

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BANRO CORPORATION, BANRO GROUP
(BARBADOS) LIMITED, BANRO CONGO (BARBADOS)
LIMITED, NAMOYA (BARBADOS) LIMITED, LUGUSHWA
(BARBADOS) LIMITED, TWANGIZA (BARBADOS) LIMITED
AND KAMITUGA (BARBADOS) LIMITED**

(the "**Applicants**")

AMENDED NOTICE OF MOTION

(Approval of SISP, Stay Extension & CCAA Charges Priority)
(Returnable January 18, 2018)

The Applicants will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) on January 18, 2018 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

- a) An Order substantially in the form attached as Schedule "A" hereto (the "**SISP Approval Order**"), *inter alia*:
 - i. approving the sale and investment solicitation process attached at Schedule "A" to the SISP Approval Order (the "**SISP**") and authorizing each of the Applicants and FTI Consulting Canada Inc. in its capacity as

court-appointed monitor of the Applicants (the “**Monitor**”) to perform their obligations thereunder;

b) An Order substantially in the form attached as Schedule “B” hereto (the “**Stay Extension and CCAA Charges Priority Order**”), *inter alia*:

i. extending the Stay Period (as defined in the Initial Order granted by this Honourable Court on December 22, 2017 (the “**Initial Order**”) to March 30, 2018;

ii. approving the Pre-Filing Report of the Monitor dated December 22, 2017 (the “**Pre-Filing Report**”) and the activities of the Monitor described therein; and

iii. declaring that, effective as of December 22, 2017, the Charges (as defined in the Initial Order) rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any Person over the Property (as defined in the Initial order), including the Encumbrances (as defined in the Initial Order); and

c) Such further and other relief as counsel may advise and as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

d) Banro Corporation (“**Banro**”) is a Canadian public corporation. The Applicants other than Banro are incorporated under the laws of Barbados (the “**Barbados Entities**”).

- e) The Applicants and their subsidiaries (collectively, the “**Banro Group**”) are involved in the exploration, development and mining of gold in the Democratic Republic of the Congo (the “**DRC**”);
- f) The Banro Group’s operations are primarily conducted by certain of its non-Applicant subsidiaries (the “**Non-Applicant Subsidiaries**”) in the DRC. Through these Non-Applicant Subsidiaries, the Banro Group owns two operating gold mines in the DRC known as the Twangiza gold mine and the Namoya gold mine, as well as certain exploration and exploitation rights in the DRC;
- g) On December 22, 2017, the Applicants were granted protection under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) pursuant to the Initial Order;
- h) The Initial Order, among other things:
 - i. granted a stay of proceedings in favour of the Applicants and the Non-Applicant Subsidiaries until and including January 19, 2018 (the “**Stay of Proceedings**”);
 - ii. authorized Banro to borrow the maximum sum of US\$20 million pursuant to an interim financing term sheet dated December 21, 2017 (the “**DIP Term Sheet**”), as interim financing (the “**DIP Financing**”) from Gramercy Funds Management LLC as agent for and on behalf of certain funds and accounts for which it acts as investment manager or advisor (“**Gramercy**”) and Baiyin International Investment Ltd and affiliates thereof within the direct or indirect control of Baiyin Nonferrous Group Company, Limited (“**Baiyin**”, and collectively with Gramercy, the “**DIP Lender**”) and granted the DIP Lenders’

Charge (as defined in the Initial Order) as security for the Applicants' obligations thereunder;

- iii. authorized the Applicants to take all steps and actions contemplated by, and to comply with their obligations under, the restructuring support agreement entered by the Applicants with Gramercy and Baiyin (the "**Support Agreement**");
- iv. granted an indemnity in favour of the directors or officers of the Applicants and granted the Directors' Charge (as defined in the Initial Order) as security for such indemnity; and
- v. established the Administration Charge (as defined in the Initial Order);

The SISP¹

- i) The Support Agreement and the DIP Term Sheet require that Banro (with the assistance of the Monitor and, in certain circumstances, in consultation with the DIP Lender) implement a process to solicit proposals for an alternative transaction to the Recapitalization contemplated in the Support Agreement;
- j) Under the proposed SISP, with the assistance of the Monitor, Banro will solicit non-binding letters of intent (the "**Non-Binding LOIs**") by March 2, 2018.
- k) Banro (in consultation with the Monitor and, subject to certain conditions, the DIP Lender) will determine if any Non-Binding LOIs received are capable of becoming a "Qualified Alternative Transaction Bid";

¹ Capitalized terms used in this section but not defined shall have the meanings given to them in the SISP.

- l) In order to constitute a Qualified Alternative Transaction Bid, a bid must, among other things, provide for consideration in a minimum amount, being the Qualified Consideration as defined in the SISP;
- m) If it is determined that no proposals received could form the basis of a Qualified Alternative Transaction Bid, then the SISP will be immediately terminated and Banro will proceed to take steps to complete the Recapitalization. If it is determined that one or more proposals received could form the basis of a Qualified Alternative Transaction Bid, then the SISP will proceed to phase 2 whereby bidders will complete any further due diligence and be entitled to submit final binding bids by no later than April 9, 2018;
- n) If one or more Qualified Alternative Transaction Bids are received by such date, Banro (in consultation with the Monitor and, subject to certain conditions, the DIP Lender) shall determine whether to accept a Qualified Transaction Bid or to proceed with the Restructuring Transaction;
- o) The key deadlines under the SISP are as follows:

March 2, 2018	Deadline for non-binding letters of intent
April 9, 2018	Deadline for binding Alternative Transaction Bids (if necessary)
April 27, 2018	Court approval of Alternative Transaction Bid (if applicable)
April 30, 2018	Outside Date

Stay Extension

- p) In the Initial Order, the Court granted the Stay of Proceedings until and including January 19, 2018;

- q) Since the granting of the Initial Order, the Applicants, in consultation with the Monitor, have acted and continue to act in good faith and with due diligence;
- r) It is necessary and in the best interests of the Applicants and their stakeholders that the Stay of Proceedings be extended until March 30, 2018, as this will allow the Applicants to implement the SISP in coordination with the Monitor;
- s) It is forecast that the Applicants have sufficient liquidity to be able to continue operating in the ordinary course during the requested extension period;

Priority of CCAA Charges

- t) Under the Initial Order, the DIP Lenders' Charge, the Directors' Charge and the Administration Charge (collectively, the "**Charges**") were granted priority over all Encumbrances (as defined in the Initial Order) in favour of any Person, except for Encumbrances the holders of which did not receive notice of the application for the Initial Order;
- u) The Applicants were, however, granted leave to seek a further order to obtain priority for the Charges over the all Encumbrances, on notice to the holders thereof;
- v) The DIP Term Sheet requires that the Applicants obtain priority on the collateral over all liens, other than Permitted Priority Liens (as defined in the DIP Term Sheet) pursuant to a Court order granted no later than January 19, 2018;
- w) Failure to obtain such priority would result in the failure to fulfil a condition precedent to the DIP Lender's advance of funds under the DIP Financing and would give rise to an event of default under the DIP Term Sheet;
- x) The beneficiaries of the other Charges also require priority over all Encumbrances;

- y) In the circumstances, the Applicants, in consultation with the Monitor, have determined that an Order providing priority for the Charges over all Encumbrances is necessary and appropriate at this time.
- z) The Applicants intend to serve the materials in connection with this Motion on all parties with registrations in the Ontario personal property security registry and the Barbados Corporate Affairs and Intellectual Property Office; and
- aa) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- bb) The Affidavit of Rory James Taylor, sworn December 21, 2017 and the exhibits attached thereto;
- cc) The Affidavit of Geoffrey Farr sworn December 22, 2017 and the exhibits attached thereto;
- dd) The Affidavit of Rory James Taylor sworn January 8, 2018 and the exhibits attached thereto;
- ee) The Pre-Filing Report of the Monitor;
- ff) The First Report of the Monitor, to be filed; and
- gg) Such further and other material as counsel may advise and this Honourable Court may permit.

January 11, 2018

CASSELS BROCK & BLACKWELL LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Ryan C. Jacobs LSUC# 59510J
Tel: 416.860.6465
Fax: 416.640.3189
rjacobs@casselsbrock.com

Jane O. Dietrich LSUC# 49302U
Tel: 416.860.5223
Fax: 416.640.3144
jdietrich@casselsbrock.com

Joseph J. Bellissimo LSUC# 46555R
Tel: 416.860.6572
Fax: 416.642.7150
jbellissimo@casselsbrock.com

Ben Goodis LSUC # 70303H
Tel: 416.869.5312
Fax: 416.640.3199
bgoodis@casselsbrock.com

Lawyers for the Applicants

TO: THE SERVICE LIST

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PROCEEDING COMMENCED AT TORONTO

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Cassels Brock & Blackwell LLP

2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Ryan C. Jacobs LSUC# 59510J
Tel: 416.860.6465
Fax: 416.640.3189
rjacobs@casselsbrock.com

Jane O. Dietrich LSUC# 49302U
Tel: 416.860.5223
Fax: 416.640.3144
jdietrich@casselsbrock.com

Joseph J. Bellissimo LSUC# 46555R
Tel: 416.860.6572
Fax: 416.642.7150
jbellissimo@casselsbrock.com

Ben Goodis LSUC# 70303H
Tel: 416.869.5312
Fax: 416.640.3199
bgoodis@casselsbrock.com

Lawyers for the Applicants