

On behalf of the Proposed Administrators  
A J Manson  
Third witness statement  
27 July 2022  
Exhibit AJM3

**Claim No. CR-2022-002121**

**Company Registered No. 04343841**

**IN THE HIGH COURT OF JUSTICE**

**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

**INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF PETROPAVLOVSK PLC**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

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**THIRD WITNESS STATEMENT OF ALLISTER JONATHAN MANSON**

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I, **ALLISTER JONATHAN MANSON** of Opus LLP, Fourth Floor, Euston House, 24 Eversholt Street, London NW1 1DB, **WILL SAY AS FOLLOWS:**

**A. INTRODUCTION**

- 1 I am the same Allister Manson who made witness statements in these proceedings on 11 July 2022 (“**Manson 1**”) and 19 July 2022 (“**Manson 2**”). Terms not defined in this witness statement have the meanings given to them in Manson 1 and Manson 2.
- 2 I was appointed a joint administrator of the Company pursuant to the Order of HHJ Jarman QC sitting as a Judge of the High Court made at the hearing of the Administration Application on 18 July 2022. The other joint administrators are my partners, Mr Trevor Binyon and Ms Joanne Rolls (together with me, the “**Administrators**”).
- 3 I make this witness statement on behalf of the Administrators:

- 3.1 To update the Court on developments and the work we have carried out since our appointment (and, where relevant, prior to our appointment where not set out in our previous evidence); and
- 3.2 In support of our application for directions in relation to a proposed sale of certain assets of the Company by the Administrators to UMMC-INVEST (“UMMC” and the “**Proposed Transaction**”).
- 4 I refer in this witness statement to the paginated bundle of documents labelled “**AJM3**”. Unless otherwise indicated, any references in this witness statement are references to that exhibit. References are to **[Exhibit/Tab/Page(s) (if relevant)]**. Any reference to “we” in this witness statement refers to the Administrators or our staff.
- 5 The facts and matters stated herein are either within my own knowledge, in which case they are true, or based on documents and information supplied to me by others, in which case they are true to the best of my knowledge, information and belief.
- 6 As required by paragraph 18.1(5) of CPR Practice Direction 32, I can confirm that this witness statement has been prepared with assistance from: our solicitors, JHA; from leading and junior insolvency counsel; from leading sanctions counsel; and from Infralex, the Company’s Russian counsel. This assistance was provided via email, telephone and in-person.

**B. FACTUAL BACKGROUND AND SUMMARY**

- 7 As explained in more detail in Manson 1 (which we respectfully invite the Court to read in full):
- 7.1 The Company is a holding company which owns a group of gold mining and exploration companies operating in eastern Russia.
- 7.2 Opus was engaged by the Company on 17 June 2022 to provide restructuring advice and to act as proposed administrators of the Company should the Company be placed into administration.
- 7.3 At the time of our engagement, it was clear that the Company was insolvent. It had defaulted on debt obligations in respect of which it was either the borrower

or guarantor, and its ability to conduct its business had been seriously impaired by sanctions and other financial restrictions relating to Russia, where the Company's operating subsidiaries are based. Although the Company and its subsidiaries were not themselves sanctioned, sanctions had restricted the ability of the Company's subsidiaries to transfer cash to the Company, had made it impossible for the Company to access at least some of its own cash, and had made it more difficult for the operating subsidiaries to maintain their production operations or to sell the gold that they produced.

- 7.4 Kroll had produced a valuation of the Company's operating assets dated 2 May 2022, which valued those assets (at that date) at between US\$ 458 million and US\$ 621 million.
- 7.5 From March 2022, when it became clear that its position was likely to be unsustainable, the Company has explored refinancing its debt and has marketed its assets for sale. It was unable to identify any banks willing to lend to it. The marketing process, run with the assistance of Hannam & Partners and AlixPartners, resulted in several indicative bids for the Company's assets. Ultimately only one of these, from UMMC, was expressed as a binding offer. UMMC is one of Russia's largest metals and mining groups, which had first expressed an interest in purchasing the Company's assets in late 2021. It is also the Company's largest creditor, following its purchase in April 2022 of the US\$ 200 million term loan in respect of which the Company is borrower from the original lender, GPB.
- 7.6 Since late April 2022, the Company has sought to negotiate the terms of an SPA with UMMC. Since our engagement, we have participated in those discussions.
- 7.7 On 7 July 2022 (shortly before the Administration Application was made) UGC, the Company's largest shareholder, made a preliminary (and expressly non-exhaustive and non-binding) offer to purchase the Company's shares, procure repayment of the Term Loan and Facilities, and restructure the Group's other debt. In response, the Company asked UGC to provide proof of funding and further detail on its proposal.

8 In Manson 1, we explained that our preliminary views as at the date of that evidence were that:

8.1 The Company was insolvent on both a cashflow and balance sheet basis. The interests of creditors would therefore be best served by a sale of the Company or its assets as soon as practicable, noting that the underlying business was continuing to deteriorate.

8.2 The attempts made by the Company to refinance its debt and to identify a buyer for its assets had been reasonable in the circumstances.

8.3 The Proposed Transaction with UMMC appeared to represent good value for the Company's stakeholders as a whole, in that: (i) it envisaged UMMC paying the Company total consideration of approximately US\$ 619 million, which was near the top of the valuation range given by Kroll; and (ii) it was likely to result in full recovery for the Company's creditors, although with no surplus remaining for shareholders.

8.4 The UGC Proposal, if it turned out to be viable, might similarly represent good value in that (on its face) it appeared to envisage full recovery for creditors plus some recovery for shareholders.

8.5 If appointed, we intended to carry out further work to:

(i) Explore the possibility of a sale to UGC and conduct due diligence in relation to such a transaction;

(ii) Continue to negotiate with UMMC, and to conduct due diligence on UMMC and the Proposed Transaction, to ensure that the terms are fair to the Company's stakeholders and that the transaction does not represent an unacceptable commercial or legal risk (including by further considering the potential applicability of sanctions); and

(iii) Carry out further work to identify possible alternatives to either a sale to UMMC or UGC.

- 9 We were appointed Administrators of the Company on 18 July 2022. The Administration Order is at [AJM3/16].
- 10 Since the date of Manson 1, both immediately prior to and since our appointment on 18 July 2022, we have, among other things:
- 10.1 Carried out further work to confirm the asset and liability position of the Company, including work to update the valuation of the Company's operating subsidiaries;
  - 10.2 Agreed (but not yet executed) a consent protocol with the Company's management in order to ensure business continuity during the period of administration;
  - 10.3 Continued to explore refinancing options, without success;
  - 10.4 Sought to elicit further information from UGC regarding the UGC Proposal, and in particular sought confirmation that UGC has funding available to complete, which has to date not been provided;
  - 10.5 Continued to negotiate the terms of the Proposed Transaction with UMMC; and
  - 10.6 Obtained further specialist legal advice regarding the applicability of sanctions to the Proposed Transaction, sought additional information and confirmations from UMMC in this regard, and updated the relevant sanctions authorities as to our intention to conclude that transaction subject to the Court's order.
- 11 In the light of that work, and as explained in more detail below, we now consider that the Proposed Transaction with UMMC: (i) does indeed represent the best outcome for the Company's stakeholders; and (ii) is permissible under the applicable sanctions legislation. By the present application, we therefore seek the Court's blessing for the Administrators to enter into that transaction. We are advised that generally the exercise of an administrator's powers, *inter alia*, to manage the Company's business and to realise its assets are regarded as matters of the commercial judgment of the administrator, rather than as being appropriate matters of directions from the Court. However, we also understand that the Court is prepared to give appropriate directions in particularly complex cases or where an administrator is proposing to take a

particularly momentous step. While this will be addressed in further detail in submissions, we consider that the decision to proceed with the Proposed Transaction is sufficiently momentous in order to justify the Court's involvement. As officers of the Court, we are also concerned that the Court, in considering whether to direct that we are at liberty to proceed with the Proposed Transaction, is fully informed of the risk in relation to sanction-related issues as set out below.

12 In the remainder of this statement, I deal with the following matters in more detail:

12.1 Update on the Company and Administrators' Work.

- (i) Update on the financial position of the Company.
- (ii) Update on corporate matters.
- (iii) Management of the business.
- (iv) Refinancing.
- (v) Valuation and marketing.
- (vi) Progress in relation to a potential sale to UMMC or UGC.
- (vii) Communications with shareholders and the market.
- (viii) Banking arrangements.

12.2 Evaluation of options.

12.3 The Proposed Transaction.

12.4 Sanctions.

- (i) Introduction.
- (ii) Summary of UK and EU sanctions regimes and the Administrators' approach.
- (iii) The GPB sanctions issue.
- (iv) The export of luxury goods sanctions issue.

(v) The 2022 Notes sanctions issue.

(vi) The Bokarev sanctions issue.

(vii) The Kozitsyn sanctions issue.

12.5 Proposed next steps if the Application is granted.

12.6 The orders sought.

12.7 Urgency.

12.8 Conclusion.

## **C. UPDATE ON THE COMPANY AND ADMINISTRATORS' WORK**

### ***Update on the financial position of the Company***

13 In Manson 1, we explained the work we had carried out to establish the asset and liability position of the Company, and therefore its solvency.

14 As explained in Philipps 2 (at paragraph 19), UMMC in its capacity as lender under the Term Loan sent notices dated 13 July 2022 to each of the four subsidiaries who are guarantors of the Term Loan (namely Pokrovskiy Rudnik JSC, Albynskiy Rudnik LLC, Malomirskiy Rudnik LLC and TEMI LLC) to demand that the guarantors pay the debt within five days. UMMC also filed a public notice of its intent to pursue bankruptcy proceedings in relation to the four guarantors.

15 Further, on 15 July 2022, Nordic (as lender under the Facilities) sent notices to the same four subsidiaries (as borrowers under the Facilities) demanding immediate repayment of the outstanding amounts under the Facilities, which debts had previously been accelerated by GPB on 18 April 2022. A copy of one of these 15 July letters before action (to TEMI LLC) is at [AJM3/14] (in Russian only, as we have not been able to obtain official translations in the time available, however its content has been confirmed to us by Mr Ploschenko, the Group CFO who has also confirmed that the other notices are, *mutatis mutandis*, in the same form).

16 We have continued to work with the Company to satisfy ourselves as to its asset and liability position. In particular, we have reviewed the Company's latest management

accounts and have liaised regularly with management, and in particular the Group CFO Mr Stanislav Ploschenko, to obtain up-to-date information regarding the Group's assets, liabilities and trading conditions. This has confirmed that the Company is insolvent and that its business continues to deteriorate. We wish to draw the Court's specific attention to the following documents:

16.1 Our updated estimate of the Company's liabilities, dated 22 July 2022, which shows total liabilities of US\$ 604,954,125 exclusive of VAT and US\$ 618,675,979 inclusive of VAT [AJM3/30].

16.2 A letter to the Administrators from Mr Ploschenko dated 20 July 2022, provided at our request, setting out "*the critical deterioration of the Russian assets' financial position*" as at that date due to three factors:

(i) Continuing deterioration of trading conditions due to the fall in value of the Russian rouble, the depressed gold price on the Russian domestic market (where the Company is effectively restricted to selling its gold as a result of international sanctions), difficulties in obtaining spare parts from outside of Russia which, together with the inflation of parts within Russia, have led to a significant increase in production costs, and the withdrawal of operational credit by the Group's suppliers. Taken together, these factors have led to a projected cash deficit for the Group of approximately US\$ 30 million for July-August 2022 (US\$ 13 million in operating cashflow deficit plus US\$ 17 million in cash requirements to fund required capital expenditure). Mr Ploschenko concludes that the resulting pressure on the Group's working capital makes "*further steady operations untenable*".

(ii) The Group's two largest creditors, UMMC (as lender under the Term Loan) and Nordic (as lender under the Facilities) have called on the operating subsidiaries (as guarantors under the Term Loan and borrowers under the Facilities) to repay the debts immediately. UMMC's position regarding potential enforcement against the subsidiaries was explained in Philipps 2 at [18]-[19]. If UMMC and/or Nordic choose to pursue the subsidiaries for the debt, we understand that



they would be able to apply to the Russian court to freeze the subsidiaries assets: see Philipps 1 at [157].

- (iii) UMMC and Nordic have also given notice of their intention to initiate bankruptcy proceedings against the operating subsidiaries, relying on the unsatisfied debts described above. This has resulted in suppliers becoming (even more) reluctant to deal with the Group and in buyers of the Group's gold (including the largest buyer, Lentabank) stopping purchases due to the risk that any sale is subsequently challenged in an insolvency process.
- (iv) Mr Ploschenko concluded by expressing the view that if the situation does not improve then the Russian operating companies are likely to consider themselves bound to file for their own bankruptcy under Russian corporate law.

17 In addition, we have carried out further work to establish the quantum of the Company's VAT liability to HMRC (which of course ranks as a preferential creditor) with greater specificity. As to this:

17.1 In Manson 1, I explained that we estimated the total VAT liability to be £14,854,913, comprising a principal debt of £10,681,223, interest of £745,633 and a potential surcharge of 30%. We arrived at this figure by:

- (i) Reviewing the Company's tax returns since 2015, which show the principal debt of £10,681,223.
- (ii) Reviewing HMRC's compliance handbooks, which indicate the amount of interest and the surcharge that HMRC could claim.
- (iii) Discussing the position with EY, the Company's former tax advisors, who confirmed that the basis of our calculations was correct.

- 17.2 Since then, we have obtained and reviewed a set of VAT assessment notices issued by HMRC to the Company.<sup>1</sup> These are at [AJM3/1] and relate to VAT refunds claimed by the Company since 1 October 2015.
- 17.3 Our investigations have revealed that prior to October 2015, HMRC had advised the Company that it was entitled to claim a refund of 67% of total VAT paid. Starting in October 2015, HMRC have issued refunds of 100% of all VAT claimed but also issued protective assessment notices for the full amount of each refund with a view to reconsidering their previous agreement that 67% refunds would be made.
- 17.4 We note that the Company had previously had a similar dispute with HMRC regarding VAT refunds for the 2011-2015 period. That dispute was settled in 2020 on terms which did not require the payment of any interest or any surcharge by the Company.
- 17.5 We would wish to reach a settlement of the dispute in relation to the period from October 2015 with HMRC as soon as practicable. It is possible that HMRC will adopt a similar approach to that taken in the previous dispute (and thus not claim interest or any surcharge), but this is uncertain. In the circumstances, therefore, it is not possible to say with certainty now what the final liability will be – but it will be between £10,681,223 and £14,854,913.
- 18 Our conclusion that the Company is insolvent has not changed. In fact, since the date of Manson 1, it appears clear to us that the value of the Company’s operating assets and business continues to deteriorate.

### *Update on corporate matters*

- 19 In this section we update the Court on recent corporate developments.
- 20 On 20 July 2020, the FCA confirmed that the Company’s shares had been removed from the Official List of the FCA and the LSE following the making of the Administration Order. The FCA’s supervisory notice is at [AJM3/23].

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<sup>1</sup> Save for one notice which we have not been able to locate.

- 21 Also on 20 July 2020, MOEX confirmed that the Company's shares had been removed from the list of securities admitted to trading on MOEX with effect from 21 July 2022. MOEX's notice is at [AJM3/24].
- 22 Also on 20 July 2020, Citibank wrote to the Company to give notice of its resignation as paying agent in respect of the Convertible Bonds, with effect from 60 days following the date of the notice. Citibank's notice is at [AJM3/25].
- 23 Also on 20 July 2020, Ocorian Limited, the corporate service provider to the Company's two Jersey subsidiaries (Petropavlovsk 2010 Limited and Petropavlovsk 2016 Limited) gave notice of its resignation with effect from one month from the date of the notice. Ocorian's notice is at [AJM3/26].
- 24 On 25 July 2022, Citibank wrote to the Company to give notice of its resignation as trustee of the 2022 Notes, with effect from three months following the date of the notice. Citibank's notice is at [AJM3/31].

### ***Management of the business***

- 25 In Manson 1 (at paragraphs [107]-[108]), I explained that we intended to enter into a consent protocol with existing management pursuant to paragraph 64 of Schedule B1 of the Insolvency Act 1986, authorising them to continue to perform certain specified functions relating to the management of the Company's business on a day-to-day basis. In particular, I noted that we understood that the approval of the Company was required for its subsidiaries to incur trade liabilities or enter into contracts above US\$ 1 million in value and that the Company's management was also responsible for collating Group financial information, managing investor relations and complying with the Company's regulatory obligations – all of which were functions we considered it appropriate for them to continue to perform during the administration (with appropriate oversight from the Administrators) in order to ensure business continuity and to allow the Administrators to focus their attention on evaluating the Company's options.
- 26 The Administration Order at paragraph 5e accordingly included an order that the Administrators be permitted to enter into such a consent protocol.
- 27 We have now agreed the form of the consent protocol in principle with the relevant

directors, a draft of which is at [AJM3/39]. We expect to execute this shortly.

### ***Refinancing***

28 In Manson 1, I explained that our provisional view was that it was unlikely to be possible to refinance the Company's debt, recognising that the Company had already approached a large number of financial institutions, but that following our appointment we would take further steps to satisfy ourselves in this regard: see Philipps 1 at [83]-[87] and Manson 1 at [110].

29 We have since made a number of enquiries, including of Citibank (the Company's own bankers) and HSBC, to identify potential sources of refinancing for the Company. We have not identified a bank willing to lend to the Company or the Group, and we do not consider that there are any obvious (or likely) sources of refinancing that we have not yet explored.

30 Further, I was approached immediately after the hearing of the Administration Application on 18 July 2022 by a representative of Prosperity, the Company's second largest shareholder. I was informed that Prosperity had some ideas as to sources of refinancing. Accordingly, on 19 July 2022 we wrote to Prosperity [AJM3/21] to ask them to provide further information in this regard by 22 July 2022. We have not received any response to that request.

31 In the circumstances, we are forced to conclude that refinancing is not a viable option for the Company.

### ***Valuation and marketing***

32 In Manson 1, I explained that:

32.1 We considered that the valuation of the Company's assets conducted by Kroll in May 2022 to be reasonable, albeit Kroll had since confirmed to the Administrators that, if the valuation were to be updated, it would be lower due to the deterioration in the interim of the Group's business; and

32.2 The marketing process conducted by the Company with assistance from Hannam & Partners and AlixPartners was also reasonable, such that it was

unlikely that further marketing would result in further or better offers emerging (it being relevant also that the Company's difficulties and the fact that it was looking for a buyer had been well publicised).

33 Since our appointment, we have sought to further test our conclusions regarding the valuation of the Company's assets. In particular:

33.1 Prior to our appointment (as set out in Manson 1 at paragraph 51) we asked Kroll to update their earlier valuation. We renewed this request following our appointment, but were informed by Kroll that to do so would take a significant amount of time (perhaps weeks) and would cost £187,000. Given Kroll's earlier informal indication that the valuation would only decrease if updated, we did not consider such delay to be justified. This is particularly so as, in our judgment, Kroll's informal indication was plainly correct as a matter of common sense, given the clear deterioration in the Company's position since the date of Kroll's first report.

33.2 In order to obtain further comfort in this regard without waiting for Kroll formally to update their report, we instructed Opus Pear Tree, Opus' forensic accounting division, to produce a standalone opinion in relation to the valuation of the Company's assets, taking Kroll's valuation as their starting point. Opus Pear Tree's report has not yet been finalised; when it is, we will ensure that it is placed before the Court. Opus Pear Tree have however confirmed to us orally that their opinion is that due to, *inter alia*, the continuing deterioration of market conditions, the value of the assets would likely be lower today than as at the date of the Kroll report.

34 As to the marketing of the Company's assets:

34.1 I ought to have mentioned in Manson 1 that we had corresponded with Hannam & Partners regarding the marketing process, in order to satisfy ourselves that this had been reasonable and that further marketing was unlikely to yield any better offer. In particular, on 6 July 2022 we wrote to Hannam with a list of questions, to which Hannam responded on 8 July 2022. Hannam's response (which sets out our questions to them in full) is at [AJM3/9]. In particular, I note that Hannam confirmed that in their opinion:

- (i) The universe of potential purchasers was limited given the nature of the business and the fact that its operating assets were located in Russia; and
- (ii) *“As the current situation is not getting better (e.g. G7 sanctioned gold exports from Russia), we believe that the appetite to acquire a Russian gold producer still remains low”.*

34.2 We consider that, given the degree of publicity which has been given to the Company’s financial difficulties and to its efforts to sell its assets, any entity likely to be interested in purchasing its business has had ample opportunity to come forward. In particular, we note that:

- (i) The Company has issued numerous press releases since March 2022 making clear that it was exploring a sale (set out in Philipps 1 at paragraph 39; see for example the press release dated 14 April 2022 at [CBEP1/AJM1/31]).
- (ii) Following our appointment, the Company and the Administrators issued press releases informing the market of the Administration Order, with that on behalf of the Administrators inviting interested parties to contact us as soon as possible [AJM3/17 and AJM3/19].

35 In the circumstances, we consider that there is no basis to depart from our previous view that: (i) the value of the Company’s assets has, if anything, decreased since the 2 May 2022 Kroll valuation; and (ii) no further or better offers for the Company’s business are likely to emerge in future.

***Progress in relation to a potential sale to UMMC or UGC***

UGC

36 As noted above and explained in detail in Philipps 1 and Manson 1, on 7 July 2022 UGC wrote to the Company to make a preliminary (and expressly non-exhaustive and non-binding) offer whereby:

36.1 UGC would procure full immediate repayment of outstanding sums due under the Term Loan (to UMMC) and the Facilities (to Nordic).

- 36.2 UGC would buy out the remaining minority shareholders at “*a current (preceding to announcement of this proposal) trading price of the Shares*”.
- 36.3 The 2022 Notes and the Convertible Bonds should be transferred to a UGC subsidiary “*incorporated in [a] jurisdiction outside of UK, EU, US and Russia*”, with the Company’s guarantee terminated. Subsequent to this transfer, this debt would be “*restructure[ed] and repa[id]*”.
- 36.4 UGC would repay other outstanding indebtedness of the Company immediately.
- 36.5 In consideration of the above, the Company would transfer all material assets to the UGC SPV.
- 37 This offer was expressly subject to contract and subject to various “*conditions precedent*”, including that: (a) the current directors of the board who are EU, UK or US nationals resign; (b) the board appoints three additional independent directors; (c) UGC conducting due diligence; (d) the current CEO being replaced by Mr Deniskin; (e) the agreement of binding documentation; and (f) “*approval of the Proposed Restructuring by competent government body of the Company and regulatory authorities*”.
- 38 Following this proposal, UGC exchanged correspondence with the board between 11 and 14 July 2022, which is set out in and exhibited to Philipps 2. Mr Strukov then sent a further letter to the board on 15 July 2022, in which he repeated his view (disputed by the Company) that the making of the Administration Order was a breach of Russian law. This letter is at [AJM3/13].
- 39 On 12 July 2022 (prior to our appointment), we wrote to UGC [AJM3/10]. Our letter requested further information regarding the UGC Proposal by 4pm on 15 July 2022, including:
- 39.1 An explanation of how UGC’s proposal to purchase the Company’s shares interacted with UGC’s intention to implement a complete debt restructuring of the Group;
- 39.2 Detailed proposals as regards the treatment of the Company’s bondholders and shareholders;

- 39.3 Proof that UGC had funding available to complete any transaction;
- 39.4 Confirmation that all proposed steps could be carried out without additional regulatory approvals being obtained; and
- 39.5 Confirmation that no person or entity involved in delivering the UGC Proposal or any transaction resulting from it is subject to any sanctions in the UK or elsewhere.
- 40 On 18 July 2022, Mr Strukov sent us a holding response [AJM3/15] stating that UGC “*should be able to revert to you with substantive answers to the queries raised in your letter of 12 July 2022 as soon as possible ... These are expected to be finalised in the course of this week*” (i.e. by Friday 22 July 2022).
- 41 On 19 July 2022, we responded to Mr Strukov [AJM3/20]. Our letter repeated the requests set out in our 12 July letter and explained that the time available to identify a solution was extremely limited because of (i) the risk of immediate enforcement action by creditors against the Company’s assets in Russia, which would jeopardise any transaction and is likely to result in a far worse outcome for the Company’s stakeholders as a whole; and (ii) the risk that UMMC, which to date was the only party to have provided a binding and funded offer in respect of the Company’s assets, would withdraw that offer. We therefore requested UGC’s substantive response to our queries by 12pm on 22 July 2022, failing which we stated that we would have to conclude that UGC’s proposal was not viable in the time available. As at the date of this evidence, we have not received any response from UGC.
- 42 As matters stand therefore, we have no further detail on UGC’s proposal beyond the preliminary, high-level and non-binding offer set out in its letter of 7 July 2022, and no proof that UGC has access to sufficient funds to pursue it. We are therefore forced to conclude that the proposal is not viable.

#### UMMC

- 43 As set out in Philipps 2, on 13 July 2022 UMMC wrote to the board of the Company [CPEB2/Tab 11] to express its disappointment at its perceived lack of progress, and to inform the Company that it was commencing enforcement and insolvency proceedings



against the Company's subsidiaries in Russia. UMMC's letter also indicated that it was willing to renew its offer to purchase the Company's assets subject to being granted "exclusivity".

44 We responded to UMMC on 22 July 2022 [AJM3/28]. Our letter explained that the pace of progress was an unavoidable consequences of the difficult situation in which the Company found itself; that we were bound to give other interested parties a fair opportunity to make competing offers; that we were working with the directors of the Company to minimise the deterioration of the Company's assets (and that withdrawal of UMMC of its enforcement action would assist in this regard); and that it would not be appropriate for us to offer UMMC "exclusivity" as requested, but that we hoped to continue to work with UMMC to reach agreement in principle on the terms of a sale.

45 By a response dated 25 July 2022 [AJM3/36], UMMC issued a "final binding offer" to proceed with the Proposed Transaction on the terms of the draft SPA. The offer is expressed to expire at 12pm on 29 July 2022. In the interim, UMMC undertook not to commence any new enforcement action. The letter explained that while UMMC previously "had some sympathy with the difficulties the Company was facing with proceedings with administration application, now, as the Administrators have been successfully appointed over the Company, we will no longer see any justifications for delays in signing the SPA".

46 We and our advisers have also regularly spoken with UMMC's representatives by phone and email since our appointment. UMMC has made it abundantly clear during these conversations that it is not willing to wait indefinitely for the Administrators to agree to conclude the Proposed Transaction, with the risk that the underlying assets will lose value in the meantime. Its expressed position is that if it does not receive certainty that it will be able to purchase the Company's assets in the very near future (with the SPA being signed in the next week or so), then it intends to press ahead with the enforcement and bankruptcy proceedings it has already initiated against the Group's assets in Russia.

47 We have also corresponded with UMMC regarding its (former) general director (i.e. CEO), Mr Andrei Kozitsyn, who on 21 July 2022 was made subject to asset-freezing measures by the EU. The background to this issue, and the relevant correspondence, is

set out in the section on sanctions below.

48 UMMC have so far been willing to continue to negotiate with us regarding the Proposed Transaction. The latest draft of the SPA is at [AJM3/38]. This is a substantially final draft which, subject to the Court's approval, the Administrators propose to execute. The terms are described in greater detail below.

49 Given our conclusion that the UGC Proposal is not viable, the Proposed Transaction with UMMC is now the only offer before the Company capable of achieving full recovery (or anything approaching it) for the Company's creditors. Should the Court accede to the present application, we therefore propose to enter into the Proposed Transaction as soon as practicable. We note that, notwithstanding the 29 July 2022 deadline given in UMMC's 25 July letter, we believe from our wider discussions with UMMC that it is willing to keep its offer open until after the present application is decided, but no longer than that.

### ***Communications with shareholders and the market***

50 Following our appointment, the Company and the Administrators have issued press releases informing the market of the Administration Order. The Company's press release dated 18 July 2022 is at [AJM3/17]; the Administrators' press release dated 19 July 2022 is at [AJM3/19]. I note that our press release invited any party interested in making a proposal in respect of the Company to contact the Administrators as soon as possible. As at the date of this evidence, we have received no such approaches (other than the communications with UGC and Prosperity described above).

### ***Banking arrangements***

51 In Manson 2, I explained that HSBC, one of the two commercial banks which provide operational banking services to Opus as a firm, had informed us on 15 July 2022 that it intended to terminate its relationship with Opus if the Administrators accepted any appointment in respect of the Company. HSBC has now confirmed that, in light of our appointment, it intends to wind down its relationship with Opus.

52 We continue to work to identify a commercial bank that would be willing to provide an administration bank account. If we are unable to do so, then (as outlined in Manson 2)

we intend to approach the Insolvency Service to discuss the use of the Insolvency Service Account for this purpose.

#### **D. EVALUATION OF OPTIONS**

53 As explained above:

53.1 Having carried out further investigations since our appointment, we do not consider that there is any realistic prospect of a financial institution providing finance to the Company at a level sufficient to allow it to restructure its debt and thus avoid insolvency.

53.2 We consider that the Proposed Transaction with UMMC is the only viable option available to the Company other than a winding-up, which, as explained in Manson 1, would result in a very significantly worse return for creditors.

53.3 We do not consider that any further or better offer is likely to emerge as a result of further marketing of the Company's assets.

53.4 The time available to conclude the Proposed Transaction with UMMC is limited, given: (i) UMMC's statements that its offer is time-limited, due in large part to its view that the value of the assets is deteriorating; and, closely related to that point, (ii) the very real risk that Russian creditors of the Group (most notably UMMC itself, as the lender under the US\$ 200 million term loan) will choose to enforce their rights against the Group's assets in Russia in the near future. For the reasons explained in Philipps 1 and Manson 1, we consider that this would result in significant prejudice to non-Russian creditors, who would naturally be at a disadvantage in Russian enforcement or bankruptcy proceedings.

54 It is accordingly our view that the Proposed Transaction should be concluded as soon as practicable in order to secure a return for the Company's creditors as a whole while that remains possible.

#### **E. THE PROPOSED TRANSACTION**

55 I provided a brief summary of the Proposed Transaction in Manson 1. In this section I

provide a fuller overview of the terms as set out in the draft SPA.

### *Overview*

56 In summary, the Proposed Transaction would see the Company sell and UMMC purchase the Company's subsidiaries (excluding Petropavlovsk 2010 Limited and Petropavlovsk 2016 Limited) and certain intercompany receivables owed to the Company for Total Consideration with a value of approximately US\$ 619 million. Importantly, this sum is equal to the total liabilities of the Company and is intended by the parties to be sufficient to allow the Company to meet its obligations to creditors in full, although with no surplus remaining for shareholders.

57 In more detail, the consideration payable by UMMC consists of:

57.1 cash consideration of approximately US\$ 380.5 million, to be reduced dollar for dollar at Completion against the face value and unpaid interest on any 2022 Notes acquired by UMMC and transferred to the Company, or the amount due on such 2022 Notes, if higher. This, in effect, allows UMMC to be able to either pay cash of US\$ 380 million, or to reduce that amount by the Company being released from the liability to pay bonds at Completion. Put differently, it allows a partial credit bid option for UMMC. We understand that UMMC wishes to be able to tender 2022 Notes because a number of the 2022 Notes are understood to be held in Russia's National Settlement Depository ("**NSD**"), which is a nominee holder holding the 2022 Notes on behalf of third parties and part of MOEX. Since March 2022, Euroclear has restricted transactions on NSD's account until further notice, as reported in the article dated 18 March 2022 at [\[CBEP1/AJM1/21\]](#). As a consequence, all assets held in NSD's account with Euroclear have been frozen and Euroclear is no longer able to process receipt or delivery transaction or corporate actions. This means that, if the consideration paid by UMMC were purely in cash and then transferred to the Trustee or Paying Agent on the 2022 Notes, it appears that any such payment would not flow to any holders who hold through the NSD. This could create a commercially unacceptable situation for UMMC in that (i) even though UMMC would have paid the consideration in full, the holders on the NSD of the 2022 Notes might remain unpaid and therefore seek to claim on the guarantees against

certain of the operating subsidiaries that UMMC had just bought; and/or (ii) the Russian government has authorised UMMC to pay funds out of the country, but the Company's noteholders holding through the NSD would be left unpaid. I understand that the Company has been in correspondence with Euroclear on behalf of the issuers of the 2022 Notes and the Convertible Bonds;

- 57.2 consideration of US\$ 202.5 million, being equal to the amount outstanding on the Term Loan from time-to-time, to be discharged by way of set-off or similar against UMMC's claims under the Term Loan (which is to be subordinated to all other creditors pending the set-off)<sup>2</sup>;
- 57.3 "day-1" administration funding of US\$ 20 million to fund the remuneration and expenses of the administration and the estimated amount of contingent and uncertain liabilities, with potential top-up funding of a further US\$10 million if required, with any residual funds being returned to UMMC; and
- 57.4 contingency funding of US\$ 6 million for the purpose of dealing with any challenges brought in relation to the Proposed Transaction, with any residual funds being returned to UMMC.

each as explained in more detail below.

### ***Timing***

### **Signing**

- 58 It is proposed that, should the Court grant the order sought the Company, acting by the Administrators, and UMMC will execute the SPA in short order (i.e. within a matter of days).

### **Pre-Completion steps**

- 59 It is envisaged in the transaction timetable that there will be delays between (i) signing the SPA and the Completion Date of the Proposed Transaction and (ii) the Completion

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<sup>2</sup> This, in effect, is also a partial credit bid mechanism. The Term Loan is to be subordinated in the sale agreement to allow creditors other than UMMC under the Term Loan to be paid in priority, which they would not otherwise be.

Date and the transfer of full legal title to the relevant shares and participatory interests in the Transferring Subsidiaries that are directly owned by the Company to UMMC.

60 During the period between signing and Completion, the Company, acting by the Administrators will:

60.1 prepare the necessary documentation and seek to agree any other steps required to effect the transfer of the directly-owned subsidiaries [**clause 4.1**];

60.2 with UMMC, take the steps required to effect the transfer of the Buyer 2022 Notes (as defined and described below), to the extent the Administrators are satisfied that they are able to accept them [**clauses 5.3, 6 and 7**]; and

60.3 with UMMC, take steps to rationalise certain intercompany loans with subsidiaries that will be transferred to UMMC [**clause 5.4**].

#### Completion

61 On or before the Completion Date, UMMC will deliver to the Company the elements of the Total Consideration, together with the other documentation required under clause 6.3 of the SPA [**clause 6.3**].

62 Subject to UMMC having delivered the consideration and documentation referred to above, the Company will deliver to UMMC the documentation set out in clause 6.4 of the SPA to effect the transfer of the Transferring Subsidiaries that are directly-owned by the Company to UMMC [**clause 6.4**]. All representations and warranties from the Company and the Administrators are excluded in the usual manner [**clause 16**].

#### Longstop Date

63 Both parties must use reasonable endeavours to agree the Completion Date [**clause 5.2**]. Either party may terminate the SPA if the Completion Date does not take place by the Longstop Date, being 60 days after the date of the SPA.

#### Post-Completion

64 After the Completion Date, the Company and UMMC will take all steps within their power to complete the transfer of full legal and beneficial ownership of the Transferring

Subsidiaries that are directly-owned by the Company to UMMC, and thereby achieve the Transfer Success Date.

- 65 Furthermore, the Company and UMMC will be bound by certain obligations, as set out below, limiting how they can deal with the Transferring Subsidiaries before the Transfer Success Date.

#### Rescission

- 66 The Company and UMMC will, in certain circumstances, be entitled to rescind the SPA provided that the Transfer Success Date has not occurred and that such right must be exercised within 49 days of the Longstop Date.
- 67 The Company will be entitled to rescind following the date falling 50 days after the Completion Date.
- 68 UMMC will be entitled to rescind from the later of: (i) the date falling 50 days after the Completion Date, and (ii) the date falling 14 days after they have received acknowledgment from HMRC of the payment of all UK stamp duty in relation to the transfer of the English Transferring Subsidiaries, provided that UMMC has complied with its obligations to take all steps within its power (including the payment of any applicable stamp duty) to cause the Transfer Success Date to occur (per **clause 8.1** of the SPA) and to procure that no action is taken outside the ordinary course of trading that materially reduces the value of any of the Companies or their assets (as described below).
- 69 Either party may rescind the SPA if the parties agree in writing that it will not be possible for the Transfer Success Date to come about.

#### Transfer Success Date

- 70 On or after Completion, once UMMC has become the sole legal and beneficial owner of all the shares and participatory interests in the Transferring Subsidiaries that were directly owned by the Company, the “Transfer Success Date” will be deemed to have occurred.

## ***Key terms***

### Sale and consideration

- 71 The Company will transfer to UMMC such right, title and interest as it holds in the shares and participatory interests of its directly owned subsidiaries, with the exception of its Jersey incorporated subsidiaries, Petropavlovsk 2010 Limited and Petropavlovsk 2016 Limited. These two companies are bond issuers of the two bond issues, hence their exclusion.
- 72 The direct and indirect Company subsidiaries and participatory interests which would transfer to UMMC under the Proposed Transaction are listed in **Schedule 1** of the SPA. In exchange, UMMC will pay to the Company the Total Consideration, comprising:
- 72.1 **Adjusted Cash Consideration:** US\$ 380.5 million less the 2022 Note Consideration Amount [**definition in clause 1.1 of Adjusted Cash Consideration**];
- 72.2 **2022 Note Consideration Amount:** the face value of any Buyer 2022 Notes together with any accrued interest thereon, or, if higher, the amount due on such notes, that UMMC buys and transfers to the Company. The 2022 Note Consideration Amount will be discharged by the transfer of the Buyer 2022 Notes to the Company. The Company will then seek to have those Buyer 2022 Notes cancelled in accordance with their terms in order to discharge its liabilities as guarantor in respect of such notes<sup>3</sup>. The Company has a right to refuse any Proposed Buyer 2022 Notes acquired from Sanctioned Persons [**definition in clause 1.1 of 2022 Note Consideration Amount and clauses 7.4, 7.10 and 7.14**];
- 72.3 **Term Loan Consideration:** an amount equal to any and all outstanding amounts payable under the Term Loan from time-to-time (save for any applicable statutory interest), currently estimated to be \$202.5 million. The Term Loan is also to be subordinated to other creditors as part of the sale arrangements. Payment of the Term Loan Consideration is to be made by way

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<sup>3</sup> Certain key Transferring Subsidiaries have also guaranteed these notes, and their liability would also be extinguished.



of set off on the Set-Off Date (being a date not before the date on which the 2022 Notes are paid in full) against the amounts payable under the Term Loan [definition in clause 1.1 of Term Loan Consideration and Set-Off Date and clause 10], subject to payment of part of the Term Loan Consideration being made in cash to meet certain tax liabilities [clause 10.3]. The parties have agreed to consider alternative mechanisms to set-off of the Term Loan Consideration and Term Loan provided such mechanism does not give rise to adverse tax consequences for the Seller and is economically equivalent/cash neutral as between the Buyer and the Seller [clause 10.1]. The Term Loan is also to be subordinated to other creditors as art of the sale arrangements;

72.4 **Administration Fund:** initial funding of US\$ 20 million (with a mechanism for UMMC to pay additional funds, if required by the Administrators, up to a maximum of a further US\$ 10 million) to be applied: (i) first, for the Administrators' remunerations and expenses of the administration; (ii) second, for the purpose of meeting the Company's liabilities, to the extent the Cash Consideration is insufficient to pay such liabilities in full (and intended to cover liabilities of a contingent or uncertain amount); and (iii) third, in relation to any residual amount after all liabilities of the Company have been paid in full, by way of refund to UMMC [definition in clause 1.1 of Administration Fund and clause 12]; and

72.5 **Contingency Fund:** US\$ 6 million, which is to be held on trust by the Company for (i) the purpose of meeting any costs, fees or liabilities incurred in connection with the defence of any claims brought or threatened against the Company or the Administrators in connection with the Proposed Transaction, or (ii) if no such claims have been bought within six years after the date of the SPA or any administration or liquidation of the Company has come to an end, any residual amount for the benefit of UMMC [definition in clause 1.1 of Contingency Fund and clause 13].

73 The Adjusted Cash Consideration, Administration Fund, Contingency Fund and 2022 Note Consideration Amount (to be discharged by the transfer of the Buyer 2022 Notes) shall be payable by UMMC to the Company on or before the Completion Date [clauses 6 and 7].

74 As explained in Philipps 1 and Manson 1, UMMC is now the lender under the Term Loan. UMMC has agreed that the Term Loan Consideration shall be set off against the amount of principal (and, subject to the satisfaction of certain tax requirements, interest) outstanding under the Term Loan (a) upon notice by UMMC, provided that the 2022 Notes have been paid in full, or (b) if no such notice has been given by UMMC, five Business Days after the Administrators, or any subsequent liquidators, of the Company give notice to UMMC that (i) all other creditors have been paid or reserved for in full, or (ii) they propose within three months to send a final account or to move from administration to dissolution [**definition in clause 1.1 of Set-off Date and clause 10.1**]. In the meantime, UMMC has agreed to subordinate its claims under the Term Loan to those of the Company's other creditors. The Term Loan will be subordinated until all the Company's other creditors have been paid or been reserved for in full. Once the 2022 Notes have been paid in full, UMMC may elect to set off the Term Loan against the Term Loan Consideration. If UMMC does not make such an election before all other claims have been paid or reserved for in full, the set-off shall take place five business days after the Administrators give notice that all other claims have been paid or reserved for in full. If other creditors are never paid or reserved for in full, the Term Loan will be set off at the end of the administration or liquidation [**clause 10 and definition in clause 1.1 of Set-off Date**].

#### *Transfer of UMMC's 2022 Notes*

75 A number of the 2022 Notes are understood to be held in Russia's National Settlement Depository ("NSD"), which is a nominee holder holding the 2022 Notes on behalf of third parties and part of MOEX. We have been advised by Infracore and the Company's English legal advisors that, since March 2022, Euroclear has restricted transactions on NSD's account until further notice, as per announcements on the NSD and Euroclear websites [**CBEP1/AJM1/21**]. As a consequence, all assets held in NSD's account with Euroclear have been frozen and Euroclear is no longer able to process receipt or delivery transaction or corporate actions. This means that, if the consideration paid by UMMC was purely in cash and then transferred to the Trustee or Paying Agent on the 2022 Notes, it appears that any such payment would not flow to any holders who hold through the NSD. This could create a commercially unacceptable situation for UMMC in that (i) even though UMMC would have paid the consideration in full, the holders

on the NSD of the 2022 Notes might remain unpaid and therefore seek to claim on the guarantees against certain of the operating subsidiaries that UMMC had just bought; and/or (ii) the Russian government has authorised UMMC to pay funds out of the country, but the Company's bondholders holding through the NSD would be left unpaid. I understand that the Company has been in correspondence with Euroclear on behalf of the issuers of the 2022 Notes and the Convertible Bonds.

76 Accordingly, to mitigate this risk, UMMC intends to purchase certain 2022 Notes and transfer them to the Company on or before the Completion Date (the "**Buyer 2022 Notes**"). The Company and UMMC have agreed to take the following steps to ensure that the acquisition and transfer of any such notes would not be in breach of applicable sanctions laws:

76.1 Six business days prior to completion, UMMC will provide the Company with evidence (where available) of the identity of the immediately prior legal and beneficial owner of any 2022 Notes it proposes to transfer to the Company, together with any information and evidence it has been able to obtain, using best endeavours, regarding the identity of all previous legal and beneficial owners of any such notes since 19 April 2022 (being the date of the assignment of the Term Loan to UMMC) [**clause 7.1**]. The Company acknowledges that it may not be possible for UMMC to provide any such evidence or information where it has acquired 2022 Notes over an exchange [**clause 7.2**].

76.2 UMMC will agree, undertake and warrant that it will not, directly or indirectly, seek to acquire any Buyer 2022 Notes from any sanctioned persons, and will take all reasonable steps (including, to the extent possible, verifying the identity of all previous legal and beneficial owners of any Buyer 2022 Notes) to ensure that it does not do so [**clauses 7.3 and 7.13**].

76.3 The Company will be entitled to refuse to accept any Proposed Buyer 2022 Notes which UMMC has acquired (i) in breach of the obligations referred to in paragraph 24.2, or (ii) from a sanctioned person [**clause 7.4**].

### ***Other sanctions provisions***

- 77 In addition to the steps taken to mitigate the risk of breaching sanctions laws when transferring the 2022 Notes, as described above, by clause 16.7 the Buyer (i.e. UMMC) warrants that *“no Sanctioned Person exists in the Buyer’s Group save for any Disclosed Sanctioned Person, and no Sanctioned Person owns or controls the Buyer for the purposes of Regulation 7 of the Russia (Sanctions) (EU Exit) Regulations 2019, whether alone or acting in concert with any other person”* (those terms being defined in clause 1.1 of the SPA) and that *“the Buyer shall use its best endeavours and shall take all possible steps to ensure that, as result of the sale of the Shares, no funds or economic resources will be made available, directly or indirectly, to or for the benefit of any Sanctioned Person in the Buyer’s Group, for the duration of the period in which they remain a Sanctioned Person, including, without limitation, by preventing the payment of any sums where such payment (directly or indirectly) would be in breach of Sanctions (if the Buyer were required, as a matter of law, to comply with such Sanctions)”*
- 78 The SPA may be terminated prior to Completion by the Company if a *“Buyer Sanctions Event”* occurs (**clause 28.1**) being: (i) the imposition of any Sanction on UMMC; (ii) the imposition of any sanctions on any other person or entity connected in any way with the transaction; (iii) any formal request by a Sanctions Authority to the Company to cease delay, defer, pause or withhold performance of any of the obligations in the agreement for whatever reason; or (iv) any other event occurring after signing (including, without limitation, the issuance of any further guidance in relation to existing or future Sanctions by any Sanctions Authority or intervention with respect to the transactions contemplated by any Sanctions Authority); in each case, as a result of which the Seller reasonably considers based on a legal opinion of a reputable and qualified legal consultant or following an order or direction of the court that it would be in violation of any Sanctions if it were to perform or continue to perform its obligations to complete the transaction.

### ***Assignment and set-off of intercompany debts***

- 79 UMMC has also agreed to acquire any intercompany receivables owed by the Transferring Subsidiaries to the Company, Petropavlovsk 2010 Limited or Petropavlovsk 2016 Limited. Once the SPA has been signed, and prior to the

Completion Date, the Company will request that certain subsidiaries of the Company enter into transactions to simplify the intercompany debts between (i) the Company, Petropavlovsk 2010 Limited and Petropavlovsk 2016 Limited and (ii) the Transferring Subsidiaries, as set out below. The resulting Final Net Receivable will be assigned to UMMC at Completion **[clauses 5.4, 5.5 and 6.4]**. The Company will request that:

79.1 JSC Pokrovskiy Mine assigns its claim for *circa* US\$ 48.2 million against the Company to Petropavlovsk Mining Treasury UK Limited in return for an intercompany debt of the same amount **[clause 5.4(a)]**;

79.2 Petropavlovsk 2010 Limited assigns its claims for *circa* US\$ 369.1 million against Petropavlovsk Mining Treasury UK Limited to the Company in return for the intercompany debt owed by the Company to Petropavlovsk 2010 Limited being increased by the same amount **[clause 5.4(b)]**;

79.3 Petropavlovsk Mining Treasury UK Limited and the Company set off their mutual debts, resulting in an Interim Net Receivable owed by Petropavlovsk Mining Treasury UK Limited to the Company of *circa* US\$ 755.4 million **[clause 5.4(c)]**; and

79.4 On completion of the steps set out above, the Company shall waive all accrued interest and any such amount of principal owing under the Interim Net Receivable as will leave a Final Net Receivable of *circa* US\$ 93 million, which will be transferred to UMMC at Completion **[clauses 5.5 and 6.4]**. The rationale for the waiver is that, although the intercompany claim exists and is a valid debt, it is unlikely to be recoverable in full. In the transfer to UMMC, it is desirable for the debt to be bought at its face value. US\$ 755 million is larger than the entire consideration that UMMC is paying. The Proposed Administrators consider that US\$ 93 million is a better reflection of its true value, so it is tax efficient to write it down to that level before assigning it at face value **[Schedule 2]**.

80 If any intercompany claims between (i) the Company, Petropavlovsk 2010 Limited or Petropavlovsk 2016 Limited; and (ii) the Transferring Subsidiaries, are discovered later, any claims against the Transferring Subsidiaries will be assigned to UMMC and any claims against the Company, Petropavlovsk 2010 Limited or Petropavlovsk 2016

Limited will be assigned to the Company, such that no claims remain outstanding between the Company and the Transferring Subsidiaries.

81 We consider that appropriate tax planning to preserve the Company's interests has taken place in relation to these arrangements, and the proposed transaction generally.

***Obligations of the Company and UMMC prior to the Transfer Success Date***

82 From the date of the SPA to the Transfer Success Date, the Company is restricted from doing certain things that might adversely affect the value of the Transferring Subsidiaries before the transfer of full legal and beneficial ownership to UMMC is complete.

83 Subject at all times to the restrictions on the Administrators' powers set out below, and to the extent within the Company's control, this includes: (a) the disposal of any shares in the Transferring Subsidiaries, (b) entry into any transactions with the Transferring Subsidiaries outside the ordinary course of business, (c) the incurring of any liabilities from any Transferring Subsidiary outside the ordinary course of business, (d) receiving any money or assets from any Transferring Subsidiary outside the ordinary course of business, or (e) forming, liquidating or merging any of the Transferring Subsidiaries, [clause 8.3]. The SPA does not, however, require the Company to procure that any of the Transferring Subsidiaries do anything.

84 From the Completion Date until the earlier of the Transfer Success Date, the date on which the parties may no longer rescind, or if rescission takes place, the date on which UMMC has transferred all subsidiaries and any other assets back to the Company, UMMC is also restricted from taking, and is required to procure that the Transferring Subsidiaries do not take any action (and must not omit to take any action) outside the ordinary course of trading that materially reduces the value of any of the Transferred Subsidiaries, their subsidiaries, or their respective assets [clause 8.6].

***Termination***

85 The SPA may be terminated prior to Completion by the Company (acting by the Administrators) if any sanctions are imposed on UMMC which the Company would violate if it were to perform its obligations under the SPA [clause 28.1]. Similarly,

UMMC would be entitled to terminate the SPA should any sanctions be imposed on the Company which UMMC would violate if it were to perform its obligations under the SPA **[clause 28.2]**.

86 Furthermore, any party may terminate the SPA if Completion has not occurred before the Longstop Date **[clause 28.3]**.

87 Finally, UMMC will be entitled to terminate the SPA prior to the Completion Date if the Company notifies UMMC that it has become aware of any Company liabilities which in aggregate, increase the Company's liabilities such that they exceed the high case estimate provided to UMMC prior to signing by at least US\$ 25 million **[clause 28.4]**.

### ***Governing law and jurisdiction***

88 The SPA and any disputes arising out of the agreement will be governed by English law **[clause 30.1]**.

89 The SPA provides that any dispute arising out of the agreement will be referred for arbitration administered by the Singapore International Arbitration Centre, with the seat of arbitration in Singapore **[clause 30.2]**. This mechanism was chosen in light of legal advice that an arbitration award obtained through this dispute resolution procedure may be more easily enforced in Russia than an English court order.

### ***SIP 16 information***

90 To be satisfied that a fair and proper process has been run, the Proposed Administrators have conducted an assessment based on the principles set out in Statement of Insolvency Practice 16 ("SIP 16") provided by the Institute of Chartered Accountants in England & Wales in respect of pre-packaged sales by administrators, and have prepared a statement in this regard (the "SIP 16 Statement") **[AJM3/37]**. Although I understand that a SIP 16 statement may not strictly be required in respect of the Proposed Transaction, we have prepared one on the footing that it may assist the Court. The SIP 16 Statement details the work which Opus has carried out in relation to: (a) reviewing the alternative options considered by the Company, (b) assessing the marketing process which the Company undertook, (c) reviewing the independent

valuation advice received by the Company and (e) analysing the Proposed Transaction in that context.

## **F. SANCTIONS**

### ***Introduction***

91 As I explained in Manson 1, prior to our appointment the Administrators had given careful consideration to the impact of sanctions relating to Russia on the Proposed Transaction and the steps required to complete it. We reviewed the detailed legal advice received by the Company prior to our appointment and consulted with our own legal advisers. The Company had obtained advice in this regard from several leading law firms and from leading sanctions counsel. That advice was not consistent: while some advisers (including leading counsel) have taken the view that the Proposed Transaction does not involve any breach of sanctions, and therefore that no licence from OFSI is required to enable the Proposed Transaction to proceed, other advisers have taken a different or more qualified view.

92 Having given careful consideration to the risks identified by the Company's advisers, and having taken further advice from leading counsel since our appointment, our own view remains as set out in Manson 1: that the Proposed Transaction properly analysed does not give rise to any breach of applicable sanctions. However, the Administrators are very much alive to the risk that the relevant authorities might disagree with that conclusion. Given the uncertainty, we wish to ensure that the Court is apprised of the relevant facts so that it may, to the extent it considers appropriate, form and express its own view.

93 We recognise that we could seek to put the matter beyond doubt by applying for licences from the relevant authorities (being OFSI in relation to UK sanctions and the Central Bank of Cyprus in relation to EU sanctions as applicable in Cyprus) to enter into the Proposed Transaction before doing so. However, we have been advised that a licence application to OFSI would in the ordinary course take six to eight weeks to be decided by OFSI, and that at present that period may be extended due to the volume of queries that OFSI is receiving relating to Russia-related business. I also note in this regard that neither the Company nor the Administrators have yet received any substantive response from OFSI to our numerous communications to them (the first



being on 29 June 2022), described below, informing them of the Proposed Transaction and requesting their views in relation to it. Our concern is that, in the time it would take for a licence application to be considered, the Proposed Transaction will cease to be viable because: (i) the value of the Company's assets will continue to deteriorate to the point that UMMC withdraws its offer; and/or (ii) UMMC could at any time abandon negotiations with the Company and choose instead to enforce its rights as creditor against the Group's assets in Russia, with the serious consequences for other (and particularly non-Russian) creditors described above. If at all possible, therefore, we consider that it would be in the interests of the creditors as a whole to proceed with the transaction without first having to wait for a licence to be granted.

94 In broad summary, we have identified five facts which give rise to potential sanctions issues under either the Russia (Sanctions) (EU Exit) Regulations 2019 (as amended) (the “**UK Regulations**”) or Council Regulation (EU) No 269/2014 (the “**EU Regulations**”). These are:

94.1 The Company's past relationship with GPB, which was until April-May 2022 a major creditor of the Group and the largest purchaser of the Group's gold. As explained in Manson 1, GPB has been subject to asset-freezing measures under the UK Regulations since 24 March 2022. The Company's relationship with GPB came to an end as a result of the assignment of the Term Loan by GPB to UMMC in April 2022 and the assignment of the Facilities by GPB to Nordic in May 2022.

94.2 The fact that the Group produces and sells products containing gold, potentially engaging the provisions of the UK Regulations prohibiting the “export” of “luxury goods” to Russia upon a sale of the relevant subsidiaries.

94.3 The fact that there is no way to be certain who currently owns the 2022 Notes, such that there is a possibility that some 2022 Notes are held by individuals or entities which are the subject of sanctions, potentially giving rise to a breach of the UK Regulations should UMMC purchase 2022 Notes from sanctioned persons and tender them to the Company as Buyer 2022 Notes (as defined in the SPA).

94.4 The fact that Mr Andrei Bokarev, a current or former minority shareholder in UMMC, has since 13 April 2022 been a designated person under the UK Regulations.

94.5 The fact that Mr Andrei Kozitsyn, a current or former minority shareholder in UMMC who was until recently the general director (CEO) of UMMC, has since 21 July 2022 been designated as a person subject to asset-freezing measures under the EU Regulations. The EU Regulations are potentially relevant because the Proposed Transaction envisages that the shares in two Cypriot subsidiaries of the Company will be transferred to UMMC. As explained below, we understand that Mr Kozitsyn resigned as general director of UMMC with effect from 20 July 2022 (after his designation under the EU Regulations was reported in the press but before it took effect).<sup>4</sup>

95 I provide more detail on these factual issues below together with an explanation of the steps the Administrators have taken to evaluate and mitigate the sanctions risk resulting from them. Our conclusion that none of them gives rise to a breach of the applicable law will be explained in greater detail in submissions.

### ***Summary of UK and EU sanctions regimes and the Administrators' approach***

96 Before turning to the five potential issues set out above, I am advised that it may assist the Court for me briefly to set out the relevant sanctions regimes (as we understand them) and our approach to these issues. The Court will readily appreciate that I am not a lawyer, still less a sanctions expert, and the summary of the law that follows is based on legal advice received by the Company and the Administrators.

#### **The UK Regulations**

97 The UK Regulations is a statutory instrument made pursuant to the Sanctions and Anti-Money Laundering Act 2018. It applies to (i) all persons who are within, or undertake

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<sup>4</sup> We understand that the position of general director in a Russian company is analogous in function to that of a chief executive officer of an English company. The general director of a Russian company is not however necessarily a member of the company's board of directors and, in the case of UMMC, I understand that Mr Kozitsyn was not a member of the board. Under Russian law, the general director constitutes a governing body separate from the board of directors, and is sometimes referred to as "sole executive body" of a Russian company.

activities within, UK territory; and (ii) all UK nationals and UK entities (including their branches) wherever they are in the world. It therefore clearly applies to the Company, to its UK-national officers and employees, and to the Administrators.

98 So far as is relevant, the UK Regulations include: (i) asset-freezing measures on designated individuals; and (ii) sanctions restricting the export of “luxury goods” to Russia.

99 As regards the asset freezing measures, I understand that:

99.1 When an individual or entity is sanctioned by the UK, they are typically subjected to an asset freeze. The asset freeze means that persons subject to UK jurisdiction are:

- (i) Prohibited from dealing with funds or economic resources owned, held or controlled by the sanctioned person (i.e. the sanctioned person’s assets must be frozen); and
- (ii) Prohibited from making funds or economic resources available (directly or indirectly) to or for the benefit of the sanctioned person.

99.2 Regulations 11 to 15 of the UK Regulations set out the specific provisions of the asset freeze in connection with those individuals and entities designated under the UK Regulations. In particular:

- (i) Regulation 11(4) provides that a person “*deals with*” funds if that person: “(a) *uses, alters, move, transfers or allows access to the funds, (b) deals with the funds in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination, or (c) makes any other change, including portfolio management, that would enable use of the funds.*”
- (ii) Regulation 11(5) explains that a person “*deals with*” economic resources if that person: “(a) *exchanges the economic resources for funds, goods or services; or (b) uses the economic resources in exchange for funds, goods or services (whether by pledging them as security or otherwise).*”

(iii) In terms of making funds available for the benefit of a designated person, Regulation 13(4) explains that: “(a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit, and (b) ‘financial benefit’ includes the discharge (or partial discharge) of a financial obligation for which the designated person is wholly or partly responsible.”

99.3 Each of the restrictions in Regulations 11 to 15 of the UK Regulations is stated to be “subject to Part 7 (Exceptions and licences)”. Part 7 of the UK Regulations sets out the various exceptions and the circumstances in which licences might be issued (which would allow conduct which would ordinarily breach the relevant provisions of the UK Regulations).

99.4 Regulation 19 of the UK Regulations also prohibits circumvention of the asset freeze provisions and states: “(1) A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly)— (a) to circumvent any of the prohibitions in regulations 11 to 18A, or (b) to enable or facilitate the contravention of any such prohibition. (2) A person who contravenes the prohibition in paragraph (1) commits an offence.”

100 As regards the sanctions regarding luxury goods, I understand that:

100.1 Regulation 46B of the UK Regulations sets out a prohibition on exporting “luxury goods” to Russia. The relevant wording is as follows:

*(1) The export of luxury goods to, or for use in, Russia is prohibited.*

*(2) A person must not directly or indirectly – (a) supply or deliver luxury goods from a third country to a place in Russia; (b) make luxury goods available to a person connected with Russia; (c) make luxury goods available for use in Russia.*

100.2 Regulation 21 of the UK Regulations defines “luxury goods” as “any thing specified in Schedule 3A, other than any thing for the time being specified in –

*(a) Schedules 2 or 3 to the Export Control Order 2008, (b) Annex 1 of the Dual-Use Regulation, or (c) Schedule 2A.*” Gold is a “luxury good” pursuant to the table at paragraph 11 of Schedule 3A of the Russia Regulations.

100.3 Regulation 21 of the UK Regulations also explains that a person is to be regarded as “connected with” Russia if the person is: “*(a) an individual who is, or an association or combination of individuals who are, ordinarily resident in Russia, (b) an individual who is, or an association or combination of individuals who are, located in Russia, (c) a person, other than an individual, which is incorporated or constituted under the law of Russia, or (d) a person, other than an individual, which is domiciled in Russia.*”

100.4 Regulation 55 of the UK Regulations also prohibits circumvention of the trade restrictions (including the restrictions on “luxury goods”) in similar terms to the circumvention provision set out in Regulation 19 of the UK Regulations (and described above).

#### The EU Regulations

101 Article 2 of the EU Regulations prohibits certain dealings with persons designated thereunder. Article 2 provides as follows:

*1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I, shall be frozen.*

*2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I.*

#### Our approach

102 We have sought to identify, evaluate and mitigate sanctions risk, both before and since our appointment, in the following ways.

- 103 First, we have sought detailed advice from our solicitors, JHA, and from specialist sanctions counsel, Mr Jim Sturman QC, which advice has been kept under constant review. Our advisers have been provided with (and asked to comment upon) all of the advice previously obtained by the Company regarding the potential applicability of sanctions, and we have made them aware of new developments (for example the recent EU designation of Mr Kozitsyn) as soon as we have learned of them, in order that they could update their advice as appropriate.
- 104 Second, we (and, before our appointment, the Company) have notified OFSI (as the relevant authority in the UK) and the Central Bank of Cyprus (as the relevant authority in Cyprus) of the Proposed Transaction as follows:
- 104.1 On 29 June 2022, JHA wrote to OFSI on behalf of the Company [AJM3/6] to inform them that we may be appointed administrators of the Company in the near future and that, if we were, we were considering concluding the Proposed Transaction with UMMC (it having been envisaged at that time that the Administration Application might include a pre-packaged sale to UMMC). We set out the relevant facts, explained our view that a licence was not required, and requested that OFSI provide a response confirming whether or not they agreed with our analysis as soon as possible.
- 104.2 On 5 July 2022, JHA wrote to OFSI [AJM3/8] to provide an update on the Administration Application. They repeated the request for a response as soon as possible.
- 104.3 On 14 July 2022, JHA wrote to OFSI [AJM3/11] to inform them that the Administration Application had been issued and was listed to be heard on 18 July 2022. JHA noted that if OFSI considered that the Proposed Transaction might involve a breach of the UK Regulations the Company would wish to engage with OFSI in that regard in advance of the hearing of the Administration Application to the extent possible or to raise them with the Court.
- 104.4 On 15 July 2022, JHA emailed OFSI [AJM3/12] to inform them of the time and place of the hearing on 18 July 2022.

- 104.5 On 25 July 2022, JHA wrote to OFSI on behalf of the Administrators [AJM3/32]. This letter enclosed a copy of the Administration Order and provided an update on recent developments, including as to the EU designation of Mr Kozitsyn on 21 July 2022 and Mr Kozitzyn's resignation from the board of UMMC. JHA noted that it had been almost four weeks since OFSI were first notified of the intention to enter into the Proposed Transaction and requested them to confirm their position in a manner that could be placed before the Court as a matter of urgency.
- 104.6 Also on 25 July 2022, JHA wrote to the Central Bank of Cyprus [AJM3/33] to inform the bank of the Proposed Transaction (including the proposed transfer of the shares in two Cypriot subsidiaries of the Company to UMMC) in light of the designation of Mr Kozitsyn. The letter stated that the Administrators intended to issue the present application shortly, explained our view that the Proposed Transaction would not involve a breach of the EU Regulations, and sought the bank's views in that regard as soon as possible.
- 104.7 On 26 July 2022, Ms Michelle Duncan of JHA telephoned OFSI in order to ask them to respond to their earlier correspondence. This call was unanswered and Ms Duncan left a voicemail providing her contact details and explaining that the Administrators were seeking an urgent response to the earlier correspondence.
- 104.8 As at the date of this evidence, no substantive response has been received to any of these communications.
- 105 Third, we have negotiated provisions to mitigate the risk of a sanctions breach in the SPA, as set out above.
- 106 Fourth, by the present application we have sought to put all the material facts before the Court so that it may, if so minded, provide the Administrators (as officers of the Court) with directions in this regard.
- 107 I now turn to the five potential issues identified above in more detail.

### *The GPB sanctions issue*

- 108 As explained in detail in Philipps 1 and Manson 1:
- 108.1 The original lender in respect of the Term Loan was GPB.
  - 108.2 GPB also made the Facilities available to certain subsidiaries of the Company.
  - 108.3 Since 24 March 2022 GPB has been a target of sanctions under the Regulations.
  - 108.4 On 18 April 2022, GPB gave notice to accelerate the Term Loan on the basis of the Company's failure to pay the interest payment of US\$ 560,000 which became due on 25 March 2002, and which the Company could not lawfully make.
  - 108.5 On the same date, GPB gave notice of acceleration to the relevant Group subsidiaries in respect of the Facilities.
  - 108.6 On 19 April 2022, GPB gave notice that it had assigned its rights in respect of the Term Loan to UMMC (the "**UMMC Assignment**").
  - 108.7 On 12 May 2022, GPB assigned the Facilities to Nordic LLC (the "**Nordic Assignment**").
- 109 Some of the Company's previous advisers identified potential risks arising from GPB's designation under the UK Regulations:
- 109.1 There is a risk of the asset-freezing provisions in regulations 11-15 of the UK Regulations being breached if, notwithstanding the UMMC Assignment and the Nordic Assignment, any benefit was deemed to flow to GPB directly or indirectly as a result of the Proposed Transaction. As set out above, the effect of the asset-freeze provisions of the Regulations is that persons subject to UK jurisdiction are: (i) prohibited from dealing with funds or economic resources owned, held or controlled by the designated person; and (ii) prohibited from making funds or economic resources available (directly or indirectly) to or for the benefit of the designated person.



- 109.2 The Company and Administrators naturally do not have perfect visibility over the circumstances of and reasons for the UMMC Assignment or the Nordic Assignment. That being so, the Company's advisers noted that there was a risk that UMMC and/or Nordic might be acting as undisclosed nominees for GPB – i.e. that the assignments were sham transactions and that GPB retained the benefit of the Term Loan and the Facilities in reality.
- 109.3 It was also noted that, until relatively recently, the Company had little information regarding the financial terms of those assignments.
- 110 The Administrators take this risk extremely seriously and, working with the Company's directors, have taken steps both prior to and since our appointment to satisfy ourselves that the assignments were genuine commercial transactions. Although we recognise that complete certainty will never be possible in this regard, we have concluded that they are genuine commercial transactions, in light of the following:
- 110.1 As explained in Philipps 1, on 28 June 2022 GPB confirmed to the Company [AJM3/5] that (i) it no longer holds any rights under either the Term Loan or the Facilities, and that no further consideration (including contingent consideration) is or might become due to GPB from any party as a result of the assignments to UMMC and Nordic; and (ii) it does not currently hold, and has no interest in, any debt or other security relating to the Company or the Group. It therefore appears that GPB has no subsisting rights under the Term Loan or the Facilities, nor that the Proposed Transaction would have the effect of making funds or economic resources available (even indirectly) to GPB, in breach of the asset-freeze provisions. The Administrators have no reason to doubt the veracity of these confirmations. We note in this regard that GPB is one of Russia's largest commercial banks, for whom the Term Loan and Facilities would have been relatively insignificant debt investments. That being so, we consider it unsurprising that GPB would seek to sell the debt as soon as it became apparent that the Company was not in a position to repay it as a result of GPB's designation. To put it another way, we consider it inherently unlikely that they would engage in an elaborate and illegal deception in order to maintain a secret interest in the Company's debt.

110.2 As also explained in Philipps 1, UMMC has provided similar confirmations in respect of the Term Loan, and has explained that it approached GPB and sought to purchase the Term Loan from GPB for commercial reasons, with a view to using the debt eventually to own the Company or its assets (a “loan to own” strategy), shortly after it became public knowledge that the Company was unable to repay the debt to GPB. The Company’s directors consider, and we agree, that this explanation entirely plausible given that:

- (i) UMMC is one of Russia’s largest metals and mining groups and is very well known in the market. It is not surprising that would wish to acquire the Company’s mining assets or to secure a negotiating advantage by first becoming its major creditor.
- (ii) UMMC first approached the Company with a view to purchasing its shares or assets in late 2021, long before there was any prospect of sanctions being imposed on GPB.

110.3 UMMC has also confirmed to the Company that it purchased the Term Loan from GPB for par value (i.e. without any discount). While on its face this is somewhat surprising, given that the debt was distressed, we do not consider that this in itself is sufficient reason to doubt the explanation given by UMMC for its actions.

110.4 In any event, there is no indication that there was any UK nexus for the UMMC assignment, which we are advised would be required for the UK Regulations to apply to it at all. GPB and UMMC are both Russian entities and we understand that the assignment was agreed and executed in Russia.

110.5 Less is known about Nordic, with whom the Company has no regular contact (as opposed to UMMC, with whom the Company and Administrators have obviously been in regular contact for some time). However, as again set out in Philipps 1, it appears from public sources that Nordic is a distressed debt investor and the Company understands that it purchased the Facilities from GPB for a significant discount to face value. We have no reason to think that this was anything other than a genuine commercial transaction.

110.6 As to the Nordic Assignment:

- (i) We are aware that the Company received letters in May 2022 from an entity called Arbat Capital, which was stated to be a partner of Nordic. The website of Arbat Capital suggests that it has a presence in London and public sources suggest that an individual associated with it, Mr Alexei Golubovich, has connections to the UK.
- (ii) On 29 June 2022, the Company wrote to Nordic seeking an explanation of Arbat Capital's role in relation to the Nordic Assignment, and in particular whether any conduct in relation to that assignment took place in the UK and/or involved any UK nationals or companies. By its response dated 29 June 2022, Nordic stated that "*Arbat Capital indeed provided to us a certain portion of the funds that we used to acquire the debt under the Assignments. Arbat Capital have not had any connections with negotiations, execution and performance of the Assignments. The only role of the Arbat group had in connection with the Assignments was - a lender. We confirm that no conduct in relation to the Assignments took place in the UK or involved any UK nationals or companies.*" This correspondence is at [AJM3/7].
- (iii) We have no reason to doubt that confirmation. However, we cannot exclude the possibility that the Nordic Assignment involved individuals/entities within the jurisdictional scope of the UK Regulations, or that it constituted a breach of those regulations. Even if, contrary to that confirmation, there were a UK nexus to the assignment, it is clear to us having made extensive enquiries of the Company's management and searches of its records that the Company had no involvement whatsoever in that assignment (or indeed the UMMC assignment).

111 Nor, in our view, is there any basis for suggesting that the Company is attempting, or has attempted, to circumvent any provisions of the UK Regulations such that the Proposed Transaction is caught by regulation 19 of the UK Regulations.

111.1 Neither the Company nor any individual connected with the Company had any involvement in, or prior knowledge of, the UMMC Assignment or the

Nordic Assignment (save that, as set out in Philipps 1 at [47] and [61], the Company was informed immediately before the assignments were made that they would be made).

111.2 While the Company has run a sales process and, over a similar timeframe, UMMC and Nordic entered into the UMMC Assignment and the Nordic Assignment with GPB, they did so without any involvement, encouragement or prior knowledge (save to the very limited extent set out in the previous subparagraph) on the part of the Company, and at no stage has the Company participated in any activities knowing or believing that its object or effect was to circumvent the sanctions to which GPB is subject.

111.3 Further, so far as the UMMC Assignment is concerned, this took place during the currency of the General Licence issued by OFSI on 24 March 2022 which permitted any person to “*wind down any transactions to which it is a party, [involving GPB]... including the closing out of any positions*” until 23 April 2022.

### ***The export of luxury goods sanctions issue***

112 As explained in Philipps 1 and Manson 1, the Company has four operating subsidiaries based in Russia, which collectively operate mines, a pressure oxidation (or “POX”) hub, and engage in gold exploration activities. The Russian subsidiaries hold a quantity of unrefined gold alloy known as “doré” as well as a quantity of refined gold bars.

113 Some of the Company’s previous advisers considered that there was a risk that, by transferring those subsidiaries to UMMC, the Company could be deemed to be exporting gold, a luxury good within the meaning of the UK Regulations, to UMMC in Russia. After this view was expressed (prior to our retention) by one of the Company’s advisers, further investigation and analysis of how the group produces and holds its gold was carried out. After our retention we participated in this analysis with our advisers. Following this further detailed factual analysis, which was then given further consideration by our legal advisers, we concluded that the original view expressed was incorrect and that the proper conclusion is that no such prohibited export would take place. This is the view shared by all other advisers, as well as leading counsel.

- 114 In summary, the mines extract grey rock from the ground which then undergoes multiple rounds of treatment to produce gold concentrate, a liquid form of rock containing around 30 grams of gold per tonne (and less than 35 grams of gold per tonne), from low grade refractory ore. The gold concentrate (essentially, as mentioned, a liquid form of rock, which is brown in colour and resembles liquid concrete) is then transported to the POX hub, where the gold/metal content is extracted to produce a substance known as “doré”, a metallic mix containing copper, gold and silver and other metals, and consisting of approximately 2-4% by weight of gold. The doré produced at the POX hub is in the form of grey/brown lumps which are irregular in shape. The doré is then transported to a third-party regulated refinery (i.e. a refinery regulated by the Russian state) where it is smelted to remove impurities and where the gold content is affirmed, and then melted into the form requested by the customer and/or formed into gold bars. The operating subsidiaries currently remain in operation such that there are quantities of doré present and/or stored at the premises of the subsidiaries. The subsidiaries also have title to a quantity of refined gold bars, which are held to their account at the relevant refineries.
- 115 As noted above, regulation 46B of the UK Regulations, headed “*Luxury goods*”, contains provisions which prohibit the export of “luxury goods” to, or for use in, Russia.
- 116 Paragraph 11 of Schedule 3A of the UK Regulations specifies that “*Pearls, precious and semi-precious stones, articles of pearls, jewellery, gold- or silversmith articles falling within the commodity codes set out in the following table*” constitute “luxury goods”.
- 117 Further, pursuant to paragraph 1 of Schedule 3A (and paragraph 1 of Schedule 3), Schedule 3A refers to a table which, among other things, contains certain commodity codes as specified in the Goods Classification Table in Annex I in Part 3 of the Tariff of the United Kingdom in order to identify what constitutes “*luxury goods*”. The table includes:

<i>“Commodity code</i>	<i>Description</i>
...	...
7108 00 00	<i>Gold (including gold plated with platinum), unwrought or in semi-manufactured forms, or in powder form”</i>

118 As appears from the UK Integrated Online Tariff, commodity code 7108 includes “*Gold ..., unwrought or in semi-manufactured forms ...*”. Further, an explanatory note adopted by the World Customs Organisation in respect of the International Convention on the Harmonised Commodity Description and Coding System states in respect of the heading 7108:

*“The alloy called “doré” or “bullion doré” consisting mainly of silver and copper falls in this heading when it contains 2% or more, by weight, of gold. It is obtained from certain cupriferous pyrites or from residues derived from the processing of blister copper and is subsequently refined to separate its constituent metals.”*

119 Notwithstanding the reference in the table in Schedule 3A to commodity code 7108 00 00 and to “*Gold ..., unwrought or in semi-manufactured forms ...*”, having taken our own advice we do not consider that either the doré or the gold bars produced and/or held by operating subsidiaries of the Company fall within the scope of “luxury goods” in regulation 46B of the UK Regulations. Although this will be a matter developed in submissions, I would note the following in this regard:

119.1 Regulation 46B appears under the heading “*Luxury Goods*”. I am advised that that heading may properly be referred to for the purposes of interpreting the relevant provisions.

119.2 The other items specified in Schedule 3A as constituting “luxury goods” are primarily goods intended for personal and/or domestic use by an individual end user, as distinct from industrial materials requiring one or more further processes to turn them into goods suitable for personal and/or domestic use.

119.3 More particularly, as mentioned, paragraph 11 of Schedule 3A specifies that “*Pearls, precious and semi-precious stones, articles of pearls, jewellery, gold- or silversmith articles falling within the commodity codes set out in the following table*” constitute “luxury goods”. Irrespective of whether the doré

and the gold bars produced and/or held by operating subsidiaries of the Company fall within the scope of the commodity code and description given in the table, they are self-evidently industrial materials and not “*gold- or silversmith articles*”. The Administrators understand from discussions with the management of the Company and our own research that a goldsmith producing, say, items of jewellery for personal use would not do so using gold bars, but would instead use smaller, thinner gold rods which are obviously easier to work. We do not consider that either doré or gold bars therefore fall within the definition of “luxury goods” for the purposes of regulation 46B of the UK Regulations.

119.4 What is more, consistently with the matters referred to above, the UK Government’s announcement of the relevant restrictions [AJM3/3] makes it clear that these provisions are primarily intended to introduce an “*export ban*” for the purpose of “*depriv[ing]*” certain categories of individuals of “*access to luxury goods*”:

*“The UK Government has today announced a ban on exports to Russia of high-end luxury goods, while also hitting hundreds of key products with new import tariffs.*

...

- *UK to ban exports of luxury goods to Russia alongside G7 allies.*

*The UK Government has today announced a ban on exports to Russia of high-end luxury goods, while also hitting hundreds of key products with new import tariffs that represent a 35 percentage point hike on current rates.*

*Russian vodka is one of the iconic products affected by the tariff increases, while the export ban will likely affect luxury vehicles, high-end fashion and works of art.*

*The measures will cause maximum harm to Putin’s war machine while minimizing the impact on UK businesses as G7 leaders unite to unleash a fresh wave of economic sanctions on Moscow.*

*The export ban will come into force shortly and will make sure oligarchs and other members of the elite, who have grown rich under President Putin’s reign and support his illegal invasion, are deprived of access to luxury goods.”*

...

*Background:*

...

- *Further details on the export ban will follow in due course; previous export bans have included items such as high-end fashion, works of art and luxury vehicles. ...”*

119.5 As that announcement makes clear, the relevant restrictions are clearly intended to prevent the influx of “luxury goods” into Russia. The Proposed Transaction does not involve any influx of “luxury goods” into Russia: it is concerned with the sale of shares in various subsidiary companies; it does not involve a transfer in ownership of those companies’ underlying assets, such as doré or gold bars which they may produce or hold, to UMMC; and further, any doré, gold bars or other materials which they hold will have been produced in Russia and will remain in Russia.

120 I should add that, as noted above, regulation 21 of the UK Regulations further provides that a person is to be regarded as “*connected with*” Russia if the person is, among other things, “*a person, other than an individual, which is incorporated or constituted under the law of Russia*”.

121 UMMC, as “*a person, other than an individual, which is incorporated or constituted under the law of Russia*”, would appear to fall within the scope of regulation 46B(2)(b). For the reasons summarised above, however, we do not consider that the Proposed Transaction involves “*mak[ing] luxury goods available*” to UMMC, nor that it involves “*mak[ing] luxury goods available for use in Russia*” within the meaning of regulation 46B(2)(c).

### ***The 2022 Notes sanctions issue***

122 The Administrators recognise that, since it is impossible to identify all holders of the 2022 Notes, there is a risk that some current holders of the 2022 Notes may be individuals or entities which are designated persons under the UK Regulations. Accordingly, careful consideration has been given to whether the manner in which the 2022 Notes may be dealt with in connection with the Proposed Transaction could give rise to any sanctions issues. As to this, it is possible that in connection with the Proposed Transaction – though not, we would note, as part of the Proposed Transaction as such or pursuant to the deal documentation – UMMC may purchase



2022 Notes from current noteholders, some of whom may be the target of sanctions, and then seek to transfer those 2022 Notes to the Company, resulting in a reduction in the amount of the cash consideration to be paid under the Proposed Transaction. I should make it clear that although this has been identified as a possibility, the Company does not know whether any current holders of the 2022 Notes are, in fact, subject to UK sanctions under the UK Regulations.

- 123 This is relevant because, as noted above, one potential element of the consideration payable by UMMC to the Company for the shares pursuant to the Proposed Transaction will be cash consideration of approximately US\$ 375 million. The SPA provides that UMMC may reduce the cash amount on a dollar-for-dollar basis at completion by (i) the face value and unpaid interest on any 2022 Notes acquired by UMMC and transferred to the Company prior to completion (i.e. the Buyer 2022 Notes) or (ii) the amount due on the Buyer 2022 Notes, if greater, with UMMC being able, but not required, to seek to acquire Notes prior to completion of the Proposed Transaction. In practical terms, I understand that UMMC may acquire 2022 Notes by purchasing them either bilaterally or on an exchange.
- 124 If 2022 Notes are held by a sanctioned individual or entity, they will clearly constitute funds or financial resources of the designated person and, pursuant to the UK Regulations, a person who is within the jurisdictional scope of the UK sanctions regime must not deal with those 2022 Notes. Accordingly, the purchase by UMMC of 2022 Notes from a sanctioned person or entity would be in breach of the Regulations if any of the activity takes place within the jurisdictional scope of the UK sanctions regime, given that it would involve dealing with a sanctioned person's funds and making funds available to a sanctioned person. However, we consider it very unlikely that any such purchase would be within the jurisdictional scope of UK sanctions, since any relevant activity would be likely to take place in Russia and to involve Russian individuals or entities.
- 125 While this will be a matter for submissions, the Company (or the Administrators) would not be in the position of dealing with a sanctioned person's assets or making funds available (albeit indirectly) to a sanctioned person, since the Company (or the Administrators) would be receiving/cancelling 2022 Notes from UMMC without any knowledge of the identities of the previous holders of the 2022 Notes.

Nor do we consider that this would involve any circumvention or attempted circumvention of the asset-freeze, given that neither the Company nor the Administrators would be encouraging or requesting UMMC to purchase 2022 Notes from anyone, still less from any individuals or entities the target of sanctions under the Regulations.

126 Even so, as explained in detail above, the SPA contains provisions intended to minimise the risk of UMMC tendering and the Company accepting any 2022 Notes acquired by UMMC from sanctioned persons.

127 Once Buyer 2022 Notes have been accepted by the Company, it is envisaged that the Company will cancel the Buyer 2022 Notes in accordance with their terms following completion of the share transfer and the delivery of the Buyer 2022 Notes to the Company – see clause 7.14 of the SPA. The remaining 2022 Notes will remain outstanding as a liability of the Company, and the creditors in respect of that liability will receive a distribution from the estate when we consider that it is appropriate to make one. We would consider the most appropriate means of doing so in due course. Insofar as there may be an issue in due course as to whether the Company should cancel 2022 Notes received from UMMC in light of the possibility that UMMC may have obtained those 2022 Notes from sanctioned persons, or for any other reason giving cause for concern, we could seek an OFSI licence in relation to any cancellation and distribution procedure such as a scheme of arrangement or alternative procedure (insofar as it might have the effect of “*dealing in*” the “*funds*” of a UK asset-freeze target) at that stage. Similarly, to the extent that dealing with EU-based intermediaries such as Euroclear or Clearstream in relation to the 2022 Notes required an EU licence, we would seek one. These licences are not, however, something which we consider should be required in order to enable the Proposed Transaction to proceed.

### ***The Bokarev sanctions issue***

128 Mr Bokarev is understood to hold an indirect shareholding in UMMC of less than 5%. The Company has considered with its advisors (i) whether Mr Bokarev’s shareholding and involvement in UMMC are such as to meet the ownership and/or control tests laid down in the UK Regulations (i.e. whether UMMC is owned or controlled by

Mr Bokarev and, therefore, should be considered to be sanctioned); and (ii) whether the Proposed Transaction could breach the asset-freeze provisions of the UK Regulations by making funds or economic resources available (directly or indirectly) to or for the benefit of Mr Bokarev.

129 As regards the first of those issues, regulation 7 of the Regulations provides as follows:

- “(1) A person who is not an individual (“C”) is “owned or controlled directly or indirectly” by another person (“P”) if either of the following two conditions is met (or both are met).*
- (2) The first condition is that P –*
  - (a) holds directly or indirectly more than 50% of the shares in C,*
  - (b) holds directly or indirectly more than 50% of the voting rights in C, or*
  - (c) holds the right directly or indirectly to appoint or remove a majority of the board of directors of C.*
- (3) Schedule 1 contains provision applying for the purpose of interpreting paragraph (2).*
- (4) The second condition is that it is reasonable, having regard to all the circumstances, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P’s wishes.”*

130 Schedule 1 of the Regulations sets out further guidance on the interpretation of these tests. In addition, OFSI has issued general non-binding guidance on “ownership” and “control” [AJM3/2] which states, at paragraph 4.1:

*“An entity is owned or controlled directly or indirectly by another person in any of the following circumstances:*

- The person holds (directly or indirectly) more than 50% of the shares or voting rights in an entity;*
- The person has the right (directly or indirectly) to appoint or remove a majority of the board of directors of the entity; or*

- *It is reasonable to expect that the person would be able to ensure the affairs of the entity are conducted in accordance with the person's wishes. This could, for example, include:*
  - o *Appointing, solely by exercising one's voting rights, a majority of the members of the administrative, management or supervisory bodies of an entity, who have held office during the present and previous financial year;*
  - o *Controlling alone, pursuant to an agreement with other shareholders in or members of an entity, a majority of shareholders' or members' voting rights in that entity;*
  - o *Having the right to exercise a dominant influence over an entity, pursuant to an agreement entered into with that entity, or to a provision in its Memorandum or Articles of Association, where the law governing that entity permits its being subject to such agreement or provision;*
  - o *Having the right to exercise a dominant influence referred to in the point above, without being the holder of that right (including by means of a front company);*
  - o *Having the ability to direct another entity in accordance with one's wishes. This can be through any means, directly or indirectly. For example, it is possible that a designated person may have control or use of another person's bank accounts or economic resources and may be using them to circumvent financial sanctions."*

131 In the circumstances, it is apparent that Mr Bokarev's limited indirect shareholding does not meet the basic "ownership" test. Nor is there anything to suggest that any of the "control" tests outlined above is met. Accordingly, we conclude that UMMC is neither owned nor controlled by Mr Bokarev and is not, therefore, subject to an asset-freeze as a result of Mr Bokarev's status as a designated person under the Regulations.

132 Further, we do not consider that the Company or the Administrators would by concluding the Proposed Transaction be making funds or economic resources available to or for the benefit of Mr Bokarev. As noted above, the SPA contains:

132.1 in clause 16.7(d) a warranty by UMMC that *"no Sanctioned Person exists in the Buyer's Group save for any Disclosed Sanctioned Person, and no Sanctioned Person owns or controls the Buyer for the purposes of Regulation 7*

*of the Russia (Sanctions) (EU Exit) Regulations 2019, whether alone or acting in concert with any other person”.*

132.2 in clause 16.7(e) a warranty by UMMC that it *“shall use its best endeavours and shall take all possible steps to ensure that, as result of the sale of the Shares, no funds or economic resources will be made available, directly or indirectly, to or for the benefit of any Sanctioned Person in the Buyer’s Group, for the duration of the period in which they remain a Sanctioned Person, including, without limitation, by preventing the payment of any sums where such payment (directly or indirectly) would be in breach of Sanctions (if the Buyer were required, as a matter of law, to comply with such Sanctions).”*

### ***The Kozitsyn sanctions issue***

133 As explained above, Mr Kozitsyn was until recently UMMC’s general director (CEO).

134 When we became aware of Mr Kozitsyn’s designation under the EU Regulations, we sought information and confirmations from UMMC regarding his shareholding, management role and degree of control over UMMC. JHA’s letter to UMMC of 25 July 2022 is at [AJM3/34] and UMMC’s response of the same date is at [AJM3/35].

135 By that correspondence, UMMC confirmed that:

135.1 Mr Kozitsyn is no longer an officer or director of UMMC. I note that this is consistent with press reports and UMMC’s press release of 22 July 2022 [AJM3/29] stating that he had resigned as general director / CEO with effect from 20 July 2022.

135.2 Mr Kozitsyn’s total shareholding of UMMC is 17.3%.

135.3 Mr Kozitsyn is not able, through his personal shareholding or otherwise, to exercise any control over or direct the activities of UMMC.

135.4 Mr Kozitsyn has no familial, contractual or other relationship with any other shareholder in UMMC, with whom he might be considered to exercise control over a greater proportion of the shares in UMMC than those he holds in his own name.

- 135.5 There is no contractual or other arrangement in place whereby Mr Kozitsyn may derive any benefit from the Proposed Transaction.
- 136 UMMC also provided:
- 136.1 A copy of the minutes of the board meeting of UMMC held on 19 July 2022 showing the appointment of a new general director of UMMC, Mr Elfat Ismagilov, to replace Mr Kozitsyn (in Russian and English) [AJM3/18];
- 136.2 The board resolution dated 20 July 2022 confirming Mr Ismagilov’s appointment as general director [AJM3/22];
- 136.3 An extract from the Russian trade register dated 22 July 2022 reflecting the change in general director (in Russian and English) [AJM3/27]; and
- 136.4 A structure chart showing the ownership of the UMMC group as at 6 May 2022, showing Mr Kozitsyn’s total (indirect) shareholding to be 17.3% [AJM3/4].
- 137 Separately, we note that (as mentioned above) UMMC issued a press release on 19 July 2022 announcing Mr Kozitsyn’s resignation and Mr Ismagilov’s appointment as general director (CEO) [AJM3/29]. This press release explained that the decision was made *“because of the possible imposition of personal sanctions by foreign states in the future and was aimed at excluding the possible indirect impact of sanctions on the companies of the UMMC Group”* and that its purpose was *“maintenance of the stability of UMMC and the companies of the UMMC Group in all markets and fulfillment of their obligations to employees and partners”*. It also noted that Mr Ismagilov was formerly chairman of the board of directors.
- 138 We are reasonably satisfied, in light of these confirmations and documents, that Mr Kozitsyn is no longer a director of UMMC and, it therefore appears, does not presently exercise any control over UMMC within the meaning of the EU Regulations. Nor has Mr Kozitsyn been designated under the UK Regulations. We have considered whether we could conduct further independent investigations to gain further comfort in this regard (for example, by instructing investigators to interrogate Mr Kozitsyn’s ongoing relationship with UMMC) but have concluded that this would be unlikely to uncover any genuine deceit in this regard, nor would it be feasible in the time available. We

have no reason to suspect that UMMC's confirmations are inaccurate and are therefore content to rely on what they have told us and announced to the market.

139 Further, we note and place reliance on the fact that clause 16.7(e) of the SPA requires UMMC to use its best endeavours to ensure that no benefit flows to Mr Kozitsyn as a result of the Proposed Transaction, in exactly the same way as Mr Bokarev. We also stress, for the avoidance of doubt, that neither UMMC itself nor any member of its corporate group has been sanctioned under either the UK or EU Regulations.

### ***Conclusion regarding sanctions***

140 In conclusion, the Administrators consider that a thorough analysis of the matters that might give rise to sanctions risk has taken place and, subject always to the Court's view, consider those risks to be adequately provided for by the approach taken to date – including the inclusion of protective provisions in the SPA and the communications to date with the relevant authorities.

141 The Administrators are acutely aware of their duties as officers of the Court and (it goes without saying) have no desire to risk acting in contravention of the law. We consider that the steps taken to date strike an appropriate balance between caution and practicality, appreciating that the legal risk can never be completely eliminated. If the Court agrees, we therefore intend to proceed with the Proposed Transaction on the basis that it does not, properly understood, involve any breach of the applicable sanctions.

### **G. PROPOSED NEXT STEPS IF THE APPLICATION IS GRANTED**

142 If the Court is minded to accede to the present application, then we would seek to execute the SPA with UMMC as soon as possible (within a matter of days).

143 We would then seek to take the steps required to complete the Proposed Transaction in the coming weeks. This will involve taking steps to execute documents in the UK and to and perfect the relevant transfers in the jurisdictions of each of the transferring subsidiaries. To the extent necessary, we may cause the Company to appoint the Administrators as its representatives in the relevant jurisdictions in order to take these steps. It is hoped that the Proposed Transaction will be completed within two months of the date of signing of the SPA.

144 Following receipt by the Company of the sale proceeds from UMMC (including any Buyer 2022 Notes accepted by the Company), we would take steps to repay the Company's creditors. As noted above, we intend that this will include cancellation of the 2022 Notes, and this may require us to return to the Court to approve a scheme of arrangement in that regard, and indeed to apply for a licence from OFSI at that point if we consider there to be a risk that any creditors of the Company are subject to sanctions. As noted above, we would also apply for a licence from the EU authorities if we are advised that this would be required to deal with EU-based intermediaries such as Euroclear or Clearstream in relation to the 2022 Notes.

## **H. THE ORDERS SOUGHT**

145 The Administrators seek an order that we be at liberty to enter into, perform and procure the Company to perform the Proposed Transaction by way of the SPA.

146 We also seek an order providing that the Administrators may receive the cash consideration payable by UMMC under the SPA into our UK bank account. We anticipate that order will give comfort to the receiving bank and reduce the risk that they refuse the payment due to its size and origination in Russia.

147 Further, the recital to draft order sought records that the Court is satisfied on the evidence before it that the making of the order and the entry into, and performance of, the SPA by the Administrators and the Company is not in contravention of the UK Regulations. It is hoped that the Court will feel able to include this statement in view of the facts and matters set out above (under the heading 'Sanctions').

## **I. URGENCY**

148 The Administrators respectfully ask the Court to hear the application and, if so minded, to make the orders sought on an urgent basis.

149 This is because, as explained above, the Proposed Transaction is presently the only viable option for the Company other than a winding-up, and the opportunity to conclude the Proposed Transaction is time-limited. UMMC has recently reiterated its threat to abandon negotiations imminently and instead to enforce its rights as creditor against the Group's assets in Russia. Any such action would undoubtedly cause prejudice to



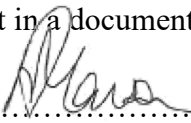
the Company's other creditors, and we are advised that it may very well result in non-Russian creditors receiving nothing at all. As I explained in Manson 1, the same applies if the Company were to be wound-up.

**J. CONCLUSION**

150 The Administrators respectfully request that the Court make the orders sought.

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:  .....

**ALLISTER JONATHAN MANSON**

Date: 27 July 2022