

March 10, 2015

In the matter of
The Securities Legislation of
Saskatchewan and Ontario (the Jurisdictions)

and

In the Matter of
The Process for Exemptive Relief Applications in multiple jurisdictions

and

In the matter of
BHP Billiton Limited (BHP Ltd.) and
BHP Billiton Plc (BHP Plc and together with BHP Ltd., the Filer)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (collectively, the Decision Makers) have received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting:

1. BHP Ltd. from the prospectus requirements of the Legislation in connection with the proposed distribution of shares (NewCo Shares) of BHP Coal Holdings Pty Ltd. (NewCo), to holders (BHP Ltd. Shareholders) of ordinary shares of BHP Ltd. (BHP Ltd. Shares); and
2. BHP Plc from the prospectus requirements of the Legislation in connection with the proposed distribution of NewCo Shares to holders (BHP Plc Shareholders and together with BHP Ltd. Shareholders, BHP Shareholders) of ordinary shares of BHP Plc (BHP Plc Shares and, together with BHP Ltd. Shares, BHP Shares).

(collectively, the Requested Relief)

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the Financial and Consumer Affairs Authority of Saskatchewan is the principal regulator for this application;

- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in British Columbia, Alberta, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 *Passport System* have the same meaning if used in this decision, unless defined herein.

Representations

The decision is based on the following facts represented by the Filer:

DLC Structure and Canadian Shareholders:

1. The Filer is a leading global resources company. The Filer operates under a Dual Listed Company (DLC) structure, with two parent companies BHP Ltd. and BHP Plc which operate as a single economic enterprise, managed by a unified board and management team. The Filer is headquartered in Melbourne, Australia.
2. BHP Ltd. is a company organized under the *Corporations Act 2001 (Cth)* of Australia. BHP Ltd. is not a reporting issuer under the securities laws of any of the Jurisdictions and currently has no intention of becoming a reporting issuer under the securities laws of any of the Jurisdictions.
3. BHP Ltd. Shares are listed on the Australian Securities Exchange (ASX) in Australia. In addition, BHP Ltd. American Depositary Receipts trade on the New York Stock Exchange (NYSE). BHP Ltd. Shares are not listed on any Canadian stock exchange.
4. As of November 30, 2014 there were 491 registered Canadian BHP Ltd. Shareholders holding 1,125,456 BHP Ltd. Shares, representing approximately 0.08% of the registered holders of BHP Ltd. Shares worldwide and holdings of approximately 0.04% of the outstanding BHP Ltd. Shares as of such date. BHP Ltd. does not expect these numbers to have materially changed since that date.
5. BHP Plc is a company organized under the *Companies Act 1996* of England and Wales. BHP Plc is not a reporting issuer under the securities laws of any of the Jurisdictions and currently has no intention of becoming a reporting issuer under the securities laws of any of the Jurisdictions.
6. BHP Plc has a premium listing on the UK Listing Authority's Official List and its BHP Plc Shares are admitted to trading on the London Stock Exchange (LSE) in the United Kingdom. BHP Plc also has a secondary listing on the Johannesburg Stock Exchange (JSE) in South Africa. In addition, BHP Plc American Depositary Receipts trade on the NYSE. BHP Plc Shares are not listed on any Canadian stock exchange.

7. As of November 30, 2014 there were 23 registered Canadian BHP Plc Shareholders holding 48,395 BHP Plc Shares, representing approximately 0.10% of the registered holders of BHP Plc Shares worldwide and holdings of less than 0.01% of the outstanding BHP Plc Shares as of such date. BHP Plc does not expect these numbers to have materially changed since that date.
8. In aggregate, as of November 30, 2014, there were 514 registered Canadian BHP Shareholders holding 1,173,851 BHP Shares, representing approximately 0.08% of the registered holders of BHP Shares worldwide and holdings of approximately 0.02% of the outstanding BHP Shares as of such date.
9. The Filer does not have available to it a complete register of beneficial BHP Ltd. Shareholders and/or BHP Plc Shareholders. However, based on a review of the top 200 registered BHP Ltd. Shareholders and BHP Plc Shareholders, as of November 28, 2014:
 - (a) approximately 27.7 million BHP Ltd. Shares were held by beneficial Canadian BHP Ltd. Shareholders, representing holdings of approximately 0.5% of the outstanding BHP Shares as of such date;
 - (b) approximately 48.9 million BHP Plc Shares were held by beneficial Canadian BHP Plc Shareholders, representing holdings of approximately 0.9% of the outstanding BHP Shares as of such date; and
 - (c) in total, approximately 76.6 million BHP Shares were held by beneficial Canadian BHP Shareholders, representing holdings of approximately 1.4% of the outstanding BHP Shares as of such date.

The Filer does not expect these numbers to have materially changed since that date. In addition, the Filer does not expect that the number of BHP Shares held by beneficial Canadian BHP Shareholders not included in the top 200 beneficial BHP Shareholders represents a material number of the BHP Shares outstanding.

10. Based on the information above, the number of registered and beneficial Canadian BHP Shareholders and the proportion of BHP Shares held by such Canadian BHP Shareholders is *de minimis*.

Demerger:

11. The Filer is proposing to divest certain assets (the Assets) into NewCo by means of a demerger to BHP Shareholders (the Demerger). The Demerger will involve an *in specie* dividend of NewCo Shares to BHP Ltd. Shareholders and BHP Plc Shareholders in the proportions in which their shareholdings represent interests in the Filer (approximately 60% and 40%, respectively).
12. The Assets are currently held on both the BHP Ltd. and BHP Plc sides of the DLC group structure. Accordingly, prior to the effective date of the Demerger, the Filer will undergo a reorganization pursuant to which the Assets not already held by NewCo will be transferred to NewCo.

13. As of the date hereof, all of the issued and outstanding NewCo Shares are held by BHP Ltd. and no other securities of NewCo are issued and outstanding.
14. BHP Shareholders will not be required to pay for NewCo Shares received in the Demerger, or to surrender or exchange BHP Shares or take any other action to be entitled to receive their NewCo Shares. Unlike the Filer, NewCo will not operate under a DLC structure.
15. Subject to obtaining the required approvals, including the approval of BHP Shareholders (which, as noted under paragraph 21 below, is not required but is being sought voluntarily), the Demerger will occur automatically and without any investment decision on the part of individual BHP Shareholders as to whether they would like to receive NewCo Shares or not.
16. It is expected that the distribution of NewCo Shares to BHP Ltd. Shareholders and BHP Plc Shareholders will be on a 1:1 basis. Accordingly, the Filer does not expect to issue any fractional NewCo Shares in connection with the Demerger.
17. Following the Demerger, BHP Ltd. Shares will continue to be listed on the ASX and BHP Plc Shares will continue to be listed on the LSE and the JSE, and BHP Ltd. and BHP Plc American Depositary Receipts will continue to trade on the NYSE.
18. NewCo intends to apply for a primary listing of NewCo shares on the ASX, the admission of NewCo Shares to the standard listing segment of the Official List and to trading on the LSE's main market for listed securities and a secondary listing on the JSE. It is also proposed that an American Depositary Receipt program would be established with such American Depositary Receipts traded over-the-counter in the United States.
19. NewCo does not intend to list the NewCo Shares on any stock exchange in Canada, nor does it intend to become a reporting issuer in any of the Jurisdictions.
20. The Demerger will be effected in compliance with the laws of Australia. The dividend of NewCo Shares in connection with the Demerger will be a dividend under Australian law. The distribution of NewCo Shares to BHP Ltd. Shareholders will be effected under the terms of BHP Ltd.'s Constitution. The distribution of NewCo Shares to BHP Plc Shareholders will be effected under the terms of BHP Plc's Articles
21. Because the Demerger will be effected by way of a dividend of NewCo Shares to BHP Shareholders, no shareholder approval of the proposed transaction is required under BHP Plc's Articles of Association or under BHP Ltd.'s Constitution. Although there is no legal requirement for the Demerger to be approved by BHP Shareholders, the Filer intends to seek approval of BHP Shareholders by way of a joint electorate vote of BHP Ltd. Shareholders and BHP Plc Shareholders.
22. In connection with the Demerger, the Filer will prepare a shareholder circular (the Shareholder Circular) which will contain comprehensive disclosure relating to the Demerger, including the advantages, disadvantages and risks of the Demerger, an overview of the Filer and NewCo post-Demerger and information about the

implementation of the Demerger. The Shareholder Circular will be prepared in accordance with the laws of the United Kingdom and Australia and will be mailed to BHP Shareholders in connection with the solicitation by management of the Filer of proxies to be voted at meetings of the BHP Shareholders to consider and approve the Demerger.

23. In connection with the Demerger, NewCo will prepare the NewCo Listing Document which collectively refers to the following documents:
- (a) an information memorandum in connection with NewCo's application for admission to the ASX Official List (the ASX IM);
 - (b) a prospectus in connection with NewCo's application for admission to the standard segment of the UKLA Official Listing (the UK Prospectus); and
 - (c) a pre-listing statement in connection with NewCo's application for a secondary listing on the Main Board of the JSE (the JSE PLS).

The NewCo Listing Document will contain detailed disclosure with respect to NewCo, including historical financial information, an overview of the industries in which NewCo will participate, a detailed overview of NewCo's business, information about NewCo's executives and governance arrangements and Competent Persons Reports in relation to NewCo's mineral resources and reserves. The NewCo Listing Documents will be prepared in accordance with the laws of the United Kingdom, Australia and South Africa. The UK Prospectus will be subject to the review and approval of the Financial Conduct Authority, the securities regulatory authority of the United Kingdom. The Filer has filed an application for prospectus relief in Australia with the Australian Securities and Investment Commission, the securities regulatory authority of Australia (ASIC). The ASX IM and the Shareholder Circular will be reviewed by ASIC. The Filer has received in-principle confirmation that ASIC will grant it prospectus relief subject to certain conditions. The JSE PLS will be subject to the review and approval of the JSE.

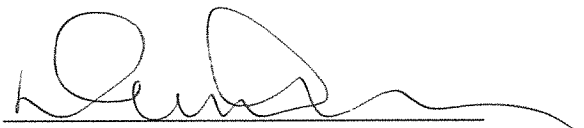
24. The Shareholder Circular sent by the Filer to BHP Shareholders will be sent concurrently to Canadian BHP Shareholders. The NewCo Listing Documents are not required to be sent to BHP Shareholders and instead will be made available to BHP Shareholders (including Canadian BHP Shareholders) electronically (and BHP Shareholders may obtain copies free of charge upon request).
25. Canadian BHP Shareholders who receive NewCo Shares as a dividend pursuant to the Demerger will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the Demerger that are available to BHP Shareholders resident outside of Canada.
26. Following the completion of the Demerger, NewCo will send concurrently to NewCo Shareholders resident in Canada the same disclosure materials required to be sent under applicable Australian securities laws to NewCo Shareholders resident in Australia.

27. Prior to the completion of the Demerger, the number of Canadian BHP Shareholders as well as their proportionate holdings of Shares will be *de minimis*. Therefore, following the Demerger, the number of NewCo Shareholders resident in Canada as well as their proportionate holdings of NewCo Shares will also be *de minimis*. The Filer's strong preference is not to exclude Canadian BHP Shareholders from the proposed Demerger, and to provide a meaningful number of Canadian BHP Shareholders with the opportunity to receive NewCo Shares, consistent with the rights of other shareholders of the Filer.
28. There will be no active trading market for NewCo Shares in Canada following the Demerger and none is expected to develop. It is expected that any resale of NewCo Shares distributed in connection with the Demerger will occur through the facilities of the ASX, the LSE or the JSE.
29. The distribution of NewCo Shares would be exempt from the prospectus requirements pursuant to subsection 2.31(2) of National Instrument 45-106 *Prospectus Exempt Distributions* but for the fact that NewCo is not a reporting issuer in any of the Jurisdictions.
30. Neither BHP Ltd. nor BHP Plc is in default of any securities legislation in any of the Jurisdictions.

Decision

The Decision Makers are satisfied that the tests contained in the Legislation that provide the Decision Makers with the jurisdiction to make the decision have been met.

The decision of the Decision Makers under the Legislation is that the Requested Relief is granted, provided that the first trade of NewCo Shares acquired in connection with the Demerger shall be deemed to be a distribution unless the conditions in Section 2.6 or subsection 2.14(1) of National Instrument 45-102 *Resale of Securities* are satisfied.



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