 9.5 below.
- 9.4.4 On the Initial Distribution Date, the Company shall issue to each Initial Scheme Creditor a pro rata share, in the proportion that its Scheme Claim bears to the Aggregate Maximum Claim Amount, of the Contingent Value Rights.
- 9.4.5 If, after each Initial Scheme Creditor has received the Contingent Value Rights to which it is entitled on the Initial Distribution Date, any of the Contingent Value Rights (the "**Surplus CVR Pool**") remain undistributed, such Surplus CVR Pool shall not be issued by the Company until the Final Distribution Date, whereupon they shall be issued to the Participating Scheme Creditors as described in section 9.5 below.

## 9.5 Final Distribution Date

- 9.5.1 On the Final Distribution Date, the Scheme Consideration Trustee (in the case of the Surplus Cash Amount, if any) shall distribute, and the Company (in the case of the Surplus Scheme Shares, if any) shall issue to each Participating Scheme Creditor an amount of the Elective Scheme Consideration equal in value to the Maximum Return less any amount of the Elective Scheme Consideration already received by that Participating

Scheme Creditor on the Initial Distribution Date. No Participating Scheme Creditor shall be entitled to receive under the Schemes an amount (or amounts) of the Elective Scheme Consideration with a value in excess of the Maximum Return.

9.5.2 The Maximum Return means, in respect of a Scheme Creditor, a value equal to  $x$  in the formula:

$$x = (a / b) * z$$

where:

$a$  is equal to the Elective Scheme Consideration Value;

$b$  is equal to the Aggregate Submitted Scheme Claim Amount; and

$z$  is equal to the value of the Scheme Claim of the relevant Scheme Creditor as at the Record Time.

9.5.3 For the purposes of the distribution described in paragraph 9.5.1:

(a) the Surplus Cash Amount (if any) shall be distributed:

(i) first, to the Initial Cash Electors on a pro rata basis among those Scheme Creditors (to the extent of their election to receive the Cash Consideration); and

(ii) second, if any amount of the Surplus Cash Amount remains after the Initial Cash Electors have received under the Schemes an amount of the Elective Scheme Consideration equal in value to the Maximum Return (or, in the case of those Initial Cash Electors that elected to receive less than 100% of their entitlement to the Elective Scheme Consideration in the form of the Cash Consideration, that percentage of the Maximum Return), to the remaining Participating Scheme Creditors pro rata; and

(b) the Surplus Scheme Shares (if any) shall be issued and allotted:

(i) first, to the Initial Share Electors on a pro rata basis among those Scheme Creditors (to the extent of their election to receive the Scheme Shares); and

(ii) second, if any of the Surplus Scheme Shares remain after the Initial Share Electors have received under the Schemes an amount of the Elective Scheme Consideration equal in value to the Maximum Return (or, in the case of those Initial Share Electors that elected to receive less than 100% of their entitlement to the Elective Scheme Consideration in the form of the Scheme Shares, that percentage of the Maximum Return), to the remaining Participating Scheme Creditors pro rata.

- 9.5.4 On the Final Distribution Date, the Company shall issue the Surplus CVR Pool to the Participating Scheme Creditors on the following basis:
- (a) first, each Participating Scheme Creditor that is not an Initial Scheme Creditor shall receive a pro rata share, in the proportion that its Scheme Claim bears to the Aggregate Maximum Claim Amount, of the Contingent Value Rights; and
  - (b) second, the remaining amount of the Contingent Value Rights (if any) shall be distributed pro rata to all Participating Scheme Creditors.

## 9.6 Illustrative examples

9.6.1 Set out in Appendix 12 (*Illustrative examples of Scheme Consideration allocation*) are four hypothetical scenarios, illustrating the operation of the mechanism described above as it relates to the Elective Scheme Consideration.

9.6.2 On the basis that:

- (a) the Elective Scheme Consideration Value is approximately US\$54,200,000; and
- (b) Scheme Claims as at a Record Time of 29 April 2016 will total approximately US\$352,200,000 (that number comprising the Aggregate Maximum Claim Amount),

in each scenario, every Participating Scheme Creditor will achieve a recovery of no less than approximately **15.4%** of its Scheme Claim.

### Scenario 1

9.6.3 In this scenario:

- (a) every Scheme Creditor has submitted the documentation described in paragraph 9.1.2 above so that it is received by the Information Agent by the Initial Scheme Consideration Deadline; hence they are all Initial Scheme Creditors; and
- (b) 50% of the Scheme Creditors are Initial Cash Electors and 50% of the Scheme Creditors are Initial Share Electors.

9.6.4 Because all of the Scheme Creditors in this scenario are Initial Scheme Creditors, all of the Scheme Consideration will be distributed on the Initial Distribution Date and each Scheme Creditor's Minimum Return will be equal to its Maximum Return i.e. there will be no surplus Scheme Consideration to distribute on the Final Distribution Date.

9.6.5 However, a Share Shortfall would occur as the value of the Scheme Shares distributed to the Initial Share Electors would be lower than the Minimum Return. As such, those Scheme Creditors would also receive approximately US\$14.6 million of the Cash Consideration, being the amount necessary to

ensure that all Scheme Creditors receive Elective Scheme Consideration with the same value.

- 9.6.6 Though not shown in Appendix 12 (*Illustrative examples of Scheme Consideration allocation*),<sup>9</sup> all of the Contingent Value Rights would also be distributed pro rata amongst the Scheme Creditors on the Initial Distribution Date.

### Scenario 2

- 9.6.7 In this scenario:

- (a) all Scheme Creditors are Initial Scheme Creditors; and
- (b) every Scheme Creditor is an Initial Cash Elector.

- 9.6.8 As in scenario 1, because all of the Scheme Creditors are Initial Scheme Creditors, all of the Scheme Consideration will be distributed on the Initial Distribution Date and each Scheme Creditor's Minimum Return will be equal to its Maximum Return i.e. there will be no surplus Scheme Consideration to distribute on the Final Distribution Date.

- 9.6.9 Because every Scheme Creditor in this scenario has made the same election to receive Cash Consideration, a Cash Shortfall would occur and the Scheme Shares would be distributed amongst the Scheme Creditors to make up that shortfall. Another consequence of every Scheme Creditor having made the same election is that all of the Scheme Consideration would be distributed on a completely pro rata basis i.e. every Scheme Creditor would receive exactly the same amount of the Cash Consideration and the Scheme Shares.

- 9.6.10 Again, though not shown in Appendix 12 (*Illustrative examples of Scheme Consideration allocation*), all of the Contingent Value Rights would be distributed pro rata amongst the Scheme Creditors on the Initial Distribution Date.

### Scenario 3

- 9.6.11 In this scenario:

- (a) 83% of the Scheme Creditors are Initial Scheme Creditors (i.e. every Scheme Creditor which has acceded to the RSA participates in the Scheme before the Initial Scheme Consideration Deadline) but no other Scheme Creditor takes any action in relation to the Schemes before the Bar Date; and
- (b) 50% of the Initial Scheme Creditors are Initial Cash Electors and 50% of the Initial Scheme Creditors are Initial Share Electors.

- 9.6.12 On the Initial Distribution Date, the Initial Scheme Creditors receive 83% by value of the total Elective Scheme Consideration. In this scenario, there is a

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<sup>9</sup> Due to the highly contingent nature of these rights, the Directors have concluded that it would be prudent to ascribe no value to the Contingent Value Rights for the purposes of assessing returns to Scheme Creditors under the Schemes.

Share Shortfall, meaning that approximately US\$10.0 million of the Cash Consideration would be paid to the Initial Share Electors to ensure they received Elective Scheme Consideration with a value equal to the Minimum Return. 83% by value of the Contingent Value Rights would also be distributed to those Initial Scheme Creditors.

- 9.6.13 Because 17% of the Scheme Creditors are not Initial Scheme Creditors, their entitlements to the Scheme Consideration would not be distributed on the Initial Distribution Date. As there is a Share Shortfall, only Surplus Cash Consideration remains, which would be held by the Scheme Consideration Trustee until the Final Distribution Date. The Company would also not issue the Surplus CVR Pool until the Final Distribution Date.
- 9.6.14 Ultimately, in this scenario, none of the remaining 17% of the Scheme Creditors takes the necessary action to become a Participating Scheme Creditor by the Bar Date. This means they receive nothing under the Schemes and their entitlements to the Surplus Cash Consideration and Surplus CVR Pool are shared pro rata between the Initial Scheme Creditors. The first US\$4.6m of the Cash Consideration is paid to the Initial Cash Electors (being the Scheme Creditors that made an election to receive Cash Consideration) and the remaining US\$4.6m is paid to the Initial Share Electors. Each Initial Scheme Creditor achieves a final, overall recovery of approximately 18.5% of the value of its Scheme Claim.

#### Scenario 4

- 9.6.15 In this scenario:
- (a) 83% of the Scheme Creditors are Initial Scheme Creditors (i.e. every Scheme Creditor which has acceded to the RSA participates in the Scheme before the Initial Scheme Consideration Deadline);
  - (b) 50% of the Initial Scheme Creditors are Initial Cash Electors and 50% of the Initial Scheme Creditors are Initial Share Electors; and
  - (c) Subsequently, after the Initial Scheme Consideration Deadline but before the Bar Date, a further 10% of the Scheme Creditors take the necessary action to become Participating Scheme Creditors.
- 9.6.16 The same distributions as described in scenario 3 would be made on the Initial Distribution Date, with 17% of the total Scheme Consideration held back by the Scheme Consideration Trustee and the Company.
- 9.6.17 However, this scenario differs from scenario 3 in that, by the Bar Date, 93% of the Scheme Creditors are Participating Scheme Creditors. The 10% of Scheme Creditors who have chosen to participate after the Initial Distribution Date will therefore, together, receive 10% of the CVRs and 10% of the Elective Scheme Consideration. Although these Scheme Creditors are too late to make an election (and are therefore deemed to have elected to receive Scheme Shares), they will receive their share of the Elective Consideration in cash because no further Scheme Shares remain after the Initial Distribution Date.

9.6.18 The remaining 7% of the Scheme Creditors who have not become Participating Scheme Creditors receive nothing under the Schemes. Their entitlements to the Surplus Cash Consideration and Surplus CVR Pool are, in this scenario, shared pro rata between all of the Participating Scheme Creditors such that they each Participating Scheme Creditor achieves a final, overall recovery of approximately 16.5% of the value of its Scheme Claim.

## **9.7 Ancillary releases**

9.7.1 As set out more fully in paragraph 6.16.7 of Section 6 (*Introduction to the Schemes*) of this Explanatory Statement, in consideration of receiving their entitlement to the Scheme Consideration and with effect from the Final Distribution Date upon completion of the steps described in paragraph 6.16.4 above (and provided that the step set out in paragraph 6.14.11 has been completed), each of the Scheme Creditors shall give certain releases in favour of:

- (a) the Subsidiary Guarantors, their Personnel and Affiliates;
- (b) the Company, its Personnel and Affiliates;
- (c) the Advisers, their Personnel and Affiliates;
- (d) the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates;

from any and all Claims and/or Liabilities arising prior to the Final Distribution Date, subject to certain carve-outs.

9.7.2 In similar fashion and at the same time, as described more fully in paragraph 6.16.8 of Section 6 (*Introduction to the Schemes*) of this Explanatory Statement, each of the Company and the Subsidiary Guarantors shall give certain releases in favour of:

- (a) the Scheme Creditors, their Personnel and Affiliates;
- (b) the Advisers, their Personnel and Affiliates; and
- (c) the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates,

from any and all Claims and/or Liabilities arising prior to the Final Distribution Date, subject to certain carve-outs.

## **9.8 Terms of the Contingent Value Rights**

9.8.1 The Contingent Value Rights will be documented on the terms of the Contingent Value Rights Instrument.

9.8.2 A summary of the Contingent Value Rights terms are set out as follows:

- (a) the notional value of the Contingent Value Rights are US\$10 million, which will be a one-off payment to the holders of the Contingent Value Rights upon the occurrence of the CVR Trigger Event (as defined below);
- (b) the triggering event will be when the Company's actual or deemed cash profit before taxation in any certain year exceeds US\$100 million ("**CVR Trigger Event**"). Such cash profit before taxation is defined as the sum of "Profit before Taxation" and "Non-cash costs". "Profit before Taxation" shall be the figure reported in the consolidated statement of profit or loss of the annual audited financial statements of the Company. "Non-cash costs" shall be defined as the sum of "Depreciation", "Amortization", and "Equity settled share-based transactions" reported in the consolidated cash flow statement of the annual audited financial statements of the Company. Such cash profit before taxation shall also exclude any extraordinary gains and losses and write downs outside normal course of business operations of the Company;
- (c) the maturity date of the Contingent Value Rights is five years after the Initial Distribution Date ("**CVR Maturity Date**");
- (d) except in certain circumstances, the Company shall have the right to choose to use cash or Shares (at the prevailing 30-day volume-weighted average price of the Shares up to the trading day immediately prior to the Settlement Date (as defined in the Contingent Value Rights Instrument)) to settle the Contingent Value Rights on the Settlement Date;
- (e) the Contingent Value Rights will lapse (and no payment shall be due from the Company) if the CVR Trigger Event does not occur on or before the CVR Maturity Date;
- (f) no application will be made for the listing of, and permission to deal in, the Contingent Value Rights on the HKEx or any other stock exchange;
- (g) the ability of the Company to settle the Contingent Value Rights by the issuance of Shares ("**CVR Shares**") is conditional on, amongst other, the following conditions precedent:
  - (i) the Listing Committee of the Stock Exchange granting the listing of and permission to deal in the CVR Shares;
  - (ii) the approval of the Independent Shareholders of the CVR Specific Mandate; and
  - (iii) all other relevant consents and approvals being obtained from all relevant governmental and regulatory authorities,

and, for the avoidance of doubt, if the Company is unable to settle the Contingent Value Rights by issuing CVR Shares, it shall settle the Contingent Value Rights in cash.

## **10 ELECTIVE SCHEME CONSIDERATION**

### **10.1 Entitlement to Elective Scheme Consideration**

- 10.1.1 As explained more fully in Section 9 (*Overview of the Debt Restructuring*) of this Explanatory Statement, each Participating Scheme Creditor is entitled to receive under the Schemes a proportion of the Elective Scheme Consideration, comprising the Cash Consideration and/or the Scheme Shares, with a value equal to the Maximum Return.
- 10.1.2 A Participating Scheme Creditor may receive its entire share of the Elective Scheme Consideration on the Final Distribution Date (in the case of those Scheme Creditors who are not Initial Scheme Creditors) or, in the case of the Initial Scheme Creditors, may receive a proportion (equal to the Minimum Return) on the Initial Distribution Date, with the balance received on the Final Distribution Date.
- 10.1.3 Both the Minimum Return and the Maximum Return are calculated by reference to the Elective Scheme Consideration Value i.e. the total value of the Cash Consideration and the Scheme Shares, as determined on the basis described in paragraph 10.3 below.

### **10.2 Ability to make an election**

- 10.2.1 Scheme Creditors may choose to receive their entitlement to the Elective Scheme Consideration in the form of the Cash Consideration only, the Scheme Shares only or a combination of the two. However, this option is only open to Scheme Creditors until the Initial Scheme Consideration Deadline.

*How does a Scheme Creditor make an election?*

- 10.2.2 If a Scheme Creditor wishes to make an election as to the type of Elective Scheme Consideration that it (or its Designated Recipient) will receive, it must ensure that the Election Form is duly completed and delivered, together with the Account Holder Letter, Distribution Confirmation Deed and, if applicable, a Designated Recipient Form, so that it is received by the Information Agent by the Initial Scheme Consideration Deadline. It must also ensure that its Account Holder submits electronic instructions via DTC's ATOP system in respect of the relevant Notes by no later than 5:00 p.m. New York time on the day before the Initial Scheme Consideration Deadline.
- 10.2.3 The Election Form is located at Appendix 1 to the Account Holder Letter, which is included in Appendix 5 (*Solicitation Packet*) of this Explanatory Statement. Further instructions for Scheme Creditors on how to complete this and the other relevant documents are set out in Appendix 5 (*Solicitation Packet*) of this Explanatory Statement.

*What happens if a Scheme Creditor does not make an election?*

- 10.2.4 **If a Scheme Creditor does not make an election in the manner described in paragraph 10.2.2 above, that Scheme Creditor shall be**

**deemed to have elected to receive its allocation of the Elective Scheme Consideration in the form of Scheme Shares only.**

*What if too many Scheme Creditors elect to receive the same type of Elective Scheme Consideration (i.e. the Cash Consideration or the Scheme Shares are "over-subscribed")?*

- 10.2.5 Even if a Scheme Creditor elects (or is deemed to have elected) to receive all of its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration or the Scheme Shares only, it may nonetheless receive the other type of Elective Scheme Consideration if there is a shortfall in the Cash Consideration or Scheme Shares (as applicable) available to satisfy its Scheme Claim.
- 10.2.6 Paragraphs 9.4.3 and 9.5.3 of Section 9 (*Overview of the Debt Restructuring*) above describe in more detail the relevant mechanisms for dealing with a Cash Shortfall or a Share Shortfall.

**10.3 Valuation of Elective Scheme Consideration**

- 10.3.1 The value of the Cash Consideration is straightforward. The amount is quantified precisely (in an amount of US\$41,703,334) and is payable in cash.
- 10.3.2 The value of the Scheme Shares is harder to quantify and involves an assessment of both the present value, and the future prospects, of the Company and its subsidiaries if the Restructuring is completed successfully. By its nature, that exercise is necessarily speculative and based on assumptions, estimates and forecasts that may or may not prove to be accurate. In this regard, Scheme Creditors should note the comments and disclaimers set out on pages 9 and 10 of this Explanatory Statement with respect to forward-looking statements.
- 10.3.3 After careful consideration, the Directors have concluded that it would be appropriate for the purposes of the Schemes and, in particular, the operation of the election mechanism described in section 9 above to ascribe a value of US\$12,500,000 to the Scheme Shares. In reaching this conclusion, the Directors have taken into account various key factors that they consider relevant, including but not limited to:
- (a) various assumptions relating to anticipated economic and market conditions;
  - (b) the anticipated performance, and the risks relating to the implementation, of the Company's new business model (as described in section 5.4 above);
  - (c) risk factors more generally applicable to the Group (including those set out in section 12.5 below); and
  - (d) the value of the post-Restructuring Shares implied by the proposed subscription price for the Rights Shares, as supported by the work

undertaken in connection with the Rights Issue, with which the proposed value of the Scheme Shares is broadly consistent.

- 10.3.4 For the avoidance of doubt, the Directors make no representations or warranties as to the actual value of the Scheme Shares and whether the value ascribed for the purposes of the Schemes is consistent with that value. The Directors have adopted a prudent approach and consider the value to be reasonable and appropriate for the limited purposes of allocating the Elective Scheme Consideration amongst the Participating Scheme Creditors.
- 10.3.5 Scheme Creditors may wish to take the factors outlined above into account when considering any election with respect to the Elective Scheme Consideration. Scheme Creditors are also advised to refer to the risk factors set out in sections 12.4 and 12.5 below, which may affect the value of the Scheme Shares on and following their issuance.

**The Information Agent cannot provide Scheme Creditors with legal advice in relation to the Schemes, elections with respect to the Elective Scheme Consideration or any related matters. Contacting the Information Agent should not be used as a substitute for, and the Directors urge each Scheme Creditor to consider seeking, professional advice in relation to the Schemes.**

#### **10.4 Distribution Confirmation Deed**

- 10.4.1 Whether a Scheme Creditor wishes to receive its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration and/or the Scheme Shares, it must complete and return a Distribution Confirmation Deed (along with its other relevant documents) in order to receive any Scheme Consideration.
- 10.4.2 Pursuant to the Distribution Confirmation Deed, a Scheme Creditor must (among other things) confirm that they may legally be issued the Scheme Shares and the Contingent Value Rights. If a Scheme Creditor is unable to do so, it should appoint a Designated Recipient that is able to provide such confirmations to receive the Scheme Shares and the Contingent Value Rights to which it is entitled.
- 10.4.3 The Distribution Confirmation Deed is located at Appendix 3 to the Account Holder Letter, which is included in Appendix 5 (*Solicitation Packet*) of this Explanatory Statement.
- 10.4.4 If a Scheme Creditor is a Disqualified Person or Prohibited Transferee and fails to designate a Designated Recipient prior to the Bar Date, all of the Scheme Shares and Contingent Value Rights that would otherwise have been distributed to such Scheme Creditor will be distributed to the other Participating Scheme Creditors that are not Disqualified Persons or Prohibited Transferees or who have designated a Designated Recipient in accordance with the terms of the Scheme.

## **10.5 Appointment of Designated Recipient**

10.5.1 The Schemes permit a Scheme Creditor to nominate a Designated Recipient as the recipient of the Scheme Shares and the Contingent Value Rights otherwise to be issued to such Scheme Creditor, subject to limitations in accordance with applicable securities laws and provided that:

- (a) the Designated Recipient shall only be validly designated if it has submitted all Distribution Confirmation Deeds and/or any other applicable forms that its designating Scheme Creditor is required to submit pursuant to the Schemes;
- (b) a Scheme Creditor may designate only one such entity and if such entity is a nominee holder it may only hold on behalf of one beneficial holder; and
- (c) the Designated Recipient is not a Disqualified Person or a Prohibited Transferee.

10.5.2 The Designated Recipient Form is located at Appendix 2 to the Account Holder Letter, which is included in Appendix 5 (*Solicitation Packet*) of this Explanatory Statement.

**If you are unclear about, or have any questions concerning, the action you are required to take in order to make an election with respect to the Elective Scheme Consideration, please contact the Information Agent.**

## 11 OVERVIEW OF THE GROUP

### 11.1 The Company

11.1.1 The Company was incorporated in the BVI on 17 September 2007 as an exempted company limited by shares pursuant to the BVI Companies Act. The Company was known as Winsway Coking Coal Holdings Limited until it changed its name on 25 June 2014.

11.1.2 The Company was registered as a non-Hong Kong company in Hong Kong under Part XI of the then Companies Ordinance (Cap. 32 of the laws of Hong Kong) (now Part 16 of the Companies Ordinance (Cap.622)) on 6 September 2010.

11.1.3 The Company's registered office is Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.

11.1.4 As at the date of this Explanatory Statement:

(a) the Company has 3,773,198,693 Shares in issue, all of which are fully paid up; and

(b) the maximum number of Shares the Company is entitled to issue is 6,000,000,000, divided into 6,000,000,000 ordinary shares of one class with no par value.

11.1.5 In connection with and for the purposes of the Restructuring, it is proposed that the Shares be consolidated such that every 20 Shares be consolidated into one Consolidated Share. It is proposed that this consolidation occurs prior to the Initial Distribution Date, such that the Scheme Shares shall be Consolidated Shares.

11.1.6 The Shareholders who have interests or short positions in or underlying the Shares which fall to be disclosed to the Company under the provisions of Divisions 2 and 3 of Part XV of the Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong) (the "**SFO**") or which are recorded in the register required to be kept by the Company under section 336 of the SFO as at the date of this Explanatory Statement are as follows:

Shareholder	Shares owned	Nature of Interest	% of issued Shares
Mr. Wang Xingchun <sup>(1)(4)</sup>	1,518,250,109	Interest of controlled corporation	40.24%
Winsway Group Holdings Limited <sup>(2)</sup>	1,518,250,109	Interest of controlled corporation	40.24%
Great Start Development	208,106,421	Interest of controlled	5.52%

Shareholder	Shares owned	Nature of Interest	% of issued Shares
Limited <sup>(3)</sup>		corporation	
Winsway International Petroleum & Chemicals Limited <sup>(4)</sup>	208,106,421	Beneficial owner	5.52%
Winsway Resources Holdings Limited <sup>(4)</sup>	1,310,143,688	Beneficial owner	34.72%
Shanxi Coal International Energy Group Xinyuan Trading Co., Ltd. <sup>(4)</sup>	1,128,186,410	Person having a security interest in shares	29.90%
Poly Legend International <sup>(4)(5)</sup>	390,000,000	Person having a security interest in shares	10.34%
Yang Peilin <sup>(5)</sup>	390,000,000	Interest of controlled corporation	10.34%
Zhuhai Chengzhi Tong Development Co., Ltd. <sup>(6)</sup>	316,900,000	Beneficial owner	8.40%
Su Songqing <sup>(6)</sup>	316,900,000	Nominee for another person (other than a bare trustee)	8.40%

Source: The Company

Notes:

- (1) Mr. Wang indirectly holds the entire issued share capital of Winsway International Petroleum & Chemicals Limited and Winsway Resources Holdings Limited and is deemed to be interested in the 208,106,421 Shares and 1,310,143,688 Shares held by Winsway International Petroleum & Chemicals Limited and Winsway Resources Holdings Limited, respectively.
- (2) Winsway Group Holdings Limited indirectly holds the entire issued share capital of Winsway International Petroleum & Chemicals Limited and directly holds the entire issued share capital of Winsway Resources Holdings Limited and is deemed to be interested in the 208,106,421 Shares and 1,310,143,688 Shares held by Winsway International Petroleum & Chemicals Limited and

Winsway Resources Holdings Limited, respectively. Mr. Wang is the sole director of Winsway Group Holdings Limited.

- (3) Great Start Development Limited holds the entire issued share capital of Winsway International Petroleum & Chemicals Limited and is deemed to be interested in the 208,106,421 Shares held by Winsway International Petroleum & Chemicals Limited. Mr. Wang is the sole director of Great Start Development Limited.
- (4) On 15 July 2014, Mr. Wang pledged 208,106,421 Shares and 920,079,989 Shares respectively (together the "**July Pledged Shares**") through his indirectly wholly owned companies Winsway International Petroleum & Chemicals Limited and Winsway Resources Holdings Limited in favour of Shanxi Coal International Energy Group Xinyuan Trading Co., Ltd, an independent third party which is a state-owned enterprise in the PRC, as security for the performance of certain contractual obligations of a company indirectly owned by Mr. Wang. On 30 September 2014, Mr. Wang further pledged 390,000,000 Shares (the "**September Pledged Shares**") through his indirectly wholly owned company Winsway Resources Holdings in favour of Poly Legend International, an independent third party, under a bona fide commercial agreement. The July Pledged Shares and September Pledged Shares represent approximately 29.90% and 10.34% of the issued shares of the Company as at the date of this Explanatory Statement, respectively. For further details, please refer to the announcement of the Company dated 15 July 2014 and 30 September 2014, respectively. Mr. Wang is the sole director of both Winsway International Petroleum & Chemicals Limited and Winsway Resources Holdings Limited.
- (5) Yang Peilin controls 90% of Poly Legend International and is deemed to be interested in the September Pledged Shares.
- (6) On 27 March 2015, Mr. Wang pledged 316,900,000 Shares through his indirectly wholly owned company Winsway Resources Holdings Limited in favour of Zhuhai Chengzhi Tong Development Co., Ltd. (the "**March 2015 Pledge**"), an independent third party, as security for the performance of certain contractual obligations of Beijing Winsway Investment Co., Ltd., a company indirectly owned by Mr. Wang, under a bona fide commercial agreement. On 2 June 2015, the pledgee exercised its rights under the March 2015 Pledge and the underlying Shares have been transferred. For further details, please refer to the Company's announcements dated 29 March 2015 and 3 June 2015.
- (7) The percentage shareholding of the Company is calculated on the basis of 3,773,198,693 Shares in issue as at the date of this Explanatory Statement.

11.1.7 The objects for which the Company was established are unrestricted and the Company has full power and authority to carry out any object not prohibited by the BVI Companies Act or any other law of the BVI.

11.1.8 The Company is the ultimate parent of the Group, which includes a large number of intermediate holding and operating companies in the PRC, the BVI, Hong Kong, Singapore and Australia.

## **11.2 Structure of the Group**

The structure of the Group as at the date of this Explanatory Statement is set out in the diagram at Appendix 6 (*Group Structure Chart*).

## **11.3 Listing of the Shares on the HKEx**

11.3.1 The Shares have been listed on the Main Board of the HKEx (with stock code 01733) since 11 October 2010.

11.3.2 At the request of the Company, trading in the Shares was halted with effect from 10:48 am on 8 June 2015 pending the release of an announcement in

relation to matters constituting inside information of the Company. An application was made by the Company to the HKEx for the resumption of trading in the Shares with effect from 9:00 a.m. on 23 June 2015.

- 11.3.3 At the request of the Company, trading in the Shares was suspended with effect from 9.00 am on 31 August 2015 pending the publication of the 2015 Interim Results by that date. It is anticipated that trading in the Shares will resume on or around 14 March 2016.
- 11.3.4 It is intended that the Shares (including the Rights Shares, the Anti-dilution Shares and the Scheme Shares) will continue to be listed on the Main Board of the HKEx following completion of the Restructuring.

#### **11.4 Listing of the Notes on the SGX-ST**

- 11.4.1 The Notes have been listed on the SGX-ST since 8 April 2011.
- 11.4.2 On or as soon as possible after the Final Distribution Date, the Company will announce the redemption and cancellation of the Notes on SGX-ST.
- 11.4.3 Once an announcement is released regarding the redemption and cancellation of the Notes, the SGX-ST will de-list the Notes. The Company will also inform the Issuer Services team at the SGX-ST of the cancellation and ask them to confirm that the de-listing has taken place.

#### **11.5 Offshore financing**

- 11.5.1 The Notes comprise a global note issued pursuant to the Indenture. The Notes (and the Indenture) are governed by the laws of the State of New York.
- 11.5.2 The Notes were originally offered and sold by the Company pursuant to a:
  - (a) restricted global note in principal amount of US\$129,222,000; and
  - (b) Regulation S global note in principal amount of US\$370,778,000,both dated 8 April 2011 between the Company, the Subsidiary Guarantors and the Note Trustee.
- 11.5.3 The Notes are represented by the above global notes, in fully registered form without interest coupons, in denominations of US\$200,000 and integral multiples of US\$1,000 in excess thereof. Such Notes were deposited with and registered in the name of the Depositary (or its nominee) through the Depositary under electronic systems designed to facilitate paperless transactions of dematerialised securities. So long as the Depositary or its nominee is the registered owner of the global notes, it shall be considered the registered holder of the Notes. Under certain circumstances, the Company may be obliged to issue individual certificated notes in fully registered form in exchange for the global notes, in which case the holders of those certificates shall be considered the registered holder of the Notes.
- 11.5.4 The Notes are redeemable, in whole or in part, at the Company's option by giving notice of redemption, upon which the relevant Notes become due and

payable at the redemption price. During the year ended 31 December 2013, the Group repurchased Notes in an aggregate principal amount of US\$153,190,000 and such Notes were subsequently redeemed. As at the date of this Explanatory Statement, Notes in an aggregate principal amount of US\$309,310,000 remain outstanding. These Notes will mature on 8 April 2016.

- 11.5.5 The Notes bear interest at a rate of 8.50% per annum. Under the terms of the Indenture, the Company is subject to an obligation (among others) to pay such interest (and any related gross-up payments) on the Notes in U.S. dollars on each interest payment date, being 8 October and 8 April of each year, commencing 8 October 2011, and ending on the maturity date.
- 11.5.6 Pursuant to the terms of the Indenture, the following events (among others) are events of default:
- (a) a default in the payment of principal of (or premium, if any, on) the Notes when the same becomes due and payable at maturity, upon acceleration, redemption or otherwise; and
  - (b) default in the payment of interest (or related gross-up payments, if any) on any Note when the same becomes due and payable, and such default continues for a period of 30 days.
- 11.5.7 If an event of default occurs and is continuing, the Note Trustee may, and upon the request of holders of 25% in principal amount of the outstanding Notes shall:
- (a) declare the unpaid principal (and premium, if any) and accrued interest in respect of the Notes to be immediately due and payable; and
  - (b) instruct the Collateral Agent to foreclose on the Collateral in accordance with the terms of the Security Documents and the Indenture.
- 11.5.8 The Company's obligations under the Notes are guaranteed by the Subsidiary Guarantors. Pursuant to the terms of the Indenture, each Subsidiary Guarantor has agreed (among other things) to jointly and severally guarantee to each holder of a Note and to the Note Trustee the due and punctual payment of the principal of, premium, if any, and interest on, and all other amounts payable under, the Notes.
- 11.5.9 The Indenture is also secured by share charges granted in favour of the Note Trustee (often in its capacity as Collateral Agent) over the shares in each of the Subsidiary Guarantors. Each share charge is governed by the laws of the country in which the Subsidiary Guarantor is incorporated, being the BVI, Hong Kong, Singapore and Australia.
- 11.5.10 The Company has to date failed to make the interest payments due on 8 April 2015 and 8 October 2015 and such amounts remain unpaid. As such, events of default occurred (and are continuing) under the Indenture on 8

May 2015 and 8 November 2015, respectively, by reason of the Company's failure to pay the relevant amounts of interest within 30 days of such sums falling due.

11.5.11 To date, no action has been taken by the Note Trustee to accelerate the Notes or to instruct the Collateral Agent to foreclose on the Collateral.

## **11.6 Onshore financing**

11.6.1 The Group's onshore operations are funded by a variety of financiers based in the PRC including, but not limited to, Industrial and Commercial Bank of China, Bank of China, CITIC Bank, Shanghai Pudong Development Bank, Jilin Bank, China Merchants Bank, Agriculture Bank of China, the Bank of Communications and China Everbright Bank.

11.6.2 As at 30 November 2015, the Group had total on-shore bank debt of approximately HK\$1.205 billion, approximately HK\$847 million of which was secured against credit guarantees and fixed assets and approximately HK\$358 million of which was secured against restricted bank deposits and receivables. Of these facilities, approximately HK\$58 million is long-term borrowing (i.e. maturing after 30 November 2016) and the remaining is short-term borrowing (maturing on or before 30 November 2016). The Group also has further on-shore liabilities of approximately HK\$193 million, comprising bills payable to three trading companies, which are secured against fixed deposits.

11.6.3 All of the Group's on-shore banking facilities are fully drawn and no additional undrawn commitments are available to the Group.

## **11.7 Intercompany balances**

11.7.1 The Group has substantial intercompany receivable and payable balances owing between different entities within the Group.

11.7.2 The intercompany balances, which relate to operational or financing activities and have accumulated over a number of years, can be broadly categorised into the following types of transactions:

- (a) trading balances;
- (b) intra-Group financing; and
- (c) prepayments, mainly relating to the pre-purchase of coal.

11.7.3 As at 30 November 2015, total intercompany claims across all Group entities amounted to approximately HK\$21.3 billion.

## **11.8 Directors and senior management of the Company**

11.8.1 The Company's articles of association provide that the Board must consist of not less than two directors.

*Current Board*

11.8.2 As at the date of this Explanatory Statement, the Board of the Company comprises the following nine directors:

Name	Position
Ms Cao Xinyi	Executive director, CEO and Company Secretary
Ms Zhu Hongchan	Executive director
Mr Wang Yaxu	Executive director
Mr Feng Yi	Executive director
Mr Lu Chuan	Non-executive director
Mr James Downing	Independent non-executive director
Mr Ng Yuk Keung	Independent non-executive director
Mr Wang Wenfu	Independent non-executive director
Mr George Jay Hambro	Independent non-executive director

*Recent changes to the Board*

11.8.3 Mr Wang was the founder of the Company and the Chairman of the Board. He was appointed as an executive director on 17 September 2007. Due to health issues, Mr Wang took a leave of absence from the Company's daily management from 26 August 2014. After a long period of absence, Mr Wang resigned as an executive director, the chairman of the Board and the CEO of the Company with effect from 16 November 2015. Mr Wang resigned in order to take care of his personal affairs.

11.8.4 Mr Andreas Werner was appointed as an executive director of the Company and CEO designate on 26 August 2014. He was appointed to handle the day-to-day operation of the Company during Mr Wang's period of absence. Mr Werner resigned as an executive director and CEO designate of the Company with effect from 28 October 2015 to pursue business activities outside the Company.

11.8.5 Ms Cao Xinyi was appointed as an executive director and CEO designate of the Company on 28 October 2015 (vacating her office as chief financial officer of the Company at the same time). On the resignation of Mr Wang Xingchun on 16 November 2015, she was appointed as CEO of the Company. Ms Cao joined the Company in 2009 and has been closely involved with the financial affairs of the Company and investors of the Company.

11.8.6 There is presently no permanent Chairman. The Board elects a chairman on an ad hoc basis in respect of each Board meeting.

11.8.7 Mr Wang Changqing (a former executive director), Ms Ma Li (a former executive director), Mr Liu Qingchun (a former non-executive director) and Mr Daniel Miller (a former non-executive director) resigned from the Board in 2015 to pursue separate business activities outside the Company.

11.8.8 Mr Feng Yi and Mr Wang Yaxu were both appointed as executive directors in 2015.

*Senior management team*

11.8.9 The senior management, which comprise the Group's executive team, responsible for the day to day management of the Group, are as follows:

<b>Name</b>	<b>Position</b>
Ms Cao Xinyi	CEO
Ms Zhu Hongchan	Executive Vice President
Mr Wang Yaxu	Vice President
Mr Feng Yi	Vice President
Ms Di Jingmin	Vice President
Mr Li Yongqiang	CFO
Mr Li Jianlou	Vice President
Mr Jia Lijun	Vice President
Mr Chenzhi	Vice President

**11.9 Directors' interests in the Group and the Restructuring**

11.9.1 As at the date of this Explanatory Statement, the following Directors and executive officers hold (within the meaning of Part XV of the SFO) the following interests and short positions in the Company:

- (a) James Downing: 392,000 Shares; and
- (b) George Jay Hambro: 573,000 Shares.

11.9.2 As noted above, Mr Liu Qingchun is no longer a Director but was a Director in the 12 months before the date of this Explanatory Statement. For completeness, therefore, he is interested in 179,000 Shares. Certain other former Directors held Share Options but these have now lapsed.

11.9.3 As noted above, Mr Wang is no longer a Director of the Company but was a Director in the 12 months before the date of this Explanatory Statement.

For completeness, therefore, his interests in the Company as at the date of this Explanatory Statement are as follows:

(a) Mr Wang is the controlling Shareholder. As noted above, Mr Wang is beneficially interested in 1,518,250,109 Shares, representing approximately 40.24% of the issued Shares. As described in further detail in the notes to the table set out in paragraph 11.1.6 above, Mr Wang's Shares are held through a number of intermediary companies incorporated in the BVI.

(b) Mr Wang has pledged certain of his Shares to certain third parties as described in further detail in the notes to the table set out in paragraph 11.1.6 above.

11.9.4 If the Schemes are implemented, they will have the same effect on the interests of the Directors (in their capacity as Shareholders) as on the interests of any other Shareholder. This is to say that their shareholding will be diluted by the issue of the new Scheme Shares to the Scheme Creditors save to the extent that they participate in the Rights Issue and benefit from the anti-dilution protections relating thereto.

11.9.5 In the same way, the Rights Issue will affect the Directors in their capacity as Shareholders in the same way as it will affect the interests of any other Shareholder. This is to say that their shareholding will be diluted by the Rights Issue if they choose not to take up their Rights Issue entitlements.

11.9.6 Mr Wang has a different interest to the other Shareholders in the Rights Issue by reason of his arrangements with the Underwriter, as described in further detail in Section 7 (*Overview of the Rights Issue*) above.

#### *Share Option Scheme*

11.9.7 Pursuant to the Share Option Scheme, the Company granted the Share Options to the Directors, certain employees of the Group and other participants.

11.9.8 However, these Share Options were subsequently cancelled with the consent of the holders and for zero consideration. This was because the exercise price of the Share Options was far higher than the current market price of the Shares and such situation was unlikely to improve significantly in the foreseeable future given the current financial position of the Company. Accordingly, it was decided that the Share Options no longer served the purposes of providing incentives or rewards to the selected Directors and employees for their contribution to the Group.

11.9.9 As at 1 March 2016, the Company has no options, warrants, convertible securities or other similar rights which confer any right to convert into or subscribe for Shares in issue.

#### *Restricted Share Unit Scheme*

11.9.10 Pursuant to the Restricted Share Unit Scheme, the Company may grant Restricted Share Units to the Directors, officers and full-time employees of

the Group. The Restricted Share Units give a participant a conditional right when they vest to obtain shares in the Company or an equivalent value in cash as determined by the Board in its absolute discretion.

11.9.11 There are currently no Restricted Share Units granted by the Company under the Restricted Share Unit Scheme.

*Other material interests*

11.9.12 Save for those disclosures made above, none of the Directors has any direct, indirect or non-beneficial interest in the Shares or the shares of any of the Company's subsidiaries. Further, none of the Directors has any material interest (whether as a director, member, creditor or otherwise) in the Schemes, except as disclosed in this Explanatory Statement.

11.9.13 The Personnel of the Company and the Subsidiary Guarantors, and each of their predecessors, successors and assigns, will be released in their capacities as such from any and all Claims and/or Liabilities relating to any acts or omissions arising prior to the Final Distribution Date or that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Final Distribution Date, except for any and all claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct.

*Director confirmations*

11.9.14 Each Director of the Company has provided confirmation that he or she:

- (a) is not subject to any unspent convictions relating to indictable offences;
- (b) has not been declared bankrupt or has not been the subject of any voluntary arrangement or like proceeding;
- (c) has not been convicted in relation to a fraudulent offence;
- (d) has not been associated with any bankruptcy, receivership, insolvent liquidation, voluntary agreement or any composition or arrangement with creditors generally or any class of creditors of such company while acting in the capacity of a member of the administrative, management or supervisory body or as senior manager of any company;
- (e) has not been subject to any official public incrimination and/or sanction by statutory or regulatory authorities (including designated professional bodies); and
- (f) has not been disqualified by a court from acting as a member of the administrative, management or supervisory bodies of any company.

## 11.10 Material Contracts

The following contracts (not being contracts entered into in the ordinary course of business) were entered into by members of the Group within two years immediately preceding the date of this Explanatory Statement and were or might be material:

11.10.1 in connection with the disposal of part of the Company's interest in GCC, as described in paragraph 5.3.17 above:

- (a) the bridge loan agreement dated 6 September 2014 entered into between Grande Cache Coal LP ("**GCC LP**"), acting by its general partner Grande Cache Coal Corporation ("**GCC**"), 0925165 B.C. Ltd ("**Seller**"), Up Energy Development Group Limited ("**Purchaser Guarantor**") and Marubeni Coal Canada Ltd. ("**Marubeni Seller**") in relation to a bridge loan facility in the amount of US\$10,000,000 provided by the Purchaser Guarantor to GCC LP (the "**Bridge Loan Agreement**");
- (b) the sale and purchase agreement dated 14 November 2014, entered into between the Seller, Up Energy Resources Company Limited (the "**Purchaser**") and the Purchaser Guarantor in relation to the disposal of a 42.74% interest in GCC and GCC LP (the "**Sale and Purchase Agreement**");
- (c) the interim support agreement dated 17 December 2014 by the Purchaser, Marubeni Seller, GCC and the Seller entered into which constitutes the management services agreement as referred to in the Sale and Purchase Agreement to GCC at any time prior to completion, as supplemented by letter agreements among the same parties dated 24 December 2014 and 12 May 2015, respectively, in respect of the Purchaser providing management services to GCC at any time prior to completion as referred to in the Sale and Purchase Agreement; and
- (d) the amended and restated bridge loan agreement entered into by the Purchaser, the Purchaser Guarantor, GCC, GCC LP, the Marubeni Seller and the Seller on 17 December 2014 as supplemented by letter agreements among the same parties dated 24 December 2014 and 12 May 2015, respectively, amending and restating the Bridge Loan Agreement dated 6 September 2014 as amended by the an amendment agreement dated 2 December 2014 entered into between the parties to the Bridge Loan Agreement;

11.10.2 the RSA, as described in section 5.8 above;

11.10.3 the irrevocable undertaking letter dated 25 November 2015 given by Mr. Wang in favour of the Company, the Note Trustee and the Scheme Creditors (and their successors and assigns), as described in paragraph 5.7.5 above;

11.10.4 the supplemental undertaking letter dated 11 March 2016 given by Mr. Wang in favour of the Company, the Note Trustee and the Scheme Creditors

(and their successors and assigns) pursuant to which he has undertaken, amongst other things, that:

- (a) he will not, and will procure that each of Winsway Group Holdings Limited, Winsway Resources Holdings Limited, Great Start Development Limited and Winsway International Petroleum & Chemicals Limited, being the companies directly and indirectly wholly owned by Mr. Wang (together with Mr. Wang, the "**Controlling Shareholder Group**") do not, take up the entitlements of Rights Shares under the Rights Issue;
- (b) he will, and will procure that the Controlling Shareholder Group will, comply with the terms and conditions of the Underwriting Agreement; and
- (c) he will procure that the Underwriter will comply with its obligations under the Underwriting Agreement; and

11.10.5 the irrevocable undertaking letter dated 11 March 2016 given by the Underwriter in favour of the Company, the Note Trustee and the Scheme Creditors (and their successors and assigns) pursuant to which the Underwriter, amongst other things, undertakes to underwrite and subscribe for all Underwritten Shares in accordance with the terms of the Underwriting Agreement.

### **11.11 Proceedings**

To the best of the Directors' knowledge and belief, as at the date of this Explanatory Statement, no material litigation or arbitration proceedings have been commenced or threatened against any member of the Group.

### **11.12 Claims by a liquidator or other insolvency officeholder**

The Directors, to the best of their knowledge and belief, do not believe there are any circumstances giving rise to the possibility, if the Company should go into liquidation or an analogous insolvency process, of:

11.12.1 an application to the BVI Court or the Hong Kong Court by the relevant insolvency officeholder for an order that any transaction be set aside; or

11.12.2 a material claim being brought by the relevant insolvency officeholder for the benefit of the Company's creditors.

### **11.13 Costs and expenses relating to the Debt Restructuring**

The Company has agreed to pay the costs, expenses and disbursements of the Advisers, the Information Agent, the Note Trustee, the Collateral Agent, the Registrar and the Scheme Consideration Trustee in connection with the Debt Restructuring, provided that such fees, costs and expenses have been incurred in accordance with the Note Documents or such other arrangement as may have been agreed between the Company and that party.

#### **11.14 Documents available for inspection**

Copies of this Explanatory Statement (including its appendices), the Company's memorandum and articles of association, the 2015 Interim Results and the 30 November 2015 Unaudited Balance Sheets may be inspected by Scheme Creditors free of charge at the offices of:

11.14.1 Stephenson Harwood at 18th Floor, United Centre, 95 Queensway, Hong Kong; and

11.14.2 Walkers at 171 Main Street, PO Box 92, Road Town, Tortola, VG1110, British Virgin Islands,

during normal business hours on any weekday (Saturdays, Sundays and public holidays excepted) up to (and including) the date of the Scheme Meeting.

## **12 RISK FACTORS**

*The following summarises some of the principal risks and uncertainties that may arise in connection with the Schemes. It should be read in conjunction with all of the other information contained in this Explanatory Statement. Additional risks and uncertainties not presently known to the Company or that the Company currently deems immaterial may become material and have a material adverse effect on the business, financial condition or results of operations of the Group. This Explanatory Statement also contains forward-looking statements, which involve risks and uncertainties of their own. Actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors and circumstances, including the risks and uncertainties described in this Explanatory Statement.*

For ease of reference only, the risk factors set out below have been grouped into the following four categories:

- 12.1.1 risks relating to the implementation of the Schemes;
- 12.1.2 risks relating to a failure to implement or a delay in implementing the Schemes;
- 12.1.3 risks relating to the Scheme Consideration to be issued and distributed under the Schemes; and
- 12.1.4 risks following the implementation of the Schemes.

### **12.2 Risks relating to the implementation of the Schemes**

*Effectiveness of the Schemes requires the approval of Scheme Creditors*

- 12.2.1 In order for the Schemes to be approved by the Scheme Creditors, more than 50% in number representing not less than 75% in value of those Scheme Creditors who vote at the Scheme Meeting must vote in favour. If the requisite majorities of Scheme Creditors do not vote in favour of the Schemes at the Scheme Meeting, the Scheme will be withdrawn and the Restructuring will not be implemented pursuant to the Schemes or possibly at all.
- 12.2.2 Although a large proportion of the Scheme Creditors (by value) have undertaken to vote in favour of the Schemes pursuant to the RSA, that undertaking will cease to be binding if the RSA is terminated.

*Even if the Scheme Creditors approve the Schemes, the Schemes may not be approved by the BVI Court or the Hong Kong Court*

- 12.2.3 In order for the BVI Scheme to become effective under BVI law, and in order for the Hong Kong Scheme to become effective under Hong Kong law, the BVI Court must sanction the BVI Scheme and the Hong Kong Court must sanction the Hong Kong Scheme.
- 12.2.4 Each of the BVI Court and the Hong Kong Court has discretion whether or not to sanction the relevant Scheme and will need to be satisfied that (i) the provisions of the applicable statute have been complied with; (ii) the

Scheme Creditors were fairly represented by those who attended the Scheme Meeting and the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and (iii) the arrangement is such that an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve.

- 12.2.5 Even if the Schemes are approved at the Scheme Meeting, any Scheme Creditor who voted (or gave instructions to someone to vote on their behalf) at the Scheme Meeting may appear by counsel at the sanction hearings for either or both of the Schemes in order to make representations that either or both of the Schemes should not be approved and to object to the granting of any order of the BVI Court and/or the Hong Kong Court sanctioning the Scheme(s). The BVI Court and/or the Hong Kong Court may also be prepared to hear such representations and objections by counsel for any other person whom they are satisfied has a substantial economic interest in the Schemes. Therefore, it is possible that objections will be made at or before the Sanction Hearings for the Schemes and that any such objections will delay or possibly prevent the Schemes from being sanctioned and becoming effective.
- 12.2.6 There can be no assurance that the BVI Court and/or the Hong Kong Court will approve the Schemes. If the BVI Court and/or the Hong Kong Court do not approve the Schemes, or approve them subject to conditions or amendments which (i) the Company regards as unacceptable or (ii) would have (directly or indirectly) a material adverse effect on the interests of any Scheme Creditors and such conditions and amendments are not approved by the Scheme Creditors, the Schemes will remain ineffective.
- 12.2.7 Further, even if the BVI Court and the Hong Kong Court approve the Schemes, it is possible for any person who opposed the sanctioning of either Schemes at a sanction hearing to appeal against the granting by the BVI Court and/or the Hong Kong Court of an order sanctioning the Scheme(s). Any such appeals and/or subsequent litigation could delay the Schemes becoming effective or possibly prevent the Schemes from becoming effective at all.

*The US Bankruptcy Court may not grant the Chapter 15 Recognition Order*

- 12.2.8 The Schemes are conditional on the US Bankruptcy Court granting the Chapter 15 Recognition Order in respect of the Hong Kong Scheme. Although the Company has obtained an opinion from an independent expert that suggests this is likely, there can be no assurance that the US Bankruptcy Court will do so. It is subject to a number of considerations by the US Bankruptcy Court under the laws of the United States.

*The Schemes are inter-conditional*

- 12.2.9 The effectiveness of the Hong Kong Scheme is conditional on the sanctioning of the BVI Scheme by the BVI Court and BVI Scheme is conditional on the sanctioning of the Hong Kong Scheme by the Hong Kong Court.

12.2.10 Consequently, if one of the Schemes is not sanctioned by one of the Hong Kong Court or the BVI Court, then both Schemes will fail to become effective.

*The Schemes are conditional on the Rights Issue becoming unconditional and the Company having received the proceeds therefrom*

12.2.11 The Cash Consideration to be distributed to the Scheme Creditors under the terms of the Schemes is to be funded by the proceeds of the Rights Issue. The Company has no other source of available cash with which to pay the Cash Consideration.

12.2.12 The effectiveness of the Schemes is therefore conditional on the Rights Issue becoming unconditional and the Company having received the proceeds therefrom.

12.2.13 The Rights Issue is fully underwritten by the Underwriter pursuant to the Underwriting Agreement dated 11 March 2016. However, its agreement thereunder to subscribe for the Underwritten Shares is subject to a number of material conditions, which must be fulfilled (or otherwise waived) before its commitment becomes unconditional and fully binding. If any of these conditions cannot be satisfied, the Underwriter will not be bound to subscribe for any Shares, the Rights Issue will not proceed and it is highly likely that the Restructuring will fail.

12.2.14 In addition, the Underwriter is reliant upon external funding to underwrite the Rights Issue and such funding is not at this stage committed. If the Underwriter fails to secure its external funding, it will unlikely be able to comply with its obligations under the Underwriting Agreement and the Rights Issue will not proceed.

12.2.15 Further, even if the existing Shareholders are (between them) willing to subscribe for all of the Rights Shares without the need to rely on the Underwriting Agreement, certain of the conditions of the Underwriting Agreement reflect conditions that are integral to the completion of the Restructuring. These include, amongst others, the following:

- (a) The Shareholders passing at an EGM the various resolutions required to implement the Rights Issue and the Debt Restructuring, including resolutions to approve the proposed consolidation of every twenty (20) existing Shares into one (1) Consolidated Share and amendments to the Company's articles of association. In order for these resolutions to be passed, a simple majority of the Shareholders who attend in person or by proxy and vote at the EGM will need to approve them, except for the approval of amendments to the Company's articles of association, which requires a special resolution, being a 75% majority of the Shareholders who attend in person or by proxy and vote at the EGM.
- (b) Without limiting the above, certain key resolutions need to be passed by a simple majority of the Independent Shareholders,

which excludes Mr Wang (as controlling Shareholder) and his associates and any other Shareholder who is materially interested in the relevant matters. The Rights Issue itself, the terms of the Underwriting Agreement, the issue of the Contingent Value Rights, the Special Deal, the Whitewash Waiver, the Specific Mandate and the CVR Specific Mandate all require such approval.

- (c) The Rights Issue is also conditional upon the Executive granting the Whitewash Waiver (subject to the approval of the Independent Shareholders, as noted above) in order to avoid the Underwriter's fulfilment of its obligations under the Underwriting Agreement triggering a mandatory general offer under Rule 26 of the Takeovers Code for all Shares other than those already owned or agreed to be acquired by it or parties acting in concert with it. There is no guarantee that the Executive will grant the Whitewash Waiver.
- (d) As certain of the existing Shareholders are Scheme Creditors, the remittance of the Consent Fee and the Scheme Consideration to them would constitute a "Special Deal" under Rule 25 of the Takeovers Code, requiring approval from the Executive. Any such approval would be subject to the approval of the Independent Shareholders, as noted above, and the independent financial adviser to the independent Board committee publicly giving an opinion that the terms of the special deal were fair and reasonable.
- (e) The Listing Committee of the HKEx will need to grant listing of, and permission to deal in, the Rights Shares in their nil-paid and fully-paid forms, the Anti-dilution Shares and the Scheme Shares, and such listing and permission not being revoked prior to the latest time for termination of the Underwriting Agreement i.e. 30 May 2016.

12.2.16 There can be no assurance that any of the relevant parties noted above will pass the resolutions, or grant the approvals, required in relation to the relevant issue. If such resolutions and/or approvals are not passed and/or granted (as applicable), it is highly likely that the Rights Issue will not proceed and the Restructuring will fail.

### **12.3 Risks relating to a failure to implement or a delay in implementing the Schemes**

*The Restructuring may not be completed in accordance with the timeline envisaged by the RSA or this Explanatory Statement*

12.3.1 Factors unknown to the Company as at the date of this Explanatory Statement may result in delays to the completion of the Restructuring. There is no guarantee that the Restructuring Effective Date will occur by the Longstop Date (as such term is defined in the RSA) or the Scheme Longstop Date (as such term is defined in the Schemes), at which time the Scheme Creditors will no longer be bound by their obligations under the RSA to

support the Restructuring and not to take action against the Company and/or any Group Company, and the Schemes will lapse, respectively.

- 12.3.2 The Longstop Date and the Scheme Longstop Date may, however, be extended by agreement between the Company and the Steering Committee Majority.

*Insolvency proceedings if the Restructuring is not implemented promptly*

- 12.3.3 The Company's recent performance has highlighted the material uncertainty as to the future of coal prices and demand for coking coal. In light of the current problems facing the coal industry and the uncertainty surrounding any alternative debt or equity financing options or restructurings in the future, there can be no certainty that such sources of financing will become available.
- 12.3.4 In these circumstances, if the Restructuring is not implemented promptly, the Company and the Group will face operational challenges and financial risks in trading within the confines of its current capital structure. If revenues do not increase or a restructuring is not implemented, it is likely that the Company and the Group will be unable to sustain its current capital structure and management would have to consider placing the Company and other members of the Group into an insolvency procedure.
- 12.3.5 In particular, the Company has limited available cash and believes that should the Debt Restructuring not proceed, it would be unable to repay its indebtedness under and in connection with the Notes. Unless the Company and the Directors are able to satisfy themselves that an alternative financial restructuring is likely to be successful, which the Company considers very unlikely given the time and cost of the negotiating the Restructuring, it is likely that the Company and other members of the Group will enter into liquidation or other appropriate insolvency proceedings.
- 12.3.6 If the Company and other Group companies are placed into a formal insolvency procedure, the proceeds available to Scheme Creditors may be reduced to a level that is considerably lower than the potential value of the consideration they would receive under the Schemes (as per the Liquidation Analysis summarised in paragraph 5.9 of Section 5 (*Background to the Schemes and the Restructuring*) to this Explanatory Statement.).

**12.4 Risks relating to the Scheme Consideration to be issued and distributed under the Schemes**

*The present value of the Scheme Shares is uncertain*

- 12.4.1 As outlined in section 10.3 above, the Directors have ascribed a value of US\$12,500,000 to the Scheme Shares for the limited purposes of the Schemes and the allocation of the Elective Scheme Consideration as between the Participating Scheme Creditors. Although the Directors consider this value to be reasonable and appropriate for these purposes, there is no guarantee that it represents the true value, present or future, of the Scheme Shares. That value may be higher or lower than US\$12,500,000.

- 12.4.2 The value of the Scheme Shares will, in large part, depend on the future performance of the Company and the Group, including the implementation and success of its new business plan. There is no guarantee that the business will perform as anticipated, the assumptions underpinning the Company's present business model may or may not prove to be accurate and if any of the various risks outlined below were to materialise, it would be likely to have an adverse impact on the Scheme Shares.
- 12.4.3 Scheme Creditors are cautioned to seek professional advice in relation to their decisions with respect to the Scheme and, in particular, their election in relation to the Elective Scheme Consideration.

*The future value of the Scheme Shares will be uncertain and the market price may be volatile*

- 12.4.4 Following the Restructuring, the Shares (including the Scheme Shares) will continue to be listed on the Main Board of the HKEx.
- 12.4.5 World, and particularly Asian, equity markets have been exceptionally volatile and have experienced some heavy intra-day falls in value in recent times that have been unrelated to the operating performance of individual companies. This may continue to be the case after completion of the Restructuring. General market conditions are affected by many factors, including general economic outlook, movements in (or outlook on) interest and inflation rates, currency fluctuations and the demand for and supply of capital.
- 12.4.6 These market fluctuations may adversely affect the price and value of the Scheme Shares, regardless of the Group's operating performance. The price at which the Scheme Shares could be sold may not reflect the underlying value of the Group following the Restructuring and the price at any particular time at which a Scheme Creditor wishes to dispose of its Scheme Shares may be influenced by a number of factors.

*No assurance of future dividends in respect of the Scheme Shares*

- 12.4.7 Under the laws of the BVI, the Company may only pay dividends out of its profits or its share premium account subject to its ability to service its debts as they fall due in the ordinary course of its business. The Company's ability to pay dividends on the Scheme Shares will therefore depend on its ability to generate sufficient profits. There can be no assurance that it will ever declare dividends of any amount. The Company has not paid any dividends since 31 December 2012.
- 12.4.8 Future dividends, if any, will be at the discretion of the Board and will depend upon the Group's future operations and earnings, capital expenditure requirements, general financial condition, legal and contractual restrictions and other factors that the Board deems relevant. As the Company is a holding company, it relies principally on dividends, if any, paid by its subsidiaries to fund its own dividend payments, if any, to Shareholders. Any limitation on the ability of its subsidiaries to pay

dividends could have a material adverse effect on the Company's ability to pay dividends.

- 12.4.9 Inner Mongolia Haotong Energy Joint Stock Co., Ltd., a non-wholly owned subsidiary of the Company, is prohibited from paying any dividend to its shareholder(s) under the terms of a RMB 4,500,000 loan from the Bank of Jilin Tonghua Erdaojiang Branch until the loan principal, accrued interest and expenses have been repaid.

*Dilution by further issuances of Shares or other securities*

- 12.4.10 Following completion of the Restructuring, the Company may require additional funding to meet its working capital or capital expenditure requirements or in connection with acquisitions or other transactions in the future.

- 12.4.11 If the Company raises such funding by issuing new Shares or other equity-linked securities, it may dilute the percentage ownership of the then existing Shareholders (subject to the Shareholders exercising any pre-emption rights, and benefiting from the effect of any anti-dilution rights, that they may have). Sales of a substantial number of Shares or other equity-linked securities in the public market could depress the market price of the Scheme Shares, and impair the ability of the Company to raise capital through the sale of additional Shares or equity-linked securities.

- 12.4.12 Alternatively, if the Company sought to meet its funding requirements by way of additional debt financing, those financing arrangements might include various restrictions that would, among other things, limit the Company's ability to pay dividends in respect of the Shares and, more generally, its ability to pursue its business strategies.

- 12.4.13 In addition, as noted below, the Company is entitled to satisfy its obligations in respect of the Contingent Value Rights (if a CVR Trigger Event arises) by issuing new Shares. These would also serve to dilute the Scheme Shares.

*Minority shareholding*

- 12.4.14 On completion and implementation of the Restructuring, the Scheme Creditors will hold 18.75% of the total issued Shares as at the Final Distribution Date. Accordingly, although the Company is subject to the Hong Kong Listing Rules and other laws and regulations established to protect the interests of minority shareholders, as minority shareholders the Scheme Creditors will not have the ability to exercise control over the Company and their ability to influence decisions at the shareholder level will be limited.

*Risk that the Shares will be de-listed, or trading will be suspended, in the future*

- 12.4.15 The Exchange may suspend from trading or delist the Shares in the future. Suspension from trading of the Shares may, and delisting of the Shares will, result in the Scheme Creditors being unable to trade the Shares. In addition, delisting of the Shares will result in the cancellation of all of the currently issued and outstanding Shares of the Company.

*The present and future value of the Contingent Value Rights is uncertain*

- 12.4.16 A Scheme Creditor's entitlement to receive a payment under the terms of the Contingent Value Rights that it receives under the Schemes is entirely contingent on the occurrence of the CVR Trigger Event within five years of the Initial Distribution Date. If this does not occur within that timescale, the Contingent Value Rights will expire and the Scheme Creditor will receive nothing in respect of the instrument.
- 12.4.17 As with the value of the Scheme Shares, whether or not the CVR Trigger Event occurs within five years of the Initial Distribution Date will depend on the future performance of the Company and the Group. There can be no assurance that the Company will generate the level of cash profit required for the CVR Trigger Event to occur.
- 12.4.18 Even if the CVR Trigger Event does occur and a Scheme Creditor is entitled to receive a payment under the terms of its Contingent Value Rights, the Company is entitled to satisfy its obligation by issuing CVR Shares rather than by making a cash payment. The risks identified above with respect to the value of the Scheme Shares are equally applicable to any CVR Shares.

## **12.5 Risks following the implementation of the Schemes**

*Volatility of coal prices*

- 12.5.1 The market price of coal is volatile and is affected by numerous factors that are beyond the control of the Company. These include international supply and demand, the level of consumer product demand, international economic trends, global or regional political events and international events as well as a range of other market forces. Sustained downward movements in coal market prices, as recorded consecutively in the years of 2013, 2014 and 2015 have materially affected the Group's business. The combined effects of any or all of these factors on coal prices are impossible to predict, and there can be no assurance that global and domestic coal prices will not continue to fall or will rebound to a profitable level, which would have material and adverse effect on the financial condition of the Company and the Group. In addition, short-term coal price volatility means the Group may have to purchase raw coking coal at prices higher than it expects to fulfil sales contracts. The Group may not always be able to pass the cost increase of raw coal on to customers now or in the future. This may adversely affect the Group's gross margins and profitability.

*Dependency on the steel industry*

- 12.5.2 The Company's business and prospects are heavily dependent on the demand for coking coal by steel makers and coke plants in the PRC. The steel industry's demand for metallurgical coal is affected by a number of factors including the cyclical nature of that industry's business, technological developments in the steel-making process and the availability of substitutes for steel such as aluminium, composites and plastics. In the years of 2014 and 2015, Chinese steel mills continued to cut down their production as steel prices continued to decline under a weak domestic and international

economic environment. Such significant reduction in the demand for steel products reduced the demand for metallurgical coal, which had a material adverse effect on the Group's profitability.

*Risks associated with the new business model*

- 12.5.3 As noted in paragraphs 5.4.1 to 5.4.5 above, the Group is developing a new business model. The new business model may have different operational parameters and carry a higher risk profile when compared to the Group's more established, existing businesses.
- 12.5.4 In addition, the implementation of the new business model may expose the Company to new challenges and risks, including but not limited to (i) insufficient experience, expertise and skills in offering new services; (ii) stricter regulation and increased credit risks, market risks and operational risks; (iii) failure to achieve investment returns from its new businesses; (iv) lack of market and customer acceptance of the integrated service platform and services; (v) failure to accurately analyse or judge market conditions; (vi) failure to obtain sufficient financing from internal and external sources to support its business segments which facilities are critically important to growing the business and will be used as back-to-back financing for the trading segment and to facilitate the supply-chain financing segment and (vii) failure to enhance its risk management capabilities and IT systems in a timely manner to support its new businesses and a broader range of products and services.
- 12.5.5 If the Group is unable to achieve the expected results with respect to the new business model, the Group's business, financial condition, results of operations and prospects could be materially and adversely affected.

*The Group has significant levels of indebtedness, much of which is due for repayment in the coming year, which could adversely affect the Group and its Shareholders*

- 12.5.6 As noted in paragraphs 5.3.13 and 11.6.2 above, as at 30 November 2015, the Group had total on-shore bank debt of approximately HK\$1.205 billion. Interest rates on these loans range from 1.53% to 7.20% per annum. The Group's gearing ratio (calculated on the basis of total liabilities divided by total assets) as at 30 November 2015 was 114.81%, compared to 96.28% at the end of 2014 and 72.91% at the end of 2013. If the Restructuring is completed, it is anticipated that the Group's gearing ratio will fall to 65.96%.
- 12.5.7 As such, the Group will remain significantly indebted, even after completion of the Restructuring. Given the Group's limited liquidity, there are therefore material uncertainties about the ability of the Group company borrowers to continue as a going concern. Their ability to do so following completion of the Restructuring will depend on various factors (including but not limited to the Group's ability to implement its plans to control costs successfully and to generate adequate cash flows from operations).
- 12.5.8 A further key issue will be the Group's ability to renew all existing loan facilities on or before their maturity and/or to obtain additional financing as

and when required (particularly as several aspects of the Company's new business model will be heavily dependent on obtaining suitable new facilities from onshore financial institutions). Many lenders to companies in the coal and steel sector in the PRC are refusing to extend any existing facilities, or make any new facilities available, in the current climate and are requiring payment on maturity. The Company is in very regular dialogue with its existing on-shore lenders and the situation is stable as at the date of this Explanatory Statement. However, there is no guarantee that this situation will continue in the future.

*Exchange rate risk*

- 12.5.9 The Group's on-shore bank loans are mainly settled in United States dollars or Renminbi. As a result, the Group's financial position and results are impacted by the exchange rate fluctuations relating to those currencies. Fluctuations in exchange rates may adversely affect the total amount of bank loans owed by the Group as Renminbi is translated or converted into US dollars or Hong Kong dollars. Any unfavourable movement in exchange rates may lead to an increase in the costs of the repayment of such bank loans owed by the Group, which could materially affect the Group's operations and results.
- 12.5.10 Similarly, the Group is exposed to currency risk through sales and purchases which give rise to payables and cash balances denominated in a foreign currency. The currencies giving rise to this risk are, again, primarily United States dollars and Renminbi. Any unfavourable movement in exchange rates may lead to an increase in the costs of the Group or a decline in sales, which would materially affect the Group's operations and results.
- 12.5.11 With a view to mitigating these risks, the Company employs a team specialising in capital management in the market. The team makes use of bank financial products or other financing tools to reduce financial costs and hedge financial risks in exchange rate or other market movements.

*Changes in the PRC political and economic policies*

- 12.5.12 The PRC is a key market for the Group and most of its assets are located in the jurisdiction.
- 12.5.13 While the PRC government has been pursuing economic reforms to transform its economy from a planned economy to a market-oriented economy since 1978, a significant part of the PRC economy is still being operated under various controls of the PRC government. By imposing industrial policies and other economic measures, such as control of foreign exchange, taxation and foreign investment, the PRC government exerts considerable direct and indirect influence on the development of the PRC economy. Many of the economic reforms carried out by the PRC government are unprecedented or experimental and are expected to be refined and improved over time.

12.5.14 Recently, the PRC government has been contemplating and introducing in-depth structural reforms in the PRC in order to further transition the PRC economy into a market economy. Political, economic and social factors may also lead to further adjustments of the PRC reform measures, including its fiscal and monetary policies. This reform and adjustment process may not necessarily have a positive effect on the Group's operations and future business development. The Group's business, prospects and results of operations may be materially and adversely affected by changes in the PRC economic and social conditions and by changes in the policies of the PRC government, such as measures to control inflation, changes in the rates or method of taxation, changes in government spending, and the imposition or lifting of restrictions on currency conversion.

*Uncertain legal environment in the PRC*

12.5.15 A number of the Group's principal operating subsidiaries are foreign-invested enterprises in the PRC and are subject to laws and regulations applicable to foreign investments in the PRC in general and laws and regulations applicable to wholly foreign-owned enterprises and Sino-foreign joint venture enterprises in particular.

12.5.16 The PRC legal system is a civil law system based on written statutes. Unlike the common law system, the civil law system is a system in which decided legal cases have little precedential value. While the PRC government, with its economic reform in 1978, has made significant progress in the promulgation of laws and regulations dealing with economic matters such as corporate organisation and governance, foreign investment, commerce, taxation and trade, its continued promulgation of new laws, changes in existing laws and abrogation of local regulations by national laws may have a negative impact on the Group's business and prospects. In addition, because of the limited volume of published cases and their non-binding nature, the interpretation and enforcement of these laws, regulations and legal requirements involve significant uncertainties. These uncertainties could limit the legal protections available to foreign investors with investments in the PRC.

*We may face adverse third-party reports and negative publicity*

12.5.17 In January 2012, the Company was the subject of a report published by an organisation called Jonestown Research, an unidentified entity, which included various allegations of material misstatements and fraud on the part of the Company, including with respect to (i) the basis of calculation of the Company's inventory, (ii) the margin for clean coal, (iii) the discrepancy between official records and the Company's disclosure as to import volumes, (iv) the relationship between the Company and various entities, including Moveday Enterprises Ltd and certain import agents, and (v) the Company's office in Macau. An announcement responding to and refuting the allegations in the Jonestown report was published by the Company on 20 January 2012, to which two further responses were published by Jonestown on 20 January and 30 January 2012 (together "**Jonestown Reports**"). Subsequent to the Company's 20 January 2012 announcement, the

Company conducted an internal investigation in respect of the allegations made in the Jonestown Reports which concluded that there was no basis to substantiate such allegations in any material respect.

- 12.5.18 Whilst the Company has not been the target of any further similar attacks or allegations since the Jonestown Reports, there can be no assurance that it will not be the subject of similar action in future. Any such negative publicity or unfavourable reports, even if unsubstantiated, could have a material adverse effect on the trading price of the Shares or have a materially adverse effect on the image or reputation of the Company and thereby materially affect the trading prospects and profitability of the Company.

## **13 TAXATION**

*The following is a high-level summary of certain material tax consequences relating to the Schemes and does not purport to be a complete analysis of all tax considerations relating to the Schemes and to all Scheme Creditors. The tax consequences set forth below in this high-level summary are based on the applicable law, regulations, court decisions, revenue rulings and administrative proceedings (which may not be binding) as of the date of this Explanatory Statement, and all of which are subject to change or changes in interpretation and are not intended to be exhaustive. Scheme Creditors should particularly note that any such change or changes in interpretation could have retroactive effect so as to result in tax consequences different from those discussed below. No representations are made regarding the tax consequences of the Schemes for any particular Scheme Creditor. This information is not a substitute for independent advice pertaining to the particular circumstances of the Scheme Creditors. Accordingly, Scheme Creditors are urged to consult their own tax advisers without delay with respect to the particular tax consequences to them of the Schemes, including the tax consequences under any applicable laws.*

### **13.1 Hong Kong taxation**

#### *Company*

13.1.1 Any gain (if any) realised by the Company on redemption of the Notes is likely to either have not arisen from carrying out its normal course of trade or business in Hong Kong or be capital in nature, and hence not within the scope of Hong Kong Profits Tax. Nor is it anticipated that any adverse Hong Kong Profits Tax implications will arise for the Company from the release of the relevant share charges.

#### *Subsidiary Guarantors*

13.1.2 On the understanding that the relevant Hong Kong commercial accounts have not included a provision for payment under any Guarantee and that the release of the Guarantee will also not have any impact in such accounts, it is not anticipated that any adverse Hong Kong Profits Tax implications will arise for the Subsidiary Guarantors from the release of the relevant Guarantees. Similarly, for those Subsidiary Guarantors that granted a share charge, it is not anticipated that any adverse Hong Kong Profits Tax implications will arise for those Subsidiary Guarantors from the release of the relevant share charges.

#### *Scheme Creditors*

13.1.3 The following high-level summary assumes that the Notes (i) are held by Scheme Creditors which are individuals or corporations which carry on business in Hong Kong, (ii) have been acquired and held by the Hong Kong Scheme Creditors for long term investment purposes, and (iii) are properly treated as debt for Hong Kong Profits Tax purposes.

13.1.4 Any loss (if any) realised by the Hong Kong holder upon the receipt of the Scheme Consideration on the final settlement of the Hong Kong holder's Notes would be considered capital in nature and therefore non-taxable for Hong Kong Profits Tax purposes.

## **13.2 British Virgin Islands taxation**

### *Company*

13.2.1 Redemption of the Notes and payment of the Scheme Consideration and Consent Fee is not expected to trigger any adverse tax implications for the Company in the BVI, nor in connection with its release from the share charges.

### *Subsidiary Guarantors*

13.2.2 No adverse BVI tax implications should arise to the Subsidiary Guarantors in connection with their release from the Guarantees and share charges.

### *Scheme Creditors*

13.2.3 Redemption of the Notes and receipt of the Scheme Consideration is not expected to trigger any adverse tax implications for Scheme Creditors which are resident in the BVI.

## **13.3 People's Republic of China taxation**

### *Company*

13.3.1 No adverse PRC tax implications should arise to the Company under the Debt Restructuring provided that the Company is not tax resident in the PRC; otherwise, any gain realised upon the redemption of the Notes would be subject to PRC Enterprise income tax at a rate of 25%.

13.3.2 The Company has taken the position that it is not tax resident in the PRC.

### *Scheme Creditors*

13.3.3 If the Company is deemed to be tax resident in the PRC, the PRC tax authorities may allocate the Scheme Consideration firstly to the scheduled and accrued interest payments, which would see such amounts subject to 10% PRC income tax on a withholding basis.

13.3.4 To the extent that the Consent Fee is not part of the consideration given by the Company to Scheme Creditors under the Debt Restructuring but rather an inducement for the Scheme Creditors to agree to the Debt Restructuring, the Consent Fee will likely be PRC sourced income to the Scheme Creditors and subject to PRC income tax at 10%.

## **13.4 Singapore taxation**

### *Company and Subsidiary Guarantors*

13.4.1 Provided that the Debt Restructuring is negotiated, signed and delivered outside of Singapore, any income or gain (if any) recognised by the Company on the redemption of the Notes should not be subject to Singapore taxation. There should not be any adverse tax implications for the Company arising from the redemption of the Notes.

13.4.2 On the understanding that the proposed release of the Guarantees and share charges should not have any profit or loss impact in the commercial accounts of the Subsidiary Guarantors and the Company respectively, there should not be any adverse tax implications for the Subsidiary Guarantors and the Company in Singapore arising from the release of the Guarantees and the share charges.

#### *Scheme Creditors*

13.4.3 The following high-level summary assumes that (i) the payments relating to the Notes are derived from Singapore by Scheme Creditors which are individuals or corporations which carry on a trade, profession or business in Singapore or receive Scheme Consideration and/or a share of the Consent Fee in Singapore, (ii) the Notes have been acquired and held by the Scheme Creditors for long term investment purposes and not as part of a trading portfolio, and (iii) the Notes are treated as debt for Singapore Tax purposes.

13.4.4 Broadly speaking, no adverse tax consequences should arise to such Scheme Creditors under the Debt Restructuring which are individuals. Such Scheme Creditors under the Debt Restructuring which are corporations may be subject to tax in Singapore on:

- (a) the portion of the Scheme Consideration received that is allocable to accrued and scheduled interest payments on the Notes; and
- (b) the portion of the Consent Fee which has been computed with reference to the accrued and scheduled interest payments on the Notes.

### **13.5 Taiwan taxation**

#### *Scheme Creditors*

13.5.1 Taiwan tax authorities could potentially argue that Scheme Consideration paid to Taiwan corporate and individual Scheme Creditors is firstly attributable to accrued interest payable if there is insufficient evidence under local regulations or scheme documentation which supports that the consideration received is to discharge principal as opposed to the interest receivable. In such circumstances, Taiwan corporate and individual Scheme Creditors could be subject to 17% corporate income tax and 20% alternative minimum tax respectively on the portion of the consideration attributable to accrued interest.

13.5.2 Consent fees payable to Taiwan corporate and individual Scheme Creditors will be subject to 17% corporate income tax and 20% alternative minimum tax respectively to the extent that such amount is unconnected with the principal and accrued interest amounts due under the Notes but rather payable only to those Taiwan Scheme Creditors which consent to become a party to the Restructuring Support Agreement by the specific time.

## **13.6 United States taxation**

### *Company, Subsidiary Guarantors, Scheme Creditors*

- 13.6.1 As the Company is not a US corporation and is not engaged in a US trade or business, a redemption of the Notes and payment of the Scheme Consideration and the Consent Fee is not expected to trigger any adverse tax implications for the Company in the US. Furthermore, the governance of the Notes under New York state law and the recognition of the Debt Restructuring by the US Bankruptcy Court should not, in and of itself, result in the Company having a taxable nexus in the US.
- 13.6.2 No adverse tax implications will arise for the Subsidiary Guarantors or the Scheme Creditors under the Debt Restructuring.

## **13.7 Australia taxation**

### *Subsidiary Guarantor*

- 13.7.1 No adverse Australian Income Tax, Goods and Services Tax or Stamp Duty implications should arise to the Australian incorporated Subsidiary Guarantor in connection with its release from the Guarantee and the share charge.

### *Scheme Creditors*

- 13.7.2 The following high-level summary assumes that (i) the Notes are held by Scheme Creditors which are individuals or corporations that are resident in Australia, (ii) the Scheme Creditors are not subject to the Taxation of Financial Arrangement rules in Division 230 of the income Tax Assessment Act 1997 (Cth) and hold the Notes on capital account for tax purposes and (iii) the Scheme Consideration received by a Scheme Creditor will not exceed the capital gains tax cost base of the cancelled Notes.
- 13.7.3 No adverse Australian Income Tax, Goods and Services Tax or Stamp Duty implications should arise to Scheme Creditors in connection with the:
- (a) redemption of the Notes issued by the Company;
  - (b) payment of Cash Consideration to the Scheme Creditors under the Debt Restructuring;
  - (c) issuance of Scheme Shares by the Company to Scheme Creditors under the Debt Restructuring; and
  - (d) issuance of Contingent Value Rights by the Company to Scheme Creditors under the Debt Restructuring.
- 13.7.4 To the extent that the Consent Fee is found not to be part of the consideration given by the Company to Scheme Creditors under the Debt Restructuring but rather an inducement for the Scheme Creditors to agree to the Debt Restructuring, the Consent Fee will more likely be ordinary income to the Scheme Creditors (as opposed to a capital receipt).

## **Appendix 1**

### **Definitions and Interpretation**

#### **1 DEFINITIONS**

In this Explanatory Statement:

<b>"2015 Interim Results"</b>	means the Company's interim results for the six months ended 30 June 2015.
<b>"Account Holder"</b>	means persons who are direct participants in the Depositary with their interests in the Global Note being recorded directly in the books or other records maintained by the Depositary.
<b>"Account Holder Letter "</b>	means the form of account holder letter set out in Appendix 5 ( <i>Solicitation Packet</i> ) of this Explanatory Statement.
<b>"Advisers"</b>	means Akin Gump, AlixPartners, Bondcom, Daniel Glosband, Houlihan Lokey, Reed Smith, Ropes & Gray, Stephenson Harwood, UBS, Walkers, Campbells and Vertus.
<b>"Affiliates"</b>	means, in relation to any person, its current and former direct and indirect subsidiaries, subsidiary undertakings, parent companies, holding companies, partners, equity holders, members and managing members, and any of their respective Affiliates.
<b>"Aggregate Maximum Claim Amount"</b>	means an amount equal to the total outstanding principal and accrued but unpaid interest in respect of the Notes at the Record Time.
<b>"Aggregate Submitted Scheme Claim Amount"</b>	means an amount equal to the Scheme Claims of the Participating Scheme Creditors at the Record Time.
<b>"Akin Gump"</b>	means Akin Gump Strauss Hauer & Feld and its affiliates.
<b>"AlixPartners"</b>	means AlixPartners Services UK LLP and AlixPartners Hong Kong, Ltd.
<b>"Anti-dilution Shares"</b>	means the new Consolidated Shares to be allotted and issued to Qualifying Shareholders

	who elect to take up the Rights Shares for the purpose of protecting the Rights Issue from the dilutive effect of the issuance of Scheme Shares.
<b>"Australia Security Release Deed"</b>	means the security release deed substantially in the form attached at Schedule 4 to the Release Instructions.
<b>"Bar Date"</b>	means 5:00 p.m. New York time on the date falling three months after the Restructuring Effective Date (or if such date is not a Business Day, the next Business Day after that date), the equivalent being 5:00 p.m. BVI time on that day / 5.00 am Hong Kong time on the next day, as notified by the Company pursuant to Clause 12 of the Schemes, being the last date for submission of a duly completed Account Holder Letter and Distribution Confirmation Deed.
<b>"Board"</b>	means the board of Directors.
<b>"Bondcom"</b>	means Bondholder Communications Group, LLC.
<b>"Business Day"</b>	means any day on which banks are open for business generally in all of Hong Kong, New York and the BVI.
<b>"BVI"</b>	means the British Virgin Islands.
<b>"BVI Companies Act"</b>	means the BVI Business Companies Act (2004).
<b>"BVI Court"</b>	means the Eastern Caribbean Supreme Court in the High Court of Justice (Virgin Islands), Commercial Division and any court capable of hearing appeals therefrom.
<b>"BVI Court Order"</b>	means the sealed copy of the order of the BVI Court sanctioning the BVI Scheme.
<b>"BVI Registrar of Companies"</b>	means the Registrar of Corporate Affairs (including the Deputy Registrar and the Assistant Registrar) appointed under the BVI Companies Act in the BVI.
<b>"BVI Court Sanction Hearing"</b>	means the hearing at the BVI Court of the petition in respect of the sanctioning of the BVI Scheme.

<b>"BVI Scheme"</b>	means the scheme of arrangement between the Company and the Scheme Creditors under section 179A of the BVI Companies Act in its present form or with or subject to any non-material modifications, addition or conditions that the BVI Court may approve or impose.
<b>"BVI Scheme Meeting"</b>	means a meeting of the Scheme Creditors in relation to the BVI Scheme as convened by an order of the BVI Court for the purpose of considering and, if thought fit, approving the BVI Scheme, and any adjournment thereof.
<b>"BVI Scheme Steps"</b>	means the steps set out in Clause 11 of the BVI Scheme.
<b>"BVI Security Release Deed"</b>	means the security release deed substantially in the form attached at Schedule 1 to the Release Instructions.
<b>"Campbells"</b>	means Campbells (BVI) and its Affiliates.
<b>"Cash Consideration"</b>	means the cash consideration to be distributed to the Scheme Creditors in accordance with the terms of the Schemes, in a total amount of US\$41,703,334.
<b>"Cash Shortfall"</b>	has the meaning given to it in Clause 19.1.2 of the Schemes.
<b>"CEO"</b>	means the chief executive officer of the Company.
<b>"Chairperson"</b>	means the chairperson of the Scheme Meetings.
<b>"Chapter 15 Recognition Order"</b>	means an order of the US Bankruptcy Court recognising and giving effect to certain aspects of the compromise and arrangement set out in the Hong Kong Scheme, including the release of the Company under Clause 28 of the Schemes.
<b>"Cheer Top"</b>	means Cheer Top Enterprises Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 635981.
<b>"Claim"</b>	means all and any actions, causes of action,

claims, counterclaims, suits, debts, sums of money, accounts, contracts, agreements, promises, contribution, indemnification, damages, judgments, executions, demands or rights whatsoever or howsoever arising, whether present, future, prospective or contingent, known or unknown, whether or not for a fixed or unliquidated amount, whether or not involving the payment of money or the performance of an act or obligation or any failure to perform any obligation or any omission, whether arising at common law, in equity or by statute in or under the laws of Hong Kong, New York, the BVI or under any other law or in any other jurisdiction howsoever arising and **"Claims"** shall be construed accordingly.

<b>"Collateral"</b>	means all collateral securing, or purported to be securing, directly or indirectly, the Notes or any Guarantee pursuant to the Security Documents.
<b>"Collateral Agent"</b>	means Deutsche Bank Trust Company Americas as collateral agent under the Indenture.
<b>"Color Future"</b>	means Color Future International Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 635946.
<b>"Companies Ordinance"</b>	means the Companies Ordinance (Cap. 622) (as amended) as applicable in Hong Kong.
<b>"Company"</b>	means Winsway Enterprises Holdings Limited (formerly Winsway Coking Coal Holdings Limited), a company incorporated with limited liability under the laws of the BVI and registered with company number 1431969 and registered as a non-Hong Kong company with the Hong Kong Registrar of Companies.
<b>"Company Registrars"</b>	means the Hong Kong Registrar of Companies and the BVI Registrar of Companies.
<b>"Consent Fee"</b>	means the fee payable under the terms of the RSA to the Consent Fee Recipients, being in

	aggregate an amount equal to 2% of the outstanding principal and accrued but unpaid interest on the Notes as at 25 November 2015.
<b>"Consent Fee Deadline"</b>	means 5.00 pm (Hong Kong time) on 23 December 2015 (or such later date as may be agreed between the Company and the Steering Committee Majority).
<b>"Consent Fee Recipients"</b>	means those Scheme Creditors who acceded to the RSA on or before the Consent Fee Deadline.
<b>"Consenting Scheme Creditor"</b>	means a Scheme Creditor who has executed or otherwise acceded to the RSA.
<b>"Consolidated Shares"</b>	means the ordinary share(s) of the Company immediately after the consolidation proposed by the Company in conjunction with the Rights Issue.
<b>"Contingent Value Rights"</b>	means the rights conferred by the Contingent Value Rights Instrument.
<b>"Contingent Value Rights Instrument"</b>	means the contingent value rights instrument substantially in the form set out in Appendix 9 ( <i>Contingent Value Rights Instrument</i> ) to this Explanatory Statement.
<b>"Court Orders"</b>	means the BVI Court Order and the Hong Kong Court Order.
<b>"CVR Specific Mandate"</b>	means the specific mandate to be granted by the Independent Shareholders to the Board at the EGM to authorise the Directors to issue the CVR Shares.
<b>"CVR Maturity Date"</b>	means the date that is five years after the Initial Distribution Date.
<b>"CVR Register"</b>	means the register of holders of the Contingent Value Rights.
<b>"CVR Registrar"</b>	means Maples Fund Services (Cayman) Limited.
<b>"CVR Share"</b>	means any share issued by the Company to settle any Contingent Value Right following the occurrence of a CVR Trigger Event.
<b>"CVR Trigger Event"</b>	has the meaning given to it in paragraph

9.8.2(b) of Section 9 of this Explanatory Statement.

**"Debt Restructuring"**

means the transaction pursuant to which the obligations of the Company and the Subsidiary Guarantors under and in connection with the Notes will be subject to a compromise and arrangement effected by the Schemes.

**"Deed of Undertaking"**

means a deed of undertaking substantially in the form set out in Schedule 2 to the Schemes.

**"Depository"**

means The Depository Trust Company, as depository and clearing system in respect of the Notes.

**"Designated Recipient"**

means any single entity that is designated as such by a Scheme Creditor in accordance with a valid Designated Recipient Form as the recipient of all of the Scheme Shares and Contingent Value Rights otherwise to be issued to such Scheme Creditor, subject to limitations in accordance with applicable securities laws and provided that (i) the Designated Recipient shall only be validly designated if it has submitted all Distribution Confirmation Deeds and/or any other applicable forms that its designating Scheme Creditor is required to submit pursuant to the Hong Kong Scheme; (ii) a Scheme Creditor may designate only one such entity and if such entity is a nominee holder it may only hold on behalf of one beneficial holder; and (iii) the Designated Recipient is not a Disqualified Person or a Prohibited Transferee.

**"Designated Recipient Form"**

means the form attached to the Account Holder Letter and available on the Scheme Website by which a Scheme Creditor may appoint a Designated Recipient to be the recipient of the Scheme Shares and Contingent Value Rights that would otherwise be issued to a Scheme Creditor.

**"Directors"**

means the board of directors of the Company

	from time to time.
<b>"Disqualified Person"</b>	means a person who is disqualified from holding, receiving or handling any Scheme Consideration pursuant to any applicable laws or regulations.
<b>"Distribution Confirmation Deed"</b>	means the form attached to the Account Holder Letter and available on the Scheme Website confirming amongst other things that the Scheme Creditor or its Designated Recipient may lawfully be issued the Scheme Shares and the Contingent Value Rights.
<b>"EGM"</b>	means an extraordinary general meeting of the Company.
<b>"E-Steel Holdings"</b>	means E-Steel Holdings Pte. Ltd. (formerly known as Winsway Mongolian Transportation Pte Ltd.) a company incorporated under the laws of Singapore and registered with number 201010051R.
<b>"Election Form"</b>	means the form attached to the Account Holder Letter and available on the Scheme Website by which a Scheme Creditor may elect to receive its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration and/or Scheme Shares.
<b>"Elective Scheme Consideration"</b>	means the Cash Consideration and the Scheme Shares.
<b>"Elective Scheme Consideration Value"</b>	means US\$54,203,334.
<b>"Eternal"</b>	means Eternal International Logistics Limited, a company incorporated with limited liability under the laws of Hong Kong and registered with number 1520785.
<b>"Executive"</b>	means the Executive Director of the Corporate Finance Division of the SFC of Hong Kong, or any delegate of the Executive Director
<b>"Final Distribution Date"</b>	means the date falling 10 Business Days after the Bar Date, as notified by the Company

	pursuant to Clause 12 of the Schemes.
<b>"GCC"</b>	means Grande Cache Coal Corporation.
<b>"Global Deed of Release"</b>	means the deed of release substantially in the form set out in Appendix 10 of this Explanatory Statement.
<b>"Global Note"</b>	has the meaning given to it in Clause 4.2 of the Schemes.
<b>"Group"</b>	means the Company and its subsidiaries from time to time.
<b>"Group Company"</b>	means any company that is a member of the Group.
<b>"Group Releasing Parties"</b>	has the meaning given to it in Clause 28.2 of the Schemes.
<b>"Guarantees"</b>	means each of the guarantees of the Notes given by the Subsidiary Guarantors.
<b>"HKEx"</b>	means The Stock Exchange of Hong Kong Limited.
<b>"Hong Kong"</b>	means the Hong Kong Special Administrative Region of the People's Republic of China.
<b>"Hong Kong Court"</b>	means the High Court of Hong Kong and any court capable of hearing appeals therefrom.
<b>"Hong Kong Court Order"</b>	means office copies of the orders of the Hong Kong Court sanctioning the Hong Kong Scheme.
<b>"Hong Kong Court Sanction Hearing"</b>	means the hearing at the Hong Kong Court of the petition in respect of the sanctioning of the Hong Kong Scheme.
<b>"Hong Kong Registrar of Companies"</b>	means the Registrar of Companies in Hong Kong.
<b>"Hong Kong Scheme"</b>	means the scheme of arrangement between the Company and the Scheme Creditors pursuant to sections 673 and 674 of the Companies Ordinance in its present form or with or subject to any non-material modifications, addition or conditions that the High Court may approve or impose.

<b>"Hong Kong Scheme Meeting"</b>	means a meeting of the Scheme Creditors in relation to the Hong Kong Scheme as convened by order of the High Court for the purpose of considering and, if thought fit, approving the Hong Kong Scheme, and any adjournments thereof.
<b>"Hong Kong Scheme Steps"</b>	means the steps set out in Clause 11 of the Hong Kong Scheme.
<b>"Hong Kong Security Release Deed"</b>	means the security release deed substantially in the form attached at Schedule 2 to the Release Instructions.
<b>"Houlihan Lokey"</b>	means Houlihan Lokey (China) Limited.
<b>"Houlihan Lokey Success Fee"</b>	means the success fee payable by the Company to Houlihan Lokey in accordance with the engagement letter between the Company and Houlihan Lokey dated 4 May 2015.
<b>"Indenture"</b>	means the indenture dated 8 April 2011 between, amongst others, the Company, certain of its subsidiaries and the Note Trustee as amended, varied and supplemented from time to time including by a supplemental indenture dated 24 April 2012 and a second supplemental indenture dated 11 October 2013.
<b>"Independent Shareholders"</b>	means, in relation to the Whitewash Waiver, the Rights Issue, the Underwriting Agreement, the issue of the CVRs, the Specific Mandate, the CVR Specific Mandate and the Special Deal, the Shareholder(s) other than (i) the Underwriter and its concert parties; and (ii) those who are involved or interested in the Rights Issue, the Underwriting Agreement, the Whitewash Waiver, the issue of the CVRs, the Specific Mandate, the CVR Specific Mandate and the Special Deal and (iii) Scheme Creditors who are also Shareholders and their respective concert parties.
<b>"Information Agent"</b>	means Bondcom.

<b>"Initial Cash Amount"</b>	means the amount of the Cash Consideration to be paid to the Initial Scheme Creditors on the Initial Distribution Date in accordance with Clause 19.1 of the Schemes.
<b>"Initial Cash Elector"</b>	means an Initial Scheme Creditor that has elected (in its Election Form) to receive some or all of its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration.
<b>"Initial CVR Pool"</b>	means the amount of the Contingent Value Rights to be issued to the Initial Scheme Creditors on the Initial Distribution Date in accordance with Clause 19.2 of the Schemes.
<b>"Initial Distribution Date"</b>	means the date falling three Business Days after the Restructuring Effective Date, as notified by the Company pursuant to Clause 12 of the Schemes.
<b>"Initial Scheme Consideration Deadline"</b>	means 5:00 p.m. New York time on 17 May 2016, the equivalent being 5:00 p.m. BVI time on 17 May 2016 / 5:00 a.m. Hong Kong time on 18 May 2016 (or, if the Scheme Meetings are adjourned to a date beyond such time, such later time and date as may be agreed between the Company and the Steering Committee Majority and notified to the Scheme Creditors in the same manner in which the notice of the Scheme Meetings was notified to them).
<b>"Initial Scheme Creditor"</b>	means a Scheme Creditor in respect of whom a duly completed Account Holder Letter and Distribution Confirmation Deed has been provided to and received by the Information Agent on or before the Initial Scheme Consideration Deadline.
<b>"Initial Scheme Shares"</b>	means the number of Scheme Shares to be issued and allotted to the Initial Scheme Creditors on the Initial Distribution Date in accordance with Clause 19.1 of the Schemes.
<b>"Initial Share Elector"</b>	means an Initial Scheme Creditor that has

	elected (in its Election Form), or is deemed to have elected, to receive some or all of its entitlement to the Elective Scheme Consideration in the form of the Scheme Shares.
<b>"Intermediary"</b>	means a person (other than an Account Holder) who holds an interest in Notes on behalf of another person or other persons.
<b>"Jonestown Reports"</b>	has the meaning given to it in paragraph 12.5.17 of Section 12 of this Explanatory Statement.
<b>"King Resources"</b>	means King Resources Holdings Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 1515587.
<b>"Liability"</b>	means any debt, liability or obligation whatsoever, whether it is present, future, prospective or contingent, whether or not its amount is fixed or undetermined, whether or not it involves the payment of money or the performance of an act or obligation, and whether arising at common law, in equity or by statute in or under the laws of Hong Kong, New York, the BVI or under any other law or in any other jurisdiction howsoever arising and <b>"Liabilities"</b> shall be construed accordingly.
<b>"Liquidation Analysis"</b>	means the liquidation analysis prepared by AlixPartners as set out in Appendix 7 of this Explanatory Statement.
<b>"Lucky Colour"</b>	means Lucky Colour Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 1469108.
<b>"Lush Power"</b>	means Lush Power Management Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 1582257.
<b>"Marubeni"</b>	means Marubeni Corporation.
<b>"Maximum Return"</b>	means, in respect of a Scheme Creditor, a value

equal to  $x$  in the formula:

$$x = (a / b) * z$$

where:

$a$  is equal to the Elective Scheme Consideration Value;

$b$  is equal to the Aggregate Submitted Scheme Claim Amount; and

$z$  is equal to the value of the Scheme Claim of the relevant Scheme Creditor as at the Record Time.

**"Million Super Star"**

means Million Super Star Limited, a company incorporated with limited liability under the laws of Hong Kong and registered with number 1516618.

**"Minimum Return"**

means, in respect of a Scheme Creditor, a value equal to  $y$  in the formula:

$$y = (a / c) * z$$

where:

$a$  is equal to the Elective Scheme Consideration Value;

$c$  is equal to the Aggregate Maximum Claim Amount; and

$z$  is equal to the value of the Scheme Claim of the relevant Scheme Creditor as at the Record Time.

**"Moveday"**

means Moveday Enterprises Limited.

**"Mr. Wang"**

means Mr. Jason Xingchun Wang, holder of Belgian passport number EJ838069, whose principal place of residence is Avenida Sir Anders Ljungdstedt No. 297, E 303 EDF L'arc 48 Andar G48, Macau.

**"New Shares"**

Means, collectively, the Rights Shares, the Scheme Shares and the Anti-dilution Shares;

<b>"Non-Participating Scheme Creditor"</b>	means a Scheme Creditor that has not submitted an Account Holder Letter and Distribution Confirmation Deed to the Information Agent prior to the Bar Date.
<b>"Note Documents"</b>	means the Indenture, the Notes and the Security Documents.
<b>"Notes"</b>	means the 8.50% Notes due 2016 issued by the Company (ISIN / CUSIP No. of Registered Global Note: US975731AA80 / 975731AA8, Common Code: 060809968 and ISIN / CUSIP No. of Regulation S Global Note: USG97214AA16 / G97214AA1), Common Code: 060809941.
<b>"Note Trustee"</b>	means Deutsche Bank Trust Company Americas as trustee under the Indenture.
<b>"Note Trustee Instruction"</b>	means an instruction to the Note Trustee substantially in the form set out in Schedule 5 to the Schemes or such other form as the Note Trustee may reasonably accept.
<b>"Participating Scheme Creditor"</b>	means a Scheme Creditor that has submitted a duly completed Account Holder Letter and Distribution Confirmation Deed such that they are received by the Information Agent on or before the Bar Date (including, but not limited to, the Initial Scheme Creditors).
<b>"Personnel"</b>	means, in relation to any person, its current and former officers, partners, directors, employees, staff, agents, counsel and other representatives.
<b>"PRC"</b>	means the People's Republic of China.
<b>"Prohibited Transferee"</b>	means a person who is prohibited from being allotted, issued with, holding, receiving or handling any Scheme Share or any Contingent Value Right pursuant to any applicable laws or regulations or so prohibited except after compliance with conditions or requirements that the Company considers to be disproportionate to the value of the relevant Scheme Shares or Contingent Value Rights.

<b>"Qualifying Shareholders"</b>	means Shareholder(s) whose name(s) appear(s) on the register of members of the Company at the Record Time, other than Shareholder(s) whose name(s) appear(s) on the register of members of the Company at the Record Time and whose address(es) as shown on such register (is) are outside Hong Kong where the Directors, based on legal advice, consider it necessary or expedient to exclude any such Shareholders on account either of legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place.
<b>"Reach"</b>	means Reach Goal Management Ltd., a company incorporated with limited liability under the laws of the BVI and registered with number 1516154.
<b>"Recognition Filings"</b>	means (i) the filing of a petition for recognition of the Hong Kong Scheme under Chapter 15 of the US Bankruptcy Code, and (ii) the filing of a request for the US Bankruptcy Court to grant a Chapter 15 Recognition Order.
<b>"Recognition Hearing"</b>	means a hearing before the US Bankruptcy Court in respect of the Recognition Filings.
<b>"Record Time"</b>	means 5:00 p.m. New York time on 29 April 2016, the equivalent being 5:00 p.m. BVI time on 29 April 2016 / 5:00 a.m. Hong Kong time on 30 April 2016.
<b>"Reed Smith"</b>	means, together, Reed Smith LLP (other than in Hong Kong) and Reed Smith Richards Butler (in Hong Kong).
<b>"Registrar"</b>	means Deutsche Bank Trust Company Americas, as registrar under the Indenture.
<b>"Release Instructions"</b>	means a letter from the Note Trustee to the Collateral Agent substantially in the form set out in Appendix 11 of this Explanatory Statement.
<b>"Relevant Persons"</b>	has the meaning given to it in Section 3 ( <i>Important Securities Law Notice</i> ) of this

	Explanatory Statement.
<b>"Restricted Share Unit"</b>	means restricted share unit awards under the Restricted Share Unit Scheme.
<b>"Restricted Share Unit Scheme"</b>	means the restricted share unit scheme adopted by the Company on 11 June 2012.
<b>"Restructuring"</b>	means the proposed restructuring in accordance with the terms of the RSA.
<b>"Restructuring Documents"</b>	means the documents listed at Schedule 1 to the Schemes, in substantially the form attached to the Schemes and this Explanatory Statement.
<b>"Restructuring Effective Date"</b>	means the date on which all of the Scheme Conditions have been satisfied.
<b>"Restructuring Transactions"</b>	means the transactions contemplated by the Schemes and the Restructuring Documents.
<b>"Rights Issue"</b>	has the meaning given to it in paragraph 7.1.1 of Section 7 of this Explanatory Statement.
<b>"Rights Shares"</b>	has the meaning given to it in paragraph 7.1.1(a) of Section 7 of this Explanatory Statement.
<b>"Ropes &amp; Gray"</b>	means Ropes & Gray LLP.
<b>"Royce"</b>	means Royce Petrochemicals Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 682808.
<b>"RSA"</b>	means the restructuring support agreement dated 25 November 2015 between the Company, the Subsidiary Guarantors and certain consenting holders of the Notes.
<b>"Sanction Hearing"</b>	means the BVI Court Sanction Hearing and/or the Hong Kong Court Sanction Hearing (as the context requires).
<b>"Scheme Claim"</b>	means any Claim of a Scheme Creditor in respect of a Liability of the Company or any Subsidiary Guarantor arising directly or indirectly pursuant to, under or in connection with the Note Documents, excluding for the

avoidance of doubt, any Liability of the Company arising directly or indirectly out of or in connection with any of the Scheme Consideration.

**"Scheme Conditions"**

means:

- (i) the Scheme Effective Date having occurred;
- (ii) the sanction with or without modification (but subject to any such modification being acceptable to the Company and in accordance with the terms of the Schemes) of each of the Hong Kong Scheme and the BVI Scheme by the Hong Kong Court and the BVI Court, respectively;
- (iii) each of the Hong Kong Court Order and the BVI Court Order having been delivered to the Hong Kong Registrar of Companies and the BVI Registrar of Companies (respectively) for registration;
- (iv) the Chapter 15 Recognition Order having been granted;
- (v) an appropriate resolution having been passed by the Company's shareholders to approve the issuance of the Contingent Value Rights;
- (vi) the Listing Committee of the Stock Exchange of Hong Kong Limited listing and granting permission to deal in the Scheme Shares;
- (vii) the Rights Issue having completed and all of the proceeds therefrom (including, for the avoidance of doubt, the proceeds from any and all underwriting arrangements in respect thereof) having been transferred to the Scheme Consideration Trustee;
- (viii) each of the Restructuring Documents having been executed by each of the parties thereto; and

(ix) the Company having paid all fees, costs and expenses of the Advisers, the Note Trustee, the Collateral Agent, the Registrar, and the Scheme Consideration Trustee that have been duly invoiced to the Company by 17 May 2016 (or such later date as may be agreed by the Company with the relevant party or parties), provided that (for the avoidance of doubt) such fees shall not include the Houlihan Lokey Success Fee.

**"Scheme Consideration"**

means the rights and interests in the Cash Consideration, the Scheme Shares and the Contingent Value Rights to be distributed to the Scheme Creditors under the terms of the Schemes.

**"Scheme Consideration Trustee"**

means Deutsche Bank Trust Company Americas as trustee of the Cash Consideration for and on behalf of the Participating Scheme Creditors, the Houlihan Lokey Success Fee for and on behalf of Houlihan Lokey and the Consent Fee for and on behalf of the Consent Fee Recipients in accordance with the terms of this Hong Kong Scheme (or any additional or replacement trustee of such amounts at any time).

**"Scheme Creditor"**

means a person with a beneficial interest as principal in the Notes held in global form or global restricted form through the Depositary at the Record Time and which has a right, upon satisfaction of certain conditions, to be issued definitive notes in accordance with the terms of the Notes.

**"Scheme Creditor Releasing Parties"**

has the meaning given to it in Clause 28.1 of the Schemes.

**"Scheme Effective Date"**

means, with respect to a Scheme, the date on which the relevant Court Order is filed with the relevant Company Registrar.

**"Scheme Longstop Date"**

means the "Longstop Date" as defined in the RSA (as such date may be extended by

	agreement between the Company and the Steering Committee Majority).
<b>"Scheme Meeting Deadline"</b>	means 5:00 p.m. New York time on 29 April 2016, the equivalent being 5:00 p.m. BVI time on 29 April 2016 / 5:00 a.m. Hong Kong time on 30 April 2016.
<b>"Scheme Meetings"</b>	means, together, the BVI Scheme Meeting and the Hong Kong Scheme Meeting.
<b>"Scheme Shares"</b>	means the Shares, to be issued and allotted to the Scheme Creditors in accordance with the terms of the Schemes, which shall in aggregate constitute 18.75% of the entire issued Shares in the Company on a fully diluted basis on the Final Distribution Date.
<b>"Scheme Steps"</b>	means, collectively, the Hong Kong Scheme Steps and the BVI Scheme Steps.
<b>"Scheme Website"</b>	means the world wide web (www) pages linked to the universal resource locator (url): <a href="http://www.bondcom.com/winswayscheme">www.bondcom.com/winswayscheme</a> .
<b>"Schemes"</b>	means, together, the BVI Scheme and the Hong Kong Scheme.
<b>"SEC"</b>	means the United States Securities and Exchange Commission.
<b>"Security Documents"</b>	has the meaning given to it in the Indenture.
<b>"Security Release Deeds"</b>	means, together, the Australia Security Release Deed, the BVI Security Release Deed, the Hong Kong Security Release Deed and the Singapore Security Release Deed.
<b>"Shareholder"</b>	means a person who holds Shares at any time.
<b>"Share Option"</b>	means an option under the Share Option Scheme.
<b>"Share Option Scheme"</b>	means the share option scheme adopted by the Company on 6 June 2014.
<b>"Share Register"</b>	means the register of members of the Company.
<b>"Share Registrar"</b>	means Computershare Hong Kong Investor Services Limited.

<b>"Share Shortfall"</b>	has the meaning given to it in Clause 19.1.4 of the Schemes.
<b>"Shares"</b>	means ordinary shares in the Company.
<b>"Singapore Security Release Deed"</b>	means the security release deed substantially in the form attached at Schedule 3 to the Release Instructions.
<b>"Solicitation Packet"</b>	means the packet of materials, including the Account Holder Letter and accompanying instructions, the Election Form, the Designated Recipient Form and the Distribution Confirmation Deed, all of which are available to Scheme Creditors on the Scheme Website and Appendix 5 of this Explanatory Statement.
<b>"Special Deal"</b>	has the meaning given to it in paragraph 7.1.4(c) of this Explanatory Statement.
<b>"Specific Mandate"</b>	means the specific mandate to be granted by the Shareholders to the Board at the EGM to authorise the Directors to allot and issue up to the New Shares.
<b>"Steering Committee"</b>	means the steering committee of Scheme Creditors as constituted from time to time, which is advised in connection with this Hong Kong Scheme by Akin Gump and Houlihan Lokey (amongst others).
<b>"Steering Committee Advisers"</b>	means Akin Gump and Houlihan Lokey.
<b>"Steering Committee Majority"</b>	means any member or members of the Steering Committee who in aggregate hold more than 50% by principal face value of the total Notes held by the Steering Committee at the time any such approval, consent or opinion is provided.
<b>"Stephenson Harwood"</b>	means, together, Stephenson Harwood LLP (in London) and Stephenson Harwood (in Hong Kong).
<b>"Subsidiary Guarantors"</b>	means E-Steel Holdings, Lucky Colour, Reach, Winsway Resources, Winsway Australia, Winsway Resources Holdings, Winsway Coking

	Coal, Cheer Top, Color Future, Royce, Eternal, Million Super Star, Lush Power, King Resources, Winsway International and Wisdom Elite (each a <b>"Subsidiary Guarantor"</b> ).
<b>"Surplus Cash Amount"</b>	has the meaning given to it in paragraph 9.4.3(e) of Section 9 of this Explanatory Statement.
<b>"Surplus CVR Pool"</b>	has the meaning given to it in paragraph 9.4.5 of this Explanatory Statement.
<b>"Surplus Scheme Shares"</b>	has the meaning given to it in paragraph 9.4.3(e) of Section 9 of this Explanatory Statement.
<b>"Takeovers Code"</b>	means the Codes on Takeovers and Mergers and Share Buy-backs in Hong Kong.
<b>"Term Sheet"</b>	means the term sheet appended to the RSA.
<b>"UBS"</b>	means UBS Investment Bank.
<b>"United States"</b>	means the United States of America.
<b>"Underwriter"</b>	means Famous Speech Limited.
<b>"Underwriting Agreement"</b>	means the underwriting agreement dated 11 March 2016 entered into between, amongst others, the Company and the Underwriter in respect of the Rights Issue.
<b>"Underwritten Shares"</b>	means all Rights Shares that are to be taken up by the Underwriter subject to the terms and conditions of the Underwriting Agreement.
<b>"US Bankruptcy Code"</b>	means Title 11 of the United States Code, as in effect on the date of the Recognition Filings.
<b>"US Bankruptcy Court"</b>	means the United States Bankruptcy Court for the Southern District of New York.
<b>"US Securities Act"</b>	means the United States Securities Act of 1933, as amended, including the rules and regulations promulgated by the SEC thereunder.
<b>"Vertus"</b>	means Vertus Law LLP.
<b>"Walkers"</b>	means Walkers (Asia), a Cayman Islands partnership, and its Affiliates.

<b>"Whitewash Waiver"</b>	has the meaning given to it in paragraph 7.1.4(b) of Section 7 of this Explanatory Statement.
<b>"Winsway Australia"</b>	means Winsway Australia Pty Ltd (ACN 140 452 759, a private company incorporated under the laws of Australia.
<b>"Winsway Coking Coal"</b>	means Winsway Coking Coal Logistics Co., Limited, a company incorporated under the laws of Hong Kong and registered with number 1404196.
<b>"Winsway International"</b>	means Winsway International Development (HK) Limited (formerly More Richway Limited), a company incorporated with limited liability under the laws of Hong Kong and registered with number 1538571.
<b>"Winsway Resources"</b>	means Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited), a company incorporated with limited liability under the laws of Hong Kong and registered with number 1384680.
<b>"Winsway Resources Holdings"</b>	means Winsway Resources Holdings Private Limited, a private company incorporated under the laws of Singapore and registered with number 200924242N.
<b>"Wisdom Elite"</b>	means Wisdom Elite Inc. Limited, a company incorporated under the laws of Hong Kong and registered with number 1513893.

## **2 INTERPRETATION**

In this Explanatory Statement:

- (a) words denoting the singular number only shall include the plural number also and vice versa;
- (b) words denoting one gender only shall include the other genders;
- (c) words denoting persons only shall include firms and corporations and vice versa;

- (d) references to any statutory provision shall be deemed also to refer to any statutory modification or re-enactment thereof or any statutory instrument, order or regulation made thereunder or under any such re-enactment;
- (e) unless expressed otherwise:
  - (a) references to U.S. dollars or US\$ are references to the currency of the United States of America; and
  - (b) references to Hong Kong dollars or HK\$ are references to the currency of Hong Kong;
- (f) any reference in this Appendix 1 (*Definitions and Interpretation*) to any document whose meaning is stated to be the meaning given to a document as defined in the Explanatory Statement shall be construed as a reference to that document as amended, varied, novated, restated, modified, supplemented or re-enacted or replaced prior to the date of this Explanatory Statement;
- (g) clause, paragraph and schedule headings are for ease of reference only;
- (h) unless otherwise stated, a reference to a time of day shall be construed as a reference to London time;
- (i) a reference to this Explanatory Statement includes a reference to the preliminary sections and appendices of this Explanatory Statement; and
- (j) references to any person shall include references to his successors, transferees and assigns and any person deriving title under or through him.