

On behalf of the Proposed Administrators  
A J Manson  
First witness statement  
11 July 2022  
Exhibit CPEP1/AJM1

**Claim No.** \_\_\_\_\_

**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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**FIRST 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 a qualified insolvency practitioner and chartered accountant. I am licensed by the Insolvency Practitioners' Association to accept insolvency appointments. Since November 2019, I have been a partner in Opus LLP ("**Opus**"), having previously had 18 years' insolvency experience at PwC, Smith & Williamson, Cork Gully (all in the UK) and KPMG (in the Cayman Islands). During my career, I have worked on notable insolvencies, such as Atlantic Computers and the restructuring of the Ashanti Gold Mining group. I have accepted a number of recent, high profile, complex appointments, such as Cloudbuy (formerly AIM listed), TFS Loans (FCA regulated) and the IVA of Pramod Mittal (one of the largest personal insolvency appointments in the UK).
- 2 Opus is a professional services firm founded in 2012. The firm has 13 offices across the UK and 27 partners, 21 of whom are qualified insolvency practitioners. As well as

providing restructuring and insolvency services, Opus carries out forensic accounting, corporate finance and business advisory work. Our partners regularly accept appointments as administrators, receivers or liquidators in complex or contentious cases. Opus is now the largest, fully independent restructuring firm in the UK.

3 I am one of the proposed administrators of Petropavlovsk PLC (the “**Company**”). The other administrators are Mr Trevor Binyon and Ms Joanne Rolls, both also of Opus (together, the “**Proposed Administrators**”).

4 I make this witness statement to explain the position of the Proposed Administrators in relation to the administration application made by the majority of the directors of the Company (the “**Applicants**”) dated 11 July 2022 (the “**Administration Application**”). I understand that, in connection with the Administration Application, the Court will be invited to read this witness statement as well as the witness statement of Charlotte Philipps, a director of the Company, dated 11 July 2022 (“**Philipps 1**”), which I have read in draft.

5 I refer in this witness statement to the paginated bundle of documents labelled “**CBEP1/AJM1**”, which is a joint exhibit to this witness statement and to Philipps 1. This approach has been adopted so as to avoid the Court needing to read multiple copies of the same documents. Unless otherwise indicated, any page references in this witness statement are references to the pages of that exhibit. Any reference to “we” hereafter refers to the Proposed Administrators or our staff. Terms not defined in this witness statement shall have the respective meanings given to them in Philipps 1.

6 The facts and matters set out in this witness statement are either: (i) within my own knowledge and are true; or (ii) based on information provided to me as a Proposed Administrator of the Company or my staff and are true to the best of my knowledge, information and belief.

7 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 the Company’s solicitors, JHA, from leading and junior insolvency counsel, and from Infralex, the Company’s Russian counsel. This assistance was provided via email, telephone and in-person.

8 In referring to any legal advice that the Applicants, the Company or the Proposed

Administrators have received, we do not intend to waive any privilege by such reference or otherwise.

## **B. FACTUAL BACKGROUND AND SUMMARY**

- 9 Opus was engaged by the Company on 17 June 2022 in order to provide insolvency advice and to act as proposed administrators should the Company be placed into administration. We received certain key documents and information before that date under the terms of a confidentiality agreement. We understood at the time of our instruction that the Company's board and previous advisers considered the Company to be insolvent, that attempts had been made to refinance the Company's debt which had proved unsuccessful and that a sale of its assets had been explored by way of a professional marketing exercise which had resulted in a number of bids being received (although, by the time we were instructed, of these only UMMC's offer – i.e. the Proposed Transaction described in Philipps 1 and discussed further below – remained open).
- 10 We are aware that, prior to our instruction, the Company had received insolvency advice from AlixPartners and BDO, both of whom were also instructed to act as proposed administrators should the Company be placed into administration. We understood from the Company that both firms felt unable to continue acting due to risk considerations arising from the Company's Russian business and international (and particularly US) sanctions.
- 11 Opus and the Proposed Administrators have carefully considered potential sanctions issues and have sought independent legal advice in this regard. In particular, we have sought to satisfy ourselves that no step we take before or after our appointment would constitute a violation of the Russia (Sanctions) (EU Exit) Regulations 2019 (the "**Regulations**") which, among other things, prohibits the making of funds or economic resources available to or for the benefit of designated persons, or the receipt of funds or economic resources from such persons.
- 12 Although the position remains under constant review, at present we see no legal impediment to our advising the Company or in accepting an appointment as administrators if the Court is minded to accede to the application. It may be relevant to note that, unlike AlixPartners and BDO, Opus has no presence in the United States.

- 13 Since our engagement, Opus has with the assistance of the Company and external advisers (as explained further below):
- 13.1 Conducted investigations in order to identify and value the assets and liabilities of the Company and Group (and hence determine their solvency);
  - 13.2 Engaged in discussions with the Company and with UMMC in relation to a possible sale of the Company's business to UMMC (i.e. the Proposed Transaction) and carried out due diligence in relation to that transaction; and
  - 13.3 Explored other options which might be available to achieve value for shareholders. This has included preliminary consideration of the UGC Proposal (described in Philipps 1 and discussed further below), which we continue to explore alongside further negotiation with UMMC in relation to the Proposed Transaction.
- 14 In our view the Company is clearly insolvent. It is in default under a series of debt instruments in respect of which it is either the borrower or guarantor (described in Phillipps 1 as the Term Loan, the Facilities, the Notes and the Convertible Bonds) and does not have, and cannot obtain, sufficient cash to pay these (or other) debts as they fall due. It is apparent to us that although no member of the Group is subject to sanctions, its ability to operate in its present form has been very seriously damaged by sanctions and other financial restrictions relating to Russia, where the Company's operating subsidiaries are based. Among other things, this has restricted the ability of the Company's subsidiaries to pay dividends to it, has made it impossible for the Company to access at least some of its own cash, and has made it more difficult for the operating subsidiaries to maintain their production operations or to sell the gold that they produce. This extremely challenging commercial situation shows no sign of improving.
- 15 We therefore consider that the interests of creditors would be best served by a sale of the Company or its assets as soon as reasonably practicable, noting that the underlying business appears likely to continue to deteriorate. We also consider that it is unlikely to be possible for the Company to complete such a sale without entering into an insolvency process under the supervision of the Court.

- 16 We note that before our involvement (as set out in Philipps 1) the Company had engaged in a marketing process, advised by Hannam & Partners and AlixPartners which resulted in a number of bids for its assets, including from UMMC. We note that UGC were approached as part of this marketing process but chose not to make a bid at that time. We also note that at the time Opus were engaged, negotiations in relation to the Proposed Transaction with UMMC were already well advanced and a significant amount of preparatory work had been completed by the Company and its advisers.
- 17 Since our engagement, we have sought to interrogate the structure and terms of the Proposed Transaction with UMMC in order to satisfy ourselves that: (a) it is a genuine commercial agreement that is practically and legally achievable, which (b) represents good value for creditors (including by reference to any possible alternative transactions). On the basis of the work we have carried out to date, our provisional view is that may well be the case. However, in the short time since our engagement we have not yet been able to complete all of the independent diligence we consider is required in order to reach a concluded view on the Proposed Transaction.
- 18 On 7 July 2022 (two working days before the Administration Application was issued) the Company received a competing proposal from its largest shareholder, UGC (i.e. the UGC Proposal described in Philipps 1). The UGC Proposal is discussed below. The Proposed Administrators have not yet had the opportunity to discuss this in detail with UGC.
- 19 If appointed (and indeed between now and the date of the hearing of the Administration Application), therefore, we intend to:
- 19.1 Explore a possibility of a sale to UGC and conduct due diligence in relation to such a transaction;
- 19.2 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

- 19.3 Carry out further work to identify possible alternatives to either a sale to UMMC or UGC.
- 20 Once we have done so, we envisage coming back before the Court to seek further directions. If we consider that a sale (to UMMC, UGC or another party) is appropriate, then we would wish to seek the Court's blessing to enter into that transaction. If no sale appears feasible, then we would apply to liquidate the Company.
- 21 I note that it was initially envisaged that the Administration Application might include a pre-packaged sale to UMMC on the terms of the Proposed Transaction. This was because, as explained below, the Proposed Administrators' provisional view, having engaged in extensive discussions with the Company and UMMC, having carried out the work and taken the advice described in the previous section, and in the absence of any competing offer until 7 July 2022, was that the Proposed Transaction was likely to represent the best outcome for the Company's creditors.
- 22 However, as of the date of this statement, we consider that we have further work to do to evaluate the Company's options. This will include further due diligence as regards UMMC and will also obviously include consideration of the UGC Proposal, including direct discussions between the Proposed Administrators and UGC and legal and financial due diligence in relation to any contemplated transaction. With the Proposed Administrators' agreement, the Applicants are not therefore seeking a pre-packaged administration.
- 23 In the remainder of this statement, I deal with the following matters in more detail:
- 23.1 The Company.
- 23.2 Work done since instruction.
- (i) Opus' instruction, approach and team.
  - (ii) Information-gathering exercise and sources.
  - (iii) Review of work conducted prior to our instruction and steps taken to satisfy ourselves to date
- 23.3 Our current view regarding:
- (i) The Company's financial position.

- (ii) Financial pressures on the Company.
- (iii) Potential options for the Company.
- (iv) Purpose of administration.
- (v) Evaluation of options and why administration is suitable.
- (vi) The marketing of the Company's business.
- (vii) Proposed next steps and further work following appointment.

23.4 The orders sought in the Administration Application.

- (i) Recital of administrators' powers.
- (ii) Scope of administrators' powers.
- (iii) Foreign representatives.
- (iv) Sanctions.
- (v) Bank account.
- (vi) Insurance.

23.5 Information about the proposed administrators.

23.6 Waiver of service.

23.7 Urgency.

**C. THE COMPANY**

24 As explained in Philipps 1, the Company is a holding company which owns a group of gold mining and exploration companies operating in eastern Russia. A structure chart showing the corporate structure as at 5 July 2022 is at [Tab 47].

25 More detail regarding the companies in the Group, the company's directors and employees is set out in section B of Philipps 1.

**D. WORK DONE SINCE INSTRUCTION**

***Opus' instruction, approach and team***

26 As noted above, Opus was formally engaged by the Company on 17 June 2022 to provide insolvency advice and to act as potential administrators of the Company. I have been the main point of contact between the Company and the Opus team at all times.

- 27 Prior to our instruction, Opus carried out standard know-your-client, anti-money laundering checks, conflict and ethics checks (which did not raise any concerns). We also prepared a budget proposal for the Company.
- 28 Also prior to our instruction, I (along with the Opus board) considered how to staff the mandate. We considered it appropriate to use more senior members of the Opus team than would usually be the case because the Company's position appeared to be dire such that it was envisaged that an application for the appointment of administrators would be made in short order, and because we were conscious that Opus had not been involved from an early stage (with the Company having previously taken insolvency advice from AlixPartners and BDO).
- 29 The core Opus team involved in this instruction comprises:
- 29.1 Myself, Ms Rolls and Mr Binyon, all of whom are partners in the firm and licensed insolvency practitioners.
- 29.2 Ms Jessie Jennings, an associate director in Opus' restructuring and insolvency division. Ms Jennings is an ACCA qualified accountant. She has worked in insolvency since 2002.
- 29.3 Mr Bradley Parrott, also an associate director in the team. Mr Parrott has been a qualified insolvency practitioner (though not yet licensed) since 2015. He has worked in insolvency since 2006.
- 29.4 Mr Mark Boast, another associate director in the team. Mr Boast has been a qualified insolvency practitioner (though not yet licensed) since 2019.
- 29.5 Mr Ben Eckerby, a senior administrator in the team. Mr Eckerby is CPI qualified (since 2018) and began his insolvency career in 2014.
- 30 Each member of the team has significant experience of administration.
- 31 In addition to the core team: (i) Mr David Birne, a partner at Opus who is a chartered accountant and insolvency practitioner with over 30 years' experience has been carrying out independent reviews of the team's work as mandated by firm policy; (ii) Mr Nick Hood, a senior adviser to Opus on international restructuring, has provided



advice as required; and (iii) the five founding partners of Opus (two of whom are Mr Binyon and Ms Rolls) have been exercising oversight over the instruction and have provided advice on an ad hoc basis.

32 It was immediately clear to us from before our instruction that international sanctions relating to Russia might have an impact on our work and the options available to the Company, including any potential disposal of assets. We have given careful consideration to the applicability of sanctions and sought external legal advice in this regard, not least in the light of the recent introduction, by the Economic Crime (Transparency and Enforcement) Act 2022, of a strict liability test for the imposition of civil monetary penalties for breach of financial sanctions.

33 As explained below, our view is that sanctions do not prevent the appointment of administrators and our current view is that they would not prevent a sale by the Company, acting through the administrators, to a non-sanctioned entity (including UMMC or UGC). However, it is clear that sanctions may be relevant to the Company's ability to make any distribution to creditors and shareholders (in short, because the identity of such stakeholders is not clear to us and it is therefore possible that the class includes sanctioned persons). If appointed, we would of course comply at all times with applicable sanctions, including by seeking a licence from OFSI in due course for any transaction that appears to us on advice to require one.

### ***Information-gathering exercise and sources***

34 In this section I summarise the sources we have looked to in order to understand the Company's position and to form a view regarding its options.

35 Shortly prior to our instruction, we received an initial information pack from the Company. This included legal opinions (including in relation to potential sanctions issues) and Company documentation, including: finance documents relating to the Term Loan, the Facilities, the Bonds and the Convertible Notes; Kroll's valuation of the Company's assets (addressed to the Company) dated 2 May 2022 [Tab 50]; information regarding intercompany loans; information regarding cashflows and the Company's liabilities with details of creditors; leases; board papers; D&O insurance policies; UMMC's final offer and the then-current draft of the SPA; and information regarding contingent liabilities.

- 36 We also had several discussions with members of the Company's board to obtain their views.
- 37 Since our instruction, we have sought to investigate and understand the Company's position and options as follows.
- 38 First, we have obtained information from the Company's board of directors and met with them regularly. In particular, we have spoken extensively with Mr Stanislav Ploschenko, the Group's chief financial officer, to understand the Company's business and its balance sheet and cash flow position.
- 39 Second, we have communicated extensively with UMMC, who have provided us with information regarding who they are, the background to the Proposed Transaction, and the terms of and commercial reasoning behind their offer. With the assistance of our lawyers, we have also since our instruction taken part in the commercial negotiations with the UMMC team alongside the directors of the Company and have sought amendments to the draft SPA, including to improve the protections relating to the sanctions risk.
- 40 Third, we have taken advice from external advisers, including:
- 40.1 JHA, who have acted as the Proposed Administrators' solicitors since 19 June 2022.
- 40.2 Leading and junior insolvency counsel, Messrs Peter Arden QC and Joseph Wigley respectively.
- 40.3 Leading sanctions counsel, Mr Jim Sturman QC.
- 40.4 Clumber Consultancy, an Employment Rights Act specialist, who have provided advice relating to employee liabilities.
- 40.5 MacIntyre Hudson, who were the Company's auditors until 1 July 2022, when they resigned (with the consent of the Company) in order to provide tax advice to the Proposed Administrators.

- 40.6 SIA Group, an asset valuation firm, which is providing advice relating to the valuation of the Company's leases (and, it is intended, will deal with any assignment of the leases in due course).
  - 40.7 Opus Pear Tree (Opus' forensic accounting division), which has evaluated the valuation methodology applied by Kroll to the Company's assets.
  - 40.8 Outlook Investment Limited, another forensic firm engaged to carry out an independent review of the work carried out by Opus Pear Tree.
  - 40.9 PDS Valuers, an asset valuation firm, which is engaged to value the Company's chattels.
  - 40.10 Fladgate, solicitors, to provide specialist employment/TUPE advice.
  - 40.11 An independent foreign exchange specialist, engaged to advise in relation to the foreign exchange risk of any potential transaction.
- 41 Fourth, we have sought information from third parties who are not (or not yet) formally engaged by us but who hold relevant information. These include:
- 41.1 Kroll, an international firm providing valuation advisory services, which provided a report to the Company valuing the Group's operating assets on 2 May 2022 (at **[Tab 50]**).
  - 41.2 Hannam & Partners, the investment bank which was engaged by the Company to market its business in April-May 2022.
  - 41.3 BDO, former insolvency advisers to the Company.
  - 41.4 DAC Beachcroft, solicitors previously instructed by the Company to advise on various employment matters, from whom we have obtained information relevant to the calculation of potential liabilities to current or former employees.
  - 41.5 Weil, Gotshal & Manges, solicitors previously instructed by the Company and BDO to advise in relation to restructuring and insolvency issues. Through our solicitors, we have obtained information from Weil relating to the Company,

the Proposed Transaction (which Weil were heavily involved in negotiating up until late June 2022) and potential sanctions risk.

41.6 EY, the Company's former tax adviser.

42 We have also approached HSBC, one of Opus' bankers, to discuss the opening of a bank account for the Proposed Administrators if we are appointed (which has included discussion of banking arrangements in respect of the proceeds of any sale of the Company's business) and Marsh, a global insurance broker, to discuss the insurance position post-appointment.

43 Finally, we have searched public sources to capture information in the public domain in relation to (among other things) the Group and its business, UMMC and UGC.

***Review of work conducted prior to our instruction and steps to satisfy ourselves to date***

44 In this section I summarise how we sought to evaluate the work carried out prior to our engagement by the Company and its professional advisers, and the further work we have carried out to date to satisfy ourselves as to the adequacy of that work.

**The Company's asset and liability position and solvency**

45 The Company's assessment of its financial position is set out in Philipps 1. In order to reach our own view, we have reviewed documentation provided to us by the Company including published financial statements and unpublished management reports. We have also discussed the position extensively with the Group CFO, who has provided more detailed information and evidence regarding the position of the Company's subsidiaries. We have taken independent legal advice regarding the validity and enforceability of major creditors' claims against the Company (including in respect of the Term Loan, Facilities, 2022 Notes and Convertible Bonds).

46 My team and I have sought information from BDO on various issues but in particular to understand their calculation of the Company's estimated liabilities (which was included in the initial information pack provided to us by the Company prior to our appointment). To date, BDO has been willing to provide only limited assistance in this regard. We have therefore had to carry out much of the same accounting analysis independently (as explained further below).

- 47 As regards trade creditors, we asked the Company to ensure any invoices received are added to the Company's accounting system, to which we have access, promptly. We have regularly requested that the Company provides updated figures to us. We have reviewed creditor correspondence and are aware that a creditor has issued a Statutory Demand in the amount of £123,301.25, which remains unsatisfied. We have also engaged in direct discussion with the Company's largest creditors to understand their position.
- 48 As regards tax liability, we have liaised with EY, the Company's former tax adviser, and reviewed correspondence between the Company and HMRC regarding potential tax liabilities.

#### Attempts to refinance

- 49 We understand that the Company has approached a significant number of Western and Russian banks to explore a possible refinancing of its debts (as set out in Philipps 1). We have discussed this at length with the Company and have carried out our own investigations to determine whether there might be other sources of finance available, including by making internal enquiries within Opus and of our advisers to identify banks not yet approached by the Company which might be willing to offer a solution. This work is ongoing.
- 50 In addition, we have reviewed correspondence between the Company and various shareholders in which the prospect of a refinancing has been raised (as summarised in Philipps 1).

#### Valuation exercise

- 51 We have been provided with a copy of Kroll's valuation report addressed to the Company dated 2 May 2022 [Tab 50]. We have requested Kroll to provide further information in relation to their valuation and to update it. So far, Kroll have indicated their view that the valuation range of between US\$ 458 million and US\$ 621 million given in their report would be materially lower if the valuation were brought up to date, due in large part to the continuing deterioration of economic conditions in Russia. We have not yet instructed them formally to update the report; we are told that this would cost £187,000 and would take approximately 10 days for Kroll to complete.

## Marketing exercise

- 52 We have been provided with documentation relating to the marketing process carried out in April-May 2022 by Hannam, including the Process Letter dated 20 April 2022 [Tab 41], the Stage 2 Letter dated 4 May 2022 [Tab 53], Hannam's full list of potential investors, their investor tracker schedule, and a full set of the bids received as a result of that exercise. My team and I have also discussed the process both with the Company and with Hannam directly, and given consideration to whether there are any obvious potential purchasers who were not approached as part of the process.
- 53 We have also reviewed correspondence with the Company's shareholders in relation to the proposed administration and a potential sale of assets, and have asked to be kept apprised of any new developments. This has included the recent discussions with shareholders set out in Philipps 1, including with UGC which culminated in the UGC Proposal being made on 7 July 2022 [Tab 52].

## Bids received

- 54 As noted above, when we were instructed the UMMC's was the only current bid for the Company's assets (the other three bids made during the marketing process having been withdrawn or proven impossible to pursue). On 7 July 2022, UGC made the UGC Proposal [Tab 52]. We have carried out a significant amount of work to evaluate the Proposed Transaction with UMMC (including carrying out financial and legal due diligence and seeking to negotiate improvements to the SPA). We have started similarly to evaluate the UGC Proposal, although this work is still at an early stage.
- 55 For completeness, I note we also considered the terms of the three ultimately unviable bids made to the Company in order to provide points of comparison.

### *(a) The Proposed Transaction with UMMC*

- 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\$ 618 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 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. We are advised that since March 2022, Euroclear has restricted transactions on NSD's account until further notice, as reported in the article dated 18 March 2022 at [Tab 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\$ 203 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>1</sup>;

57.3 administration funding of up to US\$ 29 million to fund the remuneration and expenses of the administration and the estimated amount of contingent and uncertain liabilities, 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.

58 A draft of an SPA which has been negotiated between UMMC and the Company, with our input from the date of our instruction, is at [Tab 78].

*Potential relevance of sanctions to the Proposed Transaction*

59 In the time available since Opus' engagement, I have given careful consideration to the impact of relevant sanctions on the Proposed Transaction, and the steps required to complete it. I have reviewed the detailed legal advice received by the Company to date on these issues, and consulted my own legal advisers.

60 I refer to the description of the effect of sanctions on the Company and the Group in Philipps 1. It is clear that despite the fact neither the Company, nor any of its directors or officers, nor any member of the Group, has been made the subject of any sanctions, it has been placed in great difficulty by the imposition of sanctions on other persons and activities.

61 Therefore, very careful consideration has been given to whether any aspect of the Proposed Transaction could contravene the Regulations such that a licence from the UK Office of Financial Sanctions Implementation ("OFSI") might be required for its lawful implementation, although it is important to note that the Proposed Transaction does not involve any dealing with funds or economic resources for the benefit of a "designated person" in terms of regulations 5 and 10 of the Regulations. In particular,

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<sup>1</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.



we have considered with our advisers whether any breach of the Regulations could be argued to arise by reason of:

- 61.1 the Company's past relationship with GPB (which, as mentioned, has been subject to asset-freezing measures under the Regulations since 24 March 2022 [**Tab 42**]) and the assignment of the Term Loan by GPB to UMMC [**Tab 38**] and of the Facilities by GPB to Nordic [**Tab 56**];
  - 61.2 the provisions of the Regulations prohibiting the "export" of "luxury goods" to Russia, bearing in mind that certain of the Company's subsidiaries produce and sell products which contain gold;
  - 61.3 the fact that a current or former minority (indirect) shareholder in UMMC, Mr Andrei Bokarev, has since 13 April 2022 been a designated person under the Regulations; and
  - 61.4 the fact that some current holders of the 2022 Notes may be individuals who, or entities which, are the subject of sanctions, and certain further matters arising in relation to the Notes.
- 62 Having undertaken a careful analysis of these matters in consultation with its advisers, our provisional view is that none of them involves any contravention of the Regulations, and, accordingly, that an OFSI licence would not be required to enable the Proposed Transaction to proceed. We note, however, that both the Company and we have received advice in this regard from a number of sources and while some (including most recently leading sanctions counsel, Mr Sturman QC) have advised that there would be no breach of the Regulations, others have expressed a different or more qualified view. All such advice is also obviously dependent on the factual assumptions made by those giving it.
- 63 Even so by letters dated 29 June 2022 and 5 July 2022 from JHA [**Tabs 75 and 79**], the Company has informed OFSI of the Applicants' intention to make the Administration Application and that the Proposed Administrators are considering, if appointed, entering into the Proposed Transaction (as agents for the Company), and has provided OFSI with details of the Proposed Transaction. As yet, no substantive response to that letter has been received. However, we will ensure that OFSI are given

notice of the hearing of this Application and if any response is received from them in the meantime, then we will of course bring that to the Court's attention.

64 The Proposed Administrators are conscious that, despite our provisional view that no licence would be required, the Company and/or the Proposed Administrators could seek a licence from OFSI out of an abundance of caution. This is a matter which will be kept under review. In deciding how to proceed, (in the event that the Proposed Transaction is in fact pursued in which case as explained below it is envisaged that the Administrators will return to Court for further directions before executing any sale agreement) we will be mindful of the fact that UMMC has made it clear that it wishes to complete the transaction in short order and that it is not prepared to delay while a licence is sought and granted.

65 I further note that the Draft SPA contains a number of provisions which are designed to ensure that the Proposed Transaction does not give rise to any breach of the Regulations (or any other relevant sanctions regimes):

65.1 In agreeing to accept 2022 Notes from UMMC as consideration, we (and the Company) have been alive to the risk that UMMC may obtain such 2022 Notes from sanctioned persons. To mitigate this risk, the SPA includes the following provisions:

- (i) 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**).
- (ii) 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)**.

- (iii) The Company will be entitled to refuse to accept any Proposed Buyer 2022 Notes which UMMC has acquired (i) in breach of its obligations, or (ii) from a sanctioned person **(clause 7.4)**.

65.2 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”* (those terms being defined in clause 1.1 of the Draft 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)”*

65.3 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.

66 Our provisional view on the basis of the work we have completed to date is that the Proposed Transaction, if pursued, would achieve a good outcome for all creditors (who would recover 100p on the pound based on our most pessimistic current estimates of the Company’s liabilities). This view (and our Estimated Outcome Statement) are explained in more detail below.

*(b) The UGC Proposal*

67 The UGC Proposal was received by the Company, who immediately communicated it to us, shortly before this statement was finalised. The Proposed Administrators have so far had little time to consider it. In summary, however, by its letter of 7 July 2022 [Tab 52] UGC proposed that:

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

67.2 UGC would buy out the remaining minority shareholders at “*a current (preceding to announcement of this proposal) trading price of the Shares*”.

67.3 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]*”.

67.4 UGC would repay other outstanding indebtedness of the Company immediately.

67.5 In consideration of the above, the Company would transfer all material assets to the UGC SPV.

68 This offer is 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*”.

69 In the time available, we have discussed the UGC Proposal with the Company and have started to scope the financial and legal due diligence that we would need to complete in order to evaluate it. We note that the Chairman also replied to UGC on behalf of the Company on 7 July 2022 [Tab 52] and asked a number of questions, including a request that UGC clarify what is meant by its proposal to “restructure” certain debt, a request for clarification as to the regulatory approvals UGC consider would be necessary, and a request for proof of funding. The matters raised by the Chairman are also matters to which the Proposed Administrators would have regard. We are aware that on 9 July 2022 the Company received a further letter from UGC which is expressed to be without prejudice. Insofar as this correspondence deals with matters relevant to the consideration of the UGC Proposal, if appointed, we would of course take it into account and, insofar as it gives rise to the need for further enquiries of UGC, we would make them. We would also of course ensure that any transaction with UGC was legally permissible, including by reference to sanctions legislation.

#### Sanctions

70 Prior to our appointment, the Company had received legal advice regarding the potential applicability of sanctions to a disposal of its Russian assets (in particular in the context of the Proposed Transaction with UMMC). This included advice from leading sanctions counsel, Jim Sturman QC. We have considered this material carefully alongside our own solicitors, JHA.

71 Since our instruction, JHA at my request have instructed Mr Sturman QC to update his opinion to the Company and to address certain additional matters which we considered relevant from our perspective as Proposed Administrators, including as to the relevance of sanctions in respect of the appointment itself. The revised opinion has been provided to us.

#### Our assessment

72 On the basis of what we have seen and the work we have conducted so far, it appears to us that the extensive work carried out before our involvement by the Company and its advisers in relation to its financial position was reasonable and competently done. That said, we very much recognise that there have been limits to what we have been able to do to date. Indeed, it is the case as noted above that we have not had unfettered

access to or assistance from the Company or all of the Company's former advisers or other relevant stakeholders, which has made our task more difficult. While we have generally adopted the work of the previous team as providing a sensible starting point for our own analysis, we have needed to duplicate work to a degree in order to satisfy ourselves. Most notably, we have had to identify and calculate the Company's liabilities on a line-by-line basis in order to interrogate the estimate which had been prepared by BDO in this regard.

73 We consider that the Company has made reasonable attempts to refinance its debt, which attempts have regrettably not yielded any viable options. As noted above, however, we do not exclude the possibility that refinancing may be available from a bank not yet approached by the Company and while we consider this unlikely this remains under review.

74 We also consider that the marketing process conducted to date has been reasonable, noting that the Company's present difficulties have been public for some time, that the Hannam process yielded four broadly similar bids and that a shareholder, UGC, has now also come forward with a bid outside of that process.

75 On the basis of the information we have received from the Company and its (current and former) advisers regarding the marketing process carried out before our engagement, that process appears to us to have been appropriate. We note that:

75.1 The marketing process was carried out by Hannam, a reputable independent investment bank.

75.2 As part of the marketing process, Hannam engaged with 29 potential purchasers selected by them as being likely to be able to conclude a transaction in the necessary timescales. This included the Company's shareholders (including UGC) where possible and various large mining enterprises and high net worth individuals.

75.3 The Company published a press release online on 14 April 2022 [**Tab 31**] noting that it had "*appointed AlixPartners UK LLP to assist the Board as it explores its options and determines the Company's course of action in the best interest of all stakeholders, including creditors and shareholders. These options include*

*the sale of the Company's entire interests in its operating subsidiaries as soon as practically possible. It is not currently clear what return, if any, may be secured for shareholders or the holders of the Bonds or Notes as a result of this process.*" The Company published a further press release on 16 May 2022 [Tab 58] noting that it was continuing to explore its options including "*the sale of the Company's entire interests in its operating subsidiaries as soon as practically possible*". As explained in Philipps 1, the Company's press releases are also released as announcements on the LSE, MOEX and – to the extent they relate to the 2022 Notes - the GEM. I understand that the Company's financial predicament following the imposition of Russia-related sanctions and the potential sale of its assets were well known in the market. I understand that the Company was also contacted by interested parties independently of the marketing process that was carried out by Hannam, though none of these approaches resulted in an offer being made.

75.4 It is also notable that the press release dated 14 April 2022 specifically referred to the prospect of investors receiving no return from the sale. Equally, the Company's shares are listed on the LSE and the Moscow Exchange. The trading price and market capitalisation are, as such, publicly available on a daily basis. I understand that no takeover bids or similar were received by the Company. The Company's market capitalisation since the Russian invasion of Ukraine has not exceeded £189.24 million – notably on very thin daily trading volumes. Equally, the Company's 2022 and 2024 bonds are also listed and trading at a significant discount to face value.

## **E. THE PROPOSED ADMINISTRATORS' VIEWS**

76 The views expressed in this section are on the basis of what we have seen so far and the work that we have been able to conduct to date. As explained above, we very much recognise that there have been limits to what we have been able to do to date. In the circumstances, we will obviously keep an open mind and, if anything changes, will react accordingly.

## ***The Company's financial position***

77 We consider that the Company is clearly insolvent on a cash flow basis and may also be insolvent on a balance sheet basis. We note in this regard the Company's position as set out in Philipps 1. Our own findings are summarised below.

### Liabilities

78 **Term Loan.** The Term Loan is now due and payable by the Company, having been validly accelerated by the Lender. The balance owing is US\$ 202.4 million including accrued interest.

79 **2022 Notes and Convertible Bonds.** The Company is in default of its obligations under the 2022 Notes and Convertible Bonds, having missed coupon payments. The amounts outstanding are:

79.1 **2022 Notes:** Principal sum of US\$ 304,269,000 plus estimated interest of US\$ 16,560,257.

79.2 **Convertible Bonds:** Principal sum of US\$ 33,000,000 plus estimated interest of US\$ 794,063.

80 **Trade creditors.** On the basis of the information provided by the Company and our work described above, we estimate that the total amount due to trade creditors (including the Company's professional advisers) was approximately US\$ 5,855,643 as at 8 July 2022. As noted above, a creditor has issued a Statutory Demand in the amount of £123,301.25, which remains unsatisfied.

81 **Cross-guarantees (employees).** We have reviewed information provided in respect of guarantees provided by the Company to certain employees of Atlas Mining, a Russia based entity which is a wholly owned subsidiary of the Company. Following our review, we estimate that the potential liability of the Company is US\$2,560,000.

82 **HMRC VAT liability.** We have reviewed a large volume of documentation regarding the HMRC's ongoing VAT investigation and have established that it relates to the treatment of VAT refunds issued to the Company since 1 October 2015. We have reviewed the returns since then for each period to establish the principal amount of debt,



which is £10,681,223 (“the principal debt”). We have reviewed HMRC’s compliance handbooks and have established that there will be interest payable of £745,633. In addition to this, our review of HMRC’s compliance handbooks further suggest that a 30% surcharge could be added to the principal debt and interest, thereby bringing the total indebtedness to HMRC to £14,854,913. We have discussed our findings with EY, the Company’s former VAT adviser. EY could not formally advise as they were not currently engaged but confirmed that our understanding and calculations were correct.

- 83 **HMRC employee benefit tax.** We have investigated the liability that has arisen following an investigation by HMRC into certain employee payments and have established that a formal settlement agreement was entered into with HMRC on 30 September 2020. The terms were such that the Company agreed to repay £1,450,401.75 by way of nine equal instalments. As of today’s date, £322,311 remains outstanding.
- 84 **HMRC P11D claim.** During the course of our investigations into the Company’s liabilities, we found that the Company had underdeclared employee benefits which gave rise to a further liability of which the Company was not previously aware.
- 85 **Employee entitlements.** We have reviewed the employment contracts and any amendments to the original agreed terms between employer and employee. We have established that the Company has seven employees, most of whom have contractual notice periods which far exceed the statutory notice period prescribed by legislation. We have established that, of the seven employees, six are entitled to redundancy pay. All employees also have accrued holiday. We have therefore calculated that the total liability to employees could be £529,505. In addition to this, we have established that the Company awarded retention bonuses to all employees, of which £271,468 remains payable. We asked Clumber Consultancy (“Clumber”), an employee claim specialist, to review our work. Clumber have confirmed that the methodology and calculated liabilities are correct. We have also sought advice from a law firm in respect of employee claims and, whilst we have not been able to obtain a formal legal opinion, having explained the circumstances to them, we are satisfied that the employee entitlements on an insolvency event are accurate
- 86 **Employee claims.** We are aware that a former employee has brought claims against the Company for wrongful dismissal and breach of contract, which have not been resolved.

We liaised with the law firm previously instructed by the Company in this respect and we have identified that there is the prospect that at least one element of the two claims could be upheld by an Employment Tribunal. The prior legal advisers have confirmed that, per the terms of the claim, the maximum award would be £125,000 for both claims.

### Assets

- 87 The Company's only material assets are its shares in its operating subsidiaries and sub-subsidiaries, which own three operational mines and pressure oxidization hub. As noted above, Kroll's 2 May 2022 report valued those assets at between US\$ 458 million and US\$ 621 million. However, Kroll have since indicated that an updated valuation would be materially lower.
- 88 There is an outstanding loan due to the Company from a subsidiary which performs group treasury functions (Petropavlovsk Mining Treasury UK Limited ("**Treasury UK**")) in the sum of approximately US\$ 437 million. Treasury UK has no material assets, other than loans in other group companies, in Russia, and we do not consider these balances to be recoverable due to trading difficulties and severe complications in extracting cash from Russia. We therefore consider that the Company's receivable balance is not recoverable and that the shares in its operating subsidiaries form the Company's only material assets.

### Conclusions on solvency

- 89 Based on our work, we have concluded that the Company is insolvent on a cashflow basis, as its major debt obligations are in default and there remains an unsatisfied statutory demand. The practical implication of this is that creditors could enforce against the Company at any time and could also enforce against its trading subsidiaries, which could seriously damage the value of the Company's shares. For those reasons, we have concluded that urgent action needs to be taken to protect the Company and its assets.
- 90 We have also received from the Company a working balance sheet as at 30 June 2022 which shows net shareholder funds of -US\$ 83,771,894 although we have not yet analysed the assumptions or the valuation of assets therein. Based on our review of the

balance sheet, however, it appears likely that the Company is also balance sheet insolvent.

### ***Financial pressures on the Company***

91 We agree with the Applicants' view, as set out in Philipps 1, that in the absence of a viable refinancing option, the significant and mounting financial pressure on the Company militates in favour of an asset sale taking place as soon as possible.

92 In particular, we note that:

92.1 As explained above, the Group as a whole is suffering from cashflow problems as a result of its debt defaults and the withdrawal of operational credit by counterparties. It is also subject to significant operational constraints, including difficulties maintaining and replacing equipment. What little gold is being sold is being sold at below the cost of production. Given these difficulties, there is an obvious risk that the Group's operations, and value, will continue to deteriorate.

92.2 If there is a not a sale which allows the Company to pay its creditors in full, there is an obvious risk that some of those creditors (not least UMMC, as the current Lender under the Term Loan) will seek to enforce against the Group's subsidiaries in Russia. I refer to Philipps 1 at paragraph 157 where the advice of the Company's Russian counsel as regards the potential bankruptcy of its subsidiaries is summarised. We are concerned that enforcement by creditors via the Russian courts is very likely to result in inconsistent recovery among the class of creditors as a whole, with creditors outside of Russia placed at a significant disadvantage.

92.3 In particular, enforcement in Russia could result in key operating assets being lost which would be to the detriment of the Company's other creditors. To that end, I note from Philipps 1 and the press release dated 12 May 2022 [Tab 55] that certain of the Group's Russian subsidiaries have announced waivers of the insolvency moratorium currently in place in Russia. As a result, Russian creditors are able to take enforcement action against the Russian subsidiaries which have waived the moratorium. Such action by UMMC is expressly

foreshadowed in UMMC's offer letter in relation to the Proposed Transaction date 16 May 2022 ([**Tab 59**]). The outcome of insolvency proceedings in Russia is likely to be uncontrolled as regards the Company, and may well result in very significant or total value losses when compared with the value of the Proposed Transaction, and the valuation evidence received. This is all the more so given the current geopolitical situation.

- 92.4 It is also relevant that the underlying assets of the key Russian operating subsidiaries relates to gold material extracted or to be extracted from Russian soil. Given the current animosity between the Russian and UK governments, nationalisation or expropriation by Russian state actors is equally a real risk for the Company. Litigation to recover value would be highly uncertain in the current environment.

### ***Potential options for the Company***

- 93 With our advisers, we have considered:

- 93.1 The extent to which refinancing and alternative sale transactions might be available to the Company;
- 93.2 Whether the Company could proceed with any transaction (including with UMMC or UGC) without first entering administration; and
- 93.3 The benefits of an administration order being made.

- 94 Taking each in turn:

- 94.1 We consider that the Company has made reasonable attempts to refinance its debt, which have plainly been unsuccessful. Although there may be additional avenues to explore in this regard (as discussed below), the prospects of achieving a refinancing within an acceptable timeframe currently appear remote. Similarly, given our conclusion that the marketing process conducted to date was reasonable, we do not consider it likely that additional bids for the Company or its assets are likely to emerge.

94.2 We are advised that the Company would be in breach of non-disposal covenants in its debt instruments if it were to conclude an asset sale, potentially leading to expensive satellite litigation. In our view it is appropriate in those circumstances for the Company to seek to enter administration so that the administrators, as officers of the Court, can consider entering into a sale pursuant to the Court's directions.

94.3 In the circumstances, and as explained in more detail in the following section, an administration order is in our view clearly warranted.

### ***Purpose of administration***

95 From our perspective, the Company is clearly insolvent and there are now two competing offers before it – from UMMC and UGC – either one of which if completed is likely to achieve a better outcome for creditors than a winding up. However, it is clear that in light of the Company's financial position the board of directors feel (in our view rightly) unable to evaluate the competing bids and reach a conclusion as to whether either one of them is appropriate. If appointed, we intend to focus our efforts on evaluating those two proposals in the hopes of being able to pursue one of them to conclusion.

96 Our view is that placing the Company into administration is reasonably likely to achieve the second statutory objective of administration, i.e. administration will provide “*a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration).*” Alternatively, the third statutory objective, is reasonably likely to be achieved, i.e. “*realising property in order to make a distribution to one or more [...] preferential creditors*”, being HMRC in respect of certain of the Company's English tax obligations. In either case, this is on the assumption that the Proposed Administrators will be able to conclude a sale of the Company's business for a fair value, either by way of a sale to UMMC or UGC or by way a different transaction.

### **The first statutory objective**

97 We are aware that the Proposed Administrators are required to achieve the first statutory objective of administration, i.e. “*rescuing the Company as a going concern*” unless it

is not reasonably practical to do so, in which case they must explore the second and, in turn if not reasonably practical, the third objectives.

98 The Proposed Administrators have carefully considered the first objective and do not believe its achievement would be reasonably practical for, *inter alia*, the following reasons, in no order of priority:

98.1 The Company does not currently have sufficient available funds to continue trading in any form, and cannot up-stream cash from its operating subsidiaries. Philipps 1 explains the issues which make re-financing impractical. In the face of press releases foreshadowing a sale of the Company's assets with no return to investors (see for example the press release dated 16 May 2022 [**Tab 58**]), no funders have so far been found. There is no reason why an administrator would have better prospects of doing this. There are not even sufficient available funds to pay advisers at the current time.

98.2 The Company has a complex capital structure which will mean that any consensual restructuring will take time, for which there is no funding. Sanctions and the general "Russia factor" will only mean things take longer.

98.3 Nordic have a defaulted credit facility with *circa* US\$ 87 million outstanding. Their intentions are not presently clear but they have referenced enforcement action in Russia. Philips 1 also explains the limited cash reserves in the operating subsidiaries, and the reasons for that.

98.4 UMMC wish to buy the Company's operating subsidiaries. They hold a *circa* US\$ 200 million Term Loan owed by the Company and guaranteed by key operating subsidiaries. The Company is in default under the Term Loan and could initiate local enforcement proceedings against the subsidiaries.

98.5 The 2022 Notes, *circa* US\$ 304 million, are in default and guaranteed by key operating subsidiaries. Local enforcement action can be commenced if the noteholders so resolve (albeit a trustee instruction is not likely to be without difficulties).

- 98.6 Current UK sanctions mean that the Company continuing to operate Russian gold mining subsidiaries is becoming increasingly difficult and complex. Local Russian laws are expected increasingly to oppose compliance with UK laws (as discussed in Philipps 1). Local management are already acting, and expected increasingly to act, in accordance with Russian local imperatives, not in the interests of the Company. For example, as discussed in Philipps 1, certain of the Company's Russian subsidiaries have chosen to waive the bankruptcy moratorium in force in Russia.
- 98.7 The risks and consequences for the Company and its creditors of, Russian insolvency proceedings and/or nationalisation or expropriation are set out above and are equally relevant to first objective considerations.
- 98.8 Finding advisers and service providers for the Company critical to any first objective purpose is likely to become increasingly difficult.
- 98.9 Given the nature and location of the operating subsidiaries' business, an administrator being in office for anything other than the shortest term is not desirable given litigation and sanctions risks to the Company and its administrators (see below for further detail on this issue).

#### The second statutory objective

- 99 The Proposed Administrators consider that the second statutory objective of administration is likely to be met if a sale of the business can be concluded.
- 100 First, if a sale is completed then on the terms of the Proposed Transaction (or the UGC Proposal as it appears on its face) then, on current estimates, the Company's creditors are likely to be paid in full. If the Company does not enter into administration (and/or the administrators are unable to conclude a sale), it is likely that the return to creditors would be materially less. Indeed, the return to creditors could be closer to nil than full payment because there is a very real prospect of the Company's creditors, or local creditors, taking steps to enforce against its key operating subsidiaries. The resulting diminution in the Company's assets (both through the loss of key operating assets and the costs associated with any litigation) would very likely lead to a worse return to creditors.

101 Second, the directors could, in theory, have taken an alternative approach of seeking to place the Company into liquidation. However, in our view, an administration will produce a better result for creditors as a whole than if the Company first entered into liquidation. This is because:

101.1 If the directors had sought a special resolution of the Company's members for the Company to enter into voluntary winding up, I am advised by the Company's solicitors that the effect of Article 49 of the Articles [Tab 9] is that 21 clear days' notice would have been required.

101.2 Similarly, if the directors were to apply to Court for a winding-up order, the process might well take several weeks.

101.3 The duration of the process for entry into liquidation would create, in my view, material uncertainty around any sales process. This is because there would be a material period before the appointment and identity of the liquidator was confirmed. This would, in my view, risk disrupting the sales process, worsening the prospects of a successful sale at a value consistent with the best price available in the circumstances. Equally, the Company has limited available cash reserves to trade during any such hiatus period. Such free cash as it has is largely depleted. There is a balance of c. US\$25 million which is effectively stuck in the Company's account with GPB Luxembourg (as explained in Philipps 1). I understand an OFSI licence is likely to be needed to free these funds for use, if a bank can be persuaded to accept them.

101.4 As noted above, certain of the Company's Russian subsidiaries have waived the moratorium on bankruptcy filing in Russia. As a consequence, creditors can now take enforcement action against certain of the Russian subsidiaries which, in turn, could have an impact on the Company's creditors, creating further time pressure.

#### The third statutory objective

102 As noted above, it appears that there are debts due to HMRC, who would rank as a preferential creditor. Given the Company's parlous financial situation, there is little



prospect of this debt being paid in full without the Company receiving funds from a sale of the shares in its subsidiaries.

***Evaluation of options and why administration is suitable***

103 In the circumstances, the Proposed Administrators' view is that administration is the best option for the Company. The moratorium on enforcement at Company level may also give the Company some breathing room to continue to explore (and, it is hoped, in short order finalise) a transaction whereby it would receive sufficient funds to pay its creditors in full. We consider this to be an important consideration in circumstances where, as well as the risk of enforcement against the subsidiaries and underlying assets already discussed, there is a risk of creditors taking enforcement action against the Company directly (I note in this regard that a statutory demand has already been received by the Company), which would undoubtedly complicate any transaction further.

104 For the reasons given above, the alternatives – including immediate liquidation – are significantly less attractive and are, in our view, likely to jeopardise the transactions currently on the table. Our draft estimated outcome statement, illustrating our view of the likely recovery in administration versus liquidation, is at **[Tab 86]**.

105 On advice, we are confident that the appointment of administrators in itself could not be said to give rise to any breach of our duties following appointment or of sanctions. Sanctions may affect the ability of the Company, in due course, to conclude a sale. However, it is envisaged that the Administrators will return to Court for further directions before executing any sale agreement. We have kept our consideration of the sanctions position under constant review and will continue to do so.

***Proposed next steps and further work following appointment***

106 If we are appointed as administrators of the Company, we envisage carrying out the following work in the period immediately after our appointment (this work has already begun but, as explained above, has not yet been completed).

107 First, in accordance with paragraph 64 of Schedule B1 of the Insolvency Act 1986, to we propose to enter into a consent protocol with existing management authorising them

to continue to perform certain specified functions relating to the management of the Company's business on a day-to-day basis. We understand that, at present, the Company's board exercises oversight over the Group in relation to procurement and contracting, health and safety policies and procedures, and remuneration and personnel issues. Among other things, I understand that the approval of the Company is required for any subsidiary to incur any trade liability or enter any contract above \$1 million in value (although this threshold is subject to revision by the Company). The Company is also responsible for collating Group financial information, manages investor relations and is responsible for complying with the Company's regulatory obligations (including by making RNS announcements to the market). In addition, the Company provides ad hoc supervision and guidance to the subsidiaries.

- 108 We consider it appropriate for the current board (or some of them) to continue to exercise certain of these functions following our appointment. In particular, we would wish the CFO to continue to collate and provide up-to-date information regarding the Group's assets and liabilities, and one or more members of the board to assist us to evaluate requests from subsidiaries to expend sums above the level requiring consent from the Company. We consider that this is important to ensure business continuity (to the extent possible given the Group's present difficulties) while the administrators explore options. We have considered whether such a step might give rise to any sanctions liability: on advice, we do not consider that it would on the basis that: (i) the management of business and assets in Russia is not a restricted activity; and (ii) the directors are already doing this work and what is proposed would merely allow them to continue to do so following the appointment of administrators in order to assist us to perform our duties.
- 109 Second, we would continue to negotiate and conduct diligence on UMMC and the Proposed Transaction in order to reach a concluded view regarding its viability and merits. In tandem, we intend to discuss the UGC Proposal with UGC in order to understand and evaluate that offer. The diligence will include further consideration of the applicability of sanctions to any sale and any steps that might reasonably be taken to mitigate that risk (including the seeking of a licence if deemed necessary).
- 110 Third, alongside the negotiations with potential buyers, we would take further steps to satisfy ourselves that there is no realistic possibility of refinancing the Company's debt

absent a sale. We note in this regard that the Company has approached a number of Western and Russian banks without success. We consider it extremely unlikely that a Western bank would wish to deal with the Group. We would however explore this further.

111 Once we have completed the diligence and other work outlined above, we intend to come back before the Court for directions, at which time we would of course update the Court. If we determine that a sale is in the best interests of creditors, we would explain our reasoning to the Court and seek its blessing to enter into the transaction.

## **F. THE ORDER SOUGHT IN THE ADMINISTRATION APPLICATION**

### ***Recital of the administrators' powers***

112 The draft order recites the powers of an administrator under certain provisions of the Insolvency Act 1986.

113 This has been included because Infralex have advised that a statement of an administrator's powers will assist the Proposed Administrators, if and when appointed, when dealing with any authorities or other persons in Russia. It will provide them with a ready way of understanding that the Proposed Administrators, once in office, would be properly empowered to bind the Company and enter into the Proposed Transaction. This is likely to be particularly important when dealing with notaries and registries regarding the transfer of shares and other interests in Russian subsidiaries.

### ***Scope of the administrators' powers***

114 The draft order expressly confirms that the powers of the Proposed Administrators shall not extend to the management of the affairs, business or property of the Company's subsidiaries.

115 This has been included because Infralex have advised that the Proposed Administrators should not control or materially influence the day-to-day management of the Russian subsidiaries. If they did so, there is a risk under Russian law that the Company and/or the Proposed Administrators could become liable for claims that would ordinarily sit with the subsidiaries (for instance, regarding environmental matters or the health and safety conditions for employees and the population living in the areas of the Group's

operations in Russia). Should the subsidiaries enter local insolvency proceedings, similar liabilities could be placed on the Company and/or the Proposed Administrators for creditor losses. The Company's solicitors have advised that a similar issue could arise in certain circumstances under English law (following *Lubbe v. Cape Plc* and subsequent cases). This issue is all the more pertinent given the nature of UK/Russia relations as set out above.

116 Accordingly, the intention behind the provision is to highlight the limited scope of the Proposed Administrators' remit to any third parties.

### ***Foreign representatives***

117 The draft order includes a declaration that the Proposed Administrators may cause the Company to appoint them as foreign representatives of the Company as part of any recognition proceedings.

118 As per the Group structure chart [Tab 47], the Company has subsidiaries in various jurisdictions and it may become necessary to seek recognition of the administration. I understand from the Company's solicitors that the declaration might assist with any recognition proceedings by making clear on the face of the administration order that the Proposed Administrators can properly be regarded as foreign representatives.

### ***Sanctions***

119 The draft order recites that the Court is satisfied on the evidence before it that the making of the order is not in contravention of the Regulations.

120 As explained above, we do not consider that there is any question of our appointment constituting even an arguable breach of sanctions. The Proposed Administrators as regulated professionals and (if appointed) officers of the Court also naturally comply fully and transparently with all laws. The Court is all the same respectfully requested to make this clear on the face of the administration order.

### ***Bank account***

121 The draft order includes a confirmation that the Proposed Administrators may open insolvency estate bank accounts in their names with HSBC or any other suitable

commercial bank in order to transact as agents of the Company. It also provides that the Proposed Administrators may maintain and manage the Company's existing banking arrangements.

- 122 The purpose of these confirmations is to help the Proposed Administrators in any discussions that may arise in seeking to arrange banking services for the Company. In light of the current sanctions landscape, some banks have been unwilling to deal even with unsanctioned entities linked to Russia. In that context, the confirmations in the administration order would give the banks comfort that the Court envisages their involvement on this matter and accordingly that they would not be acting improperly by providing banking services to the Proposed Administrators (once appointed) or the Company.

### ***Insurance***

- 123 The draft order includes a confirmation that the Proposed Administrators may obtain insurance for the Company's assets and business (including public liability and employer's insurance). We ask for this because our initial investigations have suggested that many insurers are likely to be wary of providing insurance to a company with assets in Russia. It is hoped that the inclusion of this wording will assist us in this regard.

### **G. INFORMATION ABOUT THE PROPOSED ADMINISTRATORS**

- 124 The statements and consents to act for each of the Proposed Administrators, as required by Rule 3.2 of the Insolvency (England and Wales) Rules 2016 (the "**Rules**"), are exhibited at [**Tab 84**].

- 125 I confirm that each of the Proposed Administrators is a licensed insolvency practitioner. The relevant insolvency practitioner licence numbers of the Proposed Administrators are as follows:

125.1 Allister Manson: 23290.

125.2 Trevor Binyon: 9285.

125.3 Joanne Rolls: 8867.

**H. WAIVER OF SERVICE**

126 I also consent, on behalf of each of the Proposed Administrators, to the waiver of service of the Administration Application and supporting documents in accordance with Rule 3.8(3)(f) of the Rules, as we are well aware of the circumstances leading to, and the contents of, the Administration Application.

**I. URGENCY**

127 We note what is said in Philipps 1 regarding urgency. We agree that the order should be made as soon as practicable given the dire and deteriorating state of the Company's business and the ever-increasing risk of enforcement action by some creditors which would be prejudicial to the interests of the creditors as a whole.

**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: 11 July 2022