

# Aus Streaming Limited (In liquidation) ACN 600 577 348 (the Company)

## Report to creditors

3 May 2021



# Disclaimer

In reviewing this Report, creditors should note:

- This Report is based upon our investigations to date. Any additional material issues that are identified subsequent to issuing this Report may be the subject of further reports.
- The contents of this Report are based on information obtained from the Company's books and records, financial reports, representations from the directors/former directors and consultants to the Company, third-party sources, and our own enquiries and investigations.
- The statements and opinions given in this Report are given in good faith and in the belief that such statements and opinions are not false or misleading.
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# Reference table

Although we have defined various people, entities and terms within the main body of the Report, set out below are some frequently used definitions.

Term	Means
\$	Australian dollars
AAI Resources	AAI Resources Limited – a company apparently registered in the RMI <sup>1</sup> and a shareholder of the Company following the transfer of 114,010,090 shares from ASAF
AAAL Holdings Limited	AAAL – a creditor of the Company
AASB	Australian Accounting Standards Board – an Australian Government agency that develops and maintains financial reporting standards applicable to entities in the private and public sectors
Act	Corporations Act 2001 (Cth)
Administrators	Ronald Dean-Willcocks and Cameron Gray who were appointed Administrators of Aus Streaming on 3 February 2018 pursuant to section 436A of the Act. The Administrators were subsequently appointed Deed Administrators of the DOCA and then GPLs when the DOCA terminated
AGB Resource	AGB Resource Capital Limited – an Investment Company originally registered in the BVI (company number 1743117) and subsequently registered in the RMI (company number 89066)
APA Energy	APA Energy Streaming Limited – an Investment Company registered in the RMI (company number 77973)
APC	APC Securities Pty Ltd ACN 138 130 328, formerly known as Dayton and Avalon – a company owned and controlled by David Sutton that is engaged in financial services and trades as Dayton Way Financial <sup>2</sup> (per ASIC records dated 21 August 2020)
April 2020 Valuation Analysis	ECB's Valuation Memorandum is based on source/supporting documents referred to as 'Valuation Analysis' (or similar) for each Investment Company. Each Valuation Analysis document contains a high-level overview of the Investment Company's business together with five-year financial projections for each Investment Company's profit and loss, balance sheet and cash flow
ASA	Australian Auditing Standards establish requirements and provide application and other explanatory material on the responsibilities of an auditor when engaged to undertake an audit of a financial report, and the form and content of the auditor's report
ASAF	ASAF Critical Metals Limited – a company registered in British Columbia, Canada (company number BC0973710). ASAF is a secured creditor and shareholder of Aus Streaming
ASIC	Australian Securities and Investments Commission
ASIL	Aus Streaming Investments Limited – a company registered in the RMI (company number 62737 <sup>3</sup> ) and the original vehicle through which ASAF was to create its Australian metal streaming business (now known as Infrastructure Commodities Limited)
ASX	Australian Stock Exchange
Aus Streaming or Company	Aus Streaming Limited (In liquidation) ACN 600 577 348

<sup>1</sup> We could not locate this company in the RMI corporate registry.

<sup>2</sup> This may not be the only trading name of APC.

<sup>3</sup> The RMI corporate registry indicates that the name of the company with company number 62737 is Infrastructure Commodities Limited.

Reference table

Term	Means
Avalon	Avalon Pacific Capital Pty Ltd ACN 138 130 328 – Avalon changed its name to APC on 4 December 2017
BC Registry Services	BC Registry Services registers and incorporates companies in British Columbia, Canada
BPH Growth	BPH Growth Partners Limited
BVI	British Virgin Islands
c.	circa or approximately
CAANZ	Chartered Accountants Australia and New Zealand
CBLSE	CBLSE Management Partners Limited
CEO	Chief Executive Officer
Companies House	Companies House is the UK's registrar of companies
Court	Supreme Court of Victoria
Court Orders	The orders made by the Court on 27 May 2020 and authenticated on 29 May 2020 which appointed the SPLs (attached as Appendix A)
CRO	Companies Registration Office registers and incorporates companies in the Republic of Ireland
CSM Resource	CSM Resource Capital Limited
Dayton	Dayton Way Financial Pty Ltd ACN 138 130 328 – former name of APC and Avalon
Deed Administrators	The Administrators became the Company's Deed Administrators upon execution of a DOCA on 5 June 2018. The Deed Administrators subsequently became the Company's liquidators on 4 March 2020 when the DOCA was terminated by a resolution of the Company's creditors
Directors	The directors of the Company from time to time, currently Christopher Graeme Every and David Henty Sutton
DOCA	Deed of Company Arrangement between Aus Streaming, the Directors and the GPLs (who were acting as Deed Administrators at the time) – approved at a meeting of creditors held on 15 May 2018 and varied at meetings of creditors held on 21 March 2019 and 17 June 2019 respectively. The DOCA was terminated on 4 March 2020
DOCA Fund	The fund to be established under the DOCA to pay the costs of the Administrators, Deed Administrators and a dividend to participating creditors
DWF Capital	DWF Capital Limited
ECB	ECB Services Limited – a company possibly registered in Dubai or RAK (company number IC20120875)
ECB Valuation Memorandum	A report dated 23 April 2020 prepared by ECB (supposedly on an independent basis) that provides a 'valuation opinion' of the Investments as at 31 December 2017 and as at 31 March 2020. The valuation as at 31 December 2017 was based on the Investment/impairment Reviews prepared by Hamirah as at that date. The valuation as at 31 March 2020 was based on the April 2020 Valuation Analysis
Ecbatan	Ecbatan Limited – a creditor of the Company
EEBS	EEBS Limited
Financial Report	The formal report of the financial activities and position of the Company for the fiscal year ended 30 September 2016
Frontier	Frontier Mining Value Limited – an Investment Company registered in the RMI (company number 19491). Frontier was acquired by Quantum in March 2020
GGP	GGP Management Services Limited – a creditor of the Company
GPLs	General purpose liquidators – Ronald Dean-Wilcocks and Cameron Gray of DW Advisory
Hamirah	Hamirah Holdings Limited – a company possibly registered in Dubai or RAK (company number IC20120878 or IC20120874)
Hamirah Agreement	A consultancy agreement between the Company and Hamirah dated 1 October 2016

Reference table

Term	Means
HFI	HFI Holdings Limited – a creditor of the Company <sup>4</sup>
ICL	Infrastructure Commodities Limited – formerly known as ASIL and now a subsidiary of ICML
ICML	Infrastructure Commodities (Mauritius) Limited – a company registered in Mauritius and listed on the Stock Exchange of Mauritius (company number 151770)
IFH Resources	IFH Resources Limited – an Investment Company registered in the BVI (company number 1751973). IFH Resources was acquired by Indus in August 2017
IFRS	International Financial Reporting Standards are accounting standards issued by the IFRS Foundation and the International Accounting Standards Board. They constitute a standardised way of describing a company's financial performance and position so that financial statements are understandable and comparable across international boundaries
Indus	Indus Infrastructure Partners Limited – an Investment Company registered in British Columbia, Canada (company number BC1099798). Indus was formerly known as IFH Resources Limited (from 7 July 2017 to 31 October 2017) and prior to that, SHM Growth Capital Limited (from 12 December 2016 to 6 July 2017) (Note: this is a different 'IFH Resources' to the BVI registered company referred to above)
Indus Partnership	Indus Infrastructure Partners 1 LP – an Investment Company registered in the Cayman Islands (partnership number 97407) (Note: the legal structure of this entity is a partnership, not a company)
Investment(s)	The investments/shareholdings held by Aus Streaming from time to time in the respective Investment Companies
Investment Company(ies)	The respective legal entities in which Aus Streaming held its Investments
Investment Confirmation letter(s)	Letters issued from time to time by Aus Streaming to seek Investment Company confirmation of the number of shares held by Aus Streaming and the net asset value per share
Investment/impairment Review(s)	Information packs prepared from time to time by Hamirah <sup>5</sup> on behalf of Aus Streaming that purportedly support the calculation of the net asset value per share of the respective Investment Companies
IPEVCG	International Private Equity and Venture Capital Valuation Guidelines set out recommendations, intended to represent current best practice, on the valuation of private capital investments.
IPR	Insolvency Practice Rules (Corporations) 2016
Lawyer	Australian legal representative appointed by ASAF, Hamirah, the Directors and Andrew Turner
m	Million
McFaddens	McFaddens & Co – an international corporate advisory business with operating hubs in Australia, Gibraltar and the UAE. McFaddens & Co provides legal advice via McFaddens LLP, and a related entity McFaddens & Co Group Ltd has the same company number in Dubai as ECB.
MCH	Murchison Holdings Limited ACN 004 707 260
MCH Transaction	The proposed transaction to merge MCH (a then ASX listed entity) with ASIL, and then change MCH's name to Aus Streaming
NAV	Net asset value
Nexia Perth	Nexia Perth Audit Services Pty Ltd – the Company's auditors

<sup>4</sup> We are advised that HFI was acquired by AAAL Holdings Limited in September 2018.

<sup>5</sup> As advised by Mr Every and Mr Turner.

Reference table

Term	Means
OTH	OTH Mineral Streaming Limited – an Investment Company registered in British Columbia, Canada (company number BC0998488)
PwC	PricewaterhouseCoopers, ABN 52 780 433 757
Quantum	Quantum Investing Management Limited – an Investment Company registered in the BVI (company number 657356)
Raydwell	Raydwell Consulting – a serviced office centre located in British Columbia, Canada
RAK	Ras Al Khaimah – one of the Emirates within the United Arab Emirates
RATA or ROCAP	Report as to Affairs or Report on Company Activity and Property - a document a company's director must prepare and provide to an external administrator (e.g. liquidator) outlining the company's assets and liabilities
Regulations	Corporations Regulations 2001 made under the Act
Report	This report prepared by the Special Purpose Liquidators
RMI	Republic of the Marshall Islands
SEM	Stock Exchange of Mauritius
Spider	Spider Business Centre – a serviced office centre located in Dubai
SPLs or Special Purpose Liquidators	Craig Crosbie and Daniel Walley of PwC
TES Management	TES Management Limited – a company based in Dubai and a corporate director/authorised signatory for AAI Resources, ASAF, ASIL, Frontier, OTH
TOR	TOR Mining Capital Limited – an Investment Company originally registered in the BVI (company number 1742611) and subsequently registered in the Republic of Ireland (company number 636175)
Turner, Mr Andrew	Andrew Turner – a consultant to the Company
UAE	United Arab Emirates
UK	United Kingdom
USD	United States dollars
Wurban	Wurban International Limited – a company of unknown origin and location that is purportedly the secured creditor of ASAF and the current registered owner of Aus Streaming's Investments

# Contents

Disclaimer	i
Reference table	ii
1 Executive summary	1
1.1 Existence of investment assets	2
1.2 Valuation of investment assets	2
1.3 Governance and management	3
1.4 Potential breaches and claims	3
1.5 Report to ASIC	4
2 Background to appointment	5
2.1 Appointment of Special Purpose Liquidators	6
2.2 Purpose of this Report	6
2.3 External administration of the Company	7
2.4 Company background information	7
3 Investigations undertaken	14
3.1 Overview of investigation process	15
3.2 Enquiries with the Company's General Purpose Liquidators	15
3.3 Enquiries with the Company's directors	15
3.4 Enquiries with the Company's auditors	21
3.5 Enquiries with the Company's creditors	21
3.6 Searching publicly available information	22
3.7 Physical attendance at office addresses	22
3.8 Enquiries with corporate registries	24

3.9	Correspondence sent to Investment Companies and company officers	25
3.10	Other enquiries	26
3.11	Powers available pursuant to the Court Order	27
4	Investment assets	29
4.1	Background to the Investments	30
4.2	Existence of Investment Companies and Investments	34
4.3	Status of the Investment Companies	37
4.4	Assets of the Investment Companies	42
4.5	Relationship of Investment Companies with ASAF and Aus Streaming	47
4.6	Steps taken to crystallise and monetise the Investments	49
5	Potential breaches and claims	56
5.1	Background	57
5.2	Transactions of the Company in connection with the Investments	57
5.3	Conduct of the Directors and Mr Turner	59
5.4	Conduct of related parties	63
5.5	Conclusion on potential claims by the Company and/or creditors	66
6	Conduct of auditors	68
6.1	Background to audit	69
6.2	Enquiries with Nexia Perth	69
6.3	Potential deficiencies in audit	71
6.4	Breach of duty by auditors	77
6.5	Potential recourse against Nexia Perth	77
Appendix A	Court Orders	80



# 1

## Executive summary

Craig Crosbie and Daniel Walley of PricewaterhouseCoopers were appointed as Special Purpose Liquidators (**SPLs**) of Aus Streaming Limited (In liquidation) ACN 600 577 348 (**Company** or **Aus Streaming**) by orders of the Supreme Court of Victoria (**Court**) made on 27 May 2020. Following our appointment by the Court we have conducted extensive investigations to, primarily, verify the existence and value of the investment assets held by Aus Streaming (**Investments**).

## 1.1 Existence of investment assets

We have concluded that the original Investments held by Aus Streaming on or around 6 September 2016 existed on the basis that:

- the original Investment Companies were registered corporate entities
- shares in those entities had been issued to Aus Streaming, as evidenced by copies of the respective share certificates produced to us.

However, what has not been made clear to creditors or to the Court is that, at the time of the appointment of Administrators on 3 February 2018, Aus Streaming apparently:

- was not the legal owner of the Investments
- has only had a beneficial interest in the Investments since April/May 2017 when they were apparently transferred to ASAF Critical Metals Ltd (**ASAF**) under the terms of ASAF's facility and security agreements.

According to Aus Streaming's Directors, Aus Streaming ceased to have a beneficial interest in the Investments on 4 March 2020, upon the liquidation of Aus Streaming.

Aus Streaming's ownership of the Investments at various points in time is a factual issue which requires further investigation and determination. Ultimately it will be a matter for the Directors and/or ASAF to prove any change in ownership subsequent to the shares in the Investments being issued to Aus Streaming. The question of ownership will become critical if it can be established that the Investments have any material value (see below).

## 1.2 Valuation of investment assets

The Investments had a purported value of approximately USD128m as at 31 March 2020. Our investigations indicate that there has been a systematic and deliberate attempt since at least 6 September 2016 to mislead Aus Streaming's external stakeholders as to the value of the Investments.

We have not been able to establish any credible and independently verifiable information supporting the substance and financial position of the companies that comprise Aus Streaming's Investments. Crucially, despite numerous requests of the Directors and Mr Turner to provide current contact details for the Investment Companies, we have been unable to establish direct contact with representatives of any of those companies. Where contact details were furnished, they were of no assistance. The Directors and Mr Turner claim not to have previously spoken to representatives of the Investment Companies.

The Investment Company's websites contain generic, non-specific information. Notably:

- references to various contracts and agreements do not name counterparties
- the location of relevant mine sites/operations are not disclosed
- names and contact details for individual directors or key management are not provided
- the Investment Company is not known or cannot be readily contacted at the addresses provided for corporate offices
- all the websites appear to have been constructed in a similar manner and format.

The most recent purported independent valuation of the Investment Companies was commissioned by ASAF and provided to Aus Streaming's Deed Administrators in April 2020. Our review of this valuation report indicates:

- it does not conform with normal valuation practices

## Executive summary

- it has not been prepared by a qualified valuer
- it is not independent.

In summary, we have not seen any evidence upon which the Investments could reasonably be valued.

Further, notwithstanding the purported illiquidity of the Investments, if the prospective value of the Investments was demonstrable then we query why the Company was not able to generate:

- initially, approximately \$82k to deal with a statutory demand that was identified as one of the catalysts for the appointment of Administrators
- subsequently, approximately \$1.2m to pay out certain creditors and costs under the Deed of Company Arrangement (**DOCA**) proposed by the Directors and supported by ASAF.

### 1.3 Governance and management

We have observed what we consider to be a deliberate opaqueness to the structure, management and business activities of what appears to be a large group of interconnected organisations (including Aus Streaming), registered in a number of jurisdictions spanning the globe. Messrs Every, Sutton and Turner appear to have had a long-standing involvement with each other and with this 'group'. Messrs Every and Sutton are Directors of the Company and Mr Turner is likely a de facto director of Aus Streaming.

Other findings from our investigations include:

- Andrew Turner was central to all aspects of the Company's business, apparently through his role as an employee of Hamirah Holdings Limited (**Hamirah**) which consulted to the Company
- none of the Directors/Andrew Turner seem to know who was in day-to-day control of the Company, the basis of financial reporting, etc
- none of the Directors/Andrew Turner have spoken to representatives of the Investment Companies (despite the Investments purportedly being valued at USD128m and being Aus Streaming's principal assets)
- there is limited information available from corporate registers in the jurisdictions that the Investment Companies are registered in
- other publicly available information for the Investments, ASAF, and other associated organisations is scant
- a number of organisations of interest to our investigations appeared to have the same physical premises
- our attempts to visit a number of physical premises revealed:
  - the organisations in question were not known at that address
  - the premises were serviced offices and, in some instances, whilst the organisations in question were known, no meaningful information was available
  - the premises were vacant.

### 1.4 Potential breaches and claims

As discussed in detail in section 5, we consider the Company and/or creditors may have the following potential claims:

#### **ASAF (see section 5.2.2)**

- Potential claims may exist against ASAF and/or its directors in relation to:
  - the representations made about the Investments
  - the enforcement of its security
  - its role in the asset realisation process to create the DOCA Fund.

#### **Directors (including Mr Turner) (see section 5.3)**

## Executive summary

- We consider Mr Turner is likely a director of the Company pursuant to the definition of de factor director contained in the Act.
- Potential claims may exist against the Directors (including Mr Turner) and officers of the Company for breach of duties in relation to:
  - entering into the transaction with ASAF that was represented to provide \$138m of assets in exchange for shares in the Company
  - allowing the Company to trade in circumstances where the necessary care and diligence has not been taken to understand the substance of the Investments and/or obtain independent advice on those Investments
  - failing to exercise their duties in good faith, if it can be established the lack of substance behind the Investments was known
  - failure to maintain adequate records in accordance with section 286 of the Act
  - failure to comply with Part 2M of Act in relation to the 2016 financial report.

### **Other (see section 5.4.2)**

- We consider the creditors and/or investors of the Company may have a claim against APC in relation to its marketing of the Investments and loan notes in the Company.

### **Auditor (see section 6)**

- Claims may exist against the auditor Nexia Perth Audit Services Pty Ltd (**Nexia Perth**) for potential deficiencies in the audit of the 2016 financial report.
- In relation to the potential claims available to the Company, the quantum of losses would need to be confirmed by expert determination.

### **General**

- As with claims of this nature, before issuing any formal proceedings for recovery, the following matters would need to be considered:
  - the funding available to pursue such claims
  - the conduct of public examinations of the relevant prospective defendants and/or other parties
  - the financial position of the prospective defendants and/or whether they have any indemnity insurance that would respond to the claim(s) being made, if successful.

## **1.5 Report to ASIC**

This Report will be lodged with ASIC pursuant to section 533 of the Act on the basis that it appears:

- A past or present officer or employee may be guilty of an offence under a law of the Commonwealth in relation to the Company.
- The Company may be unable to pay its unsecured creditors more than 50 cents in the dollar.

We also recommend that ASIC considers the actions of AFSL holder APC Securities Pty Ltd (**APC**) in connection to its, and its authorised representatives, involvement with the Company as set out in section 5.4.2 of this Report.

# 2

## Background to appointment

## 2.1 Appointment of Special Purpose Liquidators

Craig Crosbie and Daniel Walley were appointed as SPLs of the Company by orders of the Court made on 27 May 2020.

The appointment of the SPLs was the result of a proceeding issued by Mr Petrus Helberg. Mr Helberg was formerly a director and employee of the Company. By virtue of amounts owed to him under a Deed of Settlement with the Company dated 3 November 2017, Mr Helberg is a creditor of the Company. Mr Helberg's company, Helberg Holdings Pty Ltd, is a shareholder of the Company.

The costs and expenses of the SPLs are to be recovered from the terms of a funding agreement entered into between Mr Helberg and a litigation funder, or from recoveries obtained from any claims identified by the SPLs. The costs and expenses of the SPLs are not otherwise recoverable from any funds or property of Aus Streaming.

## 2.2 Purpose of this Report

The Court authenticated the orders made on 29 May 2020 (**Court Orders**), a copy of which is attached to this Report at Appendix A.

The Court Orders outline the purpose of the appointment of the SPLs, which includes conducting investigations into the following matters:

- The existence, valuation and the basis of the investments (**Investments**) Aus Streaming made by acquiring shares in the following foreign unlisted energy and resource companies (**Investment Companies**) (refer to section 4 of this Report):
  - 400,000 shares at a book value of \$10,371,360 in AGB Resource Capital Limited (**AGB Resource**)
  - 7,500,000 shares at a book value of \$14,322,000 in Frontier Mining Value Limited (**Frontier**)
  - 27,328,571 shares at a book value of \$30,498,685.24 in Indus Infrastructure Partners Limited (**Indus**)
  - 2,000,000 shares at a book value of \$7,936,000 in OTH Mineral Streaming Limited (**OTH**)
  - 47,500,000 shares at a book value of \$82,460,000 in TOR Mining Capital Limited (**TOR**).
- The existence, status and assets of the Investment Companies and their relationship with ASAF and Aus Streaming (refer to section 4 of this Report).
- The steps taken to crystallise and monetise the Investments (refer to section 4.6 of this Report).
- Whether any transactions between Aus Streaming and ASAF, and Aus Streaming and any one or more of the Investment Companies in connection with the Investments, give rise to any claim in law or in equity or under statute against any person (other than the General Purpose Liquidators (**GPLs**)) (refer to section 5.2 of this Report).
- The conduct (including any breach of duty whether statutory, at common law or in equity, and any misleading or deceptive conduct whether statutory or at common law) of Aus Streaming's directors and Mr Andrew Turner, in connection with the Investments (refer to section 5.3 of this Report).
- The conduct (including any misleading or deceptive conduct whether statutory or at common law) of Avalon Pacific Capital Pty Ltd (**Avalon**), Dayton Way Financial Pty Ltd (**Dayton**), and Hamirah, companies related to Mr Turner, in connection with the Investments (refer to section 5.4 of this Report).
- The conduct (including any breach of duty whether statutory or at common law, and any misleading or deceptive conduct whether statutory or at common law) of Aus Streaming's external auditors, Nexia Perth, in connection with the Investments (refer to section 6 of this Report).
- Any and all claims that Aus Streaming and/or the creditors of Aus Streaming may have (or may have had) against any person other than the defendants (i.e. the GPLs) in connection with the Investments, including, but not limited to, claims against the following individuals and/or entities:
  - the directors of Aus Streaming
  - Mr Turner

- Avalon
- Dayton
- Hamirah
- ASAF
- AGB Resource
- Frontier
- Indus
- OTH
- TOR
- Nexia Perth.

This Report is provided pursuant to the Court Orders, which requires the SPLs to report to the creditors and the GPLs of the Company at least once every three months during the course of the SPLs' appointment. Status reports were previously provided on 2 June 2020, 26 August 2020, 25 November 2020, and 26 February 2021.

Our investigations have largely concluded, but without uncovering substantive information about the Investment Companies or the Investments. Whether further investigations are undertaken by the SPLs is to be determined in discussion with the litigation funder and Mr Helberg.

Any comments or findings contained in this Report may be subject to amendment, clarification, or confirmation should additional information be obtained.

## 2.3 External administration of the Company

On 3 February 2018, Ronald Dean-Willcocks and Cameron Gray were appointed Administrators of Aus Streaming pursuant to section 436A of the *Corporations Act 2001* (Cth) (**Act**). Messrs Dean-Willcocks and Gray became the Company's liquidators, or GPLs, on 4 March 2020 when a DOCA was terminated by a resolution of the Company's creditors.

In the approximately three-year period that has passed since the original appointment, creditors have received various reports from the GPLs and have been provided the opportunity to attend various formal meetings conducted by the GPLs. Given the volume of information already in the possession of creditors, we do not intend to recap the history of the Company as it relates to matters not specified in the Court Orders or the series of events that preceded the appointment of the SPLs.

We have, however, set out some basic information about the Company below for ease of reference.

## 2.4 Company background information

### 2.4.1 Corporate history

Information extracted from the Australian Securities and Investments Commission (**ASIC**) on 1 June 2020 provides the following details about the Company:

Aus Streaming Limited	Current details
ACN	600 577 348
ABN	48 600 577 348
Date of registration	8 July 2014
Registered office and principal place of business	Level 10, 32 Martin Place, Sydney NSW 2000
Directors	Christopher Graeme Every appointed on 8 July 2014
	David Henty Sutton appointed on 8 July 2014

## Background to appointment

Aus Streaming Limited	Current details
Alternate director <sup>6</sup>	Steven Charles McDowell appointed on 31 July 2018
Auditor <sup>7</sup>	Nexia Perth appointed on 13 December 2016
Aus Streaming Limited	Previous details
Former company name	N/A
Former directors	Petrus Caspardus Stephanus Helberg appointed 31 May 2017, ceased 22 August 2017
	Darrel John Causbrook appointed 8 July 2014, ceased 1 June 2017
Former secretary	Nick Tropea appointed 8 July 2014, ceased 7 February 2018

### 2.4.2 Shareholders

The ASIC extract cites the number of issued ordinary shares as 161,001,000, with capital of \$139,000,400 "to be paid". The number of shares issued reconciles to the Company's share register provided to us by Mr Sutton and detailed below.

Name	Location	Type	Number held	Date issued
ASAF Critical Metals Ltd	British Columbia, Canada	Ordinary fully paid	1,000	8 July 2014
ASAF Critical Metals Ltd	British Columbia, Canada	Ordinary fully paid	39,989,910	26 May 2017
Helberg Holdings Pty Ltd	Melbourne, Australia	Ordinary fully paid	5,000,000	17 November 2017
AAI Resources Limited	RMI	Ordinary fully paid	114,010,090	6 December 2017
Agree Commodities Pty Ltd atf The JAR Family A/C	Brisbane, Australia	Ordinary fully paid	1,000,000	9 January 2018
<b>Total shares issued</b>			<b>161,001,000</b>	

We are not aware of any changes to the share register after 9 January 2018.

We are unable to exactly reconcile the unpaid share capital of \$139,000,400 per the ASIC extract to the Company's management accounts which reported the following equity account balances as at the date of appointment of the Administrators in February 2018:

Equity account as at 28 February 2018	\$	Notes
Share capital	400	1,000 shares at \$0.40 issued to ASAF but unpaid <sup>8</sup>
Capital contributions	145,556,303	Vended in Investments plus revaluation made on 31 January 2018
Retained earnings	(675,926)	Losses incurred in FY16 and FY17 – operating expenses
Current year earnings	(1,407,015)	Losses incurred in FY18 – operating expenses
<b>Total equity</b>	<b>143,473,762</b>	

The most likely explanation is that the amount of \$139,000,400 comprises:

- \$400 unpaid by ASAF, as per the Company's records (i.e. ASAF is recorded as a debtor)

<sup>6</sup> Per the GPLs' report dated 3 June 2020 section 1.3.3(b), Mr McDowell provided notice of his resignation as an alternate director of the Company dated 3 September 2018. The resignation has not been recorded by ASIC.

<sup>7</sup> Although still recorded by ASIC as the Company's auditors, Nexia Perth advised the GPLs that it did not perform any work for Aus Streaming after completion of the 30 September 2016 audit.

<sup>8</sup> The management accounts show ASAF as a debtor of the Company in the amount of \$400.



## Background to appointment

- \$139,000,000 approximates the contributed capital, by way of the 'vended in' Investments, with a book value of \$138,534,812.

### 2.4.3 Management of the Company

#### Directors

Based on telephone discussions<sup>9</sup> with the Directors, Mr Turner and Mr Causbrook (former director), we understand the Company was managed as follows:

- Messrs Every, Sutton and Causbrook were appointed as directors in July 2014. Their respective appointments appear to be based on different roles to be performed, as follows:
  - Mr Every was brought into the Company (at the instigation of Mr Turner) due to his ongoing relationship with ASAF, where he had acted as a consultant on investment opportunities in Australia and Canada, and to advise on the “*mechanics and structure*” of the Investments that would be 'vended in' to Aus Streaming by ASAF.
  - Mr Sutton was brought into the Company (at the instigation of Mr Turner) to be an Australian-based non-executive director and to provide company secretarial and administrative services. Mr Sutton was familiar with ASAF and “*the group*”, and had previously worked with ASAF to place shares with investors outside of a prospectus process.
  - Mr Causbrook was introduced by Mr Sutton, with whom he had been colleagues for “*many years*”. Based on our various discussions, Mr Causbrook apparently had limited involvement with the Company beyond the initial formation and statutory lodgements. Mr Causbrook advised that he was not invited to directors' meetings and therefore his involvement with the Company was limited to corporate secretarial work.
- Mr Turner was involved from the inception of the Company, although not appointed as a director. He described his involvement as a result of past consultancy work he had performed for ASAF. Mr Turner advised that when ASAF decided to contribute “*non-core shareholdings*” to create a balance sheet to establish a metal streaming business in Australia, it needed “*the right people*” to work with Mr Turner as he purportedly did not have a mining background. As noted above, Mr Turner brought Mr Every and Mr Sutton into Aus Streaming to perform the roles outlined above.
- In our discussions with Messrs Every, Sutton and Causbrook, it was conveyed to us that Mr Turner was central to all aspects of the Company's business. We were advised that Mr Turner had historically travelled to Australia on a regular basis and held board meetings, usually in Melbourne, with Mr Every (also travelling to Australia from overseas) and Mr Sutton. Other aspects or descriptions of Mr Turner's role with the Company include:
  - Mr Turner coordinated the Investments that would be 'vended in' by ASAF. The Investment Companies were apparently contacts of Mr Turner's<sup>10</sup>.
  - Mr Turner was appointed as a consultant to manage the relationship between ASAF and Aus Streaming and was the “*overseas contact*” for the Company. We presume the reference to the consultancy arrangement means the engagement of Hamirah, discussed further below.
  - As an overarching description, Mr Turner was the “*cornerstone*” of Aus Streaming.
- A consulting agreement was entered into between the Company and Hamirah on 1 October 2016 (**Hamirah Agreement**). That agreement required Hamirah to “*advise the Company with regards to the Corporate Structure and provide strategic advice to the Company to help execute the Company's business plan*”.
  - While the Hamirah Agreement did not specify the individual who would be undertaking the consulting work, Mr Turner stated that he was employed by Hamirah and, based on our investigations, appears to be the primary (but possibly not only) person who performed the role of consultant on behalf of Hamirah.
  - There is no business plan attached to the Hamirah Agreement, therefore the specific scope of the engagement cannot be known with certainty.

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<sup>9</sup> Details of our telephone discussions are included in section 3.3

<sup>10</sup> Mr Turner advised he had no direct involvement with the Investment Companies and the only information he had on the Investments came from Hamirah and ASAF.

## Background to appointment

- The Hamirah Agreement states that Hamirah would report to the Directors, but there is no evidence in the Company's books and records that any written reports were received, or that verbal reports were given at board meetings (i.e. there are no minutes of Directors' meetings where general business is discussed).
- We were also advised in our various discussions that Hamirah was responsible for:
  - the Company's primary accounting function, preparing its financial reports and assisting with the preparation for 2015 and 2016 external audits
  - producing the Investment/impairment Reviews dated 18 January 2018 for each of the Investment Companies
  - issuing the Investment Confirmation letters dated 18 January 2018 to each of the Investment Companies to confirm Aus Streaming's shareholding
  - generally setting strategy and sourcing funding.
- Mr Every advised he was the Company's CEO until Mr Helberg commenced his employment in August 2016<sup>11</sup>. Mr Helberg employed John Reeve to assist with developing the metal streaming business. There were no other employees. Mr Helberg and Mr Reeve resigned from their positions in mid-August 2017.
- Mr Every advised he was diagnosed with a serious illness in late 2016, and that for periods during 2017 he was less involved with the Company. During these periods of absence, Mr Sutton and Mr Turner managed the Company.
- Mr Causbrook resigned as a director on 1 June 2017 as he also was diagnosed with a serious illness.

The information gathered from our discussions with Messrs Every, Sutton, and Causbrook broadly aligned with a discussion we had with Mr Helberg<sup>12</sup> who, in summary, advised:

- Mr Every travelled to Australia frequently to attend board meetings, but otherwise was not involved in day-to-day management. Mr Helberg's observation was that, notwithstanding Mr Every's participation in board meetings and other meetings/discussions, he took instructions from and deferred to Mr Turner.
- Mr Sutton also attended board meetings, but was more involved as compared to Mr Every in that he and/or his staff at APC attended to 'back office' functions, paid supplier invoices, issued share certificates and attended to corporate secretarial work. Mr Helberg believed that Mr Sutton and/or APC (then known as Avalon) prepared various documents such as investor presentations and the Investment/impairment Reviews on the Investment Companies<sup>13</sup>, but that the source materials and financial information came from Mr Turner. This view is supported by our discussions with Mr Sutton wherein he indicated financial information and information on investments "*came from London*", which we take to mean Mr Turner/Hamirah<sup>14</sup>.
- Mr Causbrook played a very limited role in the Company.

### Helberg

In respect of Mr Helberg's role in the management of the Company, we note the following:

- Mr Helberg's contract of employment stated he would serve as "*Executive Chairman of the Board of Directors of the Employer*". In the original context, Mr Helberg's employer was Aus Streaming Investments Limited (**ASIL**), but in May 2017 his employment transferred to Aus Streaming. Mr Helberg did not become a director of Aus Streaming until 31 May 2017 and he resigned less than three months later.

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<sup>11</sup> Mr Helberg was originally employed by ASIL. It was intended that the employment agreement would be transferred to the Company once the transaction with Murchison Holdings Limited (**MCH**) had completed. Although the MCH transaction did not complete, Mr Helberg advises his employment was transferred to the Company in May 2017.

<sup>12</sup> Telephone discussion with Mr Helberg on 7 July 2020.

<sup>13</sup> Mr Sutton advised that Avalon did not prepare the Aus Streaming investor presentation, nor the investment/impairment reviews on the Investment Companies.

<sup>14</sup> Mr Causbrook also stated that "*the accounting work was done in London*" via Mr Turner.

## Background to appointment

- Mr Sutton suggested that Mr Helberg was managing the business day-to-day, but this conflicts with Mr Helberg's account of events and other commentary about, for example, how the financial and administrative aspects of the Company were managed (i.e. by a combination of Mr Sutton, Avalon, Mr Turner and Hamirah).
- It appears to us that:
  - Mr Helberg was primarily focussed on establishing the metal streaming business by seeking opportunities with mining companies
  - Mr Helberg had no other substantial involvement in other aspects of the Company's affairs
  - control over the Company's financial affairs was effected by Mr Turner with the assistance of Mr Sutton and Mr Every.

### 2.4.4 Creditor claims

Messrs Every and Sutton each submitted a Report as to Affairs (**RATA**) to the Administrators in February 2018, as required by section 438B of the Act. Those RATAs were identical and included the following information:

- one secured creditor in the amount of \$449,000
- three unsecured related party creditors in the total amount of \$368,333
- 12 unsecured trade creditors in the total amount of \$1,291,222.

The Administrators subsequently determined that portions of the unsecured claims may be entitled to priority over the secured creditor (in respect of circulating asset recoveries) and over other unsecured creditors. These reallocations were included in the GPLs estimate of the Company's creditor claims in their report to creditors dated 3 June 2020 as follows:

- one secured creditor in the amount of \$443,878
- two priority employee creditors in the total amount of \$269,704
- three unsecured related party creditors in the total amount of \$366,333
- 12 unsecured trade creditors totalling \$1,020,168, plus \$246,271 in estimated accrued interest.

Despite the small number of creditors, in our discussion with Messrs Every, Sutton and Turner, none could recall with any certainty or clarity the nature of services or loans provided by individual creditors. Further, the Company's records did not contain reports or advice that purportedly were provided to the Company by related party creditors and the basis upon which those entities submitted proofs of debt as creditors of the Company.

We are aware of a change in circumstances of one creditor, HFI Holdings Limited (**HFI**), which was struck off the Ras Al Khaimah (**RAK**) corporate register on 18 January 2019. On drawing this matter to the Directors' attention, we were advised by their legal representative that the assets of HFI had been acquired by another entity, AAAL Holdings Limited (**AAAL**), on 18 September 2018.

Our understanding of the current list of Aus Streaming's creditors is:

Name	Address	Status	Amount per proof of debt
ASAF Critical Metals Ltd	British Columbia, Canada	Secured creditor	\$443,878 <sup>15</sup>
APC Securities Pty Ltd	Sydney, Australia	Unsecured related creditor	\$10,000
Barraket Consulting	Sydney, Australia	Unsecured trade creditor	\$11,500
Causbrook & Associates	Sydney, Australia	Unsecured related creditor	\$5,398
David Sutton	Sydney, Australia	Unsecured related creditor	\$25,000

<sup>15</sup> Per loan account ledger as at 3 February 2018.

Name	Address	Status	Amount per proof of debt
Ecbatan Limited	UK	Unsecured related creditor	\$8,268
Hamirah Holdings Limited	Dubai, UAE <sup>16</sup>	Unsecured related creditor	\$117,500
AAAL Holdings Limited	Dubai, UAE <sup>17</sup>	Unsecured related creditor	\$5,850
Doreen Bull	Queensland, Australia	Unsecured loan creditor	\$50,000
RKZK Pty Ltd	Melbourne, Australia	Unsecured loan creditor	\$168,000
Rudi Cohrsen	Melbourne, Australia	Unsecured trade creditor	\$14,355
Salamander Business Services Pty Ltd	Melbourne, Australia	Unsecured trade creditor	\$85,250
GGP Management Services Limited	British Virgin Islands	Unsecured related creditor <sup>18</sup>	\$525,000
Christopher Every	United Kingdom	Priority and unsecured related creditor	\$333,333
Petrus Helberg	Melbourne, Australia	Priority and unsecured related creditor	\$230,000
John Reeve	Melbourne, Australia	Unsecured trade creditor	\$87,500
<b>TOTAL</b>			<b>\$2,120,832</b>

We have not called for creditors to provide us with details of their claims, nor have we reviewed in detail the proof of debt forms provided to the Administrators as summarised in the table above.

Excluding accrued interest for the secured creditor and loan creditors, we understand the estimated total pool of creditors for Aus Streaming is c.\$2.1m. In addition to the creditors, the GPLs reportedly have unpaid remuneration and expenses totalling c.\$400k (in their roles as Administrators, Deed Administrators and Liquidators of the Company).

#### 2.4.5 Related party creditors

The RATAs furnished by the Directors identified APC, David Sutton and Christopher Every as 'related party creditors', presumably on the basis that Messrs Sutton and Every are directors of the Company, and Mr Sutton is the sole director of APC.

We have also identified from the table above what we consider to be additional related party creditors as outlined below:

- Causbrook & Associates, the accounting practice of the Company's former director, Mr Causbrook
- Mr Helberg, a former director of the Company
- Ecbatan Limited (**Ecbatan**), Hamirah, HFI/AAAL, and GGP Management Services Limited (**GGP**) all appear to be part of a global network of organisations that are interconnected with the Company, the Directors, Mr Turner, ASAF and the Investments Companies, as evidenced by:
  - their treatment as 'deferred creditors' under the DOCA
  - offices or contact addresses are co-located with other entities that appear to be connected with the global network (e.g. the address for HFI as per its proof of debt is the same address in Dubai that has been used by Hamirah, ECB, TES Management Limited (**TES Management**), and IFH Resources)
  - company documents executed by other entities that appear to be connected with the global network (e.g. the proof of debt for HFI was executed by 'J Jennings', a person whose signature appears on several documents in respect of various entities that we have sighted during our investigations).

<sup>16</sup> Our investigations determined that Hamirah is not contactable at the address provided by the Directors.

<sup>17</sup> Our investigations determined that AAAL is not contactable at the address provided by the Directors.

<sup>18</sup> The proof of debt refers to the loan being 'secured by debenture'. We have not sighted evidence of a debenture agreement.

#### 2.4.6 Assets

The RATAs identified Company assets with an estimated realisable value as at 3 February 2018 of \$145,488,045, comprising shares in the Investment Companies. The RATA also identifies that the assets are subject to the claim of the Company's secured creditor, ASAF<sup>19</sup>.

Investment Company	Shareholding	Value <sup>20</sup> (\$)
AGB Resource Capital Limited	400,000	10,371,360
Frontier Mining Value Limited	7,500,000	14,322,000
Indus Infrastructure Partners Limited	27,328,571	30,498,685
OTH Mineral Streaming Limited	2,000,000	7,936,000
TOR Mining Capital Limited	47,500,000	82,460,000
<b>Total</b>		<b>\$145,588,045</b>
<b>Less secured claim</b>		<b>(\$449,000)</b>
<b>Surplus at valuation</b>		<b>\$145,139,045</b>

In their report of 3 June 2020, the GPLs estimated the realisable value of the Investments at \$205,366,802, subject to ASAF's secured claim of (\$443,878). That estimate was based on a purportedly independent valuation of the Investments dated 23 April 2020 prepared by ECB Services Limited (**ECB**), a company apparently based in Dubai (**ECB Valuation Memorandum**). The ECB Valuation was commissioned by ASAF.

We have significant reservations as to the value attributed to Aus Streaming's Investments in the Investment Companies, as discussed in section 4.4 of this Report.

We have not identified any additional Company assets.

A detailed discussion of the Investments is included at Section 4 of this Report.

<sup>19</sup> It appears that the Company's Investments have been transferred to the secured creditor of ASAF under the terms of ASAF's facility with its secured creditor, and that the Company has not been the registered owner of the respective Investments since April/May 2017. Further details of this matter are contained in section 4.1.4 of this Report.

<sup>20</sup> 'Value', as defined in the Directors' respective RATAs, means 'Book Value' or 'Fair Market Value in Continued Use', as well as an 'Estimated Realisable Value'.

3

Investigations  
undertaken

### 3.1 Overview of investigation process

In our circular to creditors dated 26 August 2020, we reported on the investigations undertaken. We also reported that there were several outstanding matters to be addressed, including a request for meetings/discussions with representatives of specific entities in order to advance our enquiries into the Investments. As suggested by the Directors, we initially made the request through Mr Turner and subsequently through the legal representative appointed to represent the Directors and Mr Turner.

Further details of the types of investigations we have conducted are outlined below, and further discussion of the Investments is contained in section 4 of this Report.

### 3.2 Enquiries with the Company's General Purpose Liquidators

The GPLs have provided a substantial amount of information, including:

- reports to creditors
- minutes of creditors' meetings
- RATAs and director questionnaires received from Mr Every and Mr Sutton
- proofs of debt submitted by the Company's creditors
- copies of a range of correspondence issued by the GPLs and their legal representatives to:
  - the Directors
  - Mr Turner
  - the secured creditor, ASAF
  - ECB, in its apparent capacity as an 'adviser' to ASAF
  - ECB, in its apparent capacity as an 'independent' valuation expert with regard to the Investments
  - the auditors, Nexia Perth.
- copies of searches/extracts from various corporate registries relating to the Investment Companies.

The GPLs also provided copies of certain books and records of the Company that had been forwarded to them by Mr Turner.

### 3.3 Enquiries with the Company's directors

#### 3.3.1 Christopher Every

At the time of the Company's incorporation, and until the commencement of Mr Helberg in his role in August 2016, Mr Every advised he was Aus Streaming's CEO. Mr Every resides in the United Kingdom.

We spoke with Mr Every on 9 July 2020. Our phone discussion broadly covered:

- Mr Every's history and role with the Company
- the roles of other key personnel, in particular Messrs Sutton, Causbrook and Turner
- the business, operations and creditors of the Company
- Mr Every's knowledge of the Investment Companies
- Mr Every's role with (and knowledge of) related entities including ASAF and ECB.

In summary, Mr Every advised that:

- His involvement in the Company was instigated by Mr Turner.

## Investigations undertaken

- He was a director and CEO until Mr Helberg was hired, travelling frequently to Australia to hold discussions with potential investors and on the proposed transaction to merge MCH (a then ASX listed entity) and Aus Streaming (**MCH Transaction**). This transaction was already “*in the background*” at the time he joined the Company and had been introduced by Mr Turner.
- He worked with Mr Sutton to present the Aus Streaming investment opportunity to potential advisers, brokers and investors, and also introduced various metal streaming options.
- Mr Turner instigated the “*gathering of the assets*” and was a “*cornerstone*” to the Company’s business. He understood Mr Turner has been appointed as a consultant to the Company (we understand via Hamirah) to manage the relationship with the major shareholder (i.e. ASAF).
- Mr Causbrook was not directly involved with the business, and that during periods of time when he was unwell (in mid-2017 and December/January 2018) Mr Sutton and Mr Turner managed the Company.
- The initial focus of the Company was on the MCH Transaction, although ultimately MCH did not fulfil its part of the proposed transaction resulting in the Company incurring substantial legal fees. Around this time, a statutory demand was issued against the Company by another creditor. Mr Every could not recall if funding was sought to meet the statutory demand<sup>21</sup>.
- The Company’s assets were illiquid and that “*the market was awash with illiquid assets*”, meaning that it was difficult to realise those assets to meet the Company’s liabilities and/or fund the proposed metal streaming opportunities that had been identified by Mr Helberg.
- He suggested we ask Mr Turner about the Investments and the ‘vending in’ of those assets from ASAF to ASIL and Aus Streaming, as the Investment Companies were contacts of Mr Turner’s.
- He had no direct contact with the Investment Companies and was more focussed on the “*mechanics and structure*” of what to do with the Investments.
- He had a past relationship with ASAF where he was a consultant and advised on investment assets, but had resigned as a director of ASAF in March 2018<sup>22</sup>. He was currently a director of ASIL and Infrastructure Commodities (Mauritius) Limited (**ICML**).
- In relation to the ECB report and valuation:
  - he was not directly involved in scoping the engagement, but suggested Mr Sutton may have been involved
  - ECB had not been engaged by ASAF or Aus Streaming before
  - ECB was independent as far as he was aware.
- As an overall conclusion on the failure of the Company and issues raised by Mr Helberg (see section 3.3.4), Mr Every considered that Mr Helberg had:
  - not understood the nature of the Investments
  - become frustrated that the business did not deliver what he thought it would
  - not accepted that the business needed to be successful on its own and not rely on the Investments to provide liquidity.

After our phone call we exchanged email correspondence seeking clarification of:

- the persons responsible for preparing the Investment/impairment Reviews for the Investments (identified as Hamirah)
- the identity of the person signing the Investment Confirmation letters on behalf of the Company (identified as Hamirah)

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<sup>21</sup> We understand that the statutory demand related to a debt of c.\$82,000.

<sup>22</sup> By email on 17 March 2020, Mr Turner advised the GPLs that Mr Every had resigned as a director of ASAF “*to avoid any conflicts*” (i.e. was resigning at that time). This email was in response to the GPLs email to Mr Every on 16 March 2020 seeking his advice as to the independence of the party ASAF was engaging (i.e. ECB) to prepare a valuation report on the Investments.



## Investigations undertaken

- the identity of the person signing the ASAF facility agreement/debenture agreement on behalf of the Company (identified as “*an authorised signatory from Hamirah Holdings on authority of board [sic] of Aus Streaming*”).

### 3.3.2 David Sutton

Mr Sutton has been a non-executive director of the Company since its incorporation.

We spoke with Mr Sutton on 16 July 2020. Our phone discussion broadly covered the same topics as the discussion with Mr Every. In summary, Mr Sutton advised that:

- His role was to be the Australian director of the Company and act as company secretary and/or in an administrative capacity with limited involvement in the main business.
- While he was familiar with “*the group as a whole*”, he did not have any directorships of overseas companies within the group. His past involvement with the group had included placing ASAF shares with investors but not via a prospectus or public listing. He understood ASAF to be a Canadian company with “*significant shareholders around the globe*”.
- Mr Causbrook was invited to be a director but did not take part in the operational side of the business. Similarly, Mr Every was not involved on a day-to-day basis, particularly when he was unwell.
- Mr Helberg undertook day-to-day executive functions and he was supported by Mr Reeve on a part-time basis. Mr Reeve had a finance background and was involved in fund raising. Although stipulated in his employment contract, Mr Reeve refused to become a director of the Company.
- Mr Turner was the “*contact overseas*” and represented the Company’s major shareholders.
- He was very familiar with MCH, which was controlled by a stockbroker based in Hong Kong that he knew. Accordingly, he felt comfortable to proceed with the proposed ‘back-door listing’ of Aus Streaming via MCH. As the transaction progressed, the Hong Kong principal become more difficult to deal with and ultimately the transaction did not proceed. As also noted by Mr Every, substantial legal fees were incurred resulting in a settlement with the law firm involved for \$450,000.
- When asked why the Company did not trade out of its financial difficulties, Mr Sutton advised that the streaming contracts were still “*some way off*” and there were technical aspects of the respective mining projects that collectively Mr Every, Mr Turner and he were unsatisfied with, and that more evidence of the mining projects’ viability was needed. In addition, the Investments were “*always long term*” and there was “*never any intention to sell*”<sup>23</sup>.
- His understanding of the Company’s Investments was that they were created by ASAF (i.e. they were not external businesses identified by ASAF as investment opportunities that ASAF then bought into) and that they became surplus to the needs of ASAF, hence the transfer to ASIL and Aus Streaming. He had no direct interaction with the Investment Companies nor any of the fund managers, and that the Investments “*all came through Andrew*”, meaning Mr Turner<sup>24</sup>.
- When asked how he satisfied himself as to the valuation of the Investments, Mr Sutton advised that he did not look into the “*make-up*” of the Investments and was told that the valuation was “*based on accounting standards*”.
- In relation to the ECB report and valuation:
  - he understood ECB to be a “*professional services company that provides valuation and corporate services*” based in the UK
  - he had no involvement with ECB’s work and was not contacted by ECB during the engagement
  - he was not aware of any connection between ECB and Mr Turner.

After our phone call we exchanged email correspondence around that time requesting copies of certain books and records of the Company, and seeking clarification of the persons responsible for preparing:

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<sup>23</sup> This comment is contrary to the APC ‘Company Research’ paper dated 1 August 2017 which stated that Aus Streaming would be “financed by liquidating existing assets, third party partnerships and debt and equity issuances”.

<sup>24</sup> This assertion by Mr Sutton lacks credibility given the continuous interaction between APC and TOR during the DOCA period (refer to section 4.6.2).

## Investigations undertaken

- an 'investor presentation' about Aus Streaming (advised "*not prepared by APC*")
- marketing materials for TOR Mining Capital Limited (**TOR**) (advised "*prepared by APC on behalf of ASAF*")
- Investment/impairment Reviews for the Investments (advised "*not prepared by APC*").

### 3.3.3 Darrell Causbrook

Mr Causbrook was a non-executive director of the Company for just under three years. He resigned in June 2017 due to health reasons.

We spoke to Mr Causbrook on 11 August 2020. Our discussion broadly covered:

- the respective roles Mr Causbrook and his firm, Causbrook & Associates, played in the Company's formation and operations, including his involvement in setting the Company's accounting policies and preparation of annual financial reports
- Mr Causbrook's:
  - involvement in the MCH Transaction
  - knowledge of the Investment Companies
  - knowledge and/or involvement with Hamirah
- the circumstances of Mr Causbrook's resignation as a director of the Company in June 2017.

In summary, Mr Causbrook advised that:

- He was introduced to the Company by Mr Sutton who had been a colleague for many years. His role was to provide accounting services and be a non-executive director.
- The accounting services he provided were very limited in scope and did not extend to preparing the Company's financial reports or tax returns. He was not involved in the external audit of the financial reports conducted by Nexia Perth. He understood the Company's accounting work was "*done in London via Andrew*", meaning Mr Turner.
- Further, he understood the Company was run by Mr Turner in discussion with Mr Sutton and Mr Helberg. He was not involved in the MCH Transaction.
- He was not invited to directors' meetings and did not attend those meetings.
- He was diagnosed with a serious illness and was advised to scale back his business activities, which is why he resigned as a director of the Company.
- During the period he was involved with the Company he didn't observe any odd or unusual activities. He had a very limited role, doing not much more than corporate secretarial work, but understood those operating the business were experienced in metal streaming, raising funds, and other associated activities.

### 3.3.4 Petrus Helberg

Mr Helberg entered into an employment agreement with ASIL in April 2016 but did not commence working until around August 2016. As the MCH Transaction did not proceed, his employment was transferred to the Company in May 2017. Shortly after his employment was transferred to the Company, Mr Helberg became a director of the Company but resigned as an employee and director three months later, on 21 August 2017.

We spoke with Mr Helberg on 7 and 15 July 2020 to obtain background information about the Company and his concerns regarding the Investment Companies. We also had a discussion on 23 July 2020 regarding the status of our investigations to that date. During the course of our role as SPLs, we exchanged email correspondence primarily to obtain further background information and to clarify our understanding of aspects of the Company's business, including the status of the Company's creditors.

We understand from Mr Helberg that the critical turning point in his tenure with the Company was in or around March/April 2017 when the Company needed to demonstrate to the respective counter-parties of three conditional metal streaming contracts the underlying source of funding for each mining project. Mr Helberg advises that, at that time, Mr Turner said the Company's Investments could not be sold nor used as collateral to obtain loans to secure funding.

From that point, Mr Helberg advised he attempted to verify the Company's Investments, including by making enquiries with the auditors at Nexia Perth, but without success<sup>25</sup>. As noted above, Mr Helberg resigned from the Company in August 2017 and subsequently entered into a Deed of Settlement with the Company in respect of any claims either party may have had against the other party in November 2017.

### 3.3.5 Andrew Turner

Mr Turner was not formally appointed as a director of the Company. However, based on our discussions with the Company's Directors and the information gathered during the course of our investigations, we consider *prima facie* that Mr Turner meets the criteria of an officer of the Company in accordance with section 9 of the Act (also refer to section 5.3.1).

Mr Turner advised he resided in Dubai<sup>26</sup>, but at the time of our initial correspondence in July 2020 he was living in the UK as he was unable to return to Dubai due to travel restrictions caused by COVID-19.

We spoke with Mr Turner on 22 July 2020. Our discussion broadly covered the same topics as discussed with Messrs Every and Sutton. We note that during our call Mr Turner cited he was subject to various confidentiality arrangements with ASAF and Hamirah and had potential conflicts of interest preventing him from providing answers to some of our questions. In light of this, he suggested we put those questions in writing and he would obtain responses from the relevant party for us.

In summary, Mr Turner advised that:

- He had previously done some consulting work for ASAF. Through this work he was aware of a handful of companies successfully engaged in the metal streaming business in Canada, but it appeared that no one was operating this kind of business in Australia.
- He did some "groundwork" on the prospects for a business in Australia and ASAF decided to contribute non-core shareholdings to create a balance sheet as a foundation for the Australian business. He then "looked for the right people" to manage the business as he didn't have a mining background.
- Mr Sutton was brought into the Company as he had known him for many years and would likely have good connections in the financial markets in Australia.
- In respect of his role, Mr Turner advised that:
  - he was employed by Hamirah which is based in Dubai
  - Hamirah played a role in the administrative and finance functions of the Company, including putting together the financial reports for the FY15 and FY16 audits
  - the day-to-day operations were managed in discussion with the Directors, but he and Mr Sutton managed the business during Mr Every's absences due to illness
  - he could not provide too many details as he was subject to confidentiality agreements with Hamirah and ASAF.
- The MCH Transaction was introduced by Mr Sutton, who knew MCH and the transaction was to be a reverse merger. The terms of the deal changed several times and there were concerns raised by ASIC due to the original 'vehicle', ASIL, being an off-shore entity. As a result, the transaction switched to one involving the Company, being an Australian entity. The intention was that, after the MCH Transaction completed, shares in the Company would be issued to ASAF who, in turn, would distribute the shares to ASAF's shareholders. As previously noted, the MCH Transaction did not proceed.
- He could not recall if funding was sought to cover the debt of c.\$82,000 that was the subject of the statutory demand.
- In relation to the Investments, Mr Turner advised:
  - he had no direct involvement with the Investment Companies and the only information he had on those companies has come to him via ASAF and Hamirah

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<sup>25</sup> The details of Mr Helberg's enquiries are included in his affidavit of 30 March 2020.

<sup>26</sup> Mr Turner's address as per ASIC records is in RAK.

## Investigations undertaken

- he did not know how the Investments came into ASAF's hands, but suggested we put this question to ASAF in writing
- he did not know anything about the underlying business/assets of the Investment Companies
- he had never been asked a direct question about the Investments previously.
- In relation to the ECB Valuation Memorandum, Mr Turner advised:
  - he understood ECB to be a professional services firm, “*similar to PwC*”
  - he did not know who had engaged ECB (he thought maybe the Company's shareholders) and had not seen the engagement letter issued to ECB
  - he sent “*information and extensive notes*” to ECB via Hamirah, and had “*run past*” the chronology of events with Mr Sutton and Mr Every
  - ECB was independent from ASAF and the Investment Companies as far as he knew
  - Wurban International Limited (**Wurban**) held security over ASAF, but he did not know any details about Wurban, such as where it was located.

Following our phone discussion, we emailed an information request to Mr Turner seeking:

- contact names and details for each of ASAF, ECB, and Hamirah
- copies of certain Company financial and shareholder records
- contact names and details for the Investment Companies
- details of the persons responsible for preparing the Investment/impairment Reviews for the Investment Companies.

In response, Mr Turner provided a number of documents by return email (all of which were already available to us via the information provided by the GPLs) but did not address our specific requests for contact information for various entities relevant to our investigations.

On 14 August 2020, Mr Turner advised us that he, the Directors and ASAF had appointed the same legal representative in Australia (**Lawyer**) and that our enquiries should be routed through the Lawyer.

On 20 August 2020, Mr Turner advised that Hamirah had instructed him to respond to certain of our questions, but that Hamirah had also appointed the Lawyer to respond to those enquiries that Mr Turner was unable to answer.

### 3.3.6 Legal representative

Creditors should note that the Lawyer was appointed in August 2020 and, as we understand, has not had a historical role with the Company.

On 16 October 2020, nearly three months after the original requests were made to Mr Turner, the Lawyer provided us with contact details for the Investment Companies. In his email to us, the Lawyer states he was instructed that “*the latest contact details that ASAF have [sic] for the portfolio companies are as follows*”:

Entity	Contact details provided
AGB Resource Capital Limited	contact@agbresourcecapitl.com
Indus Infrastructure Partners 1 LP	contact@indusinfrastructurepartners.com
OTH Mineral Streaming Limited	info@othminerals.com
TOR Mining Capital Limited	info@torminingcapital.com
Quantum Investing Management Limited	Use the contact form on the website to make contact with the company

Details of our correspondence sent to the Investment Companies is included at section 3.9.

We were also advised that we could refer to each Investment Companies' website for information (refer to section 3.6 below for further details).

As will be apparent to creditors, the above information brought us no closer to obtaining the names and direct contact details of the persons responsible for the Investment Companies. We have not been provided with any contact details for other entities relevant to our investigations, specifically:

- ASAF<sup>27</sup>
- ECB
- Hamirah.

Creditors should note that the Lawyer can only act on his clients' instructions. Accordingly, where we make requests for information and the Lawyer responds, he is doing so based on those instructions and not from his personal knowledge.

### **3.4 Enquiries with the Company's auditors**

We wrote to Nexia Perth on 3 August 2020 requesting additional information regarding the conduct of the 2016 audit, particularly in relation to the audit evidence obtained to substantiate the book value of the Investments.

Nexia Perth provided a detailed response with supporting documents on 2 September 2020 which supplemented the information we obtained via the GPLs and their earlier enquiries with Nexia Perth.

The subject of the auditor's conduct is discussed in detail in section 6 of this Report.

### **3.5 Enquiries with the Company's creditors**

#### **3.5.1 Secured creditor - ASAF Critical Metals Ltd**

ASAF is a company registered in British Columbia, Canada. As noted above, on 20 August 2020, we were advised that ASAF had appointed a legal representative in Australia and that any enquiries of ASAF should be directed through the Lawyer. This advice was received in response to our request to Mr Turner on 29 July 2020 to provide direct contact details for executives of ASAF so that we could, among other things, discuss the Investment Companies. We reiterated our request for direct contact details for ASAF's executives to the Lawyer on 27 August 2020.

On 16 October 2020, the Lawyer replied to our 27 August email, but the reply omitted any contact details for ASAF.

Enquiries through ASAF's registered office in British Columbia, Canada did not result in us being able to establish direct contact with the directors or management of ASAF (refer to section 3.7.1 below).

To date, across the majority of documents and correspondence we have reviewed relating to ASAF, the only persons connected to ASAF that have been identified are:

- Christopher Every, a former director of ASAF
- Andrew Turner, a 'representative' of ASAF.

We have not included the current director, Jiao Jennings<sup>28</sup>, in the list above as we have no way to directly contact<sup>29</sup> this person to establish whether they have any information relevant to our investigations (also refer to section 3.7.1).

In summary, we have had no direct contact with ASAF.

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<sup>27</sup> We note that the GPLs sent correspondence to [info@asafcriticalmetals.com](mailto:info@asafcriticalmetals.com), and that replies were signed only with the company name, not any individual employee or officer of ASAF.

<sup>28</sup> Jiao Jennings was appointed as a director of ASAF on 5 March 2020, replacing Christopher Every.

<sup>29</sup> Searches conducted via Companies House in the UK record two postal addresses for Jiao Jennings, however, these addresses are office addresses used by various entities in the global network of entities that are interconnected with the Company, the Directors, Mr Turner, ASAF and the Investments Companies and therefore are unlikely to advance our ability to directly contact Jiao Jennings.

We note that in a letter to us dated 28 January 2021, Mr Every states:

*“With regards to information on the assets I am informed by ASAF that they [sic] agreed to provide you with information on the assets and they have provided information as requested as best as they [sic] are able. In addition, they [sic] have provided a valuation report from ECB with regards to the assets.”*

We reiterate that we have had no direct contact with ASAF, nor have we received any information from ASAF.

### **3.5.2 Unsecured creditors**

We have issued four circulars to creditors, dated 2 June 2020, 26 August 2020, 25 November 2020 and 26 February 2021 respectively, each of which invited creditors to come forward with information to assist our investigations.

To date we have only been in contact with one creditor (in addition to Mr Helberg), but this interaction did not provide additional documents or information beyond what we already had in our possession.

## **3.6 Searching publicly available information**

Prior to our appointment, Mr Helberg and his legal representatives had, among other things, conducted internet searches of the Investment Companies in an attempt to find information about each entity's business. This information was included in Mr Helberg's affidavit supporting the process to appoint the SPLs.

We also reviewed the information available on the respective websites for the Investment Companies, which appears to be largely unchanged from Mr Helberg's earlier searches, although we note some instances where the contact address has changed or additional 'shareholder updates' have been published.

We observed that the websites were similar in nature and shared the following general characteristics:

- no specific information about any project, venture, asset, or business relationship
- no audited financial statements or other financial information was available
- no details of any real person, including any company officer or senior management personnel were disclosed
- a brief background/company history was provided, but otherwise only a generic description of the respective entities' business model
- in some instances, contact details were available, but these were the same general contact details provided by the Lawyer and outlined in section 3.3.6.

In summary, these websites provided no meaningful information to advance our investigations as to the underlying substance of each Investment Companies' assets or business.

## **3.7 Physical attendance at office addresses**

Given the uncertainty surrounding the existence of the Investment Companies, the lack of publicly available information, and the absence of information from the Directors and Mr Turner as to contact names and details of entities relevant to our enquiries (including ASAF, ECB, and Hamirah), we requested our PwC colleagues in certain international jurisdictions visit the office address provided in corporate records or other correspondence to see if we could establish direct contact with representatives of these entities.

The office attendances are described in more detail below but, in summary, this exercise did not advance our attempts to establish direct contact with management or company officers of the entities the subject of our investigations.

### **3.7.1 British Columbia, Canada**

The following entities currently have a registered office and registered records office at 150-10451 Shellbridge Way, Richmond, British Columbia:

- ASAF (the secured creditor of Aus Streaming)

## Investigations undertaken

- Indus Infrastructure Partners Limited (**Indus**) (one of the Investment Companies)
- OTH Mineral Streaming Limited (**OTH**) (one of the Investment Companies).

Our colleague attended this address on 22 August 2020 and found the business operating from there was Raydwell Consulting (**Raydwell**), a shared services/'virtual office' business. The Raydwell staff member our colleague spoke to advised that no records were held at their office for any of the abovenamed companies. We understand this to be a contravention of British Columbia law.

The Raydwell staff member provided our colleague with the email and phone details for a person based in the UK at an organisation known as 'Hits Management' who was the apparent contact point for the companies.

Subsequent email correspondence with the representative of Hits Management<sup>30</sup> confirmed that they provided 'corporate services' to the companies but held no corporate records. Despite advising that our enquiry would be forwarded to the respective companies to respond, no response has been forthcoming.

We note that some directors of ASAF, Indus and OTH have also listed the same Shellbridge Way address with the British Columbia corporate registry as their mailing/delivery address. We have concluded that those directors are similarly uncontactable via this address.

### 3.7.2 Singapore

The following Investment Companies had an office address at 1 Scotts Road, #24-10 Shaw Centre, Singapore:

- AGB Resource Capital Limited (**AGB Resource**)
- Frontier Mining Value Limited (**Frontier**).

Our colleague attended these premises on 21 August 2020. He reported that there was no evidence of the abovenamed companies at this address and that it appeared to be occupied by an unrelated business.

### 3.7.3 Dubai, United Arab Emirates

On 25 August 2020, the Lawyer advised that the mailing/delivery address for the following creditors of the Company was at 19<sup>th</sup> Floor, Business Centre, Conrad Hotel, Sheikh Zayed Road, Dubai:

- Hamirah (consulting firm to Aus Streaming)
- AAAL Holdings Limited<sup>31</sup>.

Our colleague attended these premises on 27 August 2020 to attempt hand-delivery of our circular to creditors. He was advised by the manager of the occupant of the premises, Spider Business Centre (**Spider**), that neither company was a client of Spider and therefore he was unable to accept delivery of the circulars.

We also noted from correspondence issued to the GPLs that ECB (the independent valuer of the Investments) had this address on its letterhead. Our colleague also enquired with Spider whether ECB was contactable via this address. The manager of Spider advised that ECB was unknown at that address, and a similar response was received from the ground floor reception of the nearby Conrad Hotel.

We are uncertain as to the current address of ECB as we have not been provided contact details for ECB as requested in July/August 2020 via Mr Turner and the Lawyer, and we note that ECB's website ([www.ecbservicesae.com](http://www.ecbservicesae.com)) is now defunct. Further, we were unable to locate ECB when searching the corporate registers in the UAE by ECB's company registration number per its letterhead (IC 20120875). However, an internet search links this company number to McFaddens & Co Group Ltd, a corporate advisory business with a base in Dubai at the same address as Hamirah and AAAL.

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<sup>30</sup> A representative of Hits Management, Robert Barker, liaised with Nexia Perth in relation to the 2016 audit.

<sup>31</sup> This entity apparently acquired the debts of HFI Holdings Limited, the original creditor of the Company.

## Investigations undertaken

We note that the United Kingdom Companies House (**Companies House**) (the UK equivalent of ASIC) has ECB recorded as a current director (appointed on 16 September 2019<sup>32</sup>) for TES Management plc<sup>33</sup>. These records provide ECB's address as 19th Floor Crowne Plaza Commercial Tower, Sheikh Zayad Road, Dubai.

In addition to ECB, various sources of information indicate that the following entities had, at various times, listed the Crowne Plaza address as their place of business:

- Hamirah – as per Companies House records and the proof of debt submitted by Hamirah to the GPLs
- TES Management – current corporate director of ASAF and OTH, as per British Columbia corporate registry records
- HFI Holdings Limited – original creditor of the Company, and as per the proof of debt submitted to the GPLs
- IFH Resources Limited – one of the original Investment Companies, and as per an earlier investment confirmation letter.

Similarly, an office address at Al Maiden Tower 2, Office #202, Al Maktoum Street, Dubai has been present in various documents we have reviewed.

Our colleague attended the premises at Crowne Plaza and Al Maiden Tower on 17 August 2020 and found that:

- the premises at Crowne Plaza were vacant and had apparently been so for a period of time
- the Al Maiden Tower was a residential building with no commercial offices.

### 3.7.4 Other jurisdictions not attended

We did not attend registered office addresses in the British Virgin Islands (**BVI**), the Republic of the Marshall Islands (**RMI**) and the Republic of Ireland as through our enquiries these addresses appeared to be nominee registered offices (i.e. the offices of businesses engaged in providing corporate secretarial and similar services to vast numbers of companies registered in these jurisdictions).

## 3.8 Enquiries with corporate registries

Copies of extracts from various corporate registers were made available to us via Mr Helberg's affidavit and the GPLs. We also conducted various searches, via our PwC colleagues in the relevant jurisdictions, to reconfirm the information supplied by Mr Helberg and the GPLs, and to check any updates to the entities' status or documents lodged.

The various searches confirm the existence of the respective Investment Companies as legal entities. However, each jurisdiction has varying degrees of transparency in relation to other information beyond the existence of the entity, for example, the names of company directors are not available in some jurisdictions as they are for Australian registered companies.

As the types of enquiries described in previous sections above had not yielded additional information, we wrote to:

- the BC Registry Services in British Columbia, Canada (the Canadian equivalent of ASIC) in respect of ASAF, Indus, and OTH seeking copies of any audited or unaudited financial statements filed by the relevant companies
- the Companies Registration Office (**CRO**) in the Republic of Ireland (the Irish equivalent of ASIC) in respect of TOR seeking copies of audited financial statements and/or any prospectuses or other material filed in relation to the proposed listing of TOR.

BC Registry Services responded to advise that financial statements were not collected as these records were required to be kept by the company pursuant the relevant act.

The CRO acknowledged receipt of our enquiry but did not respond to any of the queries raised.

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<sup>32</sup> It appears ECB was appointed director of TES Management plc in place of Hamirah as the appointment/resignation took place on the same date.

<sup>33</sup> Christopher Every is currently a director of TES Management plc, as is Timothy Chawner. Mr Chawner is also currently a director of TOR and OTH.



### 3.9 Correspondence sent to Investment Companies and company officers

Based on information contained in the extracts from corporate registers referred to in section 3.8 above, and the email addresses referred to in section 3.3.6 above, we wrote to the Investment Companies seeking various information on the management, governance, business and financial affairs of each company. The correspondence issued and responses (where received) are summarised below. As with all other avenues of enquiry, this correspondence did not advance our investigations into the Investments.

We wrote to:

- The directors of TOR, Mr Christopher Glover and Mr Timothy Chawner, at their respective addresses as per the CRO's records – no response was received.
- The company secretary of TOR, Ms Lisa Connaughton of MFD Secretaries Limited, at the email address as per documents filed with the CRO – no response was received.
- The directors of TOR via the email address provided by the Lawyer. The response to Ms Melissa Humann of our staff received on 12 November 2020 is shown below:

*Dear Madam,*

*Further to your recent correspondence, AUS Streaming Limited is not a shareholder of TOR Mining Capital Public Limited Company, although upon investigation of archived records it appears AUS Streaming Limited were a shareholder of a predecessor company and that its shareholding was transferred to ASAF Critical Metals Limited on 23rd May, 2017.*

*For and on Behalf of*

*TOR Mining Capital Public Limited Company*

- The registered agent of Quantum Investing Management Limited (**Quantum**), J.S. Archibald Trust Services Limited, at the email address located on the BVI Financial Services Commission website – no response was received.
- The registered agent of Indus Infrastructure Partners 1LP, Maples Corporate Services Limited, responded on 9 November 2020 to Ms Humann of our staff, shown below:

*Dear Melissa,*

*We write further to your letter of 5 November 2020, in which you request certain information and documents relating to Indus Infrastructure Partners Ltd (the "Company") and Indus Infrastructure Partners 1 LP (the "Partnership").*

*We do not provide any corporate services to the Company and hence, are unable to assist with your request as it relates to this entity.*

*We currently provide registered office services to the Partnership in the Cayman Islands. Under Cayman Islands law we are unable to provide you with any information or documents without authorisation of the Partnership. We have informed the General Partner of the Partnership, of your request and await its instructions.*

*In the meantime, you may wish to make your enquiries directly to the General Partner.*

*Kind regards*

*Name of MCSL representative [Redacted]*

- The unnamed 'partners' of Indus Partnership at the email address provided by the Lawyer. The response received on 10 November 2020 is shown below:

*Dear Sirs,*

*We are in receipt of your email and attachments dated 5th November, 2020 with regards to AUS Streaming Limited.*

## Investigations undertaken

*AUS Steaming Limited is not currently and has never been a partner or beneficial owner of Indus Infrastructure Partners 1 LP as such we are unable to provide the information requested.*

*With regards to Indus Infrastructure Partners Limited, in 2019 Indus Infrastructure Partners 1 LP acquired Indus Infrastructure Partners Limited and upon examination of their historic records the shareholding of AUS Streaming Limited was transferred to ASAF Critical Metals Limited on 23<sup>rd</sup> May, 2017 as we are informed that you are aware.*

*For and on behalf of*

*Indus Infrastructure Partners 1 LP*

- The unnamed directors of AGB Resource at the email address provided by the Lawyer<sup>34</sup>. The response received on 12 November 2020 is shown below:

*Dear Mr Crosbie,*

*We are in receipt of your letter of 5th November 2020. We are unable to assist you with your information request as AUS Streaming Limited is no longer a shareholder and as such we are not authorised to supply the information requested. We can confirm that the copy of the confirmation sent on behalf of a current shareholder was correct as at the date issued.*

*Yours sincerely*

*AGB Resource Capital Limited*

- The directors of OTH, Mr Basil Parker, Mr Timothy Chawner and TES Management, at the email address provided by the Lawyer – no response was received.

### **3.10 Other enquiries**

#### **3.10.1 Murchison Holdings Limited**

We wrote to the director of MCH, Mr Grant Robertson, requesting a telephone meeting to discuss his knowledge of the Investments given the proposed merger transaction between Aus Streaming and MCH. We did not receive a response to our letter.

#### **3.10.2 Infrastructure Commodities (Mauritius) Limited**

We wrote to Deloitte and BDO in Mauritius in relation to a related entity, ICML. ICML is considered to be a related entity of Aus Streaming by virtue of the common directorship of Christopher Every<sup>35</sup>.

The reason for our interest in ICML is that it appears to operate a similar business model as was intended for Aus Steaming, and holds investments in some of the Investment Companies (as well as other companies that appear to be similar in nature to the Investment Companies).

Deloitte acted as ICML's Independent Financial Advisor in respect of its proposed (and ultimately successful) listing on the Stock Exchange of Mauritius (**SEM**). We sought Deloitte's advice as to the information it may have received in respect of the investment assets of ICML as part of its review of ICML's business plan and financial projections.

The engagement partner at Deloitte responded to advise that the firm was bound by the terms of a confidentiality agreement with ICML and therefore no information was provided to us.

BDO is ICML's external auditor. It has issued unqualified audit opinions for the financial years ended 31 December 2018 and 31 December 2019.

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<sup>34</sup> We note AGB Resource's registered agent is The Trust Company of the Marshall Islands, Inc.

<sup>35</sup> Section 9 of the Act defines a related entity of a body corporate as a body corporate one of whose directors is also a director of the first-mentioned body.

## Investigations undertaken

The financial assets of ICML, which are described as “*equity investments in various companies*”, had a reported value of USD409,175,070 and USD447,914,398 in the 2018 and 2019 financial years respectively. The auditor’s report for each of the 2018 and 2019 financial years refers to the valuation of investments in financial assets as a ‘*key audit matter*’, and cites that the audit process involved the review of the “*valuation report issued by APC Securities Pty Ltd*<sup>36</sup>” and discussions with the “*independent valuer regarding the valuation methods and key assumptions used in the valuation reports*”.

We sought BDO’s comments as to:

- 1 Any information it had, whether in connection with the SEM listing process or the subsequent audits, on the existence and underlying business of ICML’s investment assets, including copies of audited financial reports, business plans, details of assets, contact with representatives of the investment asset companies, etc.
- 2 How it was satisfied as to the independence, qualifications and capabilities of the ‘independent valuer’, APC.
- 3 Whether BDO obtained any direct evidence (e.g. budgets or cash flow forecasts) for the investment assets, and whether BDO conducted its own assessment of the reasonableness of the assumptions used and conclusions reached by APC (i.e. by using BDO’s internal valuation experts).

The audit partner advised that she could not comment on our queries as she/BDO were responsible only to ICML’s shareholders and the corporate regulator in Mauritius.

We understand that some of Aus Streaming’s shareholders also hold shares in ICML and have made their own similar enquiries with BDO and ICML.

### 3.11 Powers available pursuant to the Court Order

The Order specified that the SPLs could undertake certain actions in connection with their investigations.

#### 3.11.1 Inspecting the Company’s books and records

Our enquiries revealed that there were limited available books and records and that, in the main, we had obtained those records. The types of records obtained include:

- audited financial reports for 2015 and 2016
- shareholder register
- minutes of director meetings held on 6 September 2016, 26 May 2017, 16 June 2017, 17 November 2017 and 30 November 2017<sup>37</sup>
- transaction listing for the ASAF loan account
- creditor information, including unpaid invoices
- past supplier information, including paid invoices
- Investment Confirmation letters dated 18 January 2018
- Investment/impairment Reviews for the respective Investment Companies prepared as at 31 December 2017<sup>38</sup>.

The Company did not operate a bank account and did not maintain its own financial reporting system. There is inconsistent information about who performed the Company’s administrative functions and maintained its financial and other records, but it appears likely to be a combination of:

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<sup>36</sup> APC Securities Pty Ltd is David Sutton’s company.

<sup>37</sup> We have also sighted minutes of directors’ meetings held on 31 May 2017 and 1 June 2017 relating to the appointment of John Reeve as a director of the Company, and the resignation of Mr Sutton as a director. We understand that Mr Reeve did not take up the role as a director, and neither his appointment nor Mr Sutton’s resignation is reflected in ASIC’s records.

<sup>38</sup> We were advised by Mr Every and Mr Turner that the Investment/impairment Reviews were prepared by Hamirah on behalf of the Company.

## Investigations undertaken

- Hamirah
- APC
- ASAF – as the Company's only source of funding, it may have paid some expenses directly.

### **3.11.2 Applying for orders to conduct public examinations or to obtain production**

This is a matter of ongoing consideration, including whether to pursue public examinations and/or document production in the United Kingdom and/or other jurisdictions.

There have been numerous attempts, formerly by the GPLs, and now by the SPLs to obtain information relevant to understanding the value of the Investments pursuant to the powers granted under the Act and, in the case of the SPLs, by the Order.

In March 2020, the GPLs sought ASIC's assistance in relation to demands they had made to the Directors to produce documents relevant to the Investments which had not been complied with. This action did not result in new information coming forward. In Mr Sutton's response of May 2020, he reconfirmed that he held no Company records beyond what had already been provided to the GPLs. As far as we know, Mr Every did not reply to ASIC's enquiries.

The ongoing but unsuccessful efforts to obtain information to substantiate the value of the Investments leads us to conclude that such evidence does not exist.

### **3.11.3 Requiring officers to provide Report on Company Activities and Property (ROCAP)**

We have not sought ROCAPs from the Directors as we do not believe any new information will be forthcoming.

# 4

## Investment assets

## 4.1 Background to the Investments

### 4.1.1 Original investment portfolio

The notes to Aus Streaming's 2016 audited financial statements state that on 6 September 2016 ASAF provided capital contributions totalling \$138,534,413 to the Company. The original shareholdings are summarised below:

Investment Company	Domicile <sup>39</sup>	Shareholding	Book value (\$)
AGB Resource Capital Limited	BVI	400,000	10,380,130
APA Energy Streaming Limited	RMI	16,000,000	31,004,222
IFH Resources Limited	BVI	10,000,000	9,165,100
TOR Mining Capital Limited	BVI	47,500,000	79,605,440
OTH Mineral Streaming Limited	British Columbia	2,000,000	8,379,520
<b>Total</b>			<b>\$138,534,412</b> <b>USD105,808,000</b>

For completeness, we note that the Company's general ledger indicates that only the OTH investment was directly transferred from ASAF. The other four shareholdings were transferred from ASIL<sup>40</sup> to the Company.

The notes to ASIL's 2015 audited financial statements<sup>41</sup> state that during the year ended 30 June 2015, ASAF 'vended in' equity investments to the value of USD224,967,440. The financial statements do not provide a breakdown of those assets.

In our 22 July 2020 telephone discussion with Andrew Turner, he confirmed that some of ASIL's 'vended in' assets were subsequently transferred to Aus Streaming in September 2016 (i.e. the AGB Resource, APA Energy, IFH Resources and TOR shareholdings).

While it appears the Company's 2016 financial statements do not accurately describe the original acquisition of the Investments, it further appears that, ultimately, Aus Streaming's Investments were sourced from ASAF.

### 4.1.2 Current investment portfolio

In their report dated 3 June 2020, the GPLs provided creditors with an update as to the status of the portfolio of Investments. It seems that the GPLs first became aware of the changes in the portfolio (i.e. as compared to what the Directors had disclosed in their RATAs) upon receipt of the ECB Valuation Memorandum, prepared by ECB on the instructions of ASAF in April 2020. Explanations of the changes were provided by ECB to the GPLs and relayed to creditors in the aforementioned report.

<sup>39</sup> Based on the company registration details included in the share certificates issued by the respective Investment Companies to Aus Streaming on or around 6 September 2016.

<sup>40</sup> ASIL was the original vehicle through which the Australian metal streaming business was going to be facilitated. Due to complications that arose during the proposed transaction with MCH to list on the ASX, the transaction then become one involving Aus Streaming.

<sup>41</sup> ASIL's 2015 audited financial statements were signed by Christopher Every. The other director of ASIL at that time was TES Management.

## Investment assets

We are not aware of any subsequent changes to the portfolio. Accordingly, our understanding of the 'current' portfolio (i.e. as at 31 March 2020) of Investments is based on the GPLs report/ECB Valuation Memorandum and summarised below:

Investment Company	Domicile	Shareholding/ Partnership units	Assessed value per share/unit (USD)	Assessed value (USD)
AGB Resource Capital Limited	RMI	400,000	24.76	9,904,000
TOR Mining Capital Limited	Ireland	47,500,000	1.32	62,700,000
OTH Mineral Streaming Limited	British Columbia	2,000,000	3.00	6,000,000
Indus Infrastructure Partners 1 LP	Cayman Islands	231	160,000 <sup>42</sup>	36,960,000
Quantum Investing Management Limited	BVI	18,750,000	0.60	11,250,000
<b>Total</b>				<b>USD128,814,000</b>

### 4.1.3 Investment portfolio per Court Order

For completeness, summarised below is the portfolio of Investments referred to in the Court Order. The differences, as compared to the current portfolio noted above, are understood to be:

- Frontier was acquired by Quantum
- Indus converted to Indus Partnership
- TOR redomiciled from the BVI to the Republic of Ireland.

Investment Company	Domicile <sup>43</sup>	Shareholding	Book value (\$)
AGB Resource Capital Limited	RMI	400,000	10,371,360
Frontier Mining Value Limited	RMI	7,500,000	14,322,000
Indus Infrastructure Partners Limited	British Columbia	27,328,571	30,498,685
OTH Mineral Streaming Limited	British Columbia	2,000,000	7,936,000
TOR Mining Capital Limited	BVI	47,500,000	82,460,000
<b>Total</b>			<b>\$145,588,045</b>

This version of the Investments portfolio is as disclosed by the Administrators in their report to creditors dated 26 April 2018 and issued pursuant to section 75-225 of the Insolvency Practice Rules (Corporations) 2016 (IPR), being the report containing the DOCA proposal and the Administrators' recommendation to creditors on the future of the Company. In reporting to creditors on the Investments, we note that the Administrators relied on:

- the Company's audited financial reports
- the information provided by the Directors in their respective RATAs (refer section 2.4.6)
- Investment Confirmation letters dated 18 January 2018 that confirm Aus Streaming's shareholding and net asset value per share as at 31 December 2017 for each of the Investment Companies
- representations made by the Directors and Mr Turner about the Investments.

<sup>42</sup> There is a discrepancy between the Valuation Memorandum, which states the partnership units were valued at USD106,475 per unit, and the investment confirmation letter, which states that the partnership units were valued at USD160,000 per unit. We have used the latter figure, which is the value used in the GPLs report of 3 June 2020.

<sup>43</sup> Based on investment confirmation letters dated 18 January 2018 and provided to the GPLs.

#### 4.1.4 Current status of Investments

The Company's ownership of the original Investments is evidenced by share certificates issued in the name of Aus Streaming on or around 6 September 2016. Based on the most recently available information, being Investment Confirmation letters dated 15 April 2020 issued by ECB to each of the current Investment Companies, the registered owner of Aus Streaming's Investments is Wurban, the purported secured creditor of ASAF.

We have not sighted share certificates issued in the name of Wurban to reflect the change in status that supposedly occurred around June 2019.

In letters from ECB to the GPLs dated 27 April 2020 and 26 May 2020, the transfer in 'registered ownership' was explained by the following series of events:

- In April 2017, the 'facility provider' to ASAF requested that ASAF transfer Aus Streaming's shareholdings that were subject to ASAF's security into ASAF's custody.
- In June 2019, ASAF's facility became due and payable. The facility provider then exercised its rights to have its security transferred into its custody.
- The 'facility provider' was identified as Wurban.

The GPLs have provided copies of the share certificates issued to ASAF around May 2017 that they received from ECB with the 27 April 2020 letter referred to above.

Further details of our enquiries regarding the share ownership and transfers is included at section 4.1.6 below.

#### 4.1.5 Security over Company assets

The GPLs have previously provided commentary on ASAF's purported security over the Company's assets under the terms of the Facility Agreement and Debenture between ASAF and the Company dated 6 September 2016. We also note that the GPLs provided an overview of legal advice they had obtained as to the validity and enforceability of ASAF's security as against the Company.

We have no information as to the identity or location of Wurban. We note that a search of the relevant securities register in Canada revealed that there were no security interests registered against ASAF.

The DOCA proposed by the Directors (and executed on 5 June 2018 after creditor approval) incorporated a term whereby ASAF agreed not to enforce its security during the term of the DOCA. As creditors are aware, the original DOCA was varied twice in the interim to allow extensions to the time in which the DOCA funds could be paid to the Deed Administrators. Creditors were again asked to consider an extension of time as recently as February 2020, but this did not eventuate and the DOCA was terminated on 4 March 2020.

We have not further investigated the validity and enforceability of ASAF's security (or, in turn, Wurban's). The actions to transfer the registered ownership of the Investments to ASAF in or around April/May 2017 appears to be a form of enforcement by taking 'possession' or 'control' of the relevant shares. This action pre-dates the DOCA.

#### 4.1.6 Enquiries regarding share ownership and transfers

We sought the GPLs' and Directors' comments on the conflicting information regarding the ownership of the Investments.

The GPLs' advised:

- At all times, until they received the ECB letter in April 2020, they understood that the Company was the registered owner of the Investments.
- Prior to the ECB 27 April 2020 letter, there was no indication from the Directors or Mr Turner that the Investments were not directly owned or controlled by the Company.



## Investment assets

We understand that the GPLs were advised and aware that the Company's share certificates for the Investments were physically held by ASAF, but as noted above, not aware that ASAF (and subsequently, Wurban) had been registered as the owner of the Company's shares by the respective Investment Companies in 2017 and 2019 respectively.

It is unclear why the precise status of the ownership of the Investments was not advised to the Administrators. There were several opportunities, within the documents we have reviewed and at meetings of creditors, where it appears the Directors and/or Mr Turner could have provided clarity as to the circumstances of the Investments' ownership but did not, for example:

- Mr Every and Mr Sutton provided the same answer to the following question in the 'Director's Questionnaire' issued shortly after the appointment of the Administrators:

*"During the past 4 years were any of the Company's assets subject to a security interest in respect of a non-circulating asset – e.g. lease, hire purchase, bill of sale, real property mortgage, fixed charge, etc? If any of these assets have been surrendered, repossessed or otherwise realised by the secured creditor, provide details."*

Mr Every's response: *"Not applicable"*

Mr Sutton's response: *"N/A"*

- The Administrators were provided with Investment Confirmation letters dated 18 January 2018 from each Investment Company advising that Aus Streaming owned/held shares in the respective company.
- When asked directly by the Administrators if the sale of shares would be completed by the Company as the vendor, Mr Turner responded to the Administrators as follows:

*"The mechanism for the sale of the shares will be dealt with in an agreement with ASAF that is part of the approved plan."*<sup>44</sup>

This type of evasive response is commonplace within the correspondence we have reviewed and/or been a party to.

- In email correspondence on 31 January/1 February 2019 the Deed Administrators specifically asked Mr Sutton to clarify the ownership status of the TOR shareholding. Mr Sutton responded:

*"From London I'm told that the holding of the TOR shares owned by AUS is held by TES as nominee for AUS. This situation was referred to in the last audited accounts of AUS."*

We note that there is no apparent reference to TES in the *"last audited accounts"* of the Company, being for the year ended 30 September 2016. If Mr Sutton or the unidentified person in London was referring to a different set of audited accounts, they have not been provided to the GPLs nor us.

In response to our queries on this matter, Mr Every and Mr Sutton advised that, notwithstanding the transfers, the Company was the beneficial owner of the Investments until the Company went into liquidation on 4 March 2020, as per the terms of the Facility Agreement and Debenture. In addition, and among other things:

- Mr Every advised that:
  - the Administrators were aware that the Company only had beneficial interest/ownership of the Investments
  - after agreeing to the proposed terms of the DOCA, ASAF *"did not further enforce its security interest"*.
- Mr Sutton advised that the circumstances of the Investments' ownership had no practical or economic effect on the DOCA.

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<sup>44</sup> As per email correspondence dated 7 and 8 March 2018 between Cameron Gray and Andrew Turner.

This issue is discussed further in section 5 of this Report which covers the conduct of the Company's directors.

#### 4.1.7 Implications of share transfers on creditors participating in the DOCA

It is difficult to fully assess the implication of the transfer of the Investments' ownership to Wurban as we have no information about Wurban and its position in relation to ASAF.

Leaving that aside, even if the Investments had legitimately been transferred to ASAF (on the basis that ASAF had a valid security interest over the Investments), from a practical perspective the operation and financial outcome of the DOCA for participating creditors would probably not have been impacted if the Investments had value (i.e. were capable of being sold or otherwise realised to the extent of the DOCA Fund of \$1.2m), particularly where ASAF was actively participating in the process.

ECB's letter of 27 April 2020 includes the following statement:

*"As previously stated the facility of AUS Streaming with ASAF and the facility of ASAF with its facility provider are in a different jurisdiction and if an agreement cannot be reached then ASAF are [sic] prepared to provide a lawyers undertaking to DW Advisory that they [sic] will return the secured assets once their [sic] facility has been repaid in full."*

It is unclear from this statement whose facility needed to be "repaid in full" in order for the secured assets to be returned (and to whom).<sup>45</sup>

Although there remain unanswered questions about the respective ASAF and Wurban security interests and enforceability of the same, finding a resolution to this issue is likely to become relevant for creditors only if the Investments can be monetised, with those funds then flowing back to the Company for distribution.

## 4.2 Existence of Investment Companies and Investments

Whilst the Investment Companies may exist (i.e. they are a registered legal entity) we have not been able to ascertain by reference to independently verifiable sources<sup>46</sup>, for any Investment Company:

- the number of shares/units on issue
- who the shareholders/unitholders are
- the value (if any) of the underlying equity.

As discussed in section 4.1.4, it is apparent that Aus Streaming currently is not the registered shareholder of the Investments.

### 4.2.1 Existence of AGB Resource

At the time of the Company's capitalisation in September 2016, AGB Resource was a company registered in the BVI, company number 1743117. These details were referenced in:

- share certificate number 42 issued to Aus Streaming on 6 September 2016

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<sup>45</sup> ASAF wrote to the GPLs on 29 April 2020 to put forward a proposal to deal with the Company's creditors. In this letter, ASAF stated that it would provide a "legal undertaking" to the GPLs to return the Investments held as security after ASAF's debt had been discharged in full. However, at the date of this letter, ASAF had already transferred the Investments to Wurban.

<sup>46</sup> The 'shares outstanding' for the Investment Companies are referred to in Investment Confirmation letters and Investment/impairment Reviews, but we have not seen any audited accounts or been able to obtain information from corporate registries, etc. to verify the references in the investment materials.

## Investment assets

- Investment/impairment Review dated 3 November 2016 and 3 April 2017<sup>47</sup>.

Another company with the same name was registered in the RMI on 21 February 2017, company number 89066. As at 12 November 2020 this entity was still registered and 'active' as per the RMI corporate registry.

We have not seen any reference in any of the documents provided to us regarding the transition between 'AGB BVI' and 'AGB RMI', which most likely occurred in April/May 2017. We have based our conclusion on the timing of the transition on:

- advice of ECB stating that ASAF transferred Aus Streaming's shares in AGB Resource into ASAF's custody in April 2017
- share certificate number 65 issued to ASAF on 29 May 2017 that cites AGB Resource is "*Incorporated and Registered in the Marshall Islands*"
- the Investment/impairment Review dated 18 January 2018 refers to AGB Resource as being domiciled in the RMI.

Based on the above, 'AGB RMI' appears to be the 'current' Investment Company.

### 4.2.2 Existence of OTH

At the time of the Company's capitalisation in September 2016, OTH was a company registered in British Columbia, Canada, company number BC0998488. These details were referenced in:

- share certificate number 16 issued to Aus Streaming on 7 September 2016
- share certificate number 22 issued to ASAF on 23 May 2017
- Investment/impairment Reviews dated 3 November 2016, 3 April 2017 and 18 January 2018.

A search conducted with BC Registry Services on 19 August 2020 notes that OTH was incorporated in British Columbia on 3 April 2014 as Aus Critical Metals Ltd. The company changed its name to OTH on 13 October 2016, which is after the date share certificate number 16 was issued to the Company in the name of OTH.

A further search with BC Registry Services indicates that Christopher Every was a director of OTH from 23 June 2014 until 20 December 2017. As discussed in section 3.3.1, Mr Every advised us that he had not had any contact with any of the Investment Companies, which contradicts the information recorded with the BC Registry.

Based on the above, OTH appears to have always been (and continues to be) an Investment Company.

### 4.2.3 Existence of TOR

At the time of the Company's capitalisation in September 2016, TOR was a company registered in the BVI, company number 1742611. These details were referenced in:

- share certificate number 362 issued to Aus Streaming on 13 September 2016
- share certificate number 598 issued to ASAF on 25 May 2017
- Investment/impairment Reviews dated 3 November 2016, 3 April 2017 and 18 January 2018.

We note from a company search conducted in March 2020 (and included in Mr Helberg's affidavit in support of his application to appoint the SPLs) that 'TOR BVI' was struck off the BVI corporate register on 16 July 2018.

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<sup>47</sup> We were advised the Investment/impairment Reviews dated 18 January 2018 were prepared by Hamirah on behalf of the Company. We assume that these earlier versions were also prepared by Hamirah as they have the same format and largely the same information as the 2018 version.

On 19 October 2018, another company with the same name was registered in the Republic of Ireland, company number 636175.

The GPLs were advised of the likely need to transition from TOR BVI to a “*European parent company*” in correspondence from APC<sup>48</sup> in the period between September to November 2018 in order to facilitate a public listing of the company. Confirmation of the specific transition to ‘TOR Ireland’ was provided in APC’s letter of 26 November 2018 which advised:

- the company (i.e. TOR) was proceeding with a listing on the Luxembourg Stock Exchange
- in order to do so it needed to establish a new Irish holding company
- correspondence regarding a share exchange with the Irish holding company and the public listing would be sent to shareholders by 2 December 2018.

While TOR Ireland appears to be the ‘current’ Investment Company, the description of it as a ‘holding’ or ‘parent’ company seems inaccurate given TOR BVI was struck off the BVI corporate register in July 2018.

#### 4.2.4 Existence of Frontier

At the time of the Company’s capitalisation in September 2016, Frontier was not an Investment Company but subsequently become one (discussed below) and was an Investment Company at the time of the appointment of Administrators to Aus Streaming.

The GPLs were advised by ECB in May 2020 that the Company acquired its shareholding in Frontier in April 2017 as part of a share exchange with ASAF<sup>49</sup>. The share exchange involved 5,333,333 shares held by the Company in APA Energy Streaming Limited (an original Investment Company) being exchanged with ASAF for 7,500,000 shares in Frontier and c.17m shares in IFH Resources Limited (another original Investment Company) (**IFH Resources**).

As noted in section 4.1.4, in April 2017, all of the Company’s Investments were transferred into the name of ASAF. This may explain why no Frontier share certificate exists in the name of Aus Streaming but does for ASAF (share certificate number 758 dated 26 May 2017). Notwithstanding this transfer, the Administrators/GPLs were provided with an investment confirmation letter issued by the Company and signed by Frontier on 18 January 2018 confirming that “*Aus Streaming currently own 7,500,000 shares of Frontier Mining Value Limited*”.

Although Frontier is no longer an Investment Company by virtue of its acquisition by Quantum, we note for completeness that:

- based on the share certificate issued to ASAF, Frontier was a company registered in the RMI, company number 19491
- the Investment/impairment Review dated 18 January 2018 refers to Frontier’s domicile as the RMI
- a search of the RMI corporate registry shows Frontier was registered on 13 July 2006 and annulled on 1 November 2019.

#### 4.2.5 Existence of Quantum

It is apparent from correspondence between the GPLs and Andrew Turner in May 2020 that the Company’s shareholding in Frontier had converted to a shareholding in Quantum following the apparent acquisition of Frontier by Quantum in March 2020.

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<sup>48</sup> APC was engaged by ASAF to “*place assets from the Aus Streaming portfolio*”, in accordance with the provisions of the DOCA, in order to generate the DOCA Fund. Further discussion on the steps taken to monetise the Investments is included at section 4.6.

<sup>49</sup> This conflicts with ECB’s earlier letter of 27 April 2020 wherein it advises that all of Aus Streaming’s shareholdings had been transferred to ASAF and then Wurban.

## Investment assets

The only documentation provided to us in relation to Quantum is the ECB Valuation Analysis from around April 2020, wherein it states that Quantum is “a private equity company that was established in 2005 and registered in the British Virgin Islands”.

A search of the BVI corporate registry conducted on 19 August 2020 indicates that Quantum was incorporated on 19 May 2005 as Quantum Software Limited. It changed name several times before adopting the current name on 27 September 2016.

It appears that Quantum is the ‘current’ Investment Company, but we have not sighted any documentation (e.g. share certificates) to confirm this.

### 4.2.6 Existence of Indus and Indus Partnership

At the time of the Company’s capitalisation in September 2016, Indus was not an Investment Company but subsequently become one (discussed below) and was an Investment Company at the time of the appointment of Administrators to Aus Streaming.

The GPLs were advised by ECB in May 2020 of the series of transactions that ultimately resulted in a holding of 231 partnership units in Indus Partnership as at 31 March 2020:

- the Company had an original investment of 10,000,000 shares in IFH Resources
- via the share exchange described at section 4.2.4, the Company’s shareholding increased by c.17m to 27,328,571 shares in IFH Resources in April 2017
- IFH Resources was acquired by Indus in August 2017
- in August 2019, Indus entered into a share exchange with Indus Partnership resulting in partnership units “being owned in March 2020”.

While we have sighted share certificates for IFH Resources in the name of Aus Streaming and ASAF respectively, we have not seen share certificates issued by Indus, nor partnership units issued by Indus Partnership. The Investment/impairment Review for Indus dated 18 January 2018 refers to the company’s domicile as Canada, but there is no similar information available in respect of Indus Partnership.

A search conducted with BC Registry Services on 19 August 2020 notes that Indus was incorporated in British Columbia, Canada on 12 December 2016 as SHM Growth Capital Limited. The company changed its name to IFH Resources Limited on 7 July 2017<sup>50</sup>, and to Indus on 31 October 2017.

A further search with BC Registry Services indicates that Andrew Turner was a director of Indus from 12 December 2016 until 20 December 2017. As discussed in section 3.3.5, Mr Turner advised us that he had not had any contact with any of the Investment Companies, which contradicts the information recorded with the BC Registry.

A search conducted with the corporate registry in the Cayman Islands on 20 August 2020 indicates that Indus Partnership was registered on 20 July 2018 and that its current status was ‘active’<sup>51</sup>.

It appears that Indus Partnership is the ‘current’ Investment Company, but we have not sighted any documentation to confirm this.

## 4.3 Status of the Investment Companies

Despite numerous requests, we have been unable to have direct discussions with any of the Investment Companies. Further, as referenced in section 3.9, certain Investment Companies have indicated that they are

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<sup>50</sup> Note that this is a different company to the original Investment Company IFH Resource, which is a company incorporated in the BVI.

<sup>51</sup> The investment confirmation letter issued to Indus Partnership by ECB was signed by Trinus Management Limited as a ‘general partner’. We note APC’s 2019 financial statements refer to investments held in Trinus Impact Capital Ltd and Trinus Private Equity Partners PLC.

## Investment assets

unable to provide information to us as Aus Streaming is not a current registered owner of shares in the relevant Investment Company.

Accordingly, the most current available information as to each Investment Companies' status is sourced from the:

- Investment Company's website
- April 2020 Valuation Analysis annexed to the ECB Valuation Memorandum which provides five-year financial projections for each Investment Company as at 31 March 2020 (i.e. projections forward five years from 31 March 2020<sup>52</sup>).

We do not consider either of these sources to have meaningful or independently verifiable information to assist our investigations into the value of the Investments. Hence, such information is considered to be highly unreliable.

### 4.3.1 Status of AGB Resource

We have been unable to access AGB's website ([www.agbresourcecapital.com](http://www.agbresourcecapital.com)) as it requires a log-in and password.

We note Mr Helberg's affidavit contained extracts obtained from the website taken in early 2020 which indicate that the website contains nothing of substance but, rather, similar information that we have observed as contained within various Investment/impairment Reviews and other documents covering a period from May 2015 through to April 2020. Accordingly, we suspect gaining access to the website would not advance our investigations.

The April 2020 Valuation Analysis describes AGB's business as follows:

- A private equity fund that invests in "*mining companies in the energy and metals sectors with a focus on assets in the Asia-Pacific region*".
- 18 portfolio investments held in "*growth equity and debt financing*". We note:
  - none of the portfolio investments are identified by name
  - from earlier documents (c. 2016) that AGB also had 18 portfolio investments at that time, but it is unclear if they are the same 18 investments as held in April 2020 as there is no information as to the identify of these investments in any of the documents we have seen.
- AGB has an appointed 'fund manager', but the manager is not named. We note from earlier documents (c. 2016) that the manager at that time was identified as GGP<sup>53</sup>.
- There is no reference to who the current officeholders of AGB are. We note from earlier documents (c. 2016) that GGP was a director of AGB, and Hamirah was a director and secretary of AGB.
- The value of AGB's portfolio had been impacted by the COVID-19 pandemic and, as a result, in the period January to March 2020, the unfavourable movement in the fair value of AGB's investments was (USD275,700,000).
- This reassessment in value resulted in the book value of equity investments as at 31 March 2020 falling from USD1,524,330,000 to USD1,248,630,000. For perspective, if AGB was listed on a stock exchange, the latter valuation would put AGB in the top 3,500 companies globally and in the top 10% of ASX listed companies.

It was stated in various documents dating back to 2016 that AGB intended to undertake a 'public listing', however, there is no mention of this plan in the April 2020 Valuation Analysis.

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<sup>52</sup> AGB's projection is for the period 1 January 2020 to 31 December 2024 and Indus Partnership's projection is for the period 1 October 2019 to 30 September 2024.

<sup>53</sup> GGP is a creditor of Aus Streaming.

Unidentified representatives of AGB have advised by email that Aus Streaming is not one of its registered shareholders, but rather Wurban was a shareholder as at the date of the ECB Investment Confirmation letter being 15 April 2020. As a result AGB was “*not authorised to supply the information*” we had requested on the current status of its business (refer section 3.9).

#### 4.3.2 Status of OTH

The April 2020 Valuation Analysis describes OTH's business as “*providing streaming and royalty finance for energy minerals*”. The document references:

- three streaming purchase contracts and two royalty agreements acquired in January 2018, for which it issued 300m shares
- two additional royalty agreements from which OTH receives 20% of sales from two mines.

No details of the counterparties to the streaming contracts or royalty agreements have been identified by name, nor have any of the relevant mine sites/operations.

We note that similar references to streaming contracts and royalty agreements appear in the Investment/impairment Reviews for OTH dated 3 November 2016 and 18 January 2018. The differences between these documents and the April 2020 version are:

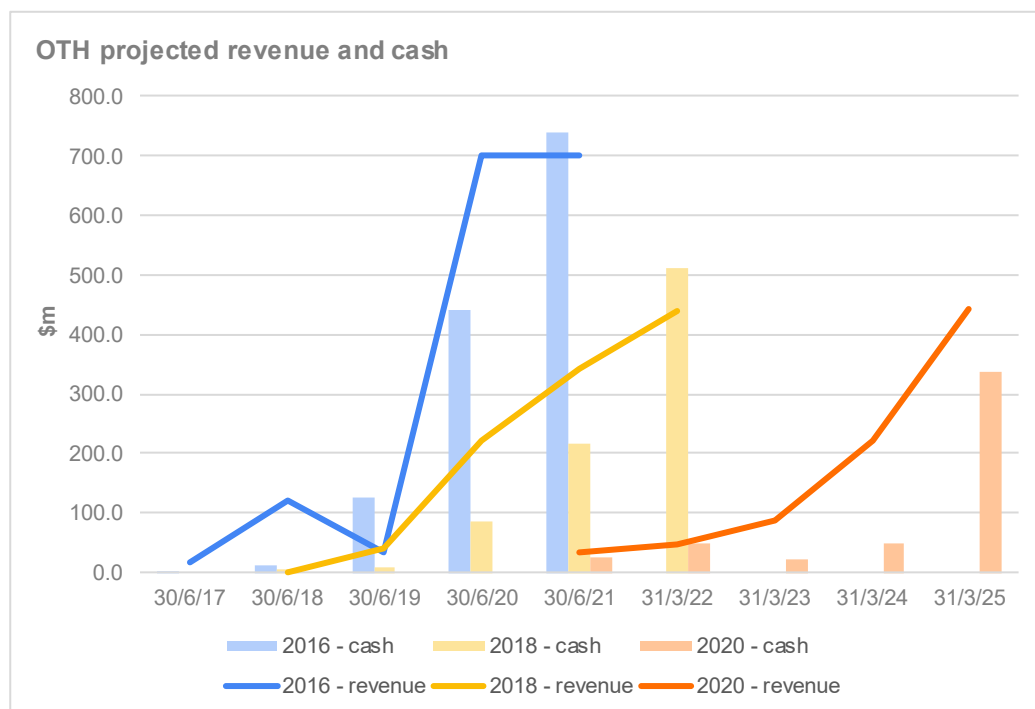
- the three streaming contracts and two royalty agreements are stated to have been acquired in January **2016** (not 2018)
- the two additional royalty agreements pay **2%** (not 20%) of sales to OTH.

OTH's website ([www.othminerals.com](http://www.othminerals.com)) does not provide any additional useful information in relation to its business and operations.

The April 2020 Valuation Analysis contains a five-year financial projection, which is stated to have taken into account the effects of COVID-19. Notwithstanding this impact, projected revenue from the streaming and royalty agreements for the financial year ended 31 March 2021 was USD33.1m. Without historical financial reports from 2016 to compare the actual financial performance to the projected performance, it is difficult to comment further on that projection.

The chart below compares the projected revenue and cash balances for three sets of five-year financial projections, being the 2016 Impairment/investment Review (blue), the 2018 Impairment/investment Review (yellow), and the April 2020 Valuation Analysis (orange). We have no information to understand the bases of these projections, but make the following observations:

- As an overarching comment, each iteration of the five-year projection seems to be a ‘roll-forward’ of the prior version, with expectations of revenue-generating activities successively pushed out into the future.
- Revenue, in each case, is forecast to grow exponentially from a low base over each five-year period, as does net profit. Leaving aside the lack of detail as to how this growth is expected to occur, we note the following anomalies:
  - in the 2018 review it states that “*gross revenues will commence in year to 31<sup>st</sup> March 2019 after an initial preparation and start up in 2018*” – there is no reference to a ‘start-up year’ in the 2016 Review
  - the April 2020 Valuation Analysis document indicates revenue in the first year of the projection of USD33.1m, but based on the 2016 and 2018 documents, revenue should have been significantly higher than this (i.e. in FY21, as per the 2016 projection, revenue would be USD700m; as per the 2018 projection, revenue was to be USD343m).
- As discussed in section 4.6 below, the focus of the asset realisation strategy to create the DOCA Fund was centred around TOR and its expected public listing. The Administrators were advised that TOR's shares had the greatest liquidity and therefore no attempts were made to realise any of the other Investments. Given OTH apparently had streaming and royalty contracts on foot with operating mines, and that these contracts generated millions of dollars in revenue/cash, it would seem that there could have been an opportunity to sell or place the OTH shares via the international network of investors that ASAF was said to have had, rather than solely relying on a public listing that was subject to uncertainty.



We also note that the 2016 Investment/impairment Review stated OTH intended to list publicly in 2017, and the 2018 Investment/impairment Review stated that the public listing would occur in 2018. There was no reference to a public listing in the April 2020 Valuation Analysis.

Our request for information on the current state of OTH's business that was sent to the OTH email address provided by the Lawyer was not answered. We have not otherwise been able to establish any contact with OTH.

#### 4.3.3 Status of TOR

The April 2020 Valuation Analysis describes TOR's business as "a *Private Equity company*" that is "focused on mining investments including mining funds with a specific focus on mining finance". It also states:

- TOR currently owns investment holdings in mining companies and mining funds focused on royalty agreements, off-take agreements and streaming agreements:
  - none of the investment holdings, which have a projected value as at 31 March 2021 of USD370.7m, are identified by name
  - the audited accounts for the financial year ended 31 December 2016 reports unquoted equity investments held in "various companies which have their assets in Europe, Asia, Africa and the Middle East" with a book value of USD354,264,482 designated as "at fair value through the profit and loss"- no specific detail is provided
  - the 2016 financial report states that these equity investments were 'vended in' by TOR's parent company and a third party on 9 June 2015.
- TOR has an appointed 'fund manager', but the manager is not named
  - we note from earlier documents that the manager was identified as EPA Advisory Limited (c. 2016) and prior to that as THR Management Limited (c. 2015).
- The main source of revenue is "movement in fair values based upon the expected performance forecasts of its investments". Due to the impact of COVID-19, there were no forecast gains for the year ending 31 March 2021, but from 2022 and across the forecast period, gains (i.e. revenue) of c.USD20m per annum were expected.



Although not mentioned in the April 2020 Valuation Analysis, there are multiple references to the planned public listing of TOR in earlier documents, including the November 2016 Investment/impairment Review<sup>54</sup>. It appears these plans remained on foot for several years, including through the Administration/DOCA of Aus Streaming. As creditors will be aware, the public listing of TOR was supposed to facilitate the creation of the DOCA Fund, however, the listing process was continually delayed and has apparently now been abandoned<sup>55</sup>.

There is no information on TOR's website about its equity investment portfolio, nor were we able to obtain information on the current status of TOR's business via the email address provided by the Lawyer (refer to section 3.9).

### 4.3.4 Status of Indus Partnership

As described in section 4.2.6, the 'current' Investment Company has evolved to be Indus Partnership after a series of transactions starting with the 'original' Investment Company, IFH. When reviewing the Investment/impairment Reviews at different points in time from 2016 to 2018, and the April 2020 Valuation Analysis, it appears that each new legal entity is a relabelled version of the previous entity (i.e. the commentary on the background, business plan and financial projections are exactly the same, just with different names, dates and figures substituted in each new version).

The April 2020 Valuation Analysis refers to Indus Partnership's "*current investments*" but provides no information as to what these investments are. The balance sheet refers to equity investments, so presumably these are similar types of shareholdings that the other Investment Companies have (refer to the balance sheet summaries at section 4.4.2).

The April 2020 Valuation Analysis provides generalised statements about what Indus Partnership intends to do, including using its "*extensive global network to develop a variety of minerals projects in partnership with state owned entities*", but no specific details. This description is no different to the 'overview' of the IFH business in October 2016, which suggests there has been no progress made to implement the company's strategy.

The website for Indus Infrastructure Partners ([www. https://indusinfrastructurepartners.com](https://indusinfrastructurepartners.com)) also contains generalised information about its purported business, but there are no specific details of its investments, management, governance structure, financial reports, etc. We note under the 'About Us' page, Indus has a "*strategic partnership with Australian investment bank Avalon Pacific Group Limited*". According to ASIC records, that company is now called APC Financial Group Limited and provides financial advisory services. The company's director and secretary is David Sutton (a director of Aus Streaming), and its parent entity is APC (a company owned by David Sutton).

Our request for information on the current state of Indus Partnership's business proved fruitless (refer to section 3.9).

### 4.3.5 Status of Quantum

The April 2020 Valuation Analysis provides limited information on the company. The key points include:

- Quantum is a private equity company that was established in 2005 and registered in the BVI
- Quantum has an appointed 'manager', but does not state who the manager is
- the company plans to list on a public exchange in the next 12 months.

There is no reference to the acquisition of Frontier, which apparently occurred in March 2020.

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<sup>54</sup> A listing on the London Stock Exchange 'AIM' market was referred to in May 2015 in the information memorandum issued by CBLSE Management Partners Limited, a former name of TOR BVI.

<sup>55</sup> As per announcement to shareholders dated 14 April 2020.

The Quantum website ([www.quantuminvestments.net](http://www.quantuminvestments.net)) includes two documents under the 'Investor Relations' section:

- a letter to shareholders dated 6 May 2020 – the letter advises shareholders:
  - the impact of COVID-19 had caused Quantum to report “*its first loss in 48 months with a net asset value per share of 60p as at 31 March 2020*”
  - the acquisition of Frontier was completed on 12 March 2020
  - the planned public listing would be delayed until the fourth quarter of 2020
  - an audit of the “*combined entity*” would be completed as at 30 June 2020.
- an investor presentation dated May 2020 which contains general information about Quantum's investment and corporate strategy and other background information on the mining/resources sector and private equity investments.

As noted in section 3.9, we were unable to obtain any information on the current status of Quantum.

## 4.4 Assets of the Investment Companies

We have consolidated our comments regarding the assets of each of the Investment Companies as there are common findings across each entity. In short:

- The only reported material asset of each of the Investment Companies are equity investments.
- We have found no evidence to substantiate the underlying business and/or assets of each of the Investment Companies that would, in turn, support the valuation attributed to each Investment Company.
- The values ascribed to the Investments appear to be nothing more than capitalised estimates of expected future revenue streams based on the concept of 'fair value'. Those estimates do not appear to be based on any independently verifiable information and therefore appear pure speculation.

### 4.4.1 Valuation analysis as at 31 March 2020

The most recent 'financial information' on the Investment Companies that we have is from the ECB Valuation Memorandum which purports to assess a net asset value (**NAV**) per share for each of the Investment Companies as at 31 March 2020<sup>56</sup>.

The financial information provided to support ECB's analysis (i.e. the April 2020 Valuation Analysis documents) contains, primarily, financial projections for the period 1 April 2020 to 31 March 2025<sup>57</sup>. As the April 2020 Valuation Analysis for each Investment Company provides the balance sheet as at 31 March 2020 (shown at 4.4.2 below), in theory, given the ECB Valuation Memorandum is dated 23 April 2020, it should represent an 'actual' balance as opposed to a projected balance.

In relation to the respective April 2020 Valuation Analysis documents:

- There is no indication as to who prepared the financial projections, nor whether the relevant companies' officeholders or management approved the projections. We surmise that the projections likely came from Hamirah given:
  - we were advised by Mr Every and Mr Turner that Hamirah prepared the Investment/impairment Reviews for the Investment Companies and the April 2020 Valuation Analysis documents contain similar types and formats of information as to the Investment/impairment Reviews

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<sup>56</sup> Except for OTH and Indus Partnership – in these cases, the per share/unit value is based upon “*the last reported financing*” of OTH shares/Indus Partnership units. No evidence of either purported “*financing*” is provided in the ECB Valuation Memorandum.

<sup>57</sup> Except for AGB and Indus Partnership – AGB's financial projection is for the period 1 January 2020 to 31 December 2024 and Indus Partnership's projection is for the period 1 October 2019 to 30 September 2024.

## Investment assets

- we were advised by Mr Turner that he had sent information and “*extensive notes*” via Hamirah to ECB as part of valuation exercise. As neither he, nor the Directors, apparently had any direct contact with ECB in connection to the valuation engagement, it seems Hamirah was providing information on behalf of the Company.
- We have no historical financial reports to benchmark the opening balances.
- There is no information as to the underlying assumptions upon which the projections are based. This is despite ECB stating in its Valuation Memorandum that it “*confirms that the assumptions used in the projections appear fair and reasonable*”.
- We were unable to recalculate the total investment portfolio value assessed by ECB using the financial information in the April 2020 Valuation Analysis (refer to the table below).

### 4.4.2 Net asset value per share as at 31 March 2020

Set out below are the reported balance sheets of the Investment Companies as at 31 March 2020, extracted from the respective April 2020 Valuation Analysis materials.

Balance sheet as at 31 March 2020 (USD)	AGB	TOR	OTH	Indus Partnership	Quantum
Cash/cash equivalent	7,425	0	2,345,000	1,316,327	0
Trade receivables	0	0	3,406,542	0	0
Equity investments	1,248,630,000	370,729,566	357,180,000	822,480,000	292,700,815
<b>Total assets</b>	<b>1,248,637,425</b>	<b>370,729,566</b>	<b>362,931,542</b>	<b>823,796,327</b>	<b>292,700,815</b>
Current liabilities	(3,188,175)	(0)	(1,603,266)	(8,730,210)	(0)
Non-current liabilities	(95,435)	(0)	(6,324,508)	0	(0)
<b>Total liabilities</b>	<b>(3,283,610)</b>	<b>(0)</b>	<b>(7,927,774)</b>	<b>(8,730,210)</b>	<b>(0)</b>
<b>Net assets</b>	<b>1,245,353,815</b>	<b>370,729,566</b>	<b>355,003,768</b>	<b>815,066,117</b>	<b>292,700,815</b>
Share capital	50,852	279,885	389,440	3,248	490,266
Share premium account	1,524,279,148	284,730,198	296,610,560	851,456,752	257,583,426
Retained earnings	(278,976,185)	85,719,483	58,003,768	(36,393,883)	34,627,123
<b>Shareholder equity</b>	<b>1,248,353,815</b>	<b>370,729,566</b>	<b>355,003,768</b>	<b>815,066,117</b>	<b>292,700,815</b>
Shares outstanding <sup>58</sup>	50,426,268	279,884,740	389,437,500	3,248	Unknown
Aus Streaming's holding <sup>59</sup>	400,000	47,500,000	2,000,000	231	18,750,000

<sup>58</sup> As per the Investment Confirmation letters dated 15 April 2020 issued by ECB on behalf of Wurban. We have not sighted the Investment Confirmation letter for Quantum and therefore do not know how many shares it has issued.

<sup>59</sup> Now apparently registered in the name of Wurban.

## Investment assets

Balance sheet as at 31 March 2020 (USD)	AGB	TOR	OTH	Indus Partnership	Quantum
NAV per share <sup>60</sup>	24.70	1.32	0.91	250,944	Unknown
NAV per share - ECB <sup>61</sup>	24.76 <sup>62</sup>	1.32	n/a	n/a	0.60
Financing per share - ECB <sup>63</sup>	n/a	n/a	3.00	106,475 <sup>64</sup>	
Aus Streaming's investment - ECB	9,904,000	62,700,000	6,000,000	24,595,725	11,250,000

Using ECB's calculations, the apparent value of Aus Streaming's investment portfolio was USD114,449,725 as at 31 March 2020. However, ECB's Valuation Memorandum states that the combined value of the investment portfolio is USD114,396,488. As there are no tabulated valuation results in the Memorandum, we are unable to identify the discrepancy between this figure and the calculated figure of USD114,449,725.

### 4.4.3 Basis of valuation

Except for TOR's 2016 audited financial report, we have not seen any audited or unaudited financial reports for any of the remaining Investment Companies. The utility of financial reports in this scenario would be to ascertain from the notes to the financial statements the accounting policies implemented for each entity, and the basis upon which the financial statements had been prepared, including applicable laws and accounting standards.

If they were available, the additional benefits of audited financial reports are, among other things, that:

- An ostensibly independent party reviews the directors' financial report to check that it is free from material misstatements and therefore provides a true and fair view of the entity's financial position and performance.
- The auditor considers the reasonableness and appropriateness of the accounting policies adopted by the entity.
- The auditor is obligated to obtain sufficient and appropriate audit evidence in support of the audit opinion provided.

We can surmise based on the handful of audited financial reports that have been identified during our investigations, including Aus Streaming's 2016 audited financial report, that it is probable the Investment Companies have adopted similar accounting policies in respect of their equity investments, that being some form of 'fair value' assessment but not one that includes any externally verifiable inputs such as quoted prices or demonstrably arms-length transactions.

As a shareholder, it would not be unreasonable to expect that, for assets of the purported value held by the Investment Companies, an independent valuation be obtained to support the amounts included in the financial report. We have only identified one example in the course of our investigations where an 'independent valuation' of an entity's investment assets has been referred to in externally audited financial statements, that being the 2018 and 2019 audited financial statements for ICML. However, in that case, the purportedly 'independent' valuation was conducted by David Sutton's company, APC.

<sup>60</sup> Calculated by dividing net assets by shares/units outstanding as at 31 March 2020.

<sup>61</sup> As per the ECB Valuation Memorandum.

<sup>62</sup> This calculation appears incorrect as it is based on total assets, not net assets (hence a slightly higher value),

<sup>63</sup> As per the ECB Valuation Memorandum.

<sup>64</sup> The Investment Confirmation letter states the "last reported financing" for Indus Partnership was \$160,000 per unit.

Without sighting the respective financial reports for the Investment Companies we cannot comment on the balance sheets and NAVs shown in the table above, other than to say we are highly sceptical of the amounts reported and are unable to place any reliance on the financial information included in the April 2020 Valuation Analysis.

#### **4.4.4 Observations on ECB's Valuation Memorandum**

The ECB Valuation Memorandum purports to provide an independent opinion as to the value of Aus Streaming's Investments.

We note from various correspondence issued by the GPLs and BWS (the GPLs solicitors) during March 2020, several requests were made to ascertain:

- the identity and qualifications of the person(s) performing the valuation
- the independence of the person(s) performing the valuation
- the scope of the intended work.

These requests, which we consider were reasonable and appropriate in the circumstances, were ignored and ECB proceeded with the valuation exercise, culminating in the ECB Valuation Memorandum and letter of 27 April 2020.

Based on our review of the ECB Valuation Memorandum, we consider that certain typical features of a valuation report were not evident.

To validate our concerns, we provided a copy of the ECB Valuation Memorandum and supporting financial information to our PwC colleagues who specialise in valuation services and requested they conduct a high-level review of the work done by ECB.

In Australia, this type of report would have been prepared in accordance with APES 225 *Valuation Services* which sets out the minimum standards that a practitioner in Australia is expected to adhere to when undertaking a valuation engagement. The observations made by our colleagues can be split into two categories:

- 1 Types of information you would expect to see in a valuation report (all of which are absent in the ECB Valuation Memorandum).
- 2 Specific comments on the approach apparently adopted by ECB, which brings into question the merit of the ECB Valuation Memorandum.

#### **Information excluded from ECB Valuation Memorandum that would typically be expected:**

- name and qualification of the person(s) who prepared the valuation
- specific purpose for which the valuation was prepared
- scope of the engagement (i.e. whether it was a full scope unrestricted valuation, or if there were limitations)
- underlying standard of value used and its definition (e.g. market value, fair value, etc)
- premise of value adopted (e.g. going concern or liquidation premise)
- description of valuation approaches and methods considered and the reasons why they were (or were not) considered relevant for the valuation
- sources of information relied upon for the analysis
- material assumptions applied and the basis for those assumptions.

#### **Specific concerns with ECB's approach:**

- the valuation relies exclusively on values assessed by other parties which ECB appears to have accepted without undertaking any independent analysis to confirm the reasonableness of those values

## Investment assets

- all of the information relied on by ECB appears to have been prepared by Aus Streaming and/or the investee companies, and not by an independent valuation practitioner
- ECB has relied on either the reported net asset value or 'reported financing' (it is unclear what this term refers to as it is not a commonly used term for valuation purposes) for the underlying investments, and it is not clear in the source documents how those values were assessed
- ECB does not appear to have cross-checked the values relied upon using a generally accepted valuation methodology, such as a discounted cash flow analysis or by reference to comparable companies. The report includes a "*Market Place Overview*" which includes analysis of historical changes in the value of mining assets and indices, however it is not clear how, or if, this information was relied on or considered in ECB's valuation
- ECB states that the impairment reviews it relied on are compliant with International Financial Reporting Standards (**IFRS**) and International Private Equity and Venture Capital Valuation Guidelines (**IPEVCG**) (which set out recommendations for the valuation of privately held investments). IPEVCG are not guidelines that are generally accepted and commonly relied on for valuation purposes in Australia and, based on our high-level review, the impairment reviews relied on by ECB do not appear to conform to the requirements of either IFRS or IPEVCG guidelines
- valuations undertaken for impairment testing purposes are undertaken based on specific financial reporting guidelines and can differ materially to valuations undertaken on an alternative basis, such as market value
- ECB states that it has reviewed the latest financial projections and valuation analysis for the underlying investments as at 31 March 2020 and "*can confirm that the assumptions used in the projections appear fair and reasonable*", however it is not clear how ECB came to this conclusion or even whether those projections were used to assess the values they have relied on.

### 4.4.5 Attempts to validate the ECB Valuation

We attempted to ascertain the background and status of ECB to determine if it was independent of the Company and its Directors, as well as to understand how ECB undertook its 'investigations' into the history and status of Aus Streaming's liquidation (as detailed in the letter of 27 April 2020, and subsequent correspondence) and the valuation work (as per the ECB Valuation Memorandum).

As referred to in the summaries of our discussions with the Directors and Mr Turner in section 3.3 of this Report, each claimed:

- no previous knowledge of ECB
- not to have engaged ECB previously and we were unaware of the scope and terms of the engagement relating to the Company
- not to have had direct contact with ECB during the course of its work in April 2020. Mr Turner advised he had provided "*extensive notes*" in discussion with the Directors to Hamirah, who was in contact with ECB
- to have understood ECB to be a professional services firm.

On 29 July 2020, we requested contact details for ECB from Mr Turner. The purpose for contacting ECB directly was to discuss the approach and methodology used in preparing the ECB Valuation Memorandum, among other things. Our request remains outstanding as at the date of this Report.

In our view, ECB is not independent and there is no basis upon which to conclude that the ECB Valuation Memorandum was prepared by suitably qualified personnel using appropriate valuation methodologies. Further, in our view, the Directors' and Mr Turner's statements regarding their collective lack of knowledge about ECB are not credible and that ECB was used simply as a further impediment to ascertaining information about the Company's Investments.

Examples of ECB's connections to relevant entities include:

- ECB is a current director of TES Management plc, a company registered in the United Kingdom with several co-directors including Christopher Every and Timothy Chawner (director of TOR). Hamirah is a former director

of the company. Except for ECB, all the directors have McFaddens LLP's address listed as the 'correspondence address' in the Companies House records.

- ECB is listed as a major shareholder (17.58%) of TOR in the draft prospectus dated January 2019 and provided to the GPLs by David Sutton.
- ECB is listed as a significant shareholder of ICML in the 2019 financial statements (8.2%) and 2018 financial statements (7.1%). As noted in section 3.10.2, ICML holds shareholdings in some of the Investment Companies.
- ECB signed various loan documents on behalf of GGP in relation to GGP's converting loan agreement with the Company<sup>65</sup>. In one document, dated 13 November 2017, David Sutton witnessed the signature of ECB.
- ECB wrote to the Company on behalf of APA Energy Streaming Limited (**APA Energy**) on 20 January 2017 confirming the issue of shares and funds raised in June 2016. This document was provided to Nexia Perth in connection with the 2016 audit.
- ECB is listed as a major shareholder (18.02%) of TOR in the audited financial statements for the year ended 31 December 2016.
- ECB signed the investment confirmation letter dated 3 November 2016 in respect of APA Energy (one of the original Investment Companies) in its capacity as a director of that company.
- ECB signed a share exchange agreement dated 22 June 2015 on behalf of CSM Resource Capital Limited. ASIL was the counterparty to the agreement which related to the exchange of AGB Resource and IFH Resource shares with ASIL. This document was provided to Nexia Perth in connection with the 2016 audit.

## 4.5 Relationship of Investment Companies with ASAF and Aus Streaming

As we have not established direct contact with ASAF, nor the Investment Companies, our understanding of the relationship between these entities is based on various documents arising from our investigations, and discussions with the Directors and Mr Turner.

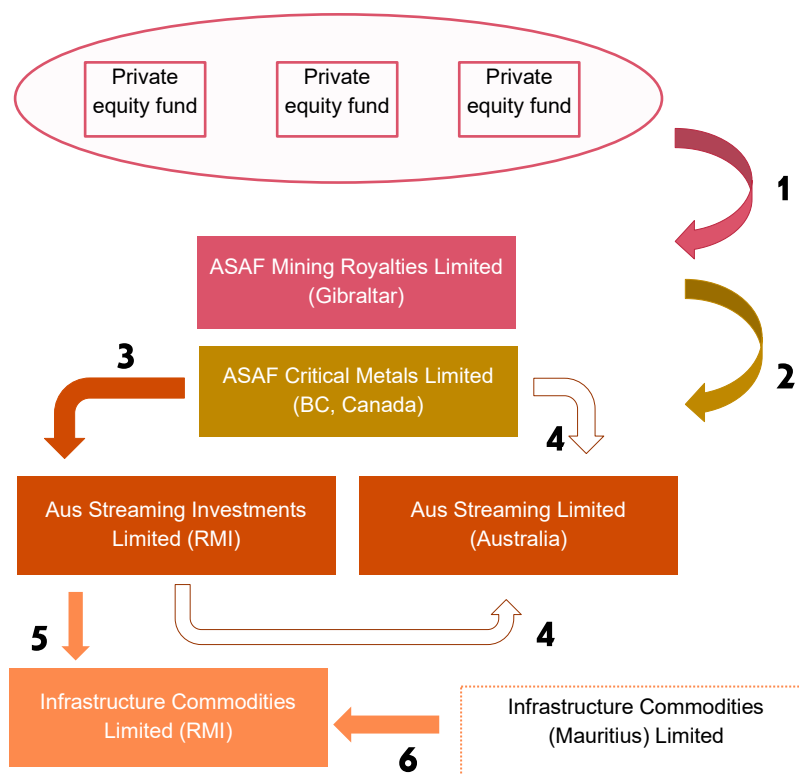
### 4.5.1 Formation of ASAF and distribution of investment assets

The ECB letter of 27 April 2020 describes the background to ASAF's formation and the role it played in subsequently capitalising Aus Streaming with the Investments. There is also a very brief summary on ASAF's website page (<http://asafcriticalmetals.com/home>) 'About Us' that is broadly in line with the description provided by ECB.

Our understanding of the formation and evolution of the 'group' (primarily based on ECB's letter of 27 April 2020) is shown in the diagram and notes below. The description by ECB is not particularly clear, so our interpretation may be subject to clarification or amendment.

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<sup>65</sup> GGP has submitted a proof of debt to the GPLs in the amount of \$525,000.



**Notes to diagram:**

1. The mining interests of three private equity funds were consolidated into ‘ASAF Gibraltar’ in 2012.
2. ASAF was incorporated in British Columbia in 2013 and acquired ASAF Gibraltar around that time.
3. ASIL was incorporated in the RMI in 2013 to facilitate ASAF’s establishment of a critical metals streaming business in Australia. In June 2015, ASAF purportedly ‘vended in’ USD224m of investment assets to ASIL in anticipation of a ‘back-door listing’ to the ASX via the MCH Transaction.
4. The vehicle for the MCH Transaction switched from ASIL to Aus Streaming, and ASIL and ASAF ‘vended in’ the Investments to Aus Streaming in September 2016.
5. In March 2017, ASAF announced to its shareholders that it intended to vend in all of its remaining assets into a wholly owned subsidiary incorporated in the RMI, Infrastructure Commodities Limited (**ICL**). We note ICL has the same company number as ASIL and therefore, based on the RMI’s corporate register, appears to be the same company. We understand that the investments vended into ICL in May 2017 excluded ASAF’s shares in Aus Streaming, as ASAF remains a shareholder of Aus Streaming. Furthermore, ICL’s investment portfolio described in ICML’s pre-listing business plan did not include a shareholding in Aus Streaming.
6. ICML is the holding company of ICL.

**4.5.2 Conclusion on relationship between entities**

In short, based on the information available to us (and in the absence of information to demonstrate otherwise), it appears to us that ASAF, the Investment Companies and Aus Streaming are all interconnected and part of a global network of organisations formed by Mr Turner (and possibly others) ostensibly for investment purpose over a number of years. The entities subject to our review are only a small part of what appears to be a global network of organisations that have been identified during the course of our investigations.

The overall purpose of establishing and perpetuating this network of organisations appears to be in line with the intended purpose of Aus Streaming, that is, to have certain companies listed on stock exchanges in various jurisdictions in order to raise money from external shareholders, either through private placement of shares and/or



through public trading. This is exemplified by the listing of ICML on the SEM. We are not aware of other companies that have actually achieved a public listing, but it has been the stated objective of numerous companies (e.g. TOR).

The interconnectedness between these organisations isn't an issue *per se*. The core issue is the absence of any substance to the purported underlying business of these organisations, in particular the investment companies which are portrayed as having substantial value to provide the capital/equity to fund and support the business of the entities which hold the shares in the investment companies. The appearance of financial wherewithal could easily entice external parties to invest in the holding entities or otherwise deal with them, e.g. suppliers providing credit terms.

The secondary issue is that there is a high degree of opacity to the global network of organisations, as many are registered in jurisdictions where details beyond the company name and date of incorporation are not readily accessible from public databases. Further, even in those jurisdictions where there is more information available, such as Australia and Canada, the group operates with a lack of transparency, as evidenced by the hurdles faced by us as SPLs and the GPLs, which prevents any parties outside the network from obtaining relevant and independently verifiable information on the organisations, their business and their investments.

### **4.6 Steps taken to crystallise and monetise the Investments**

Prior to the appointment of Administrators, there does not appear to have been any actions taken to monetise the Investments, even when the Company needed funds to support the conditional metal streaming contracts negotiated by Mr Helberg. This position only changed upon execution of the DOCA, as the sale of the Investments was identified as the method by which funds would be generated for the benefit of the Company's creditors.

Upon execution of the DOCA, control of Aus Streaming reverted to the Directors. Accordingly, the steps taken to monetise the Investments during the DOCA period were at the direction of the Directors, although based on correspondence between the Directors and the Deed Administrators, Mr Turner was also involved.

As detailed below, the focus of the asset realisation process immediately centred around TOR; no attempts were made to realise any of the other Investments. Despite numerous extensions in time to the process, no funds were ever paid to the Deed Administrators. The DOCA was terminated on 4 March 2020 when the Directors determined the terms of the DOCA (including the proposed third variation) could not be met.

The most recent update on the status of the Investments came after the termination of the DOCA, in the ECB letter to the GPLs solicitors dated 27 April 2020. In that letter, ECB states "*with the recent change in market circumstances [i.e. due to the COVID-19 pandemic] it appears there are no near term liquidity prospects for the Aus Streaming private equity portfolio*".

Aside from market conditions and the underlying issue of whether the Investments have any value at all, the other impediment to the potential realisation of the Investments are the circumstances of the registered ownership of each shareholding and the respective rights of ASAF and Wurban under their purported security over the Investments.

#### **4.6.1 DOCA proposal and initial marketing of Investments**

As creditors will be aware from earlier reports issued by the GPLs, it was proposed by the Directors that a DOCA be approved by creditors to facilitate the payment of a 100 cents in the dollar dividend on certain claims against the Company, after payment of the Administrators' and Deed Administrators' costs.

These payments would be achieved by creating a 'DOCA Fund' of approximately \$1.2m, plus accrued interest, from the progressive sale of the Company's Investments (which the Directors estimated, as per their RATAs, had a realisable value of more than \$145m). The proposed sale process and timeline was detailed in the GPLs report dated 26 April 2018, and included the following elements:

- ASAF would conduct sales diligence on the portfolio companies (e.g. the Investment Companies) and select the most attractive asset to sell out first.

## Investment assets

- ASAF would then prepare an “*Investment Marketing Package*” and contact its “*global investor network*” to complete sales in as timely manner as possible.
- The marketing package was required to be provided to the Deed Administrators within two months of execution of the DOCA, and updates on the progress of the sales process were to be provided to the Deed Administrators every six weeks.
- The DOCA Fund was to be received in full within 12 months of the execution of the DOCA, although Mr Turner advised the Administrators that it could take up to 18 months to generate sufficient funds to extinguish all claims against the Company.
- Upon execution of the DOCA, control of the Company (and therefore the process to realise its assets) would revert to the Directors.

The DOCA was approved by creditors and executed on 5 June 2018.

On 23 July 2018, the Deed Administrators received the Investment Marketing Package which was an outline of the proposed the asset realisation process. We note the following from those documents:

- ASAF had engaged APC, David Sutton’s ‘financial services’ business, to “*place assets from the Aus Streaming portfolio*” to generate the DOCA Fund<sup>66</sup>.
- APC advised that TOR was the largest asset in the portfolio and that it was progressing towards a public listing on Euronext Dublin<sup>67</sup> by the end of October 2018. This apparently made it the most attractive prospect to generate funds as none of the other Investments were mentioned in the update. APC further advised that once TOR’s prospectus was available, it could commence “*marketing the position*”.
- Included in the email to the Deed Administrators was “*an overview we [i.e. APC] have prepared on TOR*” and “*their [sic] latest corporate presentation*”.

In our telephone discussion with Mr Sutton on 16 July 2020, he could not recall preparing the marketing materials for TOR referred to above (he also advised he had no contact with any of the Investment Companies), and advised that such documents had been provided to him by Mr Turner. He subsequently changed this advice, by email dated 27 July 2020, noting that “*the materials were prepared by APC on behalf of ASAF*”.

Mr Sutton, on behalf of APC, provides a series of further updates which focus on the status of the TOR public listing. Further details of the steps taken by APC to realise the TOR investment are set out below in section 4.6.2. During this time period (i.e. between July 2018 and January 2020), Mr Sutton also writes to the Deed Administrators in his capacity as a director of Aus Streaming to seek extensions to the date by which payments need to be made towards the DOCA Fund due to delays in the TOR listing process.

It is apparent that during this period that no attempts were made to realise any of the other Investments, in particular OTH which was purportedly generating revenue/cash from its streaming and royalty agreements (refer section 4.3.2). This approach was confirmed by Mr Sutton on behalf of APC in a letter to the Deed Administrators dated 17 December 2018. The letter states:

*“As discussed, we have concentrated and continue to concentrate on the TOR Mining Capital placing as it [is] the most advanced company from a share liquidity point of view, as such no attempts have been made to liquidate any other holding.”*

It is also apparent that other options, such as banks or other types of financiers were not approached to provide short-term funding sufficient for the Company to exit from external administration. Although the Company’s assets

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<sup>66</sup> We note that in a letter to the Deed Administrators sent by David Sutton in his capacity as a director of Aus Streaming on 14 January 2019, he refers to APC having been engaged by Aus Streaming to sell the Investments.

<sup>67</sup> This is the trading name of the Irish Stock Exchange. Euronext is a pan-European exchange operator

were subject to a prior-ranking security, the ratio of loan to assets would have been negligible (i.e. \$1.2m vs \$145m, which is less than 1%).

#### 4.6.2 Sale/placing of TOR shares

A timeline of the TOR realisation process and its intersection with the DOCA timeline is set out below. This chronology is based on correspondence provided to us by the GPLs but does not reflect every piece of correspondence that was exchanged between the Deed Administrators, the Directors and Mr Turner during this period.

Date	Correspondence	Key points
5 June 2018		DOCA executed
20 July 2018	APC letter to DWA	<p>APC writing to DWA on behalf of its client, ASAF</p> <p>TOR is the largest shareholding in portfolio and has progressed toward listing on the Euronext Dublin</p> <p>TOR is preparing listing documents and expect to file documents by August 2018 and be listed by October 2018</p> <p>Once prospectus is available, APC will commence marketing Aus Streaming's position</p> <p>Enclosed a company overview and presentation (refer 4.6.1)</p>
4 September 2018	APC letter to DWA	<p>APC writing to DWA on behalf of the Directors</p> <p>Concentrating efforts on TOR</p> <p>TOR is preparing for listing on Euronext Dublin but exploring other avenues and discussing with alternative advisers to list in Luxembourg</p> <p>Continuing to draft information for admission documents and expect to complete in the next few weeks, but prospectus due end of August 2018 has been delayed due to Luxembourg opportunity</p> <p>Expect to be listed by the end of November 2018</p> <p>APC is canvassing a number of prospective investors in advance of full marketing upon completion of the listing documents, which APC anticipates by end of September 2018</p>
15 October 2018	APC letter to DWA	<p>APC writing to DWA on behalf of the Directors</p> <p>Concentrating on realisation of TOR</p> <p>Original plan was to list TOR on Euronext Dublin but now looking at other options and TOR is in discussions with alternative advisers to potentially list in Luxembourg</p> <p>TOR has been advised to put a European parent company above the BVI entity "to ensure liquidity once listed"</p> <p>TOR expects to complete process by the end of the month and to have listing documents available immediately after</p> <p>Once APC has listing documents it will circulate to investors interested in purchasing TOR shares and anticipate initial closing by November 2018</p>
26 November 2018	APC letter to DWA	<p>APC writing to DWA on behalf of the Directors</p> <p>Concentrating on realisation of TOR</p> <p>TOR is now proceeding with a listing on the Luxembourg Stock Exchange and will need to establish a new Irish holding company</p> <p>Correspondence regarding a share exchange with the Irish holding company would be sent to existing shareholders (i.e. of BVI entity) within 7 days including full details of the listing</p> <p>APC has contacted investors who indicated interest in purchasing TOR shares once it is listed</p>
4 December 2018	Email from D Sutton to DWA	Directors request six-week extension for first payment of \$100,000 due on 5 December 2018
5 December 2018		First payment of \$100,000 due under terms of original DOCA
5 December 2018	DWA email to D Sutton	Deed Administrators reject six-week extension

## Investment assets

Date	Correspondence	Key points
		Request certain information by 17 December 2018, including all correspondence from TOR regarding the listing, list of all investors contacted, details of any other actions to sell shares
17 December 2018	APC letter to DWA	Response from APC does not provide TOR correspondence, but includes sales material (same as July 2018), a template letter to investors regarding the TOR opportunity, documents on the TOR share exchange and list of potential investors in TOR shares
2 January 2019	DWA email to D Sutton	Deed Administrators request for further information by 9 January 2019 on TOR/ASAF directors, status of sale of other portfolio investments, query where funds due on 16 January 2019 will come from
9 January 2019	D Sutton letter to DWA	APC has advised the Directors and the "security holder" that "TOR are the only shares that are near to liquidity", and the "security holder" has agreed that the TOR shares can be disposed to fulfil the DOCA APC intends to revert to identified parties to finalise share sales once the TOR share exchange is confirmed, which is expected next week Directors request 30 day extension to 16 February 2019 for first payment of \$100,000
16 January 2019		Short-term extension for first payment of \$100,000
22 January 2019	D Sutton email to DWA	TOR confirmed shareholders voted in favour of share exchange TOR intends to announce outcome of vote and finalise listing docs to file with Luxembourg CSSF Once approved by the Luxembourg CSSF, TOR will be able to list on Frankfurt Stock Exchange Enclosed a copy of the draft TOR prospectus
5 March 2019		GPLs issue report to creditors with the Directors' proposed first variation of DOCA
21 March 2019		Creditors' meeting held First variation to DOCA approved
4 April 2019	APC letter to DWA	APC writing to DWA on behalf of the Directors TOR was in the process of redomiciling to Ireland and would send an update on the listing next week Listing was due to complete by March 2019 but delayed due to legal issues On completion of the redomiciling process, the listing documents will be finalised and submitted to regulators for approval; once regulators approve, then submission can be made to the stock exchange TOR shareholders would be advised once documents submitted to the regulator and APC was keeping prospective purchasers informed of progress
15 April 2019		First payment of \$100,000 due under first varied DOCA
16 April 2019	D Sutton email to DWA	Request for one-month extension for first payment of \$100,000
18 April 2019	D Sutton email to DWA	Encloses an application to purchase \$100,000 in TOR shares by CBLSE Group Ltd <sup>68</sup> , with payment to be transferred once prospectus has been submitted to regulator in Luxembourg Application is signed by "P Hamilton" and address for CBLSE Group Ltd is Level 21, Al Habtoor Tower, Dubai Marina, Dubai UAE
1 May 2019	DWA email to D Sutton	Deed Administrators require third party guarantee for payment of the \$100,00 by 3 May 2019 otherwise they need to convene meeting of creditors
15 May 2019	DWA email to A Turner	Deed Administrators met with D Sutton on 14 May 2019 who advised the terms of the varied DOCA could not be met, therefore need to call meeting of creditors to consider termination of DOCA or liquidation

<sup>68</sup> CBLSE Group Limited appears to have been a former shareholder of TOR. TOR's 2016 audited financial report states that "the Company (i.e. TOR) was acquired by CBLSE Group Limited on 7 June 2013...". We assume that CBLSE is part of the group's global network of entities.

## Investment assets

Date	Correspondence	Key points
		Advised that any further variation proposals should include guarantee and indemnity from a third party to meet the obligations of Aus Streaming under the DOCA, and demonstrate the third party has capacity to meet the obligations
16 May 2019		First variation to DOCA executed
17 May 2019	A Turner email to DWA	TOR process has been delayed due to issues with listing, but investors have committed to purchasing shares once listed "We" can secure a 'purchase & guarantee' (of TOR shares) subject to contract, with \$250,000 to be paid once TOR lists "We" have been in contact with the secured creditor who has agreed in principle to amend terms of DOCA along these lines
17 May 2019		GPLs issue letter to creditors reporting material contravention of the varied DOCA
24 May 2019	A Turner email to DWA	"We have agreed in principal [sic] with NRI Strategies Ltd who have agreed subject to contract to enter into a binding commitment to purchase \$250,000 of TOR shares within 7 days of TOR's listing"
29 May 2019		GPLs issue report to creditors with Directors' proposed second variation of DOCA
5 June 2019		Balance of DOCA Fund due under terms of original DOCA
15 June 2019		Second payment of \$100,000 due under first varied DOCA
17 June 2019		Creditors' meeting held Second variation to DOCA approved Variations to payment of DOCA Fund to milestones starting from the date TOR is listed
5 August 2019	APC letter to DWA	APC writing to DWA on behalf of the Directors Payment to creditors (i.e. DOCA Fund) will comprise \$250,000 within 7 days of TOR's listing, and 50% of the balance (c.\$500k) 90 days after first payment, and final payment (c.\$500k) 180 days after first payment Amended prospectus due to be completed by third week of August 2019 and filed by end of August 2019
15 August 2019		Third payment of \$100,000 due under first varied DOCA
5 September 2019	DWA email to D Sutton	Request for update on timing of prospectus that was due to be filed by end of August 2019
6 September 2019	D Sutton email to DWA	Informed by TOR that amendments to prospectus taking longer than anticipated and TOR estimates filing in the next two to three weeks
16 September 2019	APC letter to DWA	APC writing to DWA on behalf of the Directors Informed by TOR that amendments needed to prospectus due to changes in EU regulations; expect prospectus by end of next week
15 October 2019		Fourth payment of \$100,000 due under first varied DOCA
31 October 2019	APC letter to DWA	APC writing to DWA on behalf of the Directors Informed by TOR that due to the time that has elapsed in the listing process, TOR needs to include financial statements to end of September 2019 in prospectus Updates to prospectus expected to take another week and then a copy of prospectus will be provided to DWA
21 November 2019	DWA email to D Sutton	Request for update on timing of prospectus
9 December 2019	APC letter to DWA	APC writing to DWA on behalf of the Directors Confirmed there are investors prepared to "fund against the TOR shares" once the prospectus is filed Informed by TOR that a further update on the filing of prospectus will be provided this week Expecting announcement from one of the other portfolio holdings in the next week which will be "a positive announcement with regards to liquidity"
15 December 2019		Balance of DOCA Fund due under terms of first varied DOCA

Date	Correspondence	Key points
16 December 2019	D Sutton email to DWA	APC has " <i>heard back from TOR</i> " and will now list on the London Stock Exchange instead of the Luxembourg Stock Exchange, which is advantageous due to greater liquidity of the London exchange TOR will find out tomorrow the timing for adapting the prospectus for the London listing APC will contact investors once it has an update from TOR, and will update DWA this week
19 December 2019	APC letter to DWA	Filing of prospectus delayed to facilitate listing on London Stock Exchange TOR won't be in a position to file prospectus until end of January 2020 <i>"The directors of Aus Streaming will therefore be consulting with the providers of the facility in the next 24 hours in order to be in a position to come back to you with a concrete proposal for an extension to facilitate the delay by close of business on Monday."</i>
31 December 2019		First payment of \$250,000 due (if TOR is not listed by this date)
6 January 2020	Directors' letter to DWA	Require a 90 day extension to " <i>the current proposal</i> " Propose to increase interest rate on outstanding creditor balances from 9% to 15% The Directors have " <i>been in touch with the secured and deferred creditors</i> " regarding the proposal and " <i>the have agreed in principle</i> " The TOR listing is " <i>imminent</i> " and the delays in achieving liquidity " <i>are not in the Company's control</i> "
3 February 2020		GPLs issue report to creditors with Directors' proposed third variation to DOCA
19 February 2020		Creditors' meeting adjourned
4 March 2020		Creditors' meeting held Deed Administrators were advised the previous night that the proposed variation as per the report to creditors dated 3 February 2020 was no longer available and therefore the Company should be wound up DOCA terminated Company enters liquidation

#### 4.6.3 Conclusion on monetising the Investments

After nearly five years<sup>69</sup> of apparently seeking a public listing, TOR remains, as far as we are aware, an unlisted company. We have no visibility as to whether the work to prepare TOR for listing and reported by APC to the GPLs during the DOCA period was actually performed, save for the registration of the 'new TOR' entity in the Republic of Ireland.

We can speculate that the intention to list on a stock exchange was genuine, given the apparent modus operandi of the group, but ultimately unsuccessful possibly due to the lack of independently verifiable information on TOR's business activities and financial position.

As noted in section 4.6.1, the Directors and their adviser (APC) made no attempt to realise any of the other Investments. Based on the available financial information dating from 2016 through to April 2020, the Investment Company that offered a possible alternative realisation opportunity was OTH. This is because OTH was the only Investment Company that purportedly generated revenue and cash through apparently 'real' mining operations via its streaming and royalty contracts. All other Investment Companies derived revenue via 'movements in fair value' of the equity investments held on the respective balance sheets.

<sup>69</sup> The earliest 'valuation analysis' document for TOR that we have sighted is dated January 2016. That document, which essentially contains the same content as the subsequent valuation analysis documents, states that "*the Company's advisors are in the process of taking TOR public on the main market of the Frankfurt Stock Exchange*". Prior to that, a document dated 8 May 2015 refers to a proposed listing of TOR on the London Stock Exchange.

## Investment assets

If OTH was a party to genuine streaming and royalty contracts and earned revenue/generated cash as reported in the various Investment/impairment Reviews and April 2020 Valuation Analysis documents, even if the market for its shares was illiquid there would at least be a demonstrable financial basis upon which Aus Streaming's 2,000,000 shares with a reported book value of c.\$8m could have been sold or used to raise funds of up to \$1.2m which was the entirety of the DOCA Fund.

Overall, we have no basis to conclude that the Investments have any value, nor that there is a viable external market for the Investments, as any potential investor undertaking the most basic due diligence would encounter the issues first identified by Mr Helberg, and now encountered by us as SPLs during the course of our investigations, specifically:

- no evidence of an underlying business or asset base to support the notional value of the Investments
- no audited or unaudited financial reports to inform of past performance<sup>70</sup>
- no basis or underlying assumptions to support financial projections
- no independent valuations, nor true arm's length transactions to support market value of the Investments
- limited information as to the identities of the officeholders of the Investment Companies and no ability to directly contact these people
- no information on the identities of the senior management responsible for the operations of the Investment Companies.

It is incumbent on the Directors to provide the GPLs and SPLs with relevant information as to the status of the Investments. Furthermore, the secured creditor ASAF must account to the GPLs for the actions that have resulted in a reported \$145m in secured assets being enforced against in respect of a c.\$443k debt.

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<sup>70</sup> Except for TOR's 2016 audited financial report.

# 5

## Potential breaches and claims



## 5.1 Background

The Court Orders ask us to consider:

- Whether any transactions between Aus Streaming and ASAF, and Aus Streaming and any one or more of the Investment Companies in connection with the Investments, give rise to any claim in law or in equity or under statute against any person (other than the GPLs).
- The conduct (including any breach of duty whether statutory, at common law or in equity, and any misleading or deceptive conduct whether statutory or at common law) of the Directors and Mr Turner, in connection with the Investments.
- The conduct (including any misleading or deceptive conduct whether statutory or at common law) of Avalon, Dayton, and Hamirah, companies related to Mr Turner, in connection with the Investments.
- The conduct (including any breach of duty whether statutory or at common law, and any misleading or deceptive conduct whether statutory or at common law) of Aus Streaming's external auditors, Nexia Perth, in connection with the Investments. (This item is discussed in detail in section 6 of this Report).
- Any and all claims that Aus Streaming and/or the creditors of Aus Streaming may have (or may have had) against any person other than the GPLs in connection with the Investments, including, but not limited to, claims against the following individuals and/or entities:
  - the directors of Aus Streaming
  - Mr Turner
  - Avalon
  - Dayton
  - Hamirah
  - ASAF
  - AGB Resource
  - Frontier
  - Indus
  - OTH
  - TOR
  - Nexia Perth.

## 5.2 Transactions of the Company in connection with the Investments

The Company operated for a relatively brief period prior to the appointment of the Administrators. Accordingly, the types of transactions it was a party to were relatively limited. In line with the Court Orders, we have focused our investigations on the Company's transactions with ASAF and the Investments Companies that are "*in connection with the Investments*".

### 5.2.1 Transactions with ASAF

The substantive transaction between Aus Streaming and ASAF occurred when ASAF transferred the OTH shareholding to the Company on 6 September 2016.

As noted in section 4.1.1, the other four original shareholdings (being AGB Resource, APA Energy, IFH Resources and TOR) were transferred from ASIL to Aus Streaming on 6 September 2016. These shareholdings were originally sourced by ASIL from ASAF in a similar manner (i.e. vended in to ASIL from ASAF, as stated in ASIL's audited financial report for the year ended 30 June 2015). It may be arguable that this was, in substance, a transaction between ASAF and Aus Streaming noting that:

- ASIL was a wholly owned subsidiary of ASAF at the time the shareholdings were vended into Aus Streaming

## Potential breaches and claims

- minutes of the Aus Steaming directors' meeting held on 6 September 2016 confirmed that its sole shareholder, ASAF, had vended in assets as at the date of the meeting which comprised the original five shareholdings
- minutes of the ASAF directors' meeting held on 29 September 2016 confirmed that "*the assets vended into its wholly owned subsidiary AUS Streaming Limited would be capitalised as a capital contribution effective as at 6<sup>th</sup> September 2016*"
- ASAF issued a letter dated 17 March 2017 to Aus Streaming confirming that the five original shareholdings comprised an "*equity/capital contribution by ASAF Critical Metals to its subsidiary Aus Streaming effective as at the 6<sup>th</sup> September 2016*".

The other material transaction was the USD500,000 working capital facility provided by ASFA which involved the Company entering into the Facility Agreement and Debenture dated 6 September 2016. This transaction may be considered a transaction "*in connection with the Investments*" as it resulted in giving ASAF a security interest over the assets of the Company<sup>71</sup>. As noted in various parts of section 4 of the Report, it appears that ASAF enforced its security by transferring the registered ownership of the Investments from Aus Streaming to ASAF in April/May 2017.

### 5.2.2 Potential claims against ASAF

We consider that potential claims by the Company arise as a result of the Company entering into an agreement and transaction with ASAF based on the purported 'existence' of a portfolio of investments with a book value of \$138m/USD105m as at 6 September 2016. ASAF's consideration in the transaction is the Investments given to the Company and the Company's consideration is the shares allocated to ASAF.

In the event that the investment portfolio did not exist in the way ASAF represented it existed, the Company may have claims for:

- misleading or deceptive conduct under the Australian Consumer Law (schedule 2 to the *Competition and Consumer Act 2010* (Cth));
- misrepresentation under common law; and
- estoppel.

In isolation, the agreement and transaction with ASAF in respect of the working capital facility do not appear to give rise to a claim by the Company. However, the legality of the subsequent enforcement action by ASAF (and then Wurban) could be tested by the Company, in particular:

- The validity of the respective security interests claimed by ASAF and Wurban. In that regard we note:
  - The GPLs have detailed their investigations into the status of ASAF's security interest in various reports to creditors.
  - We have no information on Wurban, its facilities, nor its purported security over ASAF.
- The fact that there has been no account provided to the Company by ASAF or Wurban as to the outcome of the enforcement action where the debt owed by the Company to ASAF is less than \$450k, as compared to the value of the Investments which is allegedly in the hundreds of millions of dollars. It appears that the Directors have not taken any steps to pursue ASAF or Wurban in this regard, which would be open for them to do notwithstanding the appointment of the GPLs (i.e. the Directors should be motivated to work with the GPLs to recover something for the benefit of Aus Streaming).

In our view, recovery action by the SPLs against ASAF or Wurban would need to be predicated by evidence that the Investments have some value. If such evidence was not forthcoming, then there would appear to be little commercial justification to pursue such an action.

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<sup>71</sup> The transaction listing for the USD500,000 facility indicates funds had been advanced to the Company from 13 November 2015, and that by the time the Facility Agreement was signed on 6 September 2016, the facility had been drawn to USD98,729.51

### 5.2.3 Transactions with the Investment Companies

Aus Streaming did not appear to have any direct transactions with the Investment Companies.

The Company was initially capitalised by a transfer of shares from ASAF to Aus Streaming, and while the portfolio of Investments changed over time, this was not as a result of transactions between the Company and the respective Investment Companies.

Further, the apparent change in registered ownership of the Investments (i.e. from Aus Streaming to ASAF and then to Wurban) was also not the result of transactions between the Company and the respective Investment Companies, but rather as a result of enforcement actions taken by ASAF and Wurban respectively.

Accordingly, we have not identified any claims in respect of transactions between Aus Streaming and the Investment Companies on the basis there were no 'transactions' as such.

### 5.2.4 Voidable transactions

We have considered the ASAF transactions and various other transactions of the Company as to whether they might be 'voidable transactions' within the meaning of Part 5.7B, Division 2 of the Act as a result of being an:

- unfair preference
- uncommercial transaction
- unfair loan
- unreasonable director-related transaction.

Section 9 of the Act provides a definition of 'transaction' for the purpose of Part 5.7B of the Act that gives a non-exhaustive list of example transactions.

Having regard to the above, we have not identified transactions "*in connection with the Investments*" that we consider are voidable transactions.

We note that the GPLs have considered voidable transactions and reported their views to creditors in their report dated 3 June 2020.

## 5.3 Conduct of the Directors and Mr Turner

### 5.3.1 Officers and employees – Chapter 2D

Section 9 of the Act defines an 'officer' of a corporation to include a director or secretary of a company, and a person:

- who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the company, or
- who has the capacity to affect significantly the company's financial standing, or
- in accordance with whose instructions or wishes the directors of the company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the company).

In our view, Andrew Turner meets the definition of an officer of the Company even though not formally appointed as a director or secretary of the Company. We hold this view based on the following:

- the description of the role Mr Turner played in the affairs of the Company made by Mr Every and Mr Sutton in their respective discussions with us which have been summarised in sections 3.3.1 and 3.3.2
- the description of the role Mr Turner played in the affairs of the Company made by Mr Helberg in his affidavit of 30 March 2020 and in discussions/correspondence with us

## Potential breaches and claims

- advice and correspondence from Nexia Perth indicating that Mr Turner was the primary contact for the Company in respect of the audit of its 2015 and 2016 financial reports
- the involvement of Mr Turner in a broad range of correspondence with the Administrators/Deed Administrators including proposing the terms of the DOCA, providing responses to various points of clarification raised by the Administrators on the terms and mechanics of the proposal, discussing the delays experienced during the DOCA period, and proposing variations to the DOCA terms
- the absence of evidence indicating the appointed Directors were controlling the affairs of the Company.

We consider the Hamirah Agreement was Mr Turner's method to create an artificial situation whereby he could claim to be acting as an employee of a consultant/adviser to the Company when in substance he was most likely:

- controlling Hamirah
- individually, or in concert with others, controlling, directing, or influencing the actions of other stakeholders, such as ASAF, other related party creditors, the Investment Companies and ECB, in their interactions with the Company and subsequently the Administrators/Deed Administrators
- controlling the affairs of the Company from its inception through to its liquidation directly, and/or via Hamirah, and/or by giving instructions to the Directors of the Company.

The fact that neither the Directors nor Mr Turner could provide a single name of any individual person in respect of any stakeholder involved with the Company and its Investments, coupled with the consistent request that our enquiries be made in writing (and subsequently that they be routed through the Lawyer) in order to be responded to (i.e. rather than us being put in direct contact with the relevant party/person), lead us to conclude that there are no 'other people' involved in the global network of organisations that are interconnected with the Company, the Directors, Mr Turner, ASAF and the Investments Companies.

This is further evidenced by, for example:

- emails and letters being signed 'for and on behalf of' a company, rather than by a specific person
- use of generic email addresses for contacting relevant stakeholders, rather than individual email addresses
- no reference to individuals when either the Directors or Mr Turner say they have corresponded with a particular entity, rather, they have 'spoken to ASAF', 'I am informed by ASAF', etc.

We have concluded that Mr Turner is probably an officer of the Company. In such circumstances, he would be subject to the same obligations pursuant to the Act as the Directors. Our comments on potential breaches of those obligations are discussed below.

### 5.3.2 Breach of director's duties

Directors and other officers of a corporation must:

- exercise their powers and discharge their duties with the degree of care and diligence that a 'reasonable person' would exercise in a similar position (section 180 of the Act)
- exercise their powers and discharge their duties in good faith and in the best interests of the company and for a proper purpose (section 181 of the Act).

Directors, other officers and employees of a corporation must not:

- improperly use their position to gain an advantage for themselves or someone else, or to cause detriment to the company (section 182 of the Act)
- improperly use information gained by virtue of their position with the company to gain an advantage for themselves or someone else, or to cause detriment to the company (section 183 of the Act).

The breaches described above are civil obligations of company officers. Directors, other officers and employees who breach sections 181, 182 and/or 183 in a reckless or intentionally dishonest way will commit a criminal offence, pursuant to section 184 of the Act.

## Potential breaches and claims

In considering whether the actions (or inaction) of the officers may have breached the above listed provisions of the Act, we note the Company:

- was effectively dormant until its capitalisation on 6 September 2016 when it received the Investments from ASAF in exchange for shares in Aus Streaming
- entered into the Facility Agreement and Security Agreement with ASAF, purporting to grant a security interest in the Company's assets to ASAF
- issued financial reports for the financial years ended 30 September 2015 and 30 September 2016, the latter reporting 'unlisted equity securities available for sale' with a book value of \$138,566,155
- employed Mr Helberg and Mr Reeve
- attempted to list on the ASX via the failed MCH Transaction
- traded to a very limited extent, primarily by undertaking due diligence on potential metal streaming opportunities which appears to have only resulted in the three metal streaming contracts negotiated by Mr Helberg (none of which converted into binding contracts due to a lack of funding)
- sought to raise \$1m by placing 1,000,000 'loan notes' with private investors – the placement process was managed by APC and raised a principal amount of \$400,000 from three investors<sup>72</sup> (now unsecured claims in the liquidation)
- proposed and executed a DOCA that was expected to result in a 100 cent dividend to 'participating' (unrelated) creditors and deferred the claims of related creditors
- proposed and executed two variations to the DOCA, with the third proposed variation being withdrawn.

The central pillar to these matters was the Investments and their purported value which, based on our investigations, cannot be substantiated. In causing the Company to do the things listed above, the officers appear to have not taken the necessary care and diligence with regard to:

- understanding the substance of the Investments, and/or
- obtaining external and independent advice on the Investments so as to inform themselves as to the substance of the Investments.

The Directors may claim that they were relying on information about the Investments supplied by Mr Turner and/or Hamirah and/or other entities. In that case, it may indicate that the Directors were not acting on an informed and independent basis which, in-turn, suggests they had not exercised a sufficient degree of care and diligence with respect to the Company's affairs.

We note that Mr Every was a director of ASAF, ASIL and Aus Streaming at the time the Investments were 'vended in', in September 2016. Mr Every remains a director of ASIL (now known as ICL) which is a subsidiary of ICML, a company now listed on the SEM that has similar investments as Aus Streaming. It is not credible for Mr Every to assert that, despite his directorship of these entities over a period of at least seven years, he has no knowledge of the Investment Companies. Alternatively, if his assertions are factual, then it supports the contention that he appears to have failed to exercise his duties as a director with the appropriate care and diligence.

In the event the officers did have full knowledge of the lack of substance behind the Investments but proceeded with the actions described above regardless, it may be open for us to conclude that the officers had also breached section 181 of the Act due to an absence of good faith in their actions towards the Company, and possibly that this breach was intentionally dishonest on the basis that the officers have produced or provided misleading information and have made representations that they would know to be false. These claims would need to be tested under oath via a public examination in order to determine whether they merit further prosecution.

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<sup>72</sup> One investor, BWS Pty Ltd, assigned its \$200,000 loan note agreement to GGP Management in November 2017 and therefore is not a creditor in the liquidation. There are two investors with principal amounts owed of \$150,000 and \$50,000 respectively who are creditors in the liquidation.

It is possible that ASIC may investigate the conduct of the officers further, noting that:

- Mr Sutton is a director and secretary of several Australian companies and holds financial services representative licence number 278299.
- Mr Turner is a director of GME Metals Africa Pty. Limited ACN 645 805 947<sup>73</sup>, a company whose parent entity is APCS Nominees Pty Ltd ACN 625 494 868<sup>74</sup>.
- Mr Every is not a director or secretary of any other Australian companies, according to ASIC records.

### 5.3.3 Financial reports and audit – Chapter 2M

Section 286(1) of the Act states that a company must keep written financial records that:

- correctly record and explain its transactions and financial position and performance
- would enable true and fair financial statements to be prepared and audited.

While the Company's general ledger records the various transactions of the Company that can be compiled into financial statements to produce a profit and loss account and a balance sheet, we do not consider the financial statements produced are 'true and fair' given the lack of substance supporting the valuation of the Investments. Accordingly, we consider that section 286 has not been complied with.

Section 296(1) of the Act states that the financial report for a financial year must comply with the accounting standards, and section 297 of the Act states that the financial statements and notes for a financial year must give a true and fair view of the financial position and performance of the company.

We consider that the 2016 financial statements do not comply with Australian Accounting Standards Board (**AASB**):

- AASB 13 Fair Value Measurement
- AASB 139 Financial Instruments.

As a result of the financial statements' non-compliance with accounting standards, we consider that they do not give a true and fair view of the financial position of the Company. Accordingly, in our view the Directors and Mr Causbrook did not comply with sections 295(4) and (5) of the Act in respect of the 2016 financial report and, further, may have contravened section 344(1) of the Act by failing to take all reasonable steps to comply with, or to secure compliance with Part 2M of the Act.

It may be arguable that the Directors' failure to secure the Company's compliance with Part 2M of the Act was dishonest, contravening section 344(2) of the Act, on the basis that the Directors' knew, should have known, or failed to make adequate enquiries as to the lack of substance of the Investments vended in from ASAF. This element would need to be tested under oath via a public examination in order to determine its merits.

We note that the GPLs reported to creditors that the Directors did not prepare audited financial reports in accordance with Part 2M of the Act subsequent to the 2016 financial report.

### 5.3.4 Failure to assist liquidator - section 530A

The GPLs issued notices to the Directors pursuant to section 530A(1) of the Act to produce specific records of the Company. As reported to creditors on 3 June 2020, very limited information was provided in response to those requests. The GPLs will ultimately form their own conclusions as to whether the Directors have complied with this and other obligations under the Act and report their findings to ASIC.

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<sup>73</sup> The other director of GME Metals Africa Pty Ltd is Louis Schurmann.

<sup>74</sup> Mr Sutton is a director and secretary of APCS Nominees Pty Ltd.

Section 530A(2)(b) requires officers of a company to give the appointed liquidator “*such information about the company's business, property, affairs and financial circumstances*” as the liquidator reasonably requires. The SPLs have sought information from the Directors via telephone discussion and email correspondence, broadly reported on in section 3 of this Report.

Notwithstanding the Directors and Mr Turner participating in telephone calls and responding to email enquiries, in our view, the Directors and Mr Turner have not complied with section 530A(2)(b) because we believe they have not fully disclosed their actual knowledge of the Investments.

We do not accept the various assertions made by the Directors and Mr Turner in respect of the Investments, such as:

- having no knowledge of the business of the Investment Companies
- having no contact with the management/directors of the Investment Companies.

To the contrary, in our view, we consider the Directors and Mr Turner are fully aware of the status of the Investment Companies and have been involved directly or indirectly with the formation and maintenance of these entities, and the creation of various documents, such as the Investment/impairment Reviews, that purport to substantiate the net asset value of the Investment Companies.

These claims would need to be tested under oath via a public examination in order to determine whether they merit further prosecution.

Failure to comply with section 530A(2) is an offence of strict liability.

### **5.3.5 Trading while insolvent – section 588G**

Directors have a duty to prevent insolvent trading by a company pursuant to section 588G of the Act.

The GPLs have formed a view on the potential insolvency date for the Company and, based on their investigations, have issued demands for compensation on behalf of the Company for insolvent trading to Messrs Every, Sutton and Helberg, and to ASAF in its capacity as the holding company of Aus Streaming. This was reported to creditors in the GPLs report dated 3 June 2020.

The Court Orders limit our investigations to:

- Transactions between Aus Streaming and ASAF, and Aus Streaming and the Investment Companies “*in connection with the Investments*” that give rise to a claim against any person.
- The conduct, including any breach of duty, of the Directors and Mr Turner “*in connection with the Investments*”.

In that context, we have not identified transactions *in connection with the Investments* that directly resulted in the Company incurring a debt, which is the basis for determining the value of an insolvent trading claim. However, this does not mean that there aren't other circumstances that could give rise to an insolvent trading claim, such as those identified by the GPLs.

## **5.4 Conduct of related parties**

The Court Order refers to the following entities as “*companies related to Mr Turner*”:

- Avalon
- Dayton
- Hamirah.

The Court Order does not refer to ACNs for Avalon and Dayton respectively. A search of ASIC's records reveals that Avalon and Dayton are the same entity, being predecessor names for APC.

While we believe Mr Turner may have had a long association with Avalon/Dayton via his connection to Mr Sutton, we consider it more accurate to describe Avalon/Dayton as a company related to Mr Sutton (refer to section 5.4.1 below).

#### 5.4.1 Avalon and Dayton

Mr Sutton is the sole director and shareholder of APC which is a company engaged in financial services and trades as Dayton Way Financial (per ASIC records dated 21 August 2020).

On 27 January 2021, it came to our attention that APC was now called McFaddens Securities Pty Ltd. Mr Sutton advised “*McFaddens Securities is a change of name from APC Securities following the purchase of our parent company by McFaddens & Co of the UK*”.

According to its website, McFaddens & Co is an “*international corporate advisory business*” established by a “*City of London law firm*” with operating hubs in Australia, Gibraltar and the UAE.

McFaddens & Co provides legal advice via McFaddens LLP and is noted as a legal advisor to ICML<sup>75</sup> and TOR<sup>76</sup>. We note that another company, McFaddens & Co Group Ltd, is incorporated and registered in RAK with company number IC20210875, which is the same company number referred to by ECB on its letterhead.

APC holds an Australian Financial Services Licence (**AFSL**) number 338943. The financial adviser/authorised representatives under the licence according to ASIC’s records are:

- David Sutton
- Darryl Causbrook
- Collins Street Group Pty Ltd ACN 117 831 062 (**CSG**).

On the page titled ‘Partners’ of the CSG’s website, it lists ‘Dayton Way Financial’<sup>77</sup> as a partner. The CSG website also refers to its directors as Messrs Ilmars Draudins and John McFarlane. Mr Draudins is identified by Mr Helberg in his affidavit as the person who initially approached him regarding his future employment by the Company, as well as being a “*financial broker who marketed and sold investments in Aus Streaming*”.

#### 5.4.2 Activities of APC in connection with the Investments

The main activities that APC appears to have been involved with in respect of Aus Streaming include:

- Seeking private investors to buy shares in ASAF which would convert to shares in Aus Streaming and TOR – the information we have sighted indicates this activity was being undertaken by CSG as an authorised representative of Dayton in late 2016. The information provided to prospective investors included:
  - an overview of the prospective opportunity and returns that the investor would receive by acquiring the ASAF shares
  - an investor presentation dated 2015 on ‘Aus Streaming Mining Finance’
  - ‘Company Research’ papers prepared by Dayton on the proposed MCH Transaction, T One Resources (i.e. TOR), and Aus Streaming dated May 2016.
- Managing the placement of ‘loan notes’ with investors in/around March 2017 – the information we have sighted includes a cover letter issued by Mr Sutton on behalf of APC, placement acceptance forms and a term sheet.
- Issuing various ‘company research’ papers on Aus Streaming between 2015 and 2017 – the latest version of the research paper we have sighted is from August 2017.
- Managing the realisation process of Investments to generate the DOCA fund on behalf of the Company between July 2018 and early 2020 – this process is detailed in section 4.6 of this Report.

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<sup>75</sup> As per ICML’s 2018 business plan prepared in connection with its listing on the SEM.

<sup>76</sup> As per CBLSE Management Partners Limited 2015 information memorandum in connection with the capitalisation of the company. CBLSE’s name was subsequently changed to T One Resources Limited, and finally to TOR Mining Capital Limited (i.e. TOR BVI).

<sup>77</sup> This is the trading name of APC as per ASIC records.



## Potential breaches and claims

In our view, the conduct of APC may have caused potential or actual damage to the persons or entities who invested in or lent money to the Company, rather than to the Company itself.

We intend to refer the specific issue of APC's conduct to ASIC for further review in light of its AFSL status. AFSL holders are governed by Chapter 7 of the Act. The areas of concern include:

- Whether there was a conflict of interest for Mr Sutton in his role as director of Aus Streaming and as director of APC – we note that there is no reference to Mr Sutton being a director of Aus Streaming in the materials produced by APC
- Whether APC has engaged in misleading and deceptive conduct with regard to the financial information included in the documents produced.

### 5.4.3 Hamirah

This company is purportedly based in Dubai, however:

- attendance at the Dubai office address of Hamirah provided no evidence of its existence at that location
- we have been unable to locate Hamirah in searches of the corporate registry in Dubai and RAK.

We have no information about Hamirah's director/officers or management but have been advised by Mr Turner that he was an employee of Hamirah (refer section 3.3.5).

### 5.4.4 Activities of Hamirah in connection with the Investments

As noted in section 2.4.3, Hamirah was engaged by Aus Streaming to "*provide strategic advice to the Company to help execute the Company's business plan*". It would appear that the person delivering these services was Mr Turner.

In addition to undertaking administrative functions, we have been advised that Hamirah, on behalf of Aus Streaming:

- prepared the Investment/impairment Reviews on the respective Investment Companies from time to time
- signed and issued the Investment Confirmation letters dated 18 January 2018
- signed the share transfer form dated 6 December 2017 transferring 114,010,090 of ASAF's shares in Aus Streaming to AAI Resources
- signed the ASAF Facility Agreement and Debenture on 6 September 2016.

We note that Hamirah has had various other involvement with the global network of organisations that are interconnected with the Company, the Directors, Mr Turner, ASAF and the Investments Companies that have come to light during the course of our investigations. Some examples include:

- as a director of TOR BVI including signing the audited financial report for the year ended 31 December 2016
- as a director of AGB Resource including signing an 'annual report' for the year ended 30 April 2016 that includes a 'financial review' and a 'fixed asset investment valuation' as at that date
- listed as a substantial shareholder in the financial report of ICML for the year ended 31 December 2019
- listed as a substantial shareholder in the financial report of Steppes Alternative Asset Management Limited for the year ended 31 December 2017.

The Court Orders ask us to consider the conduct of Hamirah in connection with the Investments, and by extension whether such conduct gives rise to a potential claim by the Company. There may be two possibilities in this regard:

- 1 Whether Hamirah may be considered an 'officer' of the Company instead of or together with Mr Turner.
- 2 Whether Hamirah breached its director duties and/or engaged in misleading or deceptive conduct in respect of the financial reports or similar it authorised on behalf of the Investment Companies that it was a director of.

We consider these are more remote potential claims and it would be unlikely that they are commercially justifiable to pursue given:

- the lack of information about Hamirah, including the identity of its officers and how to establish contact with the company

## Potential breaches and claims

- jurisdictional issues if Hamirah is in fact based in Dubai or RAK
- costs involved of pursuing Hamirah given the above
- uncertainty as to whether Hamirah has any financial capacity to satisfy claims against it.

### 5.5 Conclusion on potential claims by the Company and/or creditors

Drawing together our comments from this section and section 6 (on the conduct of the Company's auditors), we consider the Company and/or creditors may have the following potential claims:

- Against ASAF and/or its directors in relation to:
  - the representations made about the Investments
  - the enforcement of its security
  - its role in the asset realisation process to create the DOCA Fund.
- Against the Directors (including Mr Turner) and officers of the Company for breach of director duties in relation to:
  - entering into the transaction with ASAF that was represented to provide \$138m of assets in exchange for shares in the Company
  - allowing the Company to trade in circumstances where the necessary care and diligence has not been taken to understand the substance of the Investments and/or obtain independent advice on those Investments
  - failing to exercise their duties in good faith if it could be established the lack of substance behind the Investments was known
  - failure to maintain adequate records in accordance with section 286 of the Act
  - failure to comply with Part 2M of Act in relation to the 2016 financial report.
- Against Nexia Perth for potential deficiencies in the audit of the 2016 financial report.

We consider the creditors and/or investors of the Company may have a claim against APC in relation to its marketing of investments and loan notes in the Company.

In relation to the potential claims available to the Company, the quantum of losses would need to be confirmed by expert determination but could include:

- the loss of opportunity of the MCH Transaction and any funds expended by the Company as a result, by determining the difference between the Company's exposure as a result of the MCH Transaction (which did not eventuate) and the Company's financial position if the MCH Transaction had proceeded
- the loss of opportunity caused by the Company's inability to generate funding to support the three metal streaming contracts negotiated by Mr Helberg by determining the difference between the Company's exposure as a result of the metal streaming contracts, which did not proceed, and the Company's financial position if the metal streaming contracts had proceeded<sup>78</sup>
- costs incurred by the Company during the Administration period, the DOCA period, and the liquidation
- in the event that the Investments exist, possible tracing of the Investments into ICML.

The losses suffered by creditors would be aligned to the claims they submitted in their respective proofs of debt, but potentially could also include elements of:

- loss of opportunity

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<sup>78</sup> APC's 'Company Research' paper dated 1 August 2017 appears to indicate that one of the metal streaming contracts was projected to generate \$54m in revenue for the Company over the 20-year life of the mine. The research paper also includes a five-year financial forecast that projected the Company would generate revenues of \$124m by 2022 based on an assumption of a 'five stream package'.

## Potential breaches and claims

- costs incurred in pursuing recovery of their debt.

As with claims of this nature, before issuing formal proceedings it would be open to the SPLs to pursue public examinations of the relevant prospective defendants and/or other parties.

Another relevant consideration prior to issuing formal proceedings is the financial position of the prospective defendants and/or whether they had any indemnity insurance that would respond to the claim(s) being made, if successful.

# 6

## Conduct of auditors

## 6.1 Background to audit

Aus Streaming is an unlisted public company. Pursuant to section 301 of the Act, a company must have its financial reports audited in accordance with Division 3 of the Act and obtain an auditor's report.

Nexia Perth was appointed auditors of the Company on 14 December 2016. We are advised that the decision to appoint an auditor based in Perth, rather than in Sydney where the Company was domiciled, was due to the large number of listed mining and resources entities based in Perth and hence specialist knowledge of the sector in Perth.

Mr TJ Spooner of Nexia Perth undertook the audit and signed the independent auditor's report for the financial years ended 30 September 2015 and 2016. Although still listed as the Company's auditor in ASIC records, Mr Spooner advised the Administrators in February 2018 that Nexia Perth had not performed any work for the Company after the conclusion of the 2016 audit.

We note that Mr Spooner passed away in December 2019.

## 6.2 Enquiries with Nexia Perth

### 6.2.1 Administrators'/GPLs' enquiries

Shortly after their appointment, the Administrators made routine enquiries with Nexia Perth regarding the Company's books and records, any ongoing engagements, outstanding fees and advice that may have been provided to the Company. Mr Spooner responded to these enquiries and provided the following information:

- the financial report and general ledger for the year ended 30 September 2016
- share certificates for each of the Company's original Investments at that time (refer to section 4.1.1)
- Investment Confirmation letters dated 3 November 2016 issued by Aus Streaming to the original Investment Companies
- minutes of the Directors' meeting held on 6 September 2016
- ASAF Facility Agreement
- ASAF directors' meeting minutes dated 29 September 2016
- ASAF letter to Aus Streaming dated 17 March 2017 confirming the assets 'vended in' to the Company
- creditor listing as at 30 September 2016
- copy of the Nexia Perth engagement letter.

A similar routine enquiry was made by the GPLs following the termination of the DOCA and the commencement of the liquidation in March 2020. As no further work had been performed by Nexia Perth since the 2016 audit, there was no new information provided to the GPLs.

The GPLs provided us with copies of the above listed correspondence with Nexia Perth.

We note that the Investment/impairment Reviews for the Investment Companies dated 3 November 2016 for the period ending 30 September 2016 were neither provided to the Administrators/GPLs, nor to us by Nexia Perth. We further note that these Investment/impairment Reviews were not referenced in various correspondence from Nexia Perth when describing the audit approach adopted to verify the value of the Investments. It is therefore uncertain as to whether Nexia Perth reviewed these documents as part of its audit process.

### 6.2.2 Mr Helberg's enquiries

As noted in section 3.3.4, Mr Helberg made direct enquiries with Mr Spooner in order to gain a better understanding of the Investments (i.e. the "*validity, existence and value of the Investments*") and the audit process undertaken by Nexia Perth in connection with the 2015 and 2016 audited financial reports.

The correspondence we have sighted indicates these enquiries occurred between June and August 2017, which coincides with Mr Helberg's appointment as a Director of Aus Streaming on 31 May 2017, and his subsequent resignation on 22

August 2017. This correspondence helped guide our further enquiries with Nexia Perth, particularly in respect of the audit evidence that was relied upon and the individuals (i.e. representatives of the Company) with whom Nexia Perth interacted during the audit process.

### 6.2.3 SPLs' enquiries

Our enquiries regarding the Company's audit and audited financial reports involved:

- requesting additional information and documents to that received from the GPLs
- discussions with our PwC audit colleagues, particularly on audit processes and audit evidence.

#### Information provided by Nexia Perth

Nexia Perth provided the following information, which supplemented the information we had obtained via the GPLs listed at section 6.2.1:

- email correspondence from Robert Barker of Hits Management and attachments which included:
  - share exchange agreement between ASIL and BPH Growth Partners Limited (**BPH Growth**)<sup>79</sup>
  - share exchange agreement between ASAF and EEBS Limited (**EEBS**)<sup>80</sup>
  - share exchange agreement between ASIL and CSM Resource Capital Limited (**CSM Resource**)<sup>81</sup><sup>82</sup>
  - CBLSE Management Partners Limited (**CBLSE**) "Confidential Information Memorandum"
- TOR 2016 audited financial report
- TOR draft prospectus for listing on the Frankfurt Stock Exchange
- letter from ASAF<sup>83</sup> to Nexia Perth confirming that the parties to the abovementioned share exchanges were not shareholders or related parties of ASAF
- letter from APA<sup>84</sup> to Aus Streaming regarding issuance of shares and number of shares outstanding
- letter from IFH to Aus Streaming regarding issuance of shares
- letter from OTH to Aus Streaming regarding issuance of shares
- letter from DWF Capital Limited (**DWF Capital**)<sup>85</sup> to EEBS limited regarding valuation of OTH shares.

In addition to the above, we asked Nexia Perth to advise who had provided the above information on behalf of the Company. Nexia Perth's records indicate that documents were provided by Andrew Turner and by Robert Barker of Hits Management, who Nexia Perth understood was an external consultant to the Company.

We note from email correspondence between Mr Helberg and Mr Spooner in June 2017 that:

- Mr Turner was Nexia Perth's main contact and that all instructions, as far as Nexia Perth could recall, came from Mr Turner.

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<sup>79</sup> Signatories to the agreement were Christopher Every (ASIL) and 'B Stokes' (BPH).

<sup>80</sup> Signatories to the agreement were Christopher Every (ASAF) and 'J Jennings' (EEBS).

<sup>81</sup> Signatories to the agreement were TES Management Limited (ASIL) and ECB (CSM).

<sup>82</sup> We note the Indus website refers to a "co-investment partnership" with CSM.

<sup>83</sup> ASAF's letter was signed by Christopher Every.

<sup>84</sup> APA's letter was signed by ECB.

<sup>85</sup> DWF Capital letter was signed by 'J Jennings'.

## Conduct of auditors

- Nexia Perth received correspondence from the respective Investment Companies but noted that they only received emails from “*the general company email*”. This comment was in response to a direct request by Mr Helberg for Nexia Perth to provide the “*contact details of natural persons in each underlying asset*”.

### Discussions with PwC auditors

We took a similar approach as to the review of ECB’s Valuation Memorandum and Valuation Analysis discussed in section 4.4.4 by having our PwC audit colleagues review the Financial Report and various documents and correspondence provided by Nexia Perth.

Their observations have assisted us make our preliminary conclusions as to the conduct of the auditors and whether there is evidence of breaches of duty under statute or at common law. The key observations include:

- lack of disclosure including a lack of information about the Company’s Investments and the fact that no critical accounting estimates or significant accounting judgements were disclosed in the notes to the accounts
- insufficient evidence as to the valuation of the Investments
- indications of ‘red flags’ in the evidence provided to the auditors that were apparently not further investigated (based on the information provided to us)
- no evidence that the Directors obtained an independent valuation to support the fair value assessment – this would be expected given the complexity of the fair value concept and the size/quantum of the balances involved (i.e. c.\$139m).

## 6.3 Potential deficiencies in audit

Aus Streaming issued audited financial reports for:

- the period 8 July 2014<sup>86</sup> to 30 September 2015
- the financial year ended 30 September 2016.

Each report was signed by Christopher Every (on behalf of the Directors) and Nexia Perth on 24 March 2017 (i.e. both reports were signed on the same day). Our review has focused on the 2016 financial report as the Company was dormant until ASAF ‘vended in’ the Investments with a reported book value of c.\$139m on 6 September 2016.

### 6.3.1 2016 audited financial report

Nexia Perth issued an unqualified audit report, signed by Mr Spooner, in respect of the financial report for the year ended 30 September 2016 (**Financial Report**). The audit report stated that the Financial Report was prepared in accordance with the Act, and that it:

- gave a true and fair view of the financial position of the Company at 30 September 2016 and of its performance for the year ended on that date
- complied with Australian Accounting Standards and the *Corporations Regulations 2001* (**Regulations**)
- complied with International Financial Reporting Standards (**IFRS**).

Mr Every, on behalf of the Company’s Directors<sup>87</sup>, provided the Directors’ Declaration pursuant to section 295(4) of the Act<sup>88</sup> that similarly attested that the Financial Report:

- gave a true and fair view of the financial position of the Company at 30 September 2016 and of its performance for the year ended on that date

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<sup>86</sup> The Company was incorporated on this date.

<sup>87</sup> At that time, the Company’s Directors were Messrs Every, Sutton and Causbrook.

<sup>88</sup> We have not sighted the Directors’ resolution as required by section 295(5)(a) of the Act.

## Conduct of auditors

- complied with the Act and the Regulations
- complied with IFRS.

The Directors also declared that the Company would be able to pay its debts as and when they became due and payable.

### 6.3.2 Obligations of the independent auditor and conduct of an audit

The relevant statutory obligations for auditors are contained in the Act, the Regulations and in the Australian Auditing Standards (**ASA**). Auditors also have obligations imposed by their professional membership body such as Chartered Accountants Australia and New Zealand (**CAANZ**).

While professional judgement and scepticism are foundational, but subjective, the ASAs provide objective guidance as to the expectations of the audit process and an auditor's conduct when planning and performing an audit. Set out below is a non-exhaustive list of the ASAs that we consider most relevant to our investigations concerning the conduct of Nexia Perth.

ASA 200 paragraph 7 requires an auditor to:

- Identify and assess risks of material misstatement, whether due to fraud or error, based on an understanding of the entity and its environment, including the entity's internal controls.
- Obtain sufficient appropriate audit evidence about whether material misstatements exist, through designing and implementing appropriate responses to the assessed risks.
- Form an opinion on the financial report based on conclusions drawn from the audit evidence obtained.<sup>89</sup>

Nexia Perth identified that the key audit risk area for the Financial Report was in respect of "*the recognition, measurement and disclosure of the Investments given the Company*". In a letter to the Company's Directors dated 24 March 2017, the carrying value of Investments was classified as 'High Risk' (but not 'Significant Risk'), which is defined as "*a risk that requires additional audit consideration*". ASA 330 paragraph 7(b) indicates that the higher the auditor's assessment of risk, the more persuasive the audit evidence that must be obtained<sup>90</sup>.

ASA 500, inter alia, describes that the reliability of audit evidence is influenced by its source and by its nature, and is dependent on the individual circumstances under which it is obtained<sup>91</sup>.

ASA 540<sup>92</sup> provides specific guidance on accounting estimates, including fair value accounting estimates. Note 4 to the financial statements says, in respect of the Investments, "*the investments are accounted and reported at fair value*". As the Company had only commenced 'operations' a few weeks before the 2016 financial year end, effectively the only items that were subject to the audit process were the Investments. Accordingly, for the purpose of the Financial Report, Nexia Perth was required to be satisfied that the Company owned the Investments, and accordingly adopt appropriate procedures to verify the estimated values attributed by the Directors to the Investments, particularly as 2016 was the first audit of the Company.

### 6.3.3 Audit approach

By reference to email correspondence between Nexia Perth and Mr Helberg between June and August 2017, and Nexia Perth's letter to us dated 1 September 2020, the audit approach adopted by Nexia Perth can be summarised as:

- For all Investments except TOR, initial cost price was established by reference to various share exchange agreements.

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<sup>89</sup> ASA 200 – Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standard

<sup>90</sup> ASA 330 – The Auditor's Response to Assessed Risks

<sup>91</sup> ASA 500 – Audit Evidence

<sup>92</sup> ASA 540 – Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures



## Conduct of auditors

- For these Investments, the year-end value was assessed for impairment by “*obtaining confirmations directly from each respective investee or their adviser*”<sup>93</sup>, as well as confirming the value at which new capital was raised in the months following 30 September 2016”.
- For TOR, Nexia Perth relied on TOR’s audited accounts for the financial year ended 31 December 2016, the draft listing prospectus to assess the “*price per share*”, and a research paper prepared by “*Dayton Way Financials*” [sic] to confirm the ‘fair value’ of that Investment.
- Copies of share certificates were also obtained to confirm the Company’s ownership of the Investments.

### 6.3.4 Observations on audit evidence and approach

The following general observations should have raised initial ‘red flags’ for the auditors when planning their audit procedures:

- none of the Investments are publicly traded shares
- most of the Investments are domiciled in jurisdictions where corporate information is either limited or not publicly available, for example the BVI and RMI
- the shares were acquired without the exchange of cash
- the purported value of the Investments was significant
- 2016 was the first year the Company had been audited.

#### Existence of Investments - share certificates

Our observations of the share certificates collected as audit evidence by Nexia Perth for each of the Investments, are as follows:

- none of share certificates are issued by a recognised share registry
- all are identical by way of page layout and language, despite being issued by different (and supposedly unconnected) companies
- there is no company seal or authorised signatory on the share certificates
- the share certificate issued by OTH to the Company on 7 September 2016 contains a spelling mistake when referencing the domicile.

It is our opinion that an auditor exercising the appropriate level of judgement and scepticism would not place significant reliance on these documents as audit evidence, and should have sought further evidence to satisfy the authenticity of the share certificates and to confirm the ownership of the Investments was genuine.

As a result of shortcomings with the share certificates, the investee confirmations increased in importance as to verifying the existence of the Investments.

#### Existence of Investments - investee confirmations

For increased reliability, audit evidence can involve the use of external confirmations, with ASA 505 setting out the procedures an auditor should follow to maintain control of the process when obtaining such confirmations.

It is not uncommon for external confirmation requests to be sent on the subject company’s letterhead, however the auditor is required to control the process. While it appears that Aus Streaming issued the Investment Confirmation letters (i.e. they were written on Aus Streaming letterhead and signed by Christopher Every), there is no evidence to indicate Nexia Perth

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<sup>93</sup> The Investment Confirmation letters included details of the Company’s shareholding, the total number of shares issued, and the net asset value per share as at 30 September 2016.

## Conduct of auditors

received the responses directly or had direct communication with the Investment Companies to subsequently verify the responses.

The Investment Confirmation letters not only were relied upon by Nexia Perth to substantiate the existence of each of the Investments, but also the balance date carrying value of each Investment. In respect of these letters, we note:

- all but one Investment Confirmation letter was signed by a corporate director/authorised signatory
- the signature of the one letter signed by a real person is illegible
- as noted in section 6.2.3 above, it appears that all correspondence with the Investment Companies came from the “*general company email*” or via Andrew Turner and Robert Barker
- the Investment Confirmation letters appear to have been received electronically, which increases risk.

Having not sighted or been provided evidence to the contrary, in our view an auditor exercising the appropriate level of judgement and scepticism should have undertaken additional procedures to verify the identity of the persons providing the Investment Confirmations. Additional concerns regarding the valuation aspect of the Investment Confirmation letters are discussed below.

### Valuation of the Investments

The Investments are described in the Financial Report as available-for-sale investments, in accordance with AASB accounting standard AASB 139 *Financial Instruments: Recognition and Measurement*. The Investments are accounted for and reported in the Financial Report at fair value, with the notes to the financial statements indicating that “*the fair values of the securities were estimated using recent arm’s length market transactions (Level 2)*”.

“*Level 2*” is a reference to the fair value hierarchy set out in AASB 13 *Fair Value Measurement* which categorises the inputs to valuation techniques used to measure fair value as follows:

- **Level 1** (highest priority) - quoted prices in active markets for identical assets or liabilities that the entity can access at the measurement date.
- **Level 2** - if that price is not available, using other observable inputs, such as the quoted price in a market that is not active for the identical item held by another party as an asset.
- **Level 3** (lowest priority) - relate to unobservable inputs and must be recorded using another valuation technique, for example, an income approach or market approach. Additional disclosures are required in the notes to the financial statements for this level of fair value assessment.

If the inputs used to measure the fair value of an asset or liability fall into different levels of the fair value hierarchy, then the fair value measurement should be categorised in its entirety at the lowest level.

The Directors classified the investments as Level 2, citing “*recent arm’s length market transactions*” as justification. This classification was accepted by the auditors.

We have been advised by Nexia Perth that the following documents were the audit evidence used to substantiate the carrying value of the Investments as at 30 September 2016, including certain documents that were deemed to be evidence of “*sample market transactions*” (i.e. between unrelated third parties and at arm’s length):

Investment	Audit evidence	Purpose
AGB Resource	Share exchange agreement between ASIL and BPH Growth dated 27 June 2016	Used to confirm the “ <i>trade or market price</i> ” of AGB Resource of USD19.82 per share
	Share exchange agreement between EEBS and ASAF dated 30 May 2016	Used to confirm the “ <i>trade or market price</i> ” of AGB Resource of USD19.82 per share
	Letter from ASAF to Nexia Perth dated 8 February 2017	Confirming parties to share exchange agreements are not related to ASAF
	Investment Confirmation letter dated 3 November 2016	Used to confirm the number of shares held and the net asset value per share of USD19.82

Investment	Audit evidence	Purpose
	Share certificate dated 6 September 2016	Used to support the number of shares held
APA Energy	Share exchange agreement between ASIL and BPH Growth	Used to confirm the “ <i>trade or market price</i> ” of APA Energy of USD1.48 per share
	Letter from APA Energy to BPH Growth dated 22 June 2016	Confirmation that APA Energy had “ <i>recently closed a financing at \$1.48 per share</i> ”
	Letter from APA Energy to Aus Streaming dated 20 January 2017	Confirmation that APA Energy’s “ <i>most recent issuance of shares</i> ” was completed on 8 June 2016 at USD1.48 per share
	Investment Confirmation letter dated 3 November 2016	Used to confirm the number of shares held and the net asset value per share of USD4.44 – note that there appears to have been a ‘share split’ after 30 September 2016 whereby the number of shares held by Aus Streaming decreased from 10,000,000 to 5,333,333, but the net asset value per share increased from USD1.48 to USD4.44. The share split did not change the overall value of Aus Streaming’s investment
	Share certificate dated 9 September 2016	Used to support the number of shares held
IFH Resource	Share exchange agreement between ASIL and CSM Resource dated 22 June 2015	Appears to confirm a per share value of USD0.70
	Investment Confirmation letter dated 3 November 2016	Confirms the number of shares held and states that the “ <i>last reported net asset value per share</i> ” was USD1.40 <sup>94</sup>
	Letter from IFH Resource to Aus Streaming dated 20 January 2017	States that IFH Resource issued shares on 23 November 2016 at \$0.72
	Share certificate dated 12 September 2016	Used to support the number of shares held
OTH	Share exchange agreement between EEBS and ASAF dated 30 May 2016	Used to confirm the “ <i>trade or market price</i> ” of OTH of USD3.20 per share
	Letter from DWF Capital to EEBS dated 18 May 2016 <sup>95</sup>	Confirming that DWF Capital advised OTH “ <i>on a financing</i> ” at a valuation of “ <i>\$3.20 per share</i> ”
	Letter from OTH to Aus Streaming dated 9 March 2017	Confirms OTH “ <i>completed two financings</i> ” and that each was “ <i>priced at \$3.20 per share</i> ”
	Investment Confirmation letter dated 3 November 2016	Used to confirm the number of shares held and the net asset value per share of USD3.20
	Share certificate dated 7 September 2016	Used to support the number of shares held
TOR	31 December 2016 audited financial report	Used to calculate the ‘net asset per share of USD1.32
	Undated draft prospectus	Refers to a proposed listing price of USD1.32 per share
	Share certificate dated 13 September 2016	Used to support the number of shares held

It appears that Nexia Perth has taken these documents at face value rather than exercise the appropriate level of scepticism required of an auditor, particularly given the ‘red flags’ noted above and the following additional observations:

**Directors’ assessment of fair value**

- As the Investments were held at fair value, a valuation in accordance with AASB 13 would have been required. We would expect that for an investment portfolio of this size, an external expert would be engaged as these skills are not typically found ‘in-house’. In addition, we would expect that the Directors/management would prepare a detailed memorandum outlining the basis for their valuation, key areas of judgement, assumptions used, source information, etc.

<sup>94</sup> This appears to be an anomaly. The Investment/impairment Review for IFH Resources dated 3 November 2016 cites a net asset value per share of USD0.70.

<sup>95</sup> The letter from DWF Capital to EEBS appears to be signed by the same person who signed the share exchange agreement on behalf of EEBS.

There is no evidence of the above. Further:

- Nexia Perth specifically state in the report on the audit issued to the Directors and dated 24 March 2017 that “*to our knowledge, management has not consulted with any experts or accountants*”
- as noted in section 6.2.1, it is unclear whether the auditors reviewed the Investment/impairment Reviews for the period ending 30 September 2016 (although even if they had, we consider the information contained therein would provide little to no comfort as to the net asset value calculation).

#### Disclosures about the Investments in the Financial Report

- The Company did not disclose any critical accounting estimates or significant accounting judgements in the notes to the financial statements. We query how the auditor came to the conclusion that it was reasonable for the Company not to make such disclosure given the material value of investments accounted for at fair value (which is a significant accounting estimate).
- Similarly, we query how the auditor came to the conclusion that it was reasonable for the Company to assess the Investments as Level 2 financial instruments, which require ‘observable inputs’. In our view, the Investments would be more accurately classified as Level 3 financial instruments given the ‘unobservable’ nature of the inputs (as stated in note 8(a) to the financial statements).
- Note 4 to the financial statements simply states that “[*d*uring the year, the Company acquired shares in unlisted energy and resource companies”. We would expect a greater level of disclosure given the Investments were acquired in the subject financial year and that they had been acquired without the exchange of cash.

#### Veracity of audit evidence provided

Overall, we consider there is insufficient evidence as to the valuation of the Investments and an auditor exercising appropriate judgement and scepticism should have performed incremental audit procedures as there is often a disconnect between net asset values and traded share price, particularly if the company holds a minority position. Specifically:

- There is an absence of any form of valuation report (independently prepared or otherwise) or other form of valuation assessment in the documents provided by Nexia Perth. There appears to be complete reliance on the Investment Confirmation letters, with support from the various letters and share exchange agreements referred to in the table above, as to the valuation of the Investments.
- In relation to the TOR Investment, while audited accounts would typically be considered acceptable audit evidence, closer review of those accounts show that TOR itself had significant investment assets (USD325m) which generated little income. There is also a similar lack of disclosure as to the nature and subject of those investments.
- In relation to the various letters received as ‘confirmation’ of share issuances and the share exchange agreements, a sceptical auditor might observe:
  - The letters had the same format as each other and as Aus Streaming’s letters, with only the company name and logo at the top changed.
  - The letters were signed by corporate directors or persons with illegible names. No details of any real person or contact details other than a postal address were provided, and it appears that all correspondence/information came via a “*general company email*” (or otherwise via Andrew Turner and Robert Barker).
  - The person who signed the share exchange agreement on behalf of BPH Growth is the same person who signed Aus Streaming’s facility agreement with ASAF on behalf of Aus Streaming<sup>96</sup>.
  - The person who signed the letter to EEBS from DWF Capital is the same person who signed the share exchange agreement on behalf of EEBS.
  - The letter from ASAF confirming that the share exchange agreements were “*done at arm’s length with third parties who are not part of the ASAF Group*” was signed by Christopher Every, who was also a director of Aus Streaming.

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<sup>96</sup> When asked who signed the ASAF facility agreement on behalf of Aus Streaming, Mr Every advised it was signed by “*an authorised signatory from Hamirah Holdings on authority of the board of Aus Streaming*”. It remains unclear who this person is.

## 6.4 Breach of duty by auditors

By reason of Nexia Perth's engagement and duties, Nexia Perth owed a duty to the Company to carry out its work in the discharge of the audit of the Financial Report engagement with reasonable care, skill and diligence.

Nexia Perth was at all material times under a statutory duty to comply in all respects with Division 3 of Part 2M.3 of the Act:

- pursuant to sections 307 and 308 of the Act, Nexia Perth was required to form an opinion about, and report on whether the Financial Report:
  - complied with accounting standards in accordance with section 296 of the Act
  - gave a true and fair view of the financial performance of the Company in accordance with section 297 of the Act
- pursuant to section 307A of the Act, Nexia Perth was required to conduct its audit of the Financial Report in accordance with the auditing standards.

Based on our preliminary investigations, we consider that Nexia Perth may have failed to:

- plan and perform the audit with an attitude of professional scepticism that recognised circumstances that may cause the Financial Report to be materially misstated, contrary to ASA 200.21
- plan its audit and develop an audit plan so as to reduce the audit risk in respect of the Investments to an acceptably low level, contrary to ASA 300.5 and ASA 300.18
- obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion contrary to ASA 500.5, in that insufficient audit evidence may not have been obtained as to:
  - the existence of the Investments
  - the carrying value of the Investments
- appropriately address various requirements of ASA 540 regarding accounting estimates including (but not limited to):
  - inadequately assessing the level of estimation uncertainty, contrary to ASA 540.11 and, consequently, ASA 540.15
  - not testing how management made the accounting estimate, contrary to ASA 540.13(b)
  - not obtaining evidence of written representation from management regarding reasonableness of assumptions used to make the accounting estimates, contrary to ASA 540.22
  - lack of audit documentation supporting the auditor's conclusions about the reasonableness of the accounting estimates, contrary to ASA 540.23
- prepare and retain audit documentation that was a sufficient and appropriate record of the basis for the audit opinion contrary to ASA 230.5
- meet the standard expected of a reasonable competent auditor, thereby possibly breaching:
  - the terms of the audit engagement letter referred to in section 6.2.1, specifically clause 6.1 that states Nexia will use reasonable skill and care in the provision of its audit services
  - statutory duties pursuant to the Act and the ASAs
  - professional standards imposed on members of CAANZ, including (but not limited to) the requirements of Accounting Professional Ethical Standards (**APES**) APES 205: *Conformity with Accounting Standards* and APES 210: *Conformity with Auditing and Assurance Standards*.

## 6.5 Potential recourse against Nexia Perth

Contraventions of the Act attract a statutory liability to both the individual auditor and auditing firm whereas liability associated with duties to clients is governed by common law.

The individual auditor, Mr Spooner, passed away in 2019 therefore it is questionable whether it would be possible or commercial for the SPLs or GPLs to pursue any action against his estate, however there may be a pursuable claim against Nexia Perth. As a preliminary step, the nature and quantum of the loss suffered would have to be established to determine

## Conduct of auditors

the commerciality of pursuing any claim, as well as consideration of potential defences or mitigation available to the auditors given the responsibility of the Directors to prepare and present financial reports that are free from material misstatement.

# Appendices

Appendix A	Court Orders	80
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# Court Orders







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