

30 October 2024

Associate to the Principal Registrar
Supreme Court of Western Australia
Level 11, David Malcolm Justice Centre
PERTH WA 6000

Dear Associate

In the matter of Calidus Resources Limited (Receivers and Managers Appointed) (Subject to Deed of Company Arrangement) (ACN 006 640 553) (Calidus) COR 166 of 2024 – urgent request for hearing date

1. We confirm that Hamilton Locke act for Hayden Leigh White and Daniel Hillston Woodhouse in their capacity as joint and several deed administrators of Calidus (**Plaintiffs**).
2. We refer to our email to the Supreme Court Central Office sent on 25 October 2024 and subsequent correspondence and the email we received today from the Court confirming that leave has been granted for the Plaintiffs to file by email their originating process dated 25 October 2024 (**Originating Process**) and the supporting affidavit of Mr Hayden Leigh White affirmed on 25 October 2024 (**White Affidavit**).
3. We write to respectfully request that the Principal Registrar urgently list this matter for a directions hearing this week and final hearing on 16 December 2024.
4. We set out further details in relation to our request and the reasons for the urgency below.

Background to application

5. By way of the Originating Process, the Plaintiffs seek orders pursuant to sections 444GA(1)(b) and 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15(1) of Schedule 2 of the *Corporations Act* to transfer all of the shares in Calidus and related relief.
6. The Plaintiffs' application is made for the purposes of satisfying a condition precedent in:
 - (a) a deed of company arrangement executed on 9 October 2024 by the Plaintiffs, the proponent, West Coast Gold Pty Ltd (**Proponent**) and Calidus (**Calidus DOCA**); and
 - (b) further deeds of company arrangement executed in relation to Calidus' wholly owned subsidiaries, Keras (Pilbara) Gold Pty Ltd ACN 169 795 037 (**Keras Pilbara DOCA**) and Calidus Blue Spec Pty Ltd ACN 643 467 501 (**Calidus Blue DOCA**).

FILED

30 OCT 2024

Via eLodgment
**CENTRAL OFFICE
SUPREME COURT**

Programming orders

7. The Originating Process seeks an order that the matter be listed for a directions hearing on 29 October 2024 or such other date that is convenient to the Court. As the Originating Process and White Affidavit were not accepted for filing by that date, we subsequently wrote to the Court requesting a directions hearing on 31 October 2024.
8. At any such directions hearing, the Plaintiffs intend to seek orders in terms of the **attached** minute including an order that the matter be listed for final hearing on 16 December 2024.
9. It is critical that the final hearing is listed on 16 December 2024 otherwise it is likely that the Calidus DOCA will be terminated in which case there will be no return to Calidus' unsecured creditors (as explained below and in more detail at paragraphs 61 to 75 of the White Affidavit).
10. If the hearing is to proceed on 16 December 2024, it is also critical that orders are made within the coming days:
 - (a) addressing the manner in which notice of this application is to be given to shareholders and other interested persons in order to allow sufficient time for them to consider their position and raise any objection well in advance of the final hearing; and
 - (b) setting a date by which any objections are to be filed and served.
11. We further explain the reasons for the urgency below.

Calidus DOCA

12. As set out in further detail in the White Affidavit, "effectuation" of the Calidus DOCA, Keras Pilbara DOCA and Calidus Blue DOCA remains subject to the satisfaction or waiver of "Final Conditions Precedent" set out in Schedule 3 of those DOCAs and a 'toggle' between either:
 - (a) the 'Section 444GA Option' (**Section 444GA Option**) which involves inter alia the transfer of all of the shares in Calidus to the Proponent of the Calidus DOCA (or its nominee/s) for nil consideration after obtaining court relief pursuant to section 444GA of the Act and ASIC relief from complying with the takeover provisions (**s 444GA & 606 Conditions**); or
 - (b) the 'Share Sale Option' which involves inter alia the transfer of all of the shares in Keras Pilbara and Calidus Blue to the Proponent of the Calidus DOCA or its nominee (**Share Sale Option**).
13. The Proponent has:
 - (a) directed the Plaintiffs to seek to satisfy the conditions necessary to complete the Section 444GA Option; and
 - (b) informed the Plaintiffs that if the s 444GA & 606 Conditions are not satisfied in sufficient time for the Calidus DOCA to effectuate by 20 December 2024, it will terminate the DOCA.
14. In those circumstances, Calidus will go into liquidation and there will be no return to Calidus' unsecured creditors, which will be a significantly worse outcome than if the Calidus DOCA effectuates. This is explained in further detail at paragraphs 65 to 75 of the White Affidavit.
15. It is therefore necessary that the Plaintiffs' application be heard and determined prior to 20 December 2024 (and allowing sufficient time for effectuation to occur if the Court grants the orders sought by the Plaintiffs) otherwise it will not be able to proceed.

Independent expert report

16. As set out in the White Affidavit, in accordance with ASIC Regulatory Guide RG 6 and for the purposes of this application, the Plaintiffs have engaged Grant Thornton to provide an independent expert report (**IER**) in relation to the residual value of the shares in Calidus.
17. Grant Thornton anticipate being in a position to finalise its IER by 14 November 2024.
18. ASIC Regulatory Guide RG 6.197 requires that the IER and an explanatory statement be provided to shareholders at least 14 days prior to the final hearing of any related application under s 444GA and that the IER and explanatory statement be provided to ASIC at least 14 days prior to being provided to shareholders.
19. On that basis, the Plaintiffs intend to provide the explanatory statement and IER to ASIC on 14 November 2024 (being the date of receipt from Grant Thornton), upload those documents to their website on 28 November 2024 (14 days after providing those documents to ASIC) and give a further notice to shareholders and issue advertisements in accordance with the attached minute on 29 November 2024 (being 14 clear days before the proposed hearing date on 16 December 2024).
20. Grant Thornton have also informed the Plaintiffs that they are endeavouring to finalise their report prior to that date in light of the tight timeframes that will apply in this matter.

Summary

21. By reason of the matters set out above, the Plaintiffs request that:
 - (a) the matter be listed for directions urgently so that programming orders can be made in relation to the matters outlined in the **attached** minute; and
 - (b) the matter be listed for final hearing on 16 December 2024.
22. If we can be of any further assistance in the meantime, please contact Clara Hagan (0411 395 505 / clara.hagan@hamiltonlocke.com.au) or Lachlan Chapman (0413 640 442 / lachlan.chapman@hamiltonlocke.com.au) of our office.

Yours faithfully



Chris Hood
Partner
Hamilton Locke