

**Court File No. CV-17-589016-00CL**

**Banro Corporation  
Banro Group (Barbados) Limited  
Banro Congo (Barbados) Limited  
Namoya (Barbados) Limited  
Lugushwa (Barbados) Limited  
Twangiza (Barbados) Limited and  
Kamituga (Barbados) Limited**

**THIRD REPORT OF THE MONITOR**

**February 15, 2018**

**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

**THIRD REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On December 22, 2017, Banro Corporation (“**Banro**”), Banro Group (Barbados) Limited (“**BGB**”), Banro Congo (Barbados) Limited, Namoya (Barbados) Limited, Lugushwa (Barbados) Limited, Twangiza (Barbados) Limited and Kamituga (Barbados) Limited (collectively the “**BGB Subsidiaries**” and together with Banro and BGB, the “**Applicants**”) sought and obtained an initial order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended* (the “**CCAA**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granting, *inter alia*, a stay of proceedings against the Applicants until January 19, 2018, (the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

2. Pursuant to the provisions of the Initial Order, the stay of proceedings was extended to the Democratic Republic of the Congo (“**DRC**”) subsidiaries of the BGB Subsidiaries, namely Bango Congo Mining S.A., Namoya Mining S.A., Lugushwa Mining S.A., Twangiza Mining S.A. and Kamituga Mining S.A. (collectively, the “**DRC Subsidiaries**” and, together with the Applicants, the “**Banro Group**”).
3. Pursuant to the Order of the Honourable Mr. Justice Hainey granted January 18, 2018, the Stay Period was extended to March 30, 2018.
4. On January 18, 2018, the Honourable Mr. Justice Hainey granted an Order (the “**SISP Order**”) *inter alia* approving a sale and investor solicitation process (the “**SISP**”).
5. On February 1, 2018, the Honourable Mr. Justice Hainey granted the following Orders:
  - (a) An Order (the “**Claims Procedure Order**”) approving a procedure for the submission, evaluation and adjudication of claims against the Applicants and their directors and officers (the “**Claims Procedure**”); and
  - (b) An Order (the “**Meeting Order**”) *inter alia* accepting the filing of the Applicants’ proposed consolidated plan of compromise and reorganization dated January 25, 2018, as may be amended (the “**Plan**”) and authorizing the convening meetings of creditors to consider and vote on the Plan (the “**Creditors’ Meetings**”).
6. To date the Monitor has filed two reports to the Court in respect of various aspects of the CCAA Proceedings<sup>1</sup>. The purpose of this, the Third Report of the Monitor (this “**Report**”), is to provide:
  - (a) Information on the business and financial affairs of the Applicants; and
  - (b) The Monitor’s assessment of the Plan in advance of the Creditors’ Meetings.

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<sup>1</sup> In addition, FTI Consulting Canada Inc. in its capacity as proposed monitor filed a pre-filing report dated December 22, 2017.

## TERMS OF REFERENCE

7. In preparing this Report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants' books and records, certain financial information prepared by the Applicants and discussions with various parties (the "**Information**").
8. Except as described in this Report:
  - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
9. The Monitor has prepared this Report in connection with the Plan and for the purposes of compliance with paragraph of 14 of the Meeting Order and should not be relied on for any other purposes.
10. Future oriented financial information reported or relied on in preparing this Report is based on the assumptions of the management of the Applicants ("**Management**") regarding future events; actual results may vary from forecast and such variations may be material.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in **United States Dollars**. Capitalized terms not otherwise defined herein have the meanings defined in the affidavit of Mr. Rory Taylor sworn December 21, 2017 filed in support of the Initial Application (the "**Taylor Initial Affidavit**"), the Initial Order or previous reports of the Monitor.

## EXECUTIVE SUMMARY

12. In summary, it is the Monitor's view that:

- (a) There would be benefits from the implementation of the Plan as it provides for ongoing operations in the DRC, thereby providing continued employment for both Canadian and DRC based employees and future benefits for suppliers and customers;
  - (b) The implementation of the Plan would also provide the opportunity for potential future value to Affected Secured Creditors;
  - (c) In the circumstances where the Applicants are seeking approval of the Plan, the SISP will have demonstrated that there is no alternative transaction that would provide any recovery for Listed Creditors;
  - (d) Although *de minimis*, the recoveries for Listed Creditors would be higher than recoveries from a liquidation of the assets;
  - (e) A bankruptcy would be no more beneficial to employees that are holders of Listed Claims than the Plan;
  - (f) The treatment of existing shareholders under the Plan is fair and reasonable in the circumstances; and
  - (g) There is no apparent prejudice to any creditor of any of the Applicants from the consolidation of the Plan.
13. The Monitor is unable to provide any comment on the potential value of the shares to be distributed to Affected Secured Creditors under the Plan or how the potential value of such shares would compare to potential recoveries in the event of a liquidation of the assets.
14. Subject to any amendment that may be required in the event that any additional 6(5) Claims arise prior to the implementation of the Plan, the Monitor is not aware of any aspect of the Plan that is not in compliance with statutory requirements.

15. To the extent that any valid Director/Officer Claims are covered by the Insurance Policy and payments are made thereunder, holders of such Director/Officer Claims would not appear to be materially prejudiced by paragraphs 23 and 24 of the proposed Sanction Order which, if granted, would provide a permanent injunction for actions in respect of Director/Officer Claims, other than Excluded Director/Officer Claims, against any party other than the provider of the Insurance Policy and limit recovery for valid Director/Officer Claims solely to the proceeds of the Insurance Policy. However, to the extent that valid Director/Officer Claims, if any, other than Excluded Director/Officer Claims, exceed the C\$10 million limit on the Insurance Policy, or are not covered by the Insurance Policy, the effect of paragraphs 23 and 24 of the proposed Sanction Order, if granted, appear to be that the holders of such valid Director/Officer Claims would lose any possibility of recovery from the Directors and Officers or from the Directors' Charge.
16. As at the date of this Report it is not known whether there are any valid Director/Officer Claims that would be impacted by the provisions of the Sanction Order, nor is it possible for the Monitor to provide any comment on whether there would be any possibility of recovery from the Directors and Officers or from the Directors' Charge in the event of any valid Director/Officer Claims that may be impacted by the provisions of the Sanction Order.

## **BUSINESS AND FINANCIAL AFFAIRS OF THE APPLICANTS**

17. The business and affairs of the Applicants and the causes of their insolvency are described in the Taylor Initial Affidavit. A copy of the Taylor Initial Affidavit is available on the Monitor's Website at <http://cfcanada.fticonsulting.com/banro>.
18. The Monitor has reviewed the Taylor Initial Affidavit and discussed the business and affairs of the Applicants and the causes of their insolvency with Management and is of the view that the Taylor Initial Affidavit provides a fair summary thereof. As described in the Initial Taylor Affidavit, the Applicants are unable to service their current financial obligations.

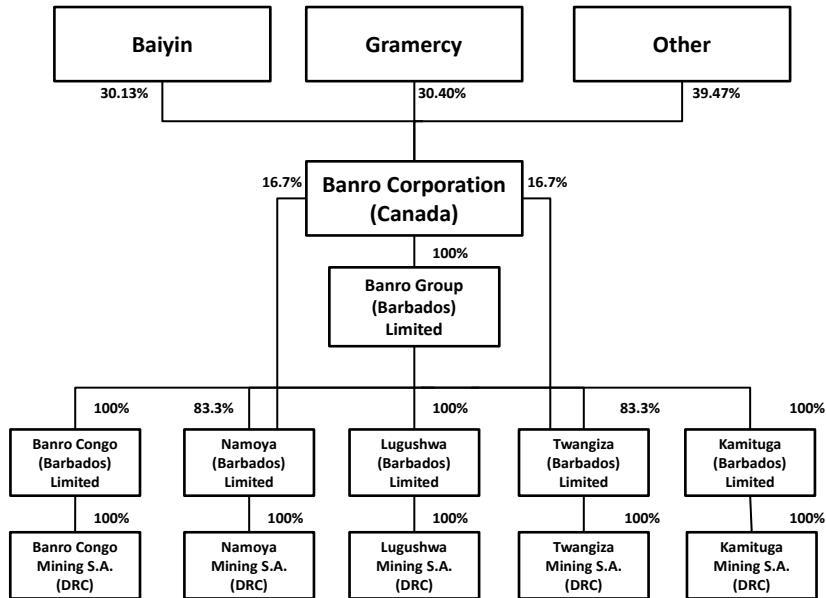
19. Further information regarding events that preceded the commencement of the CCAA Proceedings is provided in the Information Circular, which was provided to Affected Creditors and made available on the Monitor's Website pursuant to the provisions of the Meeting Order, in the section entitled "Background to the Recapitalization" at page 42 and following. That section of the Information Circular is attached hereto as **Appendix A** for ease of reference.
20. In connection with the commencement of the CCAA Proceedings, the Applicants negotiated the following with Baiyin and Gramercy, its two largest creditors and shareholders:
  - (a) The Restructuring Term Sheet, setting out the terms of a recapitalization plan to be implemented through a plan of arrangement in the event that a superior alternative transaction could not be found through a sale and investor solicitation process to be carried out in the CCAA Proceedings (the "**Recapitalization**");
  - (b) The Support Agreement, pursuant to which Gramercy and Baiyin agreed to support the Recapitalization subject to the conditions thereof;
  - (c) The form of the SISP, subject to Court approval; and
  - (d) The Interim Financing Term Sheet, pursuant to which Gramercy and Baiyin agreed to provide interim financing of up to \$20 million, subject to the terms thereof.
21. The Interim Financing Term Sheet was approved pursuant to the Initial Order.
22. As noted earlier in this Report, the SISP Order was granted on January 18, 2018 and the Plan was accepted for filing on February 1, 2018.

23. The SISP is in progress and approval for the Plan will only be sought if no Successful Bid, as defined in the SISP, is obtained through the SISP. As described in previous reports of the Monitor, a Successful Bid is required to pay the Qualified Consideration, as defined in the SISP. The current estimate of the Qualified Consideration is approximately \$385 million, which represents a significant shortfall on the claims of secured creditors.
24. In the circumstances where the Applicants seek approval for the Plan, the SISP will have demonstrated that there is no viable alternative transaction that would have the support of Baiyin and Gramercy. Accordingly, and as described later in this Report, if no Successful Bid results from the SISP, the only apparent alternatives available to the implementation of the Plan are:
  - (a) Enforcement of security by secured creditors; and
  - (b) Liquidation of the assets of the Banro Group.

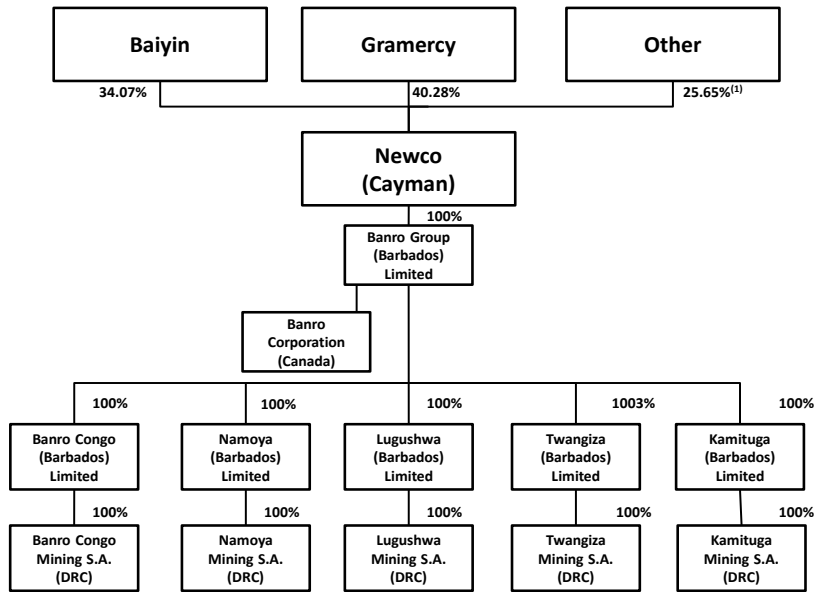
## **THE PLAN**

25. Capitalized terms used in this section of this Report not otherwise defined are as defined in the Plan, a copy of which is attached hereto as **Appendix B**.
26. As noted earlier in this Report, approval for the Plan will only be sought if no Successful Bid, as defined in the SISP, is obtained through the SISP. The Plan is a “package deal” and the components of the Plan cannot be separated nor can the Plan be amended without the consent of Baiyin and Gramercy.
27. If implemented, the Plan would involve, amongst other things, the compromise of approximately \$245 million of claims against the Applicants, the cancellation of existing shares in Banro and the issuance of new shares to certain creditors of the Applicants.
28. The current corporate structure of the Banro Group is shown below:





29. If the Plan is implemented, the corporate structure is expected to be as follows<sup>2</sup>:



<sup>1</sup>Subject to dilution for third parties down to 23.6% of the New Equity in the event that the Stream Equity Warrants are exercised at full value.

<sup>2</sup> Subject to possible amendment for tax planning reasons.

30. The following table summarizes the effect of the implementation of the Plan on the various agreements and claims:

Agreement/Claims	Effect of Plan Implementation
Twangiza Forward I	Amended consensually, providing estimated temporary cash flow relief estimated at approximately \$7 million in the period April 1, 2018, to June 30, 2019. Required gold deliveries reduced by a total of 193.248 ounces thereafter providing additional estimated cash relief of approximately \$0.2 million.
Twangiza Forward II	Amended consensually, providing estimated temporary cash flow relief estimated at approximately \$7.9 million in the period April 1, 2018, to June 30, 2019. Required gold deliveries increased by a total of 1,230.44 ounces thereafter resulting in a reduction in estimated cash flow of approximately \$1.5 million.
Namoya Forward I	Amended consensually, providing estimated temporary cash flow relief estimated at approximately \$27 million in the period April 1, 2018, to June 30, 2019. Required gold deliveries increased by a total of 14,304.14 ounces thereafter resulting in a reduction in estimated cash flow of approximately \$17.9 million.
Twangiza Streaming	Amended consensually, providing an estimated cash flow benefit of approximately \$24.2 million in the period January 1, 2018, to October 31, 2019. Granted warrants exercisable into an equity stake of up to 4.553% of the fully-diluted total shares of Newco.
Namoya Streaming	Amended consensually, providing an estimated cash flow benefit of approximately of approximately \$18.3 million in the period January 1, 2018, to October 31, 2019. Granted warrants exercisable into an equity stake of up to 3.447% of the fully-diluted total shares of Newco.
Interim Facility	Converted consensually to New Secured Term Loan, maturing December 31, 2019.
Senior Secured Notes	Converted to New Equity, Baiyin and Gramercy to receive voting shares, other beneficial holders to receive non-voting shares. Voting shares and non-voting shares will have equivalent economic rights.

Agreement/Claims	Effect of Plan Implementation
Doré Loan	Converted to New Equity, Baiyin to receive voting shares
Namoya Forward II	Converted to New Equity, Baiyin and Gramercy to receive voting shares.
Crown Priority Claims	Will be paid in full, if any.
Employee Priority Claims	Will be paid in full, if any.
Claims against Banro that are Listed Claims	Compromised, extinguished and released, will receive pro-rata share of \$10,000.
Other Claims against Banro	Unaffected.
Claims against BGB	Unaffected.
Claims against BGB Subsidiaries	Unaffected.
Claims against DRC Subsidiaries	Unaffected.
Claims against Director/Officers	Released, subject to certain limited exclusions.
Existing shares in Banro, including warrants and options	Extinguished for no consideration.

### CLASSIFICATION OF CREDITORS

31. For the purposes of considering and voting on the Plan and receiving a distribution thereunder, the Plan provides for two classes of creditors:
- (a) The Affected Secured Class; and
  - (b) The Affected Banro Unsecured Class.
32. The Affected Secured Class comprises of creditors holding Affected Secured Claims in the aggregate amount of \$175,314,967.50. The Affected Secured Claims are 75% of:
- (a) The Proven Secured Notes Claim of \$203,506,170<sup>3</sup>;

<sup>3</sup> As set by the Claims Procedure Order.

- (b) The Proven Doré Loan Claim of \$10,247,120<sup>4</sup>; and
  - (c) The Proven Namoya Forward II Claim of \$20,000,000<sup>5</sup>.
33. The Affected Banro Unsecured Class comprises of creditors holding Affected Banro Unsecured Claims in the aggregate amount of \$70,305,421.93<sup>6</sup>. The Affected Banro Unsecured Claims are:
- (a) The Listed Claims, being Claims of 16 creditors in the aggregate amount of \$11,867,099.43<sup>7</sup> as set out in **Appendix C** hereto; and
  - (b) The Affected Banro Unsecured Deficiency Claims, being 25% of the Proven Secured Notes Claim, 25% of the Proven Doré Loan Claim and 25% of the Proven Namoya Forward II Claim, an aggregate amount of \$58,438,322.50.
34. The Monitor has been informed by Banro that the Listed Claims represent all of the known unsecured Claims against Banro, other than contingent claims that could arise as a result of the termination of contracts or resignation of employees. Other than the potential contract terminations giving rise to certain Listed Claims (the “**Potentially Terminated Contracts**”), no contracts are being terminated or repudiated in connection with the CCAA Proceedings. Contracts other than the Potentially Terminated Contracts would be unaffected by the Plan except to the extent of any impact of the reorganization of the corporate structure of the Banro Group.

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<sup>4</sup> As set by the Claims Procedure Order.

<sup>5</sup> As set by the Claims Procedure Order.

<sup>6</sup> Subject to dispute and amendment in accordance with the provisions of the Claims Procedure Order and the Plan.

<sup>7</sup> Subject to dispute and amendment in accordance with the provisions of the Claims Procedure Order and the Plan.

## **DISTRIBUTIONS TO AFFECTED CREDITORS**

35. Pursuant to the Plan, the Affected Secured Claims will be compromised in exchange for their pro-rata share of 100% of the New Equity<sup>8</sup>, being 100% of the common equity of Newco prior to any dilution in respect of the warrants for common shares in Newco to be issued pursuant to the Plan. New Equity will consist of the Class A Common Shares, being voting shares which will be issued to Baiyin and Gramercy in respect of their Affected Secured Claims, and the Class B Common Shares, being non-voting shares that will be issued to holders of Affected Secured Claims other than Baiyin and Gramercy. There will be no distinction in the economic rights of the Class A Common Shares and the Class B Common Shares.
36. Pursuant to the Plan, either each Proven Affected Secured Creditor shall be deemed to be a party to the Shareholders Agreement containing the New Share Terms, each in its capacity as a holder of New Equity, or the constating documents of Newco shall contain the Newco Share Terms which shall apply to each Proven Affected Secured Creditor in its capacity as a holder of New Equity, as applicable. The New Share Terms are the rights and obligations of holders of New Equity as set forth in the Restructuring Term Sheet<sup>9</sup> and/or as otherwise acceptable to the Applicants, the Monitor and the Requisite Consenting Parties, acting reasonably. The New Share Terms are also described in the Information Circular.
37. Pursuant to the Plan, the Affected Banro Unsecured Claims will be compromised in exchange for their pro-rata share of the Affected Banro Unsecured Pool, being \$10,000. Pursuant to the Plan, the holders of Affected Banro Unsecured Deficiency Claims will waive their entitlement to a distribution from the Affected Banro Unsecured Pool, with the result that the full amount of the Affected Banro Unsecured Pool will be distributed to the Listed Creditors.

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<sup>8</sup> If any Affected Secured Creditor fails to deliver its Newco Equityholder Information on or before the date that is 6 months following the Implementation Date, that portion of the New Equity to which such Affected Secured Creditor is entitled shall be cancelled.

<sup>9</sup> See Appendices 1 and 2 of the Restructuring Term Sheet.

#### **TREATMENT OF CLAIMS OTHER THAN AFFECTED CLAIMS**

38. Excluded Claims will not be compromised by the Plan. Excluded Claims include all Claims against the Applicants other than the Affected Secured Claims and the Affected Banro Unsecured Claims. Accordingly:
- (a) No Claim against Banro that is not a Listed Claim, a Proven Notes Claim, a Proven Doré Loan Claim or a Proven Namoya Forward II Claim is compromised by the Plan;
  - (b) No Claim against BGB or any of the BGB Subsidiaries other than a Listed Claim, a Proven Notes Claim, a Proven Doré Loan Claim or a Proven Namoya Forward II Claim is compromised by the Plan; and
  - (c) No Claim against any of the DRC Subsidiaries other than a Proven Notes Claim, a Proven Doré Loan Claim or a Proven Namoya Forward II Claim is compromised or otherwise affected by the Plan.
39. The Plan provides that certain Crown Claims will be paid in full within six months after the Sanction Order, as required by section 6(3) of the CCAA (the “**Crown Priority Claims**”).
40. Section 6(5) of the CCAA states that a plan of compromise or arrangement may only be sanctioned if it provides for payment to employees of certain claims and that the Court is satisfied that the debtor company can and will make such claims (the “**6(5) Claims**”). 6(5) Claims include amounts owing for arrears of wages and salaries for services rendered in the six months prior to the CCAA filing up to a limit of \$2,000 per person (“**Pre-Filing 6(5) Claims**”) and any unpaid wages and salaries for services rendered in the period from the CCAA filing to the sanction of the plan (the “**Post-Filing 6(5) Claims**”).

41. It is intended that Post-Filing 6(5) Claims in respect of monthly salaries will be paid in the normal course and, as at the date of this Report, there are no known 6(5) Claims, except for 6(5) Claims of Listed Creditors. The Plan provides that the 6(5) Claims of Listed Creditors will be paid in full immediately after the Sanction Order, as required by section 6(5) of the CCAA. The Plan is currently silent on the payment of any additional 6(5) Claims that may arise prior to implementation of the Plan.
42. In addition, the Plan provides for the payment to Listed Creditors who are, or were, employees of Banro, of amounts in excess of the 6(5) Claims that the employees or former employees may have been entitled to receive pursuant to the *Wage Earner Protection Program Act* (“**WEPPA**”) if Banro had become bankrupt on the Filing Date (together with the 6(5) Claims of such Listed Creditors, the “**Employee Priority Claims**”).
43. The Applicants have informed the Monitor that they do not participate in a prescribed pension plan. Accordingly, it is not necessary for the Plan to provide for the payment of amounts of the type required to be paid pursuant to section 6(6) of the CCAA.
44. The Plan provides for the creation of the Priority Claim Reserve, to be funded in cash by the Applicants three business days before implementation of the Plan and held by the Monitor, from which the Crown Priority Claims and the Employee Priority Claims will be paid.

## RELEASES

45. The Plan provides for broad releases to the full extent permitted by Applicable Law for each of the members of the Banro Parties and their respective subsidiaries and affiliates and each of their respective shareholders, partners, Directors, Officers, current and former employees, financial advisors, legal counsel and agents, (collectively, the “**Banro Released Parties**”) from claims based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Effective Time of the Plan arising out of or in connection with the Affected Claims, the Support Agreement, the Recapitalization, the Plan, the CCAA Proceedings, or any Director/Officer Claim or Claim that has been barred or extinguished by the Claims Procedure Order. The releases in favour of the Banro Released Parties (the “**Banro/D&O Releases**”) do not release or discharge:
- (a) The Applicants from any Excluded Claims;
  - (b) The Directors and Officers to the extent that any claims against the Directors and Officers cannot be released under the CCAA; or
  - (c) Any Banro Released Party if such Banro Party Released Party is judged by the express terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.
46. The Plan also provides for broad releases to the full extent permitted by Applicable Law in favour of the Monitor, the Requisite Consenting Parties and their respective subsidiaries and affiliates and each of their respective shareholders, partners, officers, directors, current and former employees, financial advisors, legal counsel and agents (each a “**Third Party Released Party**”). The releases in favour of the Third Party Released Parties (the “**Third Party Releases**”) do not release or discharge any Third Party Released Party if such Third Party Released Party is judged by the express terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.



47. In addition, the Plan provides that the Sanction Order will enjoin the prosecution, whether directly, derivatively or otherwise, of any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged, compromised or terminated pursuant to the Plan.
48. If the Plan is approved by the requisite majorities of creditors, the Applicants shall seek the Sanction Order at a hearing on the date set out in the Meeting Order or such later date and the Court may set.
49. Pursuant to the Plan, the Sanction Order shall be substantially in the form attached as Schedule "B" thereto, with such amendments as the Monitor, the Applicants and the Requisite Consenting Parties may agree.
50. The proposed Sanction Order includes the customary provisions for such Orders, including paragraph 22 giving effect to the releases contained in the Plan. In addition, the proposed Sanction Order contains the following provisions at paragraphs 23 and 24:

“23. THIS COURT ORDERS that, notwithstanding paragraph 21<sup>10</sup> above, any Person having, or claiming any entitlement or compensation relating to, a Director/Officer Claim (with the exception of any Director/Officer Claims judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer (an “Excluded Director/Officer Claim”)) will be irrevocably limited to recovery in respect of such Director/Officer Claim solely from the proceeds of the applicable insurance policies held by the Applicants (the “Insurance Policies”), and Persons with any Director/Officer Claims will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from the Applicants or any Released Party, other than enforcing such Person’s rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. Nothing in this Plan Sanction Order prejudices, compromises, releases or otherwise affects any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of a Director/Officer Claim. Notwithstanding anything to the contrary herein, from and after the Implementation Date, a Person may only commence an action for an Excluded Director/Officer Claim against a Director if such Person has first obtained leave of the Court on notice to the applicable Directors and Officers, the Monitor and the Applicants.

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<sup>10</sup> The reference to paragraph 21 is a typographical error and should refer to paragraph 22.

24. THIS COURT ORDERS that from and after the Implementation Date any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims and matters which are released pursuant to Article 8 of the Plan or discharged, compromised or terminated pursuant to the Plan, except as against the applicable insurer(s) to the extent that Persons with Director/Officer Claims seek to enforce rights to be paid from the proceeds of the Insurance Policies, and provided that any claimant in respect of a Director/Officer Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Director/Officer Claim against an insurer in respect of an Insurance Policy."

51. Section 5.1(2) of the CCAA prohibits the release of certain claims against directors<sup>11</sup>. While the Banro/D&O Releases do not release the Directors and Officers to the extent that any Director/Officer Claim cannot be released under the CCAA, in the Monitor's reading, paragraphs 23 and 24 provide for a permanent injunction for actions in respect of Director/Officer Claims, other than Excluded Director/Officer Claims<sup>12</sup>, against any party other than the provider of the applicable insurance policies held by the Applicants (collectively, the "**Insurance Policy**") and limits recovery for valid Director/Officer Claims solely to the proceeds of the Insurance Policy, having the practical effect of "releasing" the Directors and Officers of any liability including any liability for section 5.1(2) Claims.
52. To the extent that any valid Director/Officer Claims are covered by the Insurance Policy and payments are made thereunder, holders of such Director/Officer Claims would not appear to be materially prejudiced by paragraphs 23 and 24 of the proposed Sanction Order. However, to the extent that valid Director/Officer Claims, if any, other than Excluded Director/Officer Claims, exceed the C\$10 million limit on the Insurance Policy or are not covered by the Insurance Policy, the effect of paragraphs 23 and 24 of the proposed Sanction Order appear to be that the holders of such valid Director/Officer Claims would lose any possibility of recovery from the Directors and Officers or from the Directors' Charge.
53. If there is no Successful Bid under the SISF and the Plan is approved by the Requisite Majorities, the Monitor will provide further commentary in respect of paragraphs 23 and 24 of the proposed Sanction Order in its report to be filed for the Sanction Hearing.

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<sup>11</sup> A provision for the compromise of claims against directors may not include claims that (a) relate to contractual rights of one or more creditors; or (b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

<sup>12</sup> An Excluded Director/Officer Claim is defined as any Director/Officer Claim judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer.

## CONDITIONS PRECEDENT TO IMPLEMENTATION

54. The implementation of the Plan is conditional upon the fulfilment, satisfaction or waiver, of the following conditions:

- (a) The Plan shall have been approved by the Required Majorities;
- (b) The Court shall have granted the Sanction Order the operation and effect of which shall not have been stayed, reversed or amended and in the event of an appeal or application for leave to appeal, final determination shall have been made by the appellate court;
- (c) The Administrative Reserve shall have been funded by the Applicants;
- (d) The Priority Claim Reserve shall have been funded by the Applicants;
- (e) The conditions precedent to the implementation of the Recapitalization set forth in Article 8 of the Support Agreement<sup>13</sup> shall have been satisfied or waived;
- (f) The Priority Lien Debt, the Gold Streams, the Shareholder Agreement and the Interim Facility and all related agreements and other documents necessary in connection with the amendments thereto contemplated by the Recapitalization and the implementation of the Plan, shall be in form and substance acceptable to the Applicants, the Monitor and the Requisite Consenting Parties and shall have become effective, subject only to the implementation of the Plan;
- (g) The Implementation Date shall have occurred no later than the Outside Date<sup>14</sup>,  
and

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<sup>13</sup> The Support Agreement contains a significant number of conditions precedent. A copy of the Support Agreement was attached as Exhibit A to the affidavit of Geoff Farr sworn December 22, 2017, and filed in support of the initial application.

<sup>14</sup> Being April 30, 2018, or such other date as the Applicants, the Monitor and the Requisite Consenting Parties may agree.

- (h) The constating documents of Newco and the composition of the board of Newco effective on and after the Implementation Date shall be consistent with the Restructuring Term Sheet and otherwise acceptable to the Applicants and the Requisite Consenting Parties, acting reasonably.

#### CONSENSUAL AMENDMENT OF CERTAIN AGREEMENTS

- 55. As noted above, amendments to the Priority Lien Debt, the Gold Streams and the Interim Facility as contemplated by the Recapitalization are a condition to the implementation of the Plan.
- 56. The Priority Lien Debt is obligations under the Twangiza Forward I Agreement, the Twangiza Forward II Agreement and the Namoya Forward I Agreement (collectively, the “**Priority GFSAs**”) each of which is a gold forward sale agreement. Obligations under the Twangiza Forward I Agreement and the Namoya Forward I Agreement rank as a “priority lien”<sup>15</sup> under the Amended and Restated Collateral Trust Agreement dated April 18, 2017 (the “**Collateral Trust Agreement**”). The issuer of the Twangiza Forward I Agreement and the Twangiza Forward II Agreement is Twangiza Mining S.A., one of the DRC Subsidiaries. The issuer of the Namoya Forward I Agreement is Namoya Mining S.A., another one of the DRC Subsidiaries. The Twangiza Forward I Agreement, the Twangiza Forward II Agreement and the Namoya Forward I Agreement are each guaranteed by Banro. As described in the First Report of the Monitor (the “**First Report**”), the guarantees of the Twangiza Forward I Agreement and the Namoya Forward I Agreement are secured and such security is valid and enforceable. The guarantee of the Twangiza Forward II Agreement is unsecured.
- 57. The amendments of the Priority GFSAs as contemplated by the Recapitalization are as follows:

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<sup>15</sup> A “priority lien” under the Collateral Trust Agreement is an obligation under the Namoya Forward I Agreement, the Twangiza Forward I Agreement and certain obligations under the Namoya Streaming Agreement and the Twangiza Streaming Agreement (other than the obligation to pay any deposits thereunder).

- (a) The delivery schedule under the Twangiza Forward I Agreement will be amended to:
  - (i) Further extend the current deferral period termination date from December 31, 2017 to June 30, 2019;
  - (ii) Extend the final delivery date from August 31, 2018, to February 29, 2020;
  - (iii) Revise the number of ounces deliverable each month starting July 1, 2019 for 8 months from 697.640 ounces to 673.484 ounces to maintain 19.5% internal rate of return through the revised final delivery date; and
  - (iv) Include a provision for the early repayment at the option of Banro at a 19.5% internal rate of return based on the delivery of equivalent ounces calculated at \$1,100 per ounce, calculated using the “XIRR function” on Excel from the initial funding date to the repayment date.
  
- (b) The delivery schedule under the Twangiza Forward II Agreement will be amended to:
  - (i) Further extend the current deferral period termination date from December 31, 2017 to June 30, 2019;
  - (ii) Extend the final delivery date from August 31, 2018, to February 29, 2020;
  - (iii) Revise the number of ounces deliverable each month starting July 1, 2019 for 8 months from 792.132 ounces to 945.937 ounces, to maintain a 15% internal rate of return through the revised final delivery date; and

- (iv) Include a provision for the early repayment at the option of Banro at a 15% internal rate of return calculated using the “XIRR function” on Excel from the initial funding date to the repayment date.
  - (c) The delivery schedule under the Namoya Forward I Agreement will be amended to:
    - (i) Further extend the current deferral period termination date from December 31, 2017 to June 30, 2019;
    - (ii) Extend the final delivery date from June 30, 2020, to April 30, 2022;
    - (iii) Revise the number of ounces deliverable each month starting July 1, 2019 for 34 months from 719.452 ounces to 929.807 ounces each to Baiyin and Gramercy to earn a 15% internal rate of return through the revised final delivery date; and
    - (iv) Include a provision for the early repayment at the option of Banro at a 15% internal rate of return calculated using the “XIRR function” on Excel from the initial funding date to the repayment date.
58. Assuming a gold price of \$1,250 per ounce, the amendments to the Priority GFSAs would create a temporary cash flow benefit of approximately \$41.9 million in the period April 1, 2018, to June 30, 2019, through the deferral of delivery obligations. Using the same price assumption, the net increase in delivery obligations thereafter would create an adverse impact on cash flow of approximately \$19.2 million in the period July 1, 2019, to April 30, 2022.



59. The Gold Streams are the Namoya Streaming Agreement, issued by Namoya Mining S.A., and the Twangiza Streaming Agreement, issued by Twangiza Mining S.A. Certain obligations under the Gold Streams rank as “priority liens” and certain obligations rank as “parity liens”<sup>16</sup> under the Collateral Trust Agreement. The Gold Streams are each guaranteed by Banro. As described in the First Report, the guarantees of the Gold Streams are secured and such security is valid and enforceable.
60. The amendments of the Gold Streams as contemplated by the Recapitalization are as follows:
- (a) The Gold Transfer Price, as defined in the relevant agreement, will be increased from US\$150 per ounce to the London Bullion Market Association afternoon gold price (the “**LBMA PM Gold Price**”) for the respective claims on the first 200,000 ounces of production delivered at each mine from January 1, 2018 (being equal to 22,200 ounces for the Twangiza mine and 16,660 ounces for the Namoya mine), after which the Gold Transfer Price will revert to US\$150 per ounce;
  - (b) Ounces deliverable through December 2017 that were deferred will be delivered over 12 months following delivery of the entitlements from the first 200,000 ounces of production from January 1, 2018, with an entitlement for an additional delivery on the deferred deliveries of 12.325% for the Twangiza Streaming Agreement and 14.808% for the Namoya Streaming Agreement (the Entitlement Percentage);
  - (c) Deferred ounces will be adjusted to ensure that each stream holder receives the production-weighted average LBMA PM Gold Price for each deferral during the deferral period; and

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<sup>16</sup> A “parity lien” under the Collateral Trust Agreement is obligations under the Indenture, the Doré Loan, the deposit obligations under the Twangiza Streaming Agreement and the Namoya Streaming Agreement, obligations under the Namoya Forward II Agreement and related guarantees.

- (d) A provision will be included in each Gold Stream allowing a buy-out at any time up until December 31, 2021, at a price equal to the amount required to give each holder a 15% internal rate of return from the initial deposit calculated using the “XIRR function” on Excel. The buy-out options must be exercised for both the Gold Streams simultaneously.
61. Based on projected production information provided by the Applicants<sup>17</sup> and assuming a gold price of \$1,250 per ounce, it is estimated that the amendments to the Twangiza Streaming Agreement would provide a cash flow benefit of approximately \$24.2 million in the period January 1, 2018, to October 31, 2019, and that the amendments to the Namoya Streaming Agreement would provide a cash flow benefit of approximately \$18.3 million over the same period.
62. As consideration for the treatment and amendment of the Gold Streams, each purchaser under each Gold Stream will receive the warrants for voting shares of Newco (the “**Stream Warrants**”) on implementation of the CCAA Plan as follows:
- (a) The Purchaser under the Twangiza Streaming Agreement will receive penny warrants exercisable into an equity stake of up to 4.553% of the fully-diluted total shares of Newco. If at the time that the warrant vests, the aggregate value of cash flow relief<sup>18</sup> achieved by the amendment of the Twangiza Streaming Agreement is less than \$24.2 million, the equity stake of the warrant will be reduced pro rata; and

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<sup>17</sup> Based on the current life-of-mine plan which could change.

<sup>18</sup> The aggregate value of cash flow relief will be equal to the number of ounces delivered pursuant to the Twangiza Streaming Agreement commencing January 1, 2018 until the warrant vests multiplied by the difference between (a) the LBMA PM Gold Price fixed on each delivery date, less (b) \$150 per delivered ounce.

- (b) The Purchaser under the Namoya Streaming Agreement will receive penny warrants exercisable into an equity stake of up to 3.447% of the fully-diluted total shares of Newco. If at the time that the warrant vests, the aggregate value of cash flow relief<sup>19</sup> achieved by the amendment of the Namoya Streaming Agreement is less than \$18.326 million, the equity stake will be reduced pro rata.

63. The Twangiza Streaming Agreement warrants will vest on the earlier of:

- (a) The Purchaser under the Twangiza Streaming Agreement receiving 22,000 ounces of payable gold from the first 200,000 ounces of production delivered at the Twangiza mine pursuant to the stream claim commencing January 1, 2018;
- (b) Completion of the Exit Transaction, as defined in the Restructuring Term Sheet; and
- (c) Termination of the stream pursuant to the buy-out option.

64. The Namoya Streaming Agreement warrants will vest on the earlier of:

- (a) The Purchaser under the Namoya Streaming Agreement receiving 16,660 ounces of payable gold from the first 200,000 ounces of production delivered at the Namoya mine pursuant to the stream claim commencing January 1, 2018;
- (b) Completion of the Exit Transaction; and
- (c) Termination of the stream pursuant to the buy-out option.

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<sup>19</sup> The aggregate value of cash flow relief will be equal to the number of ounces delivered pursuant to the Namoya Streaming Agreement commencing January 1, 2018 until the warrant vests multiplied by the difference between (a) the LBMA PM Gold Price fixed on each delivery date, less (b) \$150 per delivered ounce.

65. The Interim Facility is the interim facility of up to \$20 million approved by the Court in the Initial Order which is secured by the DIP Lender's Charge, which security ranks in priority to all Encumbrances other than the Administration Charge. On implementation of the Plan, the Interim Facility will be converted into a new secured term loan (the "**New Secured Term Loan**") and any undrawn amount of the Interim Facility will be advanced. The New Secured Term Loan will have an interest rate of 10% per annum and a maturity date of December 31, 2019. The New Secured Term Loan will be enhanced by penny warrants in favour of Baiyin and Gramercy for voting shares equivalent to 2% of the fully-diluted total shares of Newco (the "**NSTL Warrants**").

## **THE MONITOR'S ASSESSMENT OF THE PLAN**

### **CONSOLIDATION OF THE PLAN**

66. The Plan is a consolidated plan of compromise and reorganization covering all of the Applicants. The operating businesses and assets of the Banro Group are held in the DRC Subsidiaries. The BGB Subsidiaries are holding companies whose only assets are their interests in the DRC Subsidiaries. BGB is a holding company whose only assets are its interests in the BGB Subsidiaries. Banro's primary assets are cash, its interests in BGB and certain of the BGB Subsidiaries and inter-company receivables from DRC Subsidiaries. BGB is the issuer of the Senior Secured Notes. Banro, the BGB Subsidiaries and the DRC Subsidiaries have each guaranteed the Senior Secured Notes. Banro has also guaranteed the Twangiza Streaming Agreement, the Twangiza Forward I Agreement, the Twangiza Forward II Agreement<sup>20</sup>, the Namoya Streaming Agreement, the Namoya Forward I Agreement and the Namoya Forward II Agreement. Other than the obligations under the guarantees and inter-company indebtedness, BGB and the BGB Subsidiaries have no known creditors.

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<sup>20</sup> Agreement between Baiyin International Investment Ltd., Twangiza Mining S.A. and Banro dated as of July 12, 2017.

67. The proposed compromise of the Senior Secured Notes under the Plan must be effected for each of the Applicants. Doing so through the Plan on a consolidated basis simplifies matters as compared to having individual plans of arrangement for each of the Applicants. Furthermore, there is, in the Monitor's view, no apparent prejudice to any creditor of any of the Applicants from the proposed consolidation.

#### **CLASSIFICATION OF CREDITORS**

68. As described earlier in this Report, the Plan provides for two classes of creditors, the Affected Secured Class and the Affected Banro Unsecured Class, as follows:

- (a) The Affected Secured Class comprises of creditors holding Affected Secured Claims. The Affected Secured Claims are 75% of:

- (i) The Proven Secured Notes Claim of \$203,506,170;
- (ii) The Proven Doré Loan Claim of \$10,247,120; and
- (iii) The Proven Namoya Forward II Claim of \$20,000,000.

- (b) The Affected Banro Unsecured Class comprises of creditors holding Affected Banro Unsecured Claims. The Affected Banro Unsecured Claims are:

- (i) The Listed Claims; and
- (ii) The Affected Banro Unsecured Deficiency Claims, being 25% of the Proven Secured Notes Claim, 25% of the Proven Doré Loan Claim and 25% of the Proven Namoya Forward II Claim.

69. Section 22 of the CCAA states:

“22 (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.”

70. As discussed in the First Report, none of the Applicants have any obligation under the Doré Loan, which is only an obligation of the DRC Subsidiaries. Accordingly, obligations under the Doré Loan do not meet the definition of “claim” under the CCAA and accordingly cannot be voted at any Creditors’ Meeting. Accordingly, the Meeting Order provides that Baiyin shall not be entitled to vote in respect its Affected Claim under the Doré Loan and the amount of the Claim under the Doré Loan shall not be taken into account in determining whether the Affected Secured Required Majority or the Affected Banro Unsecured Required Majority is obtained. The Doré Loan is secured under the Collateral Trust Agreement with the same priority as the Senior Secured Notes and the Namoya Forward II Agreement and the Monitor is therefore satisfied that there is no prejudice from the inclusion of the Proven Doré Loan Claim in the Affected Secured Class.
71. The Monitor has considered the factors set out in section 22(2) of the CCAA and is of the view that the classification of creditors under the Plan is appropriate in the circumstances.
72. The classification of creditors was approved pursuant to the Meeting Order.

## COMPLIANCE WITH STATUTORY REQUIREMENTS

73. A plan of compromise or arrangement can only be sanctioned by the Court if, amongst other things, it complies with all statutory requirements.
74. Section 5.1(1) of the CCAA contemplates the compromise of claims against directors but Section 5.1(2) of the CCAA mandates certain exceptions. Section 8.1(a) of the Plan includes the statutory exceptions required by the CCAA in respect of the release for directors of the Applicants provided for in the Plan.
75. Section 6(3) of the CCAA requires that the Plan provide for the payment in full of certain Crown claims within six months of the Sanction Order. The Plan provides that the Crown Priority Claims will be paid in full within six months after the Sanction Order, as required by section 6(3) of the CCAA.
76. Section 6(5) of the CCAA requires that the Plan provide for payment immediately after sanction of certain amounts owing to employees and former employees. As noted earlier in this Report, it is intended that Post-Filing 6(5) Claims in respect of monthly salaries will be paid in the normal course and, as at the date of this Report, there are no known 6(5) Claims, except for 6(5) Claims of Listed Creditors. The Plan provides that the 6(5) Claims of Listed Creditors will be paid in full immediately after the Sanction Order, as required by section 6(5) of the CCAA. The Plan is silent on the payment of any additional 6(5) Claims that may arise prior to implementation of the Plan. If any such additional 6(5) Claims arise prior to implementation, arrangements will have to be made for payment of any such additional 6(5) Claims as required by the CCAA.
77. The Plan provides for the creation of the Priority Claim Reserve, to be funded in cash by the Applicants three business days before implementation of the Plan and held by the Monitor, from which the Crown Priority Claims and the Employee Priority Claims will be paid.

78. Section 6(6) of the CCAA requires that the Plan provide for payment of certain unpaid amounts relating to pension plans. The Applicants have informed the Monitor that they do not participate in a prescribed pension plan, accordingly it is not necessary for the Plan to provide for the payment of amounts of the type required to be paid pursuant to section 6(6) of the CCAA.
79. Pursuant to section 6(8) of the CCAA, no plan of compromise or arrangement that provides for a payment of an equity claim may be sanctioned by the Court unless all non-equity claims are paid in full. The Plan does not provide for any payment on account of equity claims.
80. Pursuant to section 19(2) of the CCAA, a plan of compromise or arrangement may not deal with any claim that relates to the debts or liabilities described in section 19(2) unless the plan explicitly provides for the compromise of such claim and the creditor holding the claim votes in favour of the plan. The Applicants have informed the Monitor that there are no known claims of the type described in section 19(2). In any event, any such claims would be unaffected by the Plan as no such claims are included in the Listed Claims.
81. Based on the foregoing, the Monitor is not aware of any aspect of the Plan that is not in compliance with statutory requirements.

## **ESTIMATED RECOVERIES FOR AFFECTED CREDITORS UNDER THE PLAN**

### ***Affected Secured Creditors***

82. As described earlier in this Report, if the Plan is approved and implemented the Affected Secured Creditors will receive 100% of the New Equity as consideration for the compromise of their Affected Secured Claims, subject to dilution of up to 10% from the Stream Warrants and the NSTL Warrants. As discussed earlier in this Report, Baiyin and Gramercy will receive Class A Common Shares (voting) on account of their Affected Secured Claims and all other Affected Secured Creditors will receive Class B Common Shares (non-voting) on account of their Affected Secured Claims.



83. The Monitor has been informed that the bifurcation of the New Equity into the Class A Common Shares (voting) and Class B Common Shares (non-voting) is in order to give effect to the Minority Governance Rights described in the Restructuring Term Sheet, which were required by Baiyin and Gramercy as an integral part of their support of the Plan and their willingness to amend the various gold forward sales agreements that are not otherwise affected by the Plan.
84. Banro has not prepared any estimate of the potential value of the New Equity and the Monitor is unable to provide any comment on the potential value of the shares to be distributed to Affected Secured Creditors under the Plan or how the potential value of such shares would compare to potential recoveries in the event of a liquidation of the assets. However, the implementation of the Plan would provide the opportunity for potential future value to Affected Secured Creditors.
85. The Applicants are in the process of completing their budgets and forecasts for 2018 and beyond. Consequently, no forecasts of projected results have been provided to the Monitor for periods subsequent to the implementation of the Plan.
86. Through the implementation of the Plan, approximately \$245 million in liabilities would be compromised and material cash flow benefits should be realized from the amendments to the Gold Streams and the Priority GFSAs. However, significant liabilities would remain after implementation of the Plan which would have either structural or legal priority to the New Equity, summarized as follows, excluding inter-company claims:
- (a) Liabilities under the Priority GFSAs;
  - (b) Liabilities under the Gold Streams;
  - (c) Liabilities under the New Secured Term Loan;
  - (d) Liabilities to employees, other than those employee Claims that are Affected Banro Unsecured Claims; and

- (e) Claims against the DRC Subsidiaries, other than Claims in respect of Affected Secured Claims and Affected Banro Unsecured Claims.

87. These liabilities are estimated to be approximately \$266 million in total.

***Affected Banro Unsecured Creditors***

88. As noted earlier in this Report, the Plan will only be implemented in the event that there is not a Successful Bid under the SISF paying at least the Qualified Consideration. Given that Qualified Consideration would result in a shortfall of 25% on the Affected Parity Lien Debt, the SISF would in such circumstances have demonstrated that there is no transaction available that would provide a recovery for unsecured creditors of Banro.

89. Although *de minimis*, the Plan does provide for the distribution of the Affected Banro Unsecured Pool of \$10,000 to the Affected Banro Unsecured Creditors. The actual distributions to Affected Banro Unsecured Creditors under the Plan are dependent of the quantum of Listed Claims as finally determined pursuant to the Claims Procedure Order. Subject to final determination, the Listed Claims are \$11,867,099.43 in the aggregate, of which \$6,253,370.28 are claims of certain employees that may be reduced or eliminated for voting and/or distribution purposes by agreement with the employee (the “**Employee Claims**”).

90. Assuming that that there are no disputes of the amounts of the Listed Claims, the Monitor has estimated the recoveries for Affected Banro Unsecured Creditors if the Plan is approved and implemented as follows:

- (a) 0.084% in the event that the Employee Claims are not reduced or eliminated and that no other Listed Claims are eliminated; and
- (b) 0.178% in the event that the Employee Claims are eliminated and that no other Listed Claims are eliminated.

91. The Plan also provides for the payment in full of Employee Priority Claims. The definition of Employee Priority Claims includes all amounts for which holders of Listed Claims would have priority under the *Bankruptcy and Insolvency Act* or may receive under the *Wage Earner Protection Program Act* in the event of a bankruptcy of Banro.

#### **ALTERNATIVES TO THE PLAN AND ESTIMATED RECOVERIES**

92. As noted earlier in this Report, the Plan will only be implemented in the event that no Successful Bid results from the SISP. Accordingly, if the Plan is implemented, the SISP will have demonstrated that there is no going concern transaction that would pay more than the Qualified Consideration as the Qualified Consideration would represent a 25% shortfall on the Affected Parity Lien Debt. Pursuant to the terms of the Collateral Trust Agreement, the consent of Baiyin and Gramercy would be required to proceed with any transaction at a price less than the Qualified Consideration. Baiyin and Gramercy informed the Monitor that they would not consent to a transaction at a price less than the Qualified Consideration. Accordingly, if no Successful Bid results from the SISP, the only apparent alternatives available to the implementation of the Plan are:

- (a) Enforcement of security by secured creditors; and
- (b) Liquidation of the assets of the Banro Group.

#### ***Enforcement of Security***

93. The material assets of the Applicants, other than inter-company claims, are the equity interests in subsidiaries. If the Plan is not implemented, it would be open to secured creditors to seek to lift the stay of proceedings in order to enforce their security. Given the SISP and the unwillingness of Baiyin and Gramercy to consent to a transaction at a price less than the Qualified Consideration, the most likely enforcement mechanism would be through a credit-bid acquisition of or foreclosure on the shares of BGB, the BGB Subsidiaries or the DRC Subsidiaries. Pursuant to the terms of the Collateral Trust Agreement, any such enforcement action would require the consent of Baiyin and Gramercy.

94. In a scenario where the shares of the BGB, the BGB Subsidiaries or the DRC Subsidiaries are acquired by credit-bid acquisition or foreclosure, by Parity Debt holders, which includes the holders of Senior Secured Notes, minority Noteholders would receive their *pari passu* allocation of such shares, which is consistent with the distribution of the New Equity to Affected Secured Creditors under the Plan, but there would be no amounts available to unsecured creditors of Banro. Furthermore, as described earlier in this Report, Baiyin and Gramercy have agreed to amend the Gold Streams and Priority GFSAs on implementation of the Plan, which amendments may not be available in the event that the Plan is not approved.
95. Furthermore, the implementation of such a transaction may be subject to DRC government approval given the conditions of certain agreements to which Banro is party. Accordingly, that scenario may not be feasible and, in any event, would be no more advantageous to minority Noteholders than the implementation of the Plan.

### ***Liquidation of Assets***

96. A liquidation of the assets would entail liquidating the assets of the DRC Subsidiaries, which assets are located in remote areas of the DRC. The assets of the DRC Subsidiaries consist primarily of mining and mineral rights and licences, mining infrastructure and mining plant and equipment.
97. The Monitor has had discussions with counsel in the DRC and understands from those discussions that while liquidation is technically possible, given local rules and procedures and potential claims of the government, it is unlikely that any material value could be realized for creditors from a liquidation of the mining and mineral rights and licenses. Similarly, given the location and nature of the other assets, it is unlikely that any material value could be realized for creditors from a liquidation of those other assets.

98. Furthermore, as the Monitor cannot provide any estimate of the value of the New Equity, it would not be possible for the Monitor to compare the value of distributions to Affected Secured Creditors under the Plan to the potential realizations to Affected Secured Creditors in a liquidation. Accordingly, the Monitor has not commissioned an independent value of the assets of the DRC Subsidiaries.
99. For illustrative purposes, the Monitor has estimated the approximate recoveries to the Affected Creditors at various assumed realized values in a liquidation scenario, summarized as follows:

	Assumed Proceeds				
	\$150M	\$250M	\$350M	\$450M	\$475M
Senior Secured Notes	0.0%	1.3%	43.5%	89.3%	100.0%
Banro Unsecured Creditors	0.0%	0.0%	0.0%	0.0%	0.4%

100. The estimate indicates that the realizable value of the assets of the DRC Subsidiaries would have to be approximately \$475 million in order for a liquidation to provide for a better recovery to Listed Creditors than the Plan. The Monitor is of the view that there is no possibility of generating that level of proceeds from a liquidation of the assets, which view would be supported by the results of the SISP if no Successful Bid is forthcoming at the Qualified Consideration of \$385 million.
101. As noted earlier in the Report, the Plan provides for the payment in full of Employee Priority Claims. The definition of Employee Priority Claims includes all amounts for which holders of Employee Claims would have priority under the *Bankruptcy and Insolvency Act* or may receive under the *Wage Earner Protection Program Act* in the event of a bankruptcy of Banro. Accordingly, a bankruptcy would be no more beneficial to holders of Employee Claims than the Plan.

#### TREATMENT OF SHAREHOLDERS

102. Pursuant to the Plan, all of the issued and outstanding Equity Interests in Banro shall be cancelled and extinguished for no consideration.

103. Section 6(2) of the CCAA permits the Court to order that a debtor's constating instrument be amended to reflect any change that may lawfully be made under federal or provincial law. Banro is a federally incorporated company and pursuant to section 191 of the Canada Business Corporations Act, the constating instruments of Banro may be amended by the Court in the event that a plan of compromise or arrangement is approved. Accordingly, the jurisdiction to cancel the existing Equity Interests exists.
104. The Plan will only be implemented if there is no Successful Bid under the SISP. A Successful Bid is required to pay only the Qualified Consideration. The Qualified Consideration is defined as cash consideration sufficient to indefeasibly repay:
- (a) All DIP Obligations;
  - (b) All Priority Claims;
  - (c) All amounts due under the Gold Streams or treatment of the Gold Streams on the same terms as the Recapitalization; plus
  - (d) Not less than 75% of the aggregate principal amount outstanding under the Affected Parity Lien Debt.
105. Accordingly, if there is no Successful Bid, the SISP will have demonstrated that the value of the business and assets is insufficient to repay all amounts owing by Banro to its creditors as even a Successful Bid at the minimum Qualified Consideration would have left 25% of the aggregate principal amount outstanding under the Affected Parity Lien Debt and any claims ranking subordinate thereto unpaid.
106. Therefore, if the Plan is implemented, it will have been demonstrated that there is no value in the Equity Interests in Banro. In the Monitor's view, the treatment of existing shareholders under the Plan is fair and reasonable in such circumstances.

## **THE RELEASES AND RELATED MATTERS**

107. As described earlier in this Report, section 5.1(2) of the CCAA prohibits the release of certain claims against directors. While the Banro/D&O Releases do not release the Directors and Officers to the extent that any Director/Officer Claim cannot be released under the CCAA, on the Monitor's reading, paragraphs 23 and 24 of the proposed Sanction Order provide for a permanent injunction for actions in respect of Director/Officer Claims, other than Excluded Director/Officer Claims, against any party other than the provider of the Insurance Policy and limits recovery for valid Director/Officer Claims solely to the proceeds of the Insurance Policy, having the practical effect of "releasing" the Directors and Officers of any liability, including any liability for s.5.1(2) Claims.
108. To the extent that any valid Director/Officer Claims are covered by the Insurance Policy and payments are made thereunder, holders of such Director/Officer Claims would not appear to be materially prejudiced by paragraphs 23 and 24 of the proposed Sanction Order, if granted. However, to the extent that valid Director/Officer Claims, if any, other than Excluded Director/Officer Claims, exceed the C\$10 million limit on the Insurance Policy or are not covered by the Insurance Policy, the effect of paragraphs 23 and 24 of the proposed Sanction Order, if granted, appear to be that the holders of such valid Director/Officer Claims would lose any possibility of recovery from the Directors and Officers or from the Directors' Charge.
109. The Claims Procedure Order requires that Director/Officer Proofs of Claim must be filed on or before the Claims Bar Date, being 5:00 p.m. Eastern Time on March 6, 2018. Accordingly, as at the date of this Report it is not known whether there are any valid Director/Officer Claims that would be impacted by the provisions of the Sanction Order. Furthermore, it is not possible for the Monitor to provide any comment on whether there would be any possibility of recovery from the Directors and Officers or from the Directors' Charge in the event of any valid Director/Officer Claims that may be impacted by the provisions of the Sanction Order.

110. The Monitor has been informed by Baiyin and Gramercy that the Banro/D&O Releases and the related injunction and “channelling” provided by paragraphs 23 and 24 of the proposed Sanction Order are a fundamental element of the Plan and their support for the Plan. There is no obligation for the Plan to be implemented if such provisions are not granted.

**OTHER BENEFITS OF THE PLAN**

111. It is the Monitor’s view that there would be benefits from the implementation of the Plan as it provides for ongoing operations in the DRC, thereby providing continued employment for both Canadian and DRC based employees and future benefits for suppliers and customers.

The Monitor respectfully submits to the Court this, its Third Report.

Dated this 15<sup>th</sup> day of February, 2018.

FTI Consulting Canada Inc.  
In its capacity as Monitor of  
Banro Corporation, Banro Group (Barbados) Limited, Banro Congo (Barbados) Limited,  
Namoya (Barbados) Limited, Lugushwa (Barbados) Limited,  
Twangiza (Barbados) Limited and Kamituga (Barbados) Limited



Nigel D. Meakin  
Senior Managing Director



Toni Vanderlaan  
Senior Managing Director



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# Appendix A

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## Extract from the Information Circular Background to the Recapitalization

## BACKGROUND TO THE RECAPITALIZATION

The following describes the general background to the Recapitalization and conditions and events that led to the Company's decision to pursue the Recapitalization. Based on the circumstances facing the Companies, the Boards of Directors of the Companies believe that the Recapitalization is in the best interests of the Companies and their stakeholders, with the objective of addressing the Companies' capital structure and liquidity needs.

In April 2017, pursuant to a Plan of Arrangement (the "**CBCA Arrangement**") under section 192 of the CBCA, Banro implemented a recapitalization with the goal of improving its capital structure. The recapitalization was intended to enhance the Banro Group's liquidity and provide it with greater operating flexibility. The CBCA Arrangement resulted in, among other things, the exchange of certain maturing debt for the Secured Notes and additional equity in Banro. As well, as part of the CBCA Arrangement, preferred shares of Banro and certain of its subsidiaries were exchanged for common shares of Banro, the Namoya Forward I Agreement was entered into, and certain debt maturity dates were extended.

Following the CBCA Arrangement, Banro continued to face significant liquidity constraints in both the short and long term as a result of, among other things, socio-political risks in the DRC including instability in the eastern region of the DRC where Banro's mines are located, gold production at the mines being less than targeted (which in part was related to this instability and the Companies' liquidity constraints). Since the implementation of the CBCA Arrangement, the Companies have incurred over USD\$30 million of additional indebtedness, all of which has been guaranteed by Banro.

In July 2017, in order to provide required additional liquidity, Namoya DRC and Twangiza DRC entered into the Namoya Forward II Agreement and the Twangiza Forward II Agreement with affiliates of Baiyin and Gramercy. In addition, in order to provide additional liquidity for its operations, Banro agreed with certain affiliates of Gramercy to defer certain gold deliveries that would otherwise be due to Gramercy under the Namoya Streaming Agreement and the Twangiza Forward I Agreement.

On August 10, 2017, the Board of Banro created a Special Committee comprised of independent directors (the "**Special Committee**"). The members of the Special Committee are Messrs. Brissenden, Rorrison and Weyrauch. The mandate of the Special Committee was to analyse the financial and operational condition of the Company and develop and implement a comprehensive strategy to deal with the operational, financial and managerial challenges facing the Company, which strategy could include, without limitation, all or any of: a restructuring of all or any aspect of the Company's capital under the CBCA or the CCAA, the sale or other disposition of all or any of the Company's assets or a business combination or other change of control transaction. During the period from August 10 to December 22, 2017, the Special Committee met a total of 40 times.

On September 25, 2017, Banro announced that, as a result of the closure of road access to the Company's Namoya mine in Maniema Province of the DRC, mining operations at the Namoya mine had been temporarily suspended. The closure of road access was due to the activities of local groups against both the local populations and against the DRC national army, and resulted in the depletion of essential operating stock at the mine site which had, and continued to have through to year end and beyond, a significant further negative impact on cash flow and liquidity.

On October 25, 2017, Banro announced that, in order to provide additional liquidity for its operations, it had agreed with certain affiliates of Baiyin and an entity controlled by Gramercy to again defer certain gold deliveries that would otherwise be due to Gramercy and such Baiyin affiliates under certain streaming and forward agreements. Specifically, all gold delivery obligations due from mid-September 2017 to end December 2017 under the Twangiza Streaming Agreement were deferred, as well as all gold delivery obligations due from September 2017 to end December

2017 under the Namoya Forward I Agreement. These deferrals were entered into in order to provide the Company with additional short term liquidity while it continued to explore opportunities to address its ongoing operational and working capital challenges.

On November 13, 2017, Banro announced that the Special Committee had advised the Board that, based in part on the opinion of its financial advisor, it had concluded that there was no reasonable prospect that a successful capital raise (whether debt, equity or a combination) could be completed at the current time at a level sufficient to refinance the Company's existing indebtedness and to address its working capital requirements and that, consequently, there was substantial doubt as to the Company's ability to continue as a going concern.

The Special Committee further reported that it was in discussions with the Companies' major stakeholders concerning the possible restructuring of non-DRC debt obligations as well as the provision of financing to support ongoing operations in the DRC.

Due to the significant uncertainty surrounding the Company's ability to continue as a going concern, Banro also announced on November 13, 2017, that it was not in a position to release its interim unaudited condensed consolidated financial statements and related management's discussion and analysis for the period ended September 30, 2017.

On November 20, 2017, Banro's outstanding securities became subject to a general cease trade order issued by the Ontario Securities Commission due to Banro's failure to file its interim financial statements and management's discussion and analysis for the period ended September 30, 2017, and the certifications of such filings as required by National Instrument 52-109.

On December 1, 2017, Banro announced that it had elected to defer payment of the approximately US\$4.94 million of interest due on the Secured Notes on December 1, 2017. Under the terms of the Note Indenture, the failure to pay such interest was not an "Event of Default" if the interest payment was made within 30 days of its due date. Banro announced that it intended to utilize this thirty day period to continue its ongoing discussions with its major stakeholders concerning the possible restructuring of the Company's non-DRC debt obligations as well as the provision of financing to support the Company's ongoing operations in the DRC.

Throughout the months of November and December 2017 the Special Committee and its legal and financial advisors continued to work with Baiyin and Gramercy to negotiate the terms of the Recapitalization (including the Interim Financing, the Restructuring Term Sheet and the Support Agreement).

The Special Committee met on each of December 19, 20, 21 and 22 to consider the Recapitalization and to receive reports from its legal and financial advisors on the negotiation of the terms of the Recapitalization and of the Recapitalization Term Sheet and the Support Agreement.

At its meeting on December 22, 2017, the Special Committee, after receiving reports from its legal and financial advisors, resolved to recommend to the Board of Directors of the Company that the Company should seek protection from its creditors via a filing under the CCAA and implement the Recapitalization.

At a meeting of the Board held on December 22, 2017 the Board (with the representatives of Gramercy and Baiyin abstaining) unanimously approved the recommendation of the Special Committee and resolved to authorize the Banro to seek protection from its creditors via a filing under the CCAA.

On January 22, 2018, Banro's common shares were delisted from the NYSE American stock exchange and the Toronto Stock Exchange.

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# Appendix B

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## The Plan

Court File No. CV-17-589016-00CL

**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

APPLICANTS

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**CONSOLIDATED PLAN OF COMPROMISE AND REORGANIZATION  
PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* and the *CANADA  
BUSINESS CORPORATIONS ACT***

**concerning, affecting and involving**

**BANRO CORPORATION, BANRO GROUP (BARBADOS) LIMITED, BANRO CONGO  
(BARBADOS) LIMITED, NAMOYA (BARBADOS) LIMITED, LUGUSHWA (BARBADOS)  
LIMITED, TWANGIZA (BARBADOS) LIMITED AND KAMITUGA (BARBADOS) LIMITED**

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**January 25, 2018**

## CONSOLIDATED PLAN OF COMPROMISE AND REORGANIZATION

- A. Banro Corporation (“**Banro**”), Banro Group (Barbados) Limited, Banro Congo (Barbados) Limited, Namoya (Barbados) Limited, Lugushwa (Barbados) Limited, Twangiza (Barbados) Limited and Kamituga (Barbados) Limited (collectively, the “**Banro Barbados Entities**” and together with Banro, the “**Applicants**”) are debtor companies (as such term is defined in the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”)).
- B. On December 22, 2017, the Honourable Justice Hailey of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an Initial Order in respect of the Applicants (as such Order may be amended, restated or varied from time to time, the “**Initial Order**”) pursuant to the CCAA.
- C. The Applicants and the Non-Applicant Subsidiaries (as defined herein) (together, the “**Banro Parties**”) entered into a Support Agreement dated December 22, 2017 (as it may be amended, restated and varied from time to time in accordance with the terms thereof, the “**Support Agreement**”) with Baiyin International Investment Limited and affiliates thereof within the direct or indirect control of Baiyin Nonferrous Group Company, Limited (collectively, “**Baiyin**”), 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 any other party that executed a Consent Agreement (as defined herein) (collectively, the “**Consenting Parties**” and each a “**Consenting Party**”) pursuant to which the Consenting Parties agreed to support this Plan.

**NOW THEREFORE** the Applicants hereby propose and present this consolidated plan of compromise and reorganization under the CCAA and the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.

### ARTICLE 1 INTERPRETATION

#### 1.1 Certain Rules of Interpretation

For the purposes of this Plan:

- (a) In this Plan and the Recitals, unless otherwise stated or the subject matter or context otherwise requires, all terms defined herein have their meanings ascribed thereto in Schedule “**A**”.
- (b) Any reference in this Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means such document shall be substantially in such form or substantially on such terms and conditions;
- (c) Unless otherwise expressly provided herein, any reference in this Plan to an instrument, agreement or an Order or an existing document or exhibit filed or to be filed means such instrument, agreement, Order, document or exhibit as it may have been or may be amended, modified, or supplemented in accordance with its terms;

- (d) The division of this Plan into articles and sections is for convenience of reference only and does not affect the construction or interpretation of this Plan, nor are the descriptive headings of articles and sections intended as complete or accurate descriptions of the content thereof;
- (e) The use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of this Plan to such Person (or Persons) or circumstances as the context otherwise permits;
- (f) The words “includes” and “including” and similar terms of inclusion shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather shall mean “includes but is not limited to” and “including but not limited to”, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (g) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day;
- (h) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends;
- (i) Unless otherwise provided, any reference to a statute or other enactment of parliament, a legislature or other Governmental Entity includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;
- (j) References to a specific Recital, Article or Section shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specific Recital, Article or Section of this Plan, whereas the terms “this Plan”, “hereof”, “herein”, “hereto”, “hereunder” and similar expressions shall be deemed to refer generally to this Plan and not to any particular Recital, Article, Section or other portion of this Plan and include any documents supplemental hereto; and
- (k) The word “or” is not exclusive.

## **1.2 Governing Law**

This Plan shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation or application of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the jurisdiction of the Court.

## **1.3 Currency**

Unless otherwise stated, all references in this Plan to sums of money are expressed in, and all payments provided for herein shall be made in, United States dollars. In accordance with paragraph 35 of the Claims Procedure Order, any Claim (other than Priority Claims) in a currency other than United States dollars must be converted to United States dollars, and any such amount shall be regarded as having been converted at the daily exchange rate quoted by

the Bank of Canada for exchanging such currency to United States dollars as at the Filing Date, which for a conversion of Canadian dollars to United States dollars is CDN\$1.2759: USD\$1.00.

#### **1.4 Date for Any Action**

If the date on which any action is required to be taken hereunder by a Person is not a Business Day, such action shall be required to be taken on the next succeeding day which is a Business Day.

#### **1.5 Time**

Time shall be of the essence in this Plan.

### **ARTICLE 2 PURPOSE AND EFFECT OF THIS PLAN**

#### **2.1 Purpose**

The purpose of this Plan is to:

- (a) implement the Recapitalization; and
- (b) allow the Applicants to reorganize and continue ongoing operations;

in the expectation that Persons who have an economic interest in the Applicants or the Non-Applicant Subsidiaries, when considered as a whole, will derive a greater benefit from the implementation of the Plan than would result from a bankruptcy of the Applicants.

#### **2.2 Support Agreement**

The Banro Parties have executed the Support Agreement pursuant to which the Consenting Parties have agreed to support this Plan.

#### **2.3 Effectiveness**

Subject to the satisfaction, completion or waiver (to the extent permitted pursuant to section 9.4) of the conditions precedent set out herein, this Plan will become effective in the sequence described in Section 7.2 from and after the Effective Time and shall be binding on and enure to the benefit of the Applicants, the Affected Creditors, the Released Parties, and all other Persons as provided for herein, or subject to, this Plan and their respective successors and assigns and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

#### **2.4 Persons Not Affected**

- (a) This Plan does not affect Excluded Creditors to the extent of their Excluded Claims. Nothing in this Plan shall affect the Banro Parties' rights and defences, both legal and equitable, with respect to any Excluded Claims, including, but not limited to, all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Excluded Claims. Nothing herein shall constitute a waiver of any rights of any of the Applicants to dispute the quantum or validity of an Excluded Claim.
- (b) Other than with respect to the Affected Secured Claims and the Released Claims, this Plan does not affect or otherwise impair the Claims of any Person as against the Banro Barbados Entities or any of their direct subsidiaries.



### **ARTICLE 3 CLASSIFICATION, VOTING CLAIMS AND RELATED MATTERS**

#### **3.1 Classes**

For the purposes of considering, voting on, and receiving distributions under this Plan, the Affected Creditors shall constitute two classes: (i) the Affected Secured Class; and (ii) the Affected Banro Unsecured Class.

#### **3.2 Claims of Affected Creditors**

Except as otherwise provided in the Meeting Order, Affected Creditors shall be entitled to vote their Voting Claims at the Creditors' Meetings in respect of this Plan and shall be entitled to receive distributions on account of their Proven Claims as provided under and pursuant to this Plan.

#### **3.3 Excluded Claims**

Excluded Claims shall not be compromised under the Plan. No Excluded Creditor shall be:

- (a) entitled to vote or (except as otherwise expressly stated in the Meeting Order) attend in respect of their Excluded Claims at any Creditors' Meeting to consider and approve this Plan; or
- (b) entitled to receive any distribution or consideration under this Plan in respect of such Excluded Claim.

#### **3.4 Guarantees**

No Person who has a Claim under a guarantee in respect of any Claim which is compromised under the Plan (a "**Principal Claim**") or who has any right to or claim over in respect of or to be subrogated to the rights of any Person in respect of a Principal Claim, shall:

- (a) be entitled to any greater rights as against any of the Applicants than the Person holding the Principal Claim;
- (b) be entitled to vote on this Plan to the extent that the Person holding the Principal Claim is voting on this Plan; or
- (c) be entitled to receive any distribution under this Plan to the extent that the Person holding the Principal Claim is receiving a distribution.

#### **3.5 Creditors' Meetings**

- (a) The Creditors' Meetings shall be held in accordance with this Plan, the Meeting Order and any further Order in the CCAA Proceedings. Subject to the terms of any further Order in the CCAA Proceedings, the only Persons entitled to notice of, to attend or to speak at the Creditors' Meetings are the Eligible Voting Creditors (or their respective duly-appointed proxyholders), representatives of the Monitor, the Applicants, all such parties' financial and legal advisors, the Chair, Secretary and Scrutineers (all as defined in the Meeting Order). Any other person may be admitted to the Creditors' Meetings only by invitation of the Applicants or the Chair.

- (b) If this Plan is approved by both the Required Majorities, then this Plan shall be deemed to have been agreed to, accepted and approved by the Affected Creditors and shall be binding upon all Affected Creditors immediately upon the delivery of the Monitor's Certificate in accordance with section 9.6 hereof.

### **3.6 Procedure for Valuing Voting Claims**

The procedure for valuing Voting Claims and resolving Disputed Voting Claims shall be as set forth in the Claims Procedure Order, the Meeting Order, this Plan and the CCAA. The Monitor and the Applicants shall have the right to seek the assistance of the Court in valuing any Voting Claim in accordance with the Claims Procedure Order, the Meeting Order and this Plan, if required, and to ascertain the result of any vote on this Plan.

### **3.7 Determination of Beneficial Noteholders' Proven Affected Secured Claims**

For the purposes of rights, entitlements and distributions under this Plan, the amount of a Beneficial Noteholders' Proven Affected Secured Claim shall be determined on the basis of the principal amount of Secured Notes held by it as at the Distribution Record Date as set forth on the Master List provided by Participant Holders following the Registration Election Deadline in accordance with the Meeting Order.

## **ARTICLE 4 TREATMENT OF CLAIMS**

### **4.1 Treatment of Affected Secured Claims**

- (a) On the Implementation Date, in accordance with this Plan and in accordance with the steps and in the sequence set forth in Section 7.2, each of Baiyin and Gramercy, as Proven Affected Secured Creditors, shall be entitled to receive a distribution of its Affected Secured Pro Rata Share of the Class A Common Shares which shall, and shall be deemed to, be received in full and final settlement of its Affected Secured Claims.
- (b) On the Implementation Date, in accordance with this Plan and in accordance with the steps and in the sequence set forth in Section 7.2, each Proven Affected Secured Creditor other than Baiyin and Gramercy, shall be entitled to receive a distribution of its Affected Secured Pro Rata Share of the Class B Common Shares which shall, and shall be deemed to, be received in full and final settlement of its Affected Secured Claims.
- (c) Following completion of the steps set forth in Sections 4.1(a) and (b), the proportion that the number of outstanding Class A Common Shares and outstanding Class B Common Shares shall bear to the total number of Common Shares of both classes outstanding shall be equal, in each case, to the proportion that the aggregate amount of the Affected Secured Claims of Baiyin and Gramercy, on the one hand, and the aggregate amount of the Affected Secured Claims of all other Proven Affected Secured Creditors on the other hand bear to the aggregate amount of the Affected Secured Claims of all Proven Affected Secured Creditors.
- (d) New Equity received by an Affected Creditor shall be applied first to the payment of principal of its Affected Secured Claims and if such principal is fully repaid, shall be applied to the payment of accrued interest owing on such Affected Secured Claims.

- (e) On the Implementation Date, either (i) each Proven Affected Secured Creditor shall be deemed to be a party to the Shareholders Agreement, each in its capacity as a holder of New Equity, or (ii) the constating documents of Newco shall contain the Newco Share Terms which shall apply to each Proven Affected Secured Creditor in its capacity as a holder of New Equity, as applicable.

#### 4.2 Treatment of Affected Banro Unsecured Claims

- (a) On the Implementation Date, in accordance with this Plan and in accordance with the steps and in the sequence set forth in Section 7.2, each Proven Affected Banro Unsecured Creditor shall be entitled to receive a pro rata distribution from the Affected Banro Unsecured Pool.
- (b) All amounts received by an Affected Creditor from the Affected Banro Unsecured Pool shall be applied first to the payment of principal of its Proven Affected Banro Unsecured Claims and if such principal is fully repaid, shall be applied to the payment of accrued interest owing on such Proven Affected Banro Unsecured Claims.
- (c) Notwithstanding section 4.2(a) above, each Proven Affected Banro Unsecured Creditor with respect to its Affected Banro Unsecured Deficiency Claim waives their right under this Plan to receive any distribution from the Affected Banro Unsecured Pool.

#### 4.3 Priority Claims

- (a) In accordance with the Sanction Order, the CCAA and with the steps and in the sequence set forth herein, Section 7.2 and 7.3, the Employee Priority Claims and the Crown Priority Claims, if any, shall be paid from the Priority Claim Reserve Account.
- (b) Subject to the Effective Time occurring: (i) all Crown Priority Claims that were outstanding as at the Filing Date shall be paid in full by the Monitor on behalf of the Applicants, from the Priority Claim Reserve within six months after the Sanction Order, as required by subsection 6(3) of the CCAA; and (ii) all Employee Priority Claims to the extent unpaid prior to the Implementation Date shall be paid by the Monitor, on behalf of the Applicants, from the Priority Claim Reserve immediately after the Sanction Order as required by subsection 6(5) of the CCAA.

#### 4.4 Equity Claims

On the Implementation Date, in accordance with this Plan and in accordance with the steps and in the sequence set forth in Section 7.2, all Equity Claims other than Intercompany Claims that are Equity Claims (the “**Affected Equity Claims**”), and all Equity Interests, if any, shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred. Holders of Affected Equity Claims or Equity Interests shall not receive any consideration or distributions under this Plan and shall not be entitled to vote on this Plan at the Creditors’ Meetings and existing shares of Banro shall be cancelled and shall be deemed to be cancelled without compensation.

#### **4.5 Excluded Claims**

Excluded Creditors in respect to and to the extent of their Excluded Claims shall not receive any consideration under this Plan in respect of their Excluded Claims. Excluded Creditors shall not be entitled to vote on this Plan at the Creditors' Meetings in respect of their Excluded Claims.

#### **4.6 Disputed Claims**

Any Affected Banro Unsecured Creditor with a Disputed Affected Banro Unsecured Claim shall not be entitled to receive any distribution hereunder with respect to such Disputed Affected Banro Unsecured Claim unless and until such Disputed Affected Banro Unsecured Claim becomes a Proven Claim in accordance with the Claims Procedure Order. Distributions pursuant to and in accordance with Section 4.2 shall be paid or distributed in respect of any Disputed Affected Banro Unsecured Claim that is finally determined to be a Proven Claim in accordance with the Claims Procedure Order and Article 6 hereof.

#### **4.7 Director/Officer Claims**

All Director/Officer Claims that are not (i) Section 5.1(2) Director/Officer Claims, or (ii) judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer, shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration on the Implementation Date. For greater certainty, any Claim of a Director or Officer for indemnification from any of the Applicants in respect of any Director/Officer Claim that is not covered by the Directors' Charge shall be cancelled for no consideration.

#### **4.8 Extinguishment of Claims**

On the Implementation Date, in accordance with its terms and in the sequence set forth in Section 7.2 herein and in accordance with the provisions of the Sanction Order, the treatment of Affected Claims (including Proven Claims and Disputed Affected Banro Unsecured Claims) and all Released Claims, in each case as set forth herein, shall be final and binding on the Applicants, all Affected Creditors (and their respective heirs, executors, administrators, legal personal representatives, successors and assigns) and any Person holding a Released Claim. All Affected Claims and all Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Released Parties shall thereupon have no further obligation whatsoever in respect of the Affected Claims and the Released Claims, as applicable; provided that nothing herein releases any of the Applicants or any other Person from their obligations to make distributions in the manner and to the extent provided for in the Plan and provided further that such discharge and release of the Applicants shall be without prejudice to the right of an Affected Creditor in respect of a Disputed Affected Banro Unsecured Claim to prove such Disputed Affected Banro Unsecured Claim in accordance with the Claims Procedure Order so that such Disputed Affected Banro Unsecured Claim may become a Proven Claim entitled to receive consideration under Sections 4.1 and 4.2 hereof.

#### **4.9 Set-Off**

The law of set-off applies to all Claims.

## **ARTICLE 5 CREATION OF POOL AND RESERVES**

### **5.1 Creation of the Affected Banro Unsecured Pool**

- (a) Three Business Days prior to the Implementation Date, Banro shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), the Cash in the amount necessary to establish the Affected Banro Unsecured Pool.
- (b) The Monitor shall hold the Affected Banro Unsecured Pool and shall distribute such Cash in the Affected Banro Unsecured Pool to Proven Affected Banro Unsecured Creditors holding Listed Claims in accordance with Article 6 hereof.

### **5.2 Creation of the Administrative Reserve**

- (a) Three Business Days prior to the Implementation Date, Banro shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), Cash in the amount necessary to establish the Administrative Reserve.
- (b) The Monitor shall hold the Administrative Reserve in the Administrative Reserve Account for the purpose of paying the Administrative Reserve Costs in accordance with this Plan and shall distribute any remaining balance in the Administrative Reserve Account to the Applicants, in accordance with section 7.3 of the Plan.

### **5.3 Creation of the Priority Claim Reserve**

- (a) Three Business Days prior to the Implementation Date, Banro shall deliver to the Monitor by way of wire transfer (in accordance with the wire transfer instructions provided by the Monitor at least five (5) Business Days prior to the Implementation Date), Cash in the amount necessary to establish the Priority Claim Reserve.
- (b) The Monitor shall hold the Priority Claim Reserve in the Priority Claim Reserve Account for the purpose of paying the Priority Claims in accordance with this Plan and shall distribute any remaining balance in the Priority Claim Reserve Account to the Applicants, in accordance with section 7.3 of this Plan.

## **ARTICLE 6 PROVISIONS REGARDING DISTRIBUTIONS AND DISBURSEMENTS**

### **6.1 Distributions and Disbursements Generally**

- (a) All distributions and disbursements to be effected pursuant to the Plan shall be made pursuant to this Article 6 and shall occur in the manner set out below under the supervision of the Monitor.
- (b) All distributions and disbursements to be effected pursuant to this Plan on account of Affected Secured Claims shall be made to the Affected Secured Creditors holding such Proven Affected Secured Claims as at the Distribution

Record Date and the Applicants, the Monitor and their agents shall have no obligation to deal with a transferee or assignee of such Proven Affected Secured Claim after the Distribution Record Date in respect of any such matter. Affected Secured Creditors who assign their Affected Secured Claims after the Distribution Record Date shall be wholly responsible for ensuring that plan distributions intended to be included within such assignments are in fact delivered to the assignee and neither the Applicants, the Monitor, CDS, nor the Canadian Trustee, as applicable, shall have any liability in connection therewith.

- (c) Notwithstanding any other provisions of the Plan, no distributions or transfers of Cash shall be made by the Monitor with respect to all or any portion of a Disputed Affected Banro Unsecured Claim unless and only to the extent that such Disputed Affected Banro Unsecured Claim has become a Proven Claim.

## 6.2 Issuance and Delivery of New Equity

- (a) The delivery of the New Equity to be distributed under this Plan will be made either (i) by delivering share certificates representing the New Equity in the name of the applicable recipient, or (ii) through the facilities of a direct registration system operated by the Transfer Agent by providing direct registration system advices or confirmations in the name of the applicable recipient and registered electronically in Newco's records which will be maintained by the Transfer Agent.
- (b) On the Implementation Date or as soon as reasonably practicable thereafter, Newco, on account of Proven Affected Secured Creditor Claims, shall issue the New Equity to the Transfer Agent to be held for the benefit of (i) Proven Affected Secured Creditors that are not Beneficial Noteholders, in the name of and to the address as recorded in the books and records of the Applicants or as otherwise communicated to the Applicants not less than three Business Days prior to the anticipated Implementation Date, (ii) to Beneficial Noteholders that have validly provided Registration Instructions to their Participant Holders in accordance with the Meeting Order prior to the Distribution Record Date, in accordance with their Registration Instructions provided by such Beneficial Noteholders as recorded on the Master List, and (iii) to Beneficial Noteholders that have not delivered Registration Instructions to their Participant Holders on or prior to the Distribution Record Date, in the name of such Beneficial Noteholder's Participant Holders in trust for such Beneficial Noteholders.
- (c) Notwithstanding Section 6.2(b), no Proven Affected Secured Creditor shall be entitled to the rights associated with the New Equity and all such New Equity shall be held solely by the Transfer Agent and recorded on the books and records of the Applicants by the Transfer Agent until such time as it has delivered its Newco Equityholder Information to the Transfer Agent and/or Newco, as applicable. In the event that an Affected Secured Creditor fails to deliver its Newco Equityholder Information in accordance with this Section 6.2(c) on or before the date that is 6 months following the Implementation Date, Newco shall be entitled to cancel, and Newco and the Transfer Agent shall have no further obligation to deliver, any New Equity otherwise issuable to Affected Proven Secured Creditors (such equity, the "**Cancelled New Equity**") that have not delivered their Newco Equityholder Information accordance this Section 6.2(c) and all such Proven Affected Secured Creditors shall cease to have a claim to, or interest of any kind or nature against or in, the Applicants, Newco or the

Cancelled New Equity and the Transfer Agent shall delete such Cancelled New Equity from the books and records of the Applicants as maintained by the Transfer Agent.

- (d) No fractional common shares of Newco shall be allocated or issued under this Plan. Any legal, equitable, contractual and any other rights or claims (whether actual or contingent, and whether or not previously asserted) of any Person with respect to fractional common shares of Newco issued pursuant to this Plan shall be rounded down to the nearest whole number without compensation therefor.

### **6.3 Distributions of Cash After Disputed Affected Banro Unsecured Claims Resolved**

From and after the date of the resolution of all Disputed Affected Banro Unsecured Claims in accordance with the Claims Procedure Order (the “**Unsecured Creditor Distribution Date**”), the Monitor shall distribute to such Affected Banro Unsecured Creditor, Cash in an amount equal to its Affected Banro Unsecured Pro Rata Share, less any Withholding Obligations or statutory deductions required by Applicable Law;

### **6.4 Method of Payment**

All distributions in Cash to Affected Banro Unsecured Creditors to be made by the Monitor under this Plan shall be made by cheque sent by prepaid ordinary mail to the address for such Affected Banro Unsecured Creditor as recorded in the books and records of the Applicants or as otherwise communicated to the Monitor not more than 3 Business Days following the granting of the Sanction Order by such Affected Banro Unsecured Creditor, or an assignee in respect of such Affected Banro Unsecured Creditor's Proven Claim.

### **6.5 Undeliverable Distributions**

- (a) If any distribution is returned as undeliverable or is not cashed (in each case, an “**Undeliverable Distribution**”), no further distributions to such Affected Creditor shall be made unless and until the Monitor is notified by such Affected Creditor of its current address or wire particulars, at which time all such distributions shall be made to such Affected Creditor without interest.
- (b) All claims for undeliverable or un-cashed distributions in respect of Proven Claims shall be made on or before the date that is 6 months after the Final Distribution Date, after which date the Proven Claims of such Affected Creditor or successor or assign of such Affected Creditor with respect to such unclaimed or un-cashed distributions shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any Applicable Law to the contrary, at which time any Cash held by the Monitor in relation to such undeliverable or unclaimed distribution shall be returned to Banro. Nothing in the Plan or Sanction Order shall require the Monitor or the Applicants to attempt to locate the holder of any Proven Claim or Excluded Claim.
- (c) If the certificates and/or direct registration advices or confirmations representing the New Equity issued and delivered pursuant to the instructions contained in a Share Receipt Instruction Form are returned as undeliverable, then any right or claim thereto shall, as of the first anniversary of the Implementation Date, cease to represent a right or claim of any kind or nature and the right of the holder to receive the New Equity shall terminate and be deemed to be surrendered and forfeited to Newco, for no consideration.

## 6.6 Tax Matters

- (a) Any terms and conditions of any Affected Claims which purport to deal with the ordering of or grant of priority of payment of principal, interest, penalties or other amounts shall be deemed to be void and ineffective.
- (b) Notwithstanding any provisions of the Plan, each Person that receives a distribution, disbursement or other payment pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on such Person by any Taxing Authority on account of such distribution, disbursement or payment.
- (c) Any payor shall be entitled to deduct and withhold and remit from any distribution, payment or consideration otherwise payable to any Person pursuant to the Plan such amounts as are required (a **"Withholding Obligation"**) to be deducted and withheld with respect to such payment under the ITA, or any provision of federal, provincial, territorial, state, local or foreign tax law, in each case, as amended or succeeded. For greater certainty, no distribution, payment or other consideration shall be made to or on behalf of a Person until such Person has delivered to the Monitor and Banro such documentation prescribed by Applicable Law or otherwise reasonably required by the Monitor as will enable the Monitor to determine whether or not, and to what extent, such distribution, payment or consideration to such Person is subject to any Withholding Obligation imposed by any Taxing Authority.
- (d) All distributions made pursuant to the Plan shall be first in satisfaction of the portion of Affected Claims that are not subject to any Withholding Obligation.
- (e) To the extent that amounts are withheld or deducted and paid over to the applicable Taxing Authority, such withheld or deducted amounts shall be treated for all purposes of the Plan as having been paid to such Person as the remainder of the payment in respect of which such withholding and deduction were made.
- (f) For the avoidance of doubt, it is expressly acknowledged and agreed that the Monitor and any Director or Officer will not hold any assets hereunder, including Cash, or make distributions, payments or disbursements, and no provision hereof shall be construed to have such effect.

## **ARTICLE 7 IMPLEMENTATION**

### 7.1 Corporate Authorizations

The adoption, execution, delivery, implementation and consummation of all matters contemplated under this Plan involving corporate action of the Applicants will occur and be effective as of the Implementation Date, and will be authorized and approved under this Plan and by the Court, where appropriate, as part of the Sanction Order, in all respects and for all purposes without any requirement of further action by shareholders, directors or officers of any of the Applicants. All necessary approvals to take actions shall be deemed to have been obtained from the Directors or the shareholders of the Applicants, as applicable, including resolution or special resolution with respect to any of the steps contemplated by this Plan shall be deemed to be effective.



## 7.2 Implementation Date Transactions

Commencing at the Effective Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected in five minute increments (unless otherwise indicated) and at the times set out in this section (or in such other manner or order or at such other time or times as the Applicants may determine in consultation with the Monitor and the Requisite Consenting Parties), without any further act or formality required on the part of any Person, except as may be expressly provided herein:

- (a) all of BGB's issued and outstanding Equity Interests held by Banro shall be cancelled without any return of capital and BGB shall simultaneously issue to Newco the New BGB Common Shares pursuant to the Newco/BGB Subscription Agreement;
- (b) Newco shall issue the Stream Warrants as consideration for the Stream Amendments;
- (c) all of the issued and outstanding Equity Interests in Banro shall be cancelled and extinguished for no consideration and without any return of capital and Banro shall issue 100 common shares to BGB;
- (d) the Administration Charge and the Directors' Charge shall continue and shall attach solely against the Administrative Reserve from and after the Implementation Date pursuant to and in accordance with the Sanction Order and shall be deemed to be released as against the other Property (as defined in the Initial Order) of the Applicants pursuant to and in accordance with the Sanction Order;
- (e) concurrently:
  - (i) the Affected Secured Creditors shall be entitled to the treatment set out in section 4.1 hereof in full and final settlement of their Affected Secured Claims, and the Affected Secured Claims shall, and shall be deemed to be, irrevocably and finally extinguished and such Affected Secured Creditors shall have no further right, title or interest in and to its Affected Secured Claim; and
  - (ii) either (A) each Proven Affected Secured Creditor shall be deemed to be a party to the Shareholders Agreement, each in its capacity as a holder of New Equity, or (B) the constating documents of Newco shall contain the Newco Share Terms which shall apply to each Proven Affected Secured Creditor in its capacity as a holder of New Equity, as applicable;
- (f) the Affected Banro Unsecured Creditors shall be entitled to the treatment set out in section 4.2 hereof in full and final settlement of their Affected Banro Unsecured Claims, and the Affected Banro Unsecured Claims shall, and shall be deemed to be, irrevocably and finally extinguished and such Affected Banro Unsecured Creditors shall have no further right, title or interest in and to its Affected Banro Unsecured Claim other than their right to distribution under this Plan.
- (g) the Intercompany Claims shall be treated in the manner so elected by the Applicants with consent of the Requisite Consenting Parties;
- (h) simultaneously:

- (i) the Interim Facility shall be replaced by the New Secured Facility pursuant to the New Secured Facility Credit Agreement;
- (ii) the DIP Lender's Charge shall be and shall be deemed to be discharged from the assets of the Applicants; and
- (iii) Newco shall issue the New Secured Facility Warrants to the DIP Lender;
- (i) the directors of Banro immediately prior to the Effective Time shall be deemed to have resigned and the New Banro Board shall be deemed to have been appointed; and
- (j) the releases and injunctions referred to in accordance with Article 8 hereof shall become effective.

### 7.3 Post-Implementation Date Transactions

- (a) The Monitor, on behalf of the Applicants, shall pay (i) the Priority Claims pursuant to and in accordance with section 4.3 from the Priority Claim Reserve Account; (ii) any other Administrative Reserve Costs from the Administrative Reserve Account; and (iii) distributions from the Affected Banro Unsecured Pool in accordance with Article 6 hereof.
- (b) The Monitor shall, as and when it determines appropriate, transfer any unused portion of the Administrative Reserve Account to the Applicants.

## ARTICLE 8 RELEASES

### 8.1 Plan Releases

- (a) At the Effective Time, each of the Banro Parties and their respective subsidiaries and affiliates and each of their respective shareholders, partners, Directors, Officers, current and former employees, financial advisors, legal counsel and agents, (being referred to collectively as the "**Banro Released Parties**") shall be released and discharged from any and all demands, claims, liabilities, causes of action, debts, accounts, covenants, damages, executions and other recoveries based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, applications, counterclaims, suits, sums of money, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Creditor, Affected Creditor, or other Person may be entitled to assert, including any and all Claims in respect of the payment and receipt of proceeds, statutory liabilities of the Directors, Officers and employees of the Banro Released Parties and any alleged fiduciary or other duty (whether such employees are acting as a Director, Officer or employee), including any and all Claims that may be made against the Banro Released Parties where by law such Banro Released Parties may be liable in their capacity as Directors or Officers of the Applicants, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Effective Time arising out of or in

connection with the Affected Claims, the Support Agreement, the Recapitalization, the Plan, the CCAA Proceedings, or any Director/Officer Claim any Claim that has been barred or extinguished by the Claims Procedure Order, and all such Claims shall be forever waived and released (other than the right to enforce the Applicants' obligations under the Plan, Support Agreement or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge (i) the Applicants from any Excluded Claims, (ii) the Directors and Officers to the extent that any claims against the Directors and Officers cannot be released under the CCAA based on statutory limitations set out in the CCAA (such as claims under section 5.1(2) of the CCAA) or (iii) any Banro Released Party if such Banro Party Released Party is judged by the express terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct. Notwithstanding the foregoing, all Intercompany Claims owing by any of the Banro Parties to any of the other Banro Parties shall not be released unless the Applicants, with the consent of the Requisite Consenting Parties, elect to extinguish such obligations.

- (b) At the Effective Time, the Monitor, the Requisite Consenting Parties and their respective subsidiaries and affiliates and each of their respective shareholders, partners, officers, directors, current and former employees, financial advisors, legal counsel and agents (being referred to individually as a "**Third Party Released Party**") are hereby released and discharged from any and all demands, claims, liabilities, causes of action, debts, accounts, covenants, damages, executions and other recoveries based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, actions, applications, counterclaims, suits, sums of money, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the Implementation Date in any way relating to, arising out of or in connection with the Applicants, the Plan, the CCAA Proceedings and any Claims, including any Claim that has been barred or extinguished by the Claims Procedure Order, and all claims arising out of such actions or omissions shall be forever waived and released (other than the right to enforce the Monitor's or the Requisite Consenting Parties' obligations under the Plan, the Support Agreement or any related document), all to the full extent permitted by Applicable Law, provided that nothing herein shall release or discharge any Third Party Released Party if such Third Party Released Party is judged by the express terms of a judgment rendered on a final determination on the merits to have committed criminal, fraudulent or other wilful misconduct.
- (c) The Sanction Order will enjoin the prosecution, whether directly, derivatively or otherwise, of any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest released, discharged, compromised or terminated pursuant to the Plan.

- (d) Nothing in the Plan shall be interpreted as restricting the application of Section 21 of the CCAA.

## **8.2 Timing of Releases and Injunctions**

All releases and injunctions set forth in this Article 8 shall become effective on the Implementation Date.

## **8.3 Knowledge of Claims**

Each Person to which Section 8.1 hereof applies shall be deemed to have granted the releases set forth in Section 8.1 notwithstanding that it may hereafter discover facts in addition to, or different from, those which it now knows or believes to be true, and without regard to the subsequent discovery or existence of such different or additional facts, and such party expressly waives any and all rights that it may have under any applicable law which would limit the effect of such releases to those Claims or causes of action known or suspected to exist at the time of the granting of the release.

# **ARTICLE 9 COURT SANCTION, CONDITIONS PRECEDENT AND IMPLEMENTATION**

## **9.1 Application for Sanction Order**

If this Plan is approved by the Required Majorities, the Applicants shall apply for the Sanction Order on the date set out in the Meeting Order or such later date as the Court may set.

## **9.2 Sanction Order**

The Sanction Order shall be substantially in the form attached (without schedules) as Schedule "B" hereto, with such amendments as the Monitor, the Applicants and the Requisite Consenting Parties may agree.

## **9.3 Conditions to the Implementation Date**

The implementation of this Plan shall be conditional upon the fulfillment, satisfaction or waiver (to the extent permitted by Section 9.4 hereof) of the following conditions:

- (a) the Plan shall have been approved by the Required Majorities;
- (b) the Court shall have granted the Sanction Order the operation and effect of which shall not have been stayed, reversed or amended and in the event of an appeal or application for leave to appeal, final determination shall have been made by the appellate court;
- (c) the Administrative Reserve shall have been funded by the Applicants;
- (d) the Priority Claim Reserve shall have been funded by the Applicants;
- (e) the conditions precedent to the implementation of the Recapitalization set forth in Article 8 of the Support Agreement shall have been satisfied or waived;
- (f) the Priority Lien Debt, the Gold Streams, the Shareholder Agreement and the Interim Facility and all related agreements and other documents necessary in connection with the amendments thereto contemplated by the Recapitalization and the implementation of this Plan, shall be in form and substance acceptable to

the Applicants, the Monitor and the Requisite Consenting Parties and shall have become effective, subject only to the implementation of the Plan;

- (g) the Implementation Date shall have occurred no later than the Outside Date; and
- (h) the constating documents of Newco and the composition of the board of Newco effective on and after the Implementation Date shall be consistent with the Restructuring Term Sheet and otherwise acceptable to the Applicants and the Requisite Consenting Parties, acting reasonably.

#### **9.4 Waiver of Conditions**

The Applicants, in consultation with the Monitor, may at any time and from time to time waive the fulfillment or satisfaction, in whole or in part, of the conditions set out herein, to the extent and on such terms as such parties may agree to, provided however that the conditions set out in sections 9.3(e), (f), (g) and (h) may only be waived with the consent of the Requisite Consenting Parties.

#### **9.5 Implementation Provisions**

If the conditions contained in Section 9.3 are not satisfied or waived (to the extent permitted under Section 9.4) by the Outside Date, unless the Applicants, in consultation with the Monitor, and the Requisite Consenting Parties, agree in writing to extend such period, this Plan and the Sanction Order shall cease to have any further force or effect and will not be binding on any Person.

#### **9.6 Monitor's Certificate of Plan Implementation**

Upon written notice from the Applicants and the Requisite Consenting Parties (or counsel on their behalf) to the Monitor that the conditions to Plan implementation set out in Section 9.3, have been satisfied or waived, the Monitor shall, as soon as possible following receipt of such written notice, deliver to the Applicants and file with the Court, a certificate (the "**Monitor's Certificate**") which states that all conditions precedent set out in Section 9.3 have been satisfied or waived and that Implementation Date (which shall be set out on the certificate) has occurred.

### **ARTICLE 10 GENERAL**

#### **10.1 Deeming Provisions**

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

#### **10.2 Claims Bar Date**

Nothing in this Plan extends or shall be interpreted as extending or amending the Claims Bar Date, or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order.

#### **10.3 Non-Consummation**

If the Implementation Date does not occur on or before the Outside Date (as the same may be extended in accordance with the terms hereof and of the Support Agreement), or if this Plan is otherwise withdrawn in accordance with its terms: (a) this Plan shall be null and void in all respects, and (b) nothing contained in this Plan, and no acts taken in preparation for

consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Banro Parties, their respective successors or any other Person; (ii) prejudice in any manner the rights of the Banro Parties, their respective successors or any other Person in any further proceedings involving the Banro Parties or their respective successors; or (iii) constitute an admission of any sort by the Banro Parties, their respective successors or any other Person.

#### **10.4 Modification of Plan**

- (a) The Applicants reserve the right to amend, restate, modify and/or supplement this Plan at any time and from time to time, provided that (except as provided in subsection (c) below) any such amendment, restatement, modification or supplement must be contained in a written document that is (A) filed with the Court and, if made following the Creditors' Meetings, approved by the Court, and (B) approved by the Monitor and the Requisite Consenting Parties, and communicated to the Affected Creditors in the manner required by the Court (if so required):
  - (i) if made prior to or at the Creditors' Meetings: (A) the Chair (as defined in the Meeting Order) shall communicate the details of any such amendment, restatement, modification and/or supplement to Affected Creditors and other Persons present at the Creditors' Meeting prior to any vote being taken at the Creditors' Meeting; (B) the Applicants shall provide notice to the service list of any such amendment, restatement, modification and/or supplement and shall file a copy thereof with the Court forthwith and in any event prior to the Court hearing in respect of the Sanction Order; and (C) the Monitor shall post an electronic copy of such amendment, restatement, modification and/or supplement on the Monitor's Website forthwith and in any event prior to the Court hearing in respect of the Sanction Order;
  - (ii) if made following the Creditors' Meetings: (A) the Applicants shall provide notice to the service list of any such amendment, restatement, modification and/or supplement and shall file a copy thereof with the Court; (B) the Monitor shall post an electronic copy of such amendment, restatement, modification and/or supplement on the Monitor's Website; and (C) such amendment, restatement, modification and/or supplement shall require the approval of the Court following notice to the service list.
- (b) Any amendment, modification or supplement to this Plan may be proposed by the Applicants with the consent of the Monitor and the Requisite Consenting Parties at any time prior to or at the Creditors' Meetings, with or without any prior notice or communication (other than as may be required under the Initial Order), and if so proposed and affected at the Creditors' Meetings, shall become part of this Plan for all purposes.
- (c) Any amendment, modification or supplement to this Plan may be made following the Creditors' Meetings by the Applicants, with the consent of the Monitor, without requiring filing with, or approval of, the Court, provided that it concerns a matter which is of an administrative nature and is required to better give effect to the implementation of this Plan and is not materially adverse to the financial or economic interests of any of the Consenting Parties or any Affected Creditors.

### **10.5 Severability of Plan Provisions**

If, prior to the Effective Time, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, at the request of the Applicants, the Court shall have the power to either (a) sever such term or provision from the balance of this Plan and provide the Applicants with the option to proceed with the implementation of the balance of this Plan as of and with effect from the Effective Time, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that this Plan is implemented, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

### **10.6 Preservation of Rights of Action**

Except as otherwise provided in this Plan or in the Sanction Order, or in any contract, instrument, release, indenture or other agreement entered into in connection with this Plan, following the Implementation Date, the Applicants will retain and may enforce, sue on, settle, or compromise (or decline to do any of the foregoing) all claims, rights or causes of action, suits and proceedings, whether in law or in equity, whether known or unknown, that the Applicants may hold against any Person or entity without further approval of the Court.

### **10.7 Responsibilities of Monitor**

The Monitor is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to the Applicants and not in its personal or corporate capacity, and shall have no liability in connection with the implementation of this Plan, including without limitation with respect to making distributions pursuant to and in accordance with the Plan, the establishment and administration of the Affected Banro Unsecured Pool, the Administrative Reserve, the Priority Claim Reserve and the Disputed Affected Banro Unsecured Claims Reserve (and in each case, any adjustments with respect to same) or the timing or sequence of the plan transaction steps, in each case save and except for gross negligence and wilful misconduct. The Monitor shall not be responsible or liable whatsoever for any obligations of the Applicants. The Monitor shall at all times have the powers and protections granted to it by the Plan, the CCAA, the Initial Order, the Meeting Order, and any other Order made in the CCAA Proceedings.

### **10.8 Different Capacities**

Persons who are affected by the Plan may be affected in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not affect such Person in any other capacity, unless expressly agreed by a Person in writing or unless its Claims overlap or are otherwise duplicative.

### **10.9 Notices**

Any notice or other communication to be delivered hereunder must be in writing and refer to this Plan and may, as hereinafter provided, be made or given by personal delivery, ordinary mail, email or by facsimile addressed to each of the respective Parties as follows:

- (a) Banro Corporation  
1 First Canadian Place

- 20 -

100 King Street West, Suite 7005  
Toronto, ON M5X 1E3

Attention: Rory Taylor  
Email: rtaylor@banro.com

with a required copy (which shall not be deemed notice) to:

Cassels Brock & Blackwell LLP  
40 King Street West  
2100 Scotia Plaza  
Toronto, Ontario M5H 3C2

Attention: Ryan Jacobs/ Jane O. Dietrich  
Email: rjacobs@casselsbrock.com/  
jdietrich@casselsbrock.com

- (b) The Monitor  
FTI Consulting Canada Inc.  
79 Wellington Street West  
Toronto Dominion Centre, Suite 2010, P.O. Box 104  
Toronto, ON M5K 1G8

Attention: Nigel Meakin/ Toni Vanderlaan  
Email: nigel.meakin@fticonsulting.com/  
toni.vanderlaan@fticonsulting.com

And to:

McMillan LLP  
181 Bay Street, Suite 4400  
Toronto, ON M5J 2T3  
Attention: Wael Rostom/ Caitlin Fell  
Email: wael.rostom@mcmillan.ca/  
caitlin.fell@mcmillan.ca

- (c) If to Baiyin, at:

Resource FinanceWorks Limited  
17/F Wilson House, 19-27 Wyndham Street  
Central, Hong Kong  
Attention: Clement Kwong  
Email: clementkwong@resourcefinanceworks.com

With a required copy (which shall not be deemed notice) to:

McCarthy Tétrault LLP  
Suite 2400  
745 Thurlow Street  
Vancouver, BC V6E 0C5  
Attention: Sean F. Collins/ Roger Taplin



Email: scollins@mccarthy.ca/ rtaplin@mccarthy.ca

(d) If to Gramercy, at:

Gramercy Funds Management LLC  
20 Dayton Avenue  
Greenwich, CT 06830 USA

Attention: Robert Rauch/ Brian Nunes/ Operations  
Email: rrauch@gramercy.com/  
bnunes@gramercy.com/  
operations@gramercy.com

With a required copy (which shall not be deemed notice) to:

Goodmans LLP  
Suite 3400  
333 Bay Street  
Bay Adelaide Centre  
Toronto, ON M5H 2S7

Attention: Kari Mackay/ Brendan O'Neill  
Email: kmackay@goodmans.ca/  
boneill@goodmans.ca

or to such other address as any Party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

#### **10.10 Paramountcy**

From and after the Effective Time, any conflict between:

- (a) this Plan; and
- (b) the covenants, warranties, representations, terms, conditions, provisions or obligations, expressed or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between any Person and the Applicants and/or the Non-Applicant Subsidiaries as at the Implementation Date,

will be deemed to be governed by the terms, conditions and provisions of this Plan and the Sanction Order, which shall take precedence and priority.

#### **10.11 Further Assurances**

Notwithstanding that the transactions and events set out herein will occur and be deemed to occur in the order set out in this Plan without any further act or formality, each of the Persons

named or referred to in, or subject to, this Plan will make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by any of them to carry out the full intent and meaning of this Plan and to give effect to the transactions contemplated herein.

Dated this 25<sup>th</sup> day of January, 2018.

## SCHEDULE "A" INTERPRETATION

### Definitions

**"Administration Charge"** has the meaning given to that term in the Initial Order;

**"Administrative Reserve"** means a Cash reserve, in an amount to be agreed to by the Monitor, the Applicants and the Requisite Consenting Parties at least three (3) Business Days prior to the Implementation Date, or failing agreement, the amount ordered by the Court, to be deposited by the Applicants into the Administrative Reserve Account for the purpose of paying the Administrative Reserve Costs;

**"Administrative Reserve Account"** means a segregated interest-bearing trust account established by the Monitor to hold the Administrative Reserve;

**"Administrative Reserve Costs"** means costs incurred and payments to be made on or after the Implementation Date (including costs incurred prior to the Implementation Date which remain outstanding as of the Implementation Date) in respect of: (a) the Monitor's fees and disbursements (including of its legal counsel and other consultants and advisors) in connection with the performance of its duties under the Plan and in the CCAA Proceedings, including without limitation all costs associated with resolving Disputed Affected Banro Unsecured Claims; (b) the Applicants' legal fees and disbursements in connection with the Plan and the CCAA Proceedings including without limitation all costs associated with resolving Disputed Affected Banro Unsecured Claims; (c) amounts secured by the Directors' Charge; and (d) any other reasonable amounts in respect of any other determinable contingency as the Applicants, with the consent of the Monitor and the Requisite Consenting Parties may determine in connection with the Applicants or the CCAA Proceedings;

**"Affected Banro Unsecured Claim"** means (i) the Listed Claims; and (ii) Affected Banro Unsecured Deficiency Claims;

**"Affected Banro Unsecured Class"** means the class of creditors holding Affected Banro Unsecured Claims;

**"Affected Banro Unsecured Creditor"** means the holder of an Affected Banro Unsecured Claim in respect of and to the extent of such Affected Banro Unsecured Claim;

**"Affected Banro Unsecured Deficiency Claim"** means an unsecured Claim equal to 25% of the amount of the Claim under each of: (i) the Proven Secured Notes Claim; (ii) the Proven Doré Loan Claim; and (iii) the Proven Namoya Forward II Claim;

**"Affected Banro Unsecured Pool"** means Cash in the amount of \$10,000.00;

**"Affected Banro Unsecured Pro Rata Share"** means the proportionate share of the Listed Claim of a Proven Affected Banro Unsecured Creditor to the total of all Listed Claims of Proven Affected Banro Unsecured Creditors after final determination of all Disputed Affected Banro Unsecured Claims in accordance with the Claims Procedure Order;

**"Affected Banro Unsecured Required Majority"** means a majority in number of Affected Banro Unsecured Creditors representing at least two thirds in value of the Voting Claims of

Affected Banro Unsecured Creditors who actually vote (in person or by Proxy) at the Creditors' Meeting;

**"Affected Claims"** means all Claims against any of the Applicants that are not Excluded Claims;

**"Affected Creditor"** means the holder of an Affected Claim in respect of and to the extent of such Affected Claim;

**"Affected Equity Claims"** has the meaning ascribed to that term in section 4.4;

**"Affected Secured Claim"** means Claims under (i) the Secured Notes in the amount equal to 75% of the Proven Secured Notes Claim; (ii) the Doré Loan in an amount equal to 75% of the Proven Doré Loan Claim; and (iii) the Namoya Forward II Agreement in an amount equal to 75% of the Namoya Forward II Claim;

**"Affected Secured Class"** means the class of creditors holding Affected Secured Claims;

**"Affected Secured Creditor"** means the holder of an Affected Secured Claim;

**"Affected Secured Pro Rata Share"** means, as to: (a) each of Baiyin and Gramercy in their capacity as Affected Secured Creditors, the proportionate share of Proven Affected Secured Claims held by it on the Distribution Record Date of all Proven Affected Secured Claims held by Baiyin and Gramercy together on the Distribution Record Date; and (b) in respect of any other Affected Secured Creditor, the proportionate share of Proven Affected Secured Claims held by it on the Distribution Record Date of all Proven Affected Secured Claims held by all Affected Secured Creditors other than Baiyin and Gramercy, on the Distribution Record Date;

**"Affected Secured Required Majority"** means a majority in number of Affected Secured Creditors representing at least two thirds in value of the Voting Claims of Affected Secured Creditors who actually vote (in person or by Proxy) at the Creditors' Meeting;

**"Applicable Law"** means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter, including, where appropriate, any interpretation of the Law (or any part thereof) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation;

**"Applicants"** has the meaning ascribed to that term in the Recitals;

**"Baiyin"** has the meaning ascribed to that term in the Recitals;

**"Banro"** has the meaning ascribed to that term in the Recitals;

**"Banro Barbados Entities"** has the meaning ascribed to that term in the Recitals;

**"Banro Parties"** has the meaning ascribed to that term in the Recitals;

**"Banro Released Parties"** has the meaning ascribed to that term in section 8.1 hereof;

**"Beneficial Noteholders"** means a beneficial or entitlement holder of Secured Notes holding such Secured Notes in a securities account with a depository participant or other securities intermediary including, for greater certainty, such depository participant or other securities intermediary only if and to the extent such depository participant or other securities intermediary holds the Secured Notes as a principal for its own account;

**"BGB"** means Banro Group (Barbados) Limited;

**“Business Day”** means any day, other than a Saturday, or a Sunday or a statutory or civic holiday, on which banks are generally open for business in Toronto, Ontario;

**“Canadian Trustee”** means TSX Trust Company;

**“Cash”** means cash, certificates of deposit, bank deposits, commercial paper, treasury bills and other cash equivalents;

**“Cassels”** means Cassels Brock & Blackwell LLP, legal counsel to the Applicants and the Banro Parties;

**“Cayman Law”** means the laws of the Cayman Islands, as in effect at the relevant time;

**“CCAA”** has the meaning ascribed to that term in the Recitals;

**“CCAA Proceedings”** means the proceedings commenced by the Applicants under the CCAA as contemplated by the Initial Order;

**“CDS”** means Canadian Depository for Securities or its nominee, which at the date of this Plan is CDS & Co. or any successor thereof;

**“Charges”** has the meaning ascribed to that term in the Initial Order;

**“Circular”** means Banro’s information circular dated January 1, 2018;

**“Claim”** means:

- (a) any right or claim, including any Tax Claim, of any Person that may be asserted or made in whole or in part against any of the Applicants, in any capacity, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever of any of the Applicants, and any interest accrued thereon or costs payable in respect thereof, in existence on the Filing Date, or which is based on an event, fact, act or omission which occurred in whole or in part prior to the Filing Date, whether at law or in equity, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, any legal, statutory, equitable or fiduciary duty) or by reason of any equity interest, right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and together with any security enforcement costs or legal costs associated with any such claim, and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present or future, known or unknown, by guarantee, warranty, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature, including any claim arising from or caused by the termination, disclaimer, rescission, assignment or repudiation by any of the Applicants of any contract, lease or other agreement, whether written or oral, any claim made or asserted against any of the Applicants through any affiliate, subsidiary, associated or related person, or any right or ability of any Person to advance a claim for an accounting, reconciliation, contribution, indemnity, restitution or otherwise with respect to any matter, grievance, action (including any class action or proceeding before an administrative tribunal), cause or chose in action, whether existing at present or commenced in the future, and including

any other claims that would have been claims provable in bankruptcy had any of the Applicants become bankrupt on the Filing Date, any Equity Claim, and any claim against any of the Applicants for indemnification by any Director or Officer in respect of a Director/Officer Claim; and

- (b) any right or claim of any Person against any of the Applicants in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any of the Applicants to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by any of the Applicants on or after the Filing Date of any contract, lease, warranty obligation or other agreement whether written or oral;

**“Claims Procedure Order”** means the Order made in these proceedings on February 1, 2018 entitled “Claims Procedure Order”;

**“Claims Process”** means the claims process to be conducted in accordance with the Claims Procedure Order;

**“Claims Bar Date”** has the meaning ascribed to that term in the Claims Procedure Order;

**“Class A Common Share”** means a Class A Common Share of Newco, each of which shall have the right to one vote at any meeting of the shareholders of Newco and shall also have attached to it such other rights and restrictions as are acceptable to the Applicants, the Monitor and the Requisite Consenting Parties, acting reasonably;

**“Class B Common Share”** means a Class B Common Share of Newco, which shall have attached to it such rights and restrictions as are acceptable to the Applicants, the Monitor and the Requisite Consenting Parties, acting reasonably, other than the right to vote at any meeting of the shareholders of Newco, except as required by Cayman Law;

**“Consent Agreement”** means the form of consent agreement attached as “Schedule “B” to the Support Agreement;

**“Consenting Party”** has the meaning ascribed to that term in the Recitals;

**“Consenting Parties”** has the meaning ascribed to that term in the Recitals;

**“Court”** has the meaning ascribed to that term in the Recitals;

**“Creditor”** means any Person having a Claim and includes without limitation the transferee or assignee of a Claim transferred and recognized as a Creditor in accordance with the Claims Procedure Order or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person;

**“Creditors’ Meetings”** means the meetings of the Affected Banro Unsecured Creditors and of the Affected Secured Creditors called for the purpose of considering and voting in respect of this Plan as described in the Meeting Order;

**“Crown”** means Her Majesty in right of Canada or a province of Canada;

**“Crown Priority Claim”** means any Claim of the Crown, for all amounts that were outstanding at the Filing Date and are of a kind that could be subject to a demand under:

- (a) subsection 224(1.2) of the ITA;

- (b) any provision of the Canada Pension Plan or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the ITA and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act and of any related interest, penalties or other amounts;
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the ITA, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
  - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the ITA; or
  - (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection;

**"DIP Claims"** means the claims secured by the DIP Lender's Charge;

**"DIP Lender"** has the meaning ascribed to that term in the Initial Order;

**"DIP Lender's Charge"** has the meaning ascribed to that term in the Initial Order;

**"DIP Term Sheet"** has the meaning ascribed to that term in the Initial Order;

**"Director"** means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Applicants;

**"Director/Officer Claim"** any right or Claim of any Person against one or more of the Directors or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, including any right of contribution or indemnity, for which any Director or Officer is alleged to be by statute or otherwise by law liable to pay in his or her capacity as a Director or Officer (collectively, the **"Director/Officer Claims"**);

**"Director/Officer Indemnity Claim"** means any existing or future right of any Director or Officer of any of the Applicants against any of the Applicants that arose or arises as a result of any Person filing a Proof of Claim in respect of a Director/Officer Claim or otherwise, in respect of such Director or Officer of any of the Applicants for which such Director or Officer of any of the Applicants is entitled to be indemnified by any of the Applicants;

**"Directors' Charge"** has the meaning ascribed to it in the Initial Order;

**"Disputed Affected Banro Unsecured Claim"** means an Affected Banro Unsecured Claim which has not been allowed, in whole or in part, as a Proven Affected Banro Unsecured Claim,

which is validly disputed for distribution purposes in accordance with the Claims Procedure Order and which remains subject to adjudication for distribution purposes in accordance with the Claims Procedure Order;

**“Disputed Voting Claim”** means an Affected Claim or such portion thereof which has not been allowed as a Voting Claim, which is validly disputed for voting purposes in accordance with the Meeting Order or Claims Procedure Order and which remains subject to adjudication for voting purposes in accordance with the Meeting Order or Claims Procedure Order;

**“Distribution Record Date”** means the Implementation Date or such earlier date as the Applicants, the Monitor and the Requisite Consenting Parties may agree;

**“Doré Loan”** means a loan in the total principal amount of US\$10.0 million advanced pursuant to a letter agreement dated July 15, 2016 among Baiyin International Investment Ltd and Twangiza Mining S.A.;

**“DRC”** means Democratic Republic of the Congo;

**“Effective Time”** means 12:01 a.m. on the Implementation Date (or such other time as the Applicants, the Monitor and the Requisite Consenting Parties may agree);

**“Eligible Voting Creditors”** means Affected Banro Unsecured Creditors and Affected Secured Creditors, holding Voting Claims or Disputed Voting Claims;

**“Employee Priority Claims”** means, with respect to Listed Creditors who are or were employees of Banro, the following claims:

- (d) Claims of the Applicants’ employees and former employees equal to the amounts that such employees and former employees would have been qualified to receive under paragraph 136(l)(d) of the *Bankruptcy and Insolvency Act* (Canada) if the Applicants had become bankrupt on the Filing Date;
- (e) Claims of the Applicants’ employees and former employees for wages, salaries, commissions or compensation for services rendered by them after the Filing Date and on or before the date of the Sanction Order, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the Applicants’ business during the same period; and
- (f) any amounts in excess of (a) and (b) above, that the Applicants’ employees or former employees may have been entitled to receive pursuant to the *Wage Earner Protection Program Act* if Banro had become bankrupt on the Filing Date.

**“Equity Claim”** has the meaning set forth in section 2(1) of the CCAA;

**“Equity Interest”** has the meaning set forth in section 2(1) of the CCAA;

**“Excise Tax Act”** means the *Excise Tax Act*, R.S.C. 1985, c.E-15, as amended and any regulations thereunder;

**“Excluded Claim”**

- (a) any Claims secured by any of the Charges;



- (b) any Claims that cannot be compromised pursuant to subsection 19(2) of the CCAA;
- (c) all secured Claims against the Applicants other than the Affected Secured Claims;
- (d) all unsecured Claims against the Applicants other than the Affected Banro Unsecured Claims;
- (e) Intercompany Claims;
- (f) any Priority Claims;
- (g) any Post-Filing Claims; and
- (h) any Claim entitled to the benefit of any applicable insurance policy, excluding any such Claim or portion thereof that is directly recoverable as against an Applicant;

**“Excluded Creditor”** means a Person who has an Excluded Claim, but only in respect of and to the extent of such Excluded Claim;

**“Filing Date”** means December 22, 2017;

**“FTI”** means FTI Consulting Canada Inc.;

**“Gold Streams”** means collectively, the Namoya Streaming Agreement and the Twangiza Streaming Agreement;

**“Gramercy”** has the meaning ascribed to that term in the Recitals;

**“Governmental Entity”** means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

**“Implementation Date”** means the Business Day on which this Plan becomes effective, which shall be the day indicated on the certificate which the Monitor has filed with the Court contemplated in Section 9.6 hereof;

**“Initial Order”** has the meaning ascribed to that term in the Recitals;

**“Intercompany Claim”** means any Claim, including Equity Claims, by any of the Banro Parties against other Banro Parties;

**“Interim Facility”** means a senior secured super priority (debtor-in-possession) interim, non-revolving credit facility up to a maximum principal amount of US\$20,000,000 dated as of December 22, 2017;

**“ITA”** means the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), as amended and any regulations thereunder;

**“Law”** means any law, statute, order, decree, consent decree, judgment, rule regulation, ordinance or other pronouncement having the effect of law whether in Canada or any other

country, or any domestic or foreign state, county, province, city or other political subdivision or of any Governmental Entity;

**“Listed Claims”** means Claims of Listed Creditors as defined in the Claims Procedure Order;

**“Meeting Order”** means the Order of the Court dated February 1, 2018 in connection with the CCAA Proceedings;

**“Monitor”** means FTI, in its capacity as Court-appointed Monitor of the Applicants in the CCAA Proceedings;

**“Monitor’s Certificate”** has the meaning ascribed to that term in section 9.6 hereof;

**“Monitor’s Website”** means <http://cfcanada.fticonsulting.com/banro/>;

**“Namoya Forward I Agreement”** means the gold purchase and sale agreement dated April 19, 2017 among Namoya Gold Forward Holdings LLC, RFW Banro II Investments Limited, Banro and Namoya Mining S.A. (as amended or restated from time to time) in the secured amount of US\$42 million;

**“Namoya Forward II Agreement”** means the Purchase and Sale Agreement dated July 12, 2017 among Namoya Gold Forward Holdings II LLC, Baiyin International Investment Ltd, Banro and Namoya Mining S.A. (as amended from time to time) in the secured amount of US\$20.0 million;

**“Namoya Streaming Agreement”** means the Gold Purchase and Sale Agreement dated February 27, 2015 among Namoya GSA Holdings, Banro and Namoya Mining S. A. (as amended or restated from time to time);

**“New Banro Board”** means Banro’s board of directors appointed on the Implementation Date, which shall be comprised of individuals acceptable to the Applicants and the Requisite Consenting Parties;

**“New BGB Common Shares”** means the 100 common shares in the capital of BGB to be issued to Newco on the Implementation Date;

**“Newco”** means a company to be organized under the laws of the Cayman Islands;

**“Newco/BGB Subscription Agreement”** means a subscription agreement to be entered into by Newco and BGB on or prior to the Implementation Date in form and substance reasonably acceptable to the Applicants and the Requisite Consenting Parties pursuant to which BGB agrees to issue to Newco, and Newco agrees to subscribe for, the New BGB Common Shares on the Implementation Date;

**“Newco Equityholder Information”** means such information and documentation as the Transfer Agent and/or Newco may require from recipients of the New Equity in order to comply with any anti-money laundering, know your client, proceeds of crime and other Laws applicable to the Transfer Agent and Newco, respectively, which shall be communicated to the Proven Affected Secured Creditors by the Transfer Agent and/or Newco at the information provided in such Proven Affected Secured Creditors’ Registration Instructions.

**“Newco Share Terms”** means the rights and obligations of holders of New Equity as set forth in the Restructuring Term Sheet and/or as otherwise acceptable to the Applicants, the Monitor and the Requisite Consenting Parties, acting reasonably;

**“New Equity”** means, collectively, the Class A Common Shares and the Class B Common Shares of Newco which, immediately following the issuance thereof, will constitute all of the issued and outstanding shares of Newco;

**“New Secured Facility”** means a new secured loan facility, which facility shall have refinanced the obligations owing by the Banro Parties to the DIP Lender under the DIP Term Sheet;

**“New Secured Facility Credit Agreement”** means the secured term loan agreement to be entered into between the Banro Parties on the terms substantially as described in the Circular and/or as may otherwise be agreed by the Applicants and the DIP Lender, each acting reasonably, pursuant to which the New Secured Facility will be issued;

**“New Secured Facility Warrants”** means warrants for common shares in the capital of Newco to be issued to the DIP Lender on the Implementation Date as consideration for providing the New Secured Facility, on the terms and conditions as described in the Circular and/or as may otherwise be agreed by the Applicants and the DIP Lender, each acting reasonably;

**“Noteholder”** means a holder of the Secured Notes as determined in accordance with the Claims Procedure Order, including a Beneficial Noteholder;

**“Non-Applicant Subsidiaries”** means Banro Congo Mining S.A., Namoya Mining S.A., Lugushwa Mining S. A., Twangiza Mining S.A. and Kamituga Mining S.A.;

**“Officer”** means anyone who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Applicants;

**“Order”** means any order of the Court in the CCAA Proceedings;

**“Outside Date”** means April 30, 2018 (or such other date as the Applicants, the Monitor and the Requisite Consenting Parties may agree);

**“Participant Holder”** has the meaning ascribed to that term in the Meeting Order;

**“Person”** is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Governmental Entity or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status;

**“Plan”** means this Consolidated Plan of Compromise and Reorganization and any amendments, restatements, modifications or supplements hereto made from time to time in accordance with the terms hereof or made at the direction of the Court in the Sanction Order or otherwise;

**“Post-Filing Claim”** means any claims against any of the Applicants that arose from the provision of authorized goods and services provided or otherwise incurred on or after the Filing Date in the ordinary course of business;

**“Principal Claim”** has the meaning ascribed to that term in section 3.4 hereof;

**“Priority Claim”** means a Crown Priority Claim or an Employee Priority Claim;

**“Priority Claim Reserve”** means a Cash reserve, in equal to the amount of the Priority Claims, to be deposited by the Applicants into the Priority Claim Reserve Account for the purpose of paying the Priority Claims;

**“Priority Claim Reserve Account”** means a segregated interest-bearing trust account established by the Monitor to hold the Priority Claim Reserve;

**“Priority Lien Debt”** means (i) the Twangiza Forward I Agreement; (ii) the Twangiza Forward II Agreement; and (iii) the Namoya Forward I Agreement;

**“Proof of Claim”** has the meaning ascribed to such term in the Claims Procedure Order;

**“Proven Affected Banro Unsecured Claim”** means the amount of the Affected Banro Unsecured Claim of an Affected Banro Unsecured Creditor as finally accepted and determined for distribution purposes in accordance with the Claims Procedure Order and the CCAA;

**“Proven Affected Banro Unsecured Creditor”** means a holder of a Proven Affected Banro Unsecured Claim;

**“Proven Affected Secured Claim”** means the amount of an Affected Secured Claim as finally accepted and determined for distribution purposes in accordance with the Claims Procedure Order and the CCAA;

**“Proven Affected Secured Creditor”** means a holder of a Proven Affected Secured Claim as at the Distribution Record Date;

**“Proven Claim”** means a Proven Affected Banro Unsecured Claim or a Proven Affected Secured Claim, as applicable;

**“Proven Doré Loan Claim”** has the meaning ascribed to that term in the Meeting Order;

**“Proven Namoya Forward II Claim”** has the meaning ascribed to that term in the Meeting Order;

**“Proven Secured Notes Claim”** has the meaning ascribed to that term in the Meeting Order;

**“Recapitalization”** means a transaction on the terms set forth in the Restructuring Term Sheet;

**“Registered Holder”** means in respect of the Secured Notes as recorded on the books and records of the Canadian Trustee;

**“Registration Election Deadline”** has the meaning ascribed to that term in the Meeting Order;

**“Registration Instructions”** means the instructions provided by Beneficial Noteholder to its Participant Holder for the registration and issuance of its New Equity submitted in accordance with the VIEF and the Meeting Order;

**“Released Claims”** means the matters that are subject to release and discharge pursuant to section 8.1 hereof;

**“Released Party”** means each of the Banro Released Parties and the Third Party Released Parties;

**“Required Majorities”** means the Affected Secured Required Majority and the Affected Banro Unsecured Required Majority;

**“Requisite Consenting Parties”** means, collectively, Gramercy and Baiyin;

**“Requisite Consenting Party Advisors”** means, all of the professional advisors retained by Gramercy and Baiyin, respectively;

**“Restructuring Term Sheet”** means the Restructuring Term Sheet attached to the Support Agreement;

**“Sanction Order”** has the meaning ascribed to that term in section 9.2;

**“Section 5.1(2) Director/Officer Claims”** means any Director/Officer Claims that may not be compromised pursuant to section 5.1(2) of the CCAA;

**“Secured Notes”** means 10% Secured Notes due March 1, 2021 in the principal amount of US\$197.5 million, for which Banro Group (Barbados) Limited is the issuer and the other Banro Parties are guarantors;

**“Shareholders Agreement”** means the shareholders agreement made between and among the shareholders of Newco on the Implementation Date, which shall contain the Newco Share Terms and otherwise be acceptable to the Applicants, the Monitor and the Requisite Consenting Parties, acting reasonably;

**“Solicitation Agent”** means Kingsdale Advisors;

**“Stream Amendments”** means the amendments and modifications to the Gold Streams as contemplated by the Restructuring Term Sheet;

**“Stream Equity Warrants”** means the warrants for common shares in the capital of Newco to be issued to the purchasers under the Gold Streams as consideration for the entering into of the Stream Amendments on the terms and conditions as set forth in the Restructuring Term Sheet and/or as may otherwise be agreed by the Applicants and the purchasers under the Gold Streams, each acting reasonably;

**“Support Agreement”** has the meaning ascribed to that term in the Recitals;

**“Tax”** or **“Taxes”** means any and all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever, including all interest, penalties, fines, additions to tax or other additional amounts in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Quebec and other government pension plan premiums or contributions;

**“Tax Claim”** means any Claim by a Taxing Authority against the Applicants regarding any Taxes in respect of any taxation year or period;

**“Taxing Authority”** means any of Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, any municipality of Canada, the Canada Revenue Agency, the Canada Border Services Agency, any similar revenue or taxing authority of Canada and each and every province or territory of Canada and any political subdivision thereof and any Canadian or foreign government, regulatory authority, government department, agency, commission, bureau, minister, court, tribunal or body or regulation making entity exercising taxing authority or power;

**“Transfer Agent”** means the transfer agent in respect of the New Equity, which shall be acceptable to the Applicants and the Requisite Consenting Parties, acting reasonably;

**“Third Party Released Parties”** has the meaning ascribed to that term in section 8.1(b);

**“Twangiza Forward I Agreement”** means the amended and restated Gold Purchase and Sale Agreement Tranche 2/3 dated September 17, 2015 among Twangiza GFSA Holdings, Banro and Twangiza Mining S.A. (as amended or restated from time to time) in the secured amount of US\$4,492,200;

**“Twangiza Forward II Agreement”** means the purchase and sale Agreement dated July 12, 2017 (as amended or restated from time to time) among Baiyin International Investments Ltd, Banro and Twangiza Mining S.A. in the secured amount of US\$6.0 million;

**“Twangiza Streaming Agreement”** means the Gold Purchase and Sale Agreement dated December 31, 2015 among RFW Banro Investment Limited, Banro and Twangiza Mining S.A. (as amended or restated from time to time);

**“Undeliverable Distribution”** has the meaning given to that term in section 6.5 hereof;

**“Unsecured Creditor Distribution Date”** has the meaning given to that term in section 6.3 hereof;

**“VIEF”** means the Voting Information and Election Form (or other applicable instruction) provided to a Beneficial Noteholder by its Participant Holder;

**“Voting Claim”** means the amount of the Affected Claim of an Affected Creditor against the Applicant as finally accepted and determined for purposes of voting at the Creditors’ Meeting, in accordance with the provisions of the Meeting Order and the CCAA;

**“Withholding Obligation”** means the amounts that any payor shall be entitled to deduct and withhold and remit from any distribution, payment or consideration otherwise payable to any Person pursuant to the Plan;

**Schedule "B"**

Court File No. CV-17-589016-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR.	)	●DAY, THE ●
	)	
JUSTICE HAINEY	)	DAY OF ●, 2018

**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")

**ORDER  
(Plan Sanction)**

**THIS MOTION** made by the Applicants for an Order (the "**Sanction Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended ("**CCAA**") *inter alia* (a) approving and sanctioning the Consolidated Plan of Compromise and Reorganization of the Applicants dated January ●, 2018 (the "**Plan**"), a copy of which is attached hereto as Schedule "A", and (b) approving the Third Report of FTI Consulting Canada Inc. in its capacity as Monitor (the "**Monitor**"), dated January ●, 2018 (the "**Third Report**") and the Fourth Report of the Monitor dated January ●, 2018 (the "**Fourth Report**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the within Notice of Motion, the Affidavit of ● sworn ●, 2018 including the exhibits thereto, the Third Report, the Fourth Report, and upon hearing the submissions of counsel for the Applicants, the Monitor, ●, no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2018, and upon being advised that this Order shall serve as the basis for reliance on the exemption provided by Section 3(a)(10) of the *United*



*States Securities Act of 1933*, as amended, from the registration requirements otherwise imposed by that Act,

## **DEFINED TERMS**

1. **THIS COURT ORDERS** that all capitalized terms not otherwise defined herein shall be as defined in the Plan or as in the Meeting Order made in this proceeding (the “**CCAA Proceedings**”) by Justice Hainey on ●, 2018 (the “**Meeting Order**”), as applicable.

## **SERVICE, NOTICE AND MEETINGS**

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, and the ● Report be and is hereby validated such that this Motion is properly returnable today and that service thereof upon any interested party other than the persons served with the Motion Record is hereby dispensed with.

3. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient service, delivery and notice to all Affected Creditors of the Information Package and the Noteholder Information Package, and that the Creditors’ Meetings were duly, called, convened, held and conducted all in conformity with the CCAA and all other Orders of this Court in the CCAA Proceedings (collectively, the “**CCAA Orders**”).

## **SANCTION OF THE PLAN**

4. **THIS COURT ORDERS AND DECLARES** that:

- (a) Pursuant to the Meeting Order, the relevant classes of creditors of the Applicants for the purposes of voting to approve the Plan are the Affected Banro Unsecured Class and the Affected Secured Class;
- (b) the Plan has been approved by the Affected Banro Unsecured Required Majority and the Affected Secured Required Majority, all in conformity with the CCAA and the terms of the Meeting Order;
- (c) the Applicants have acted, and are acting, in good faith and with due diligence, and have complied with the provisions of the CCAA and the CCAA Orders in all respects;

- (d) the Court is satisfied that the Applicants have not done or purported to do anything that is not authorized by the CCAA; and
- (e) the Plan, all terms and conditions thereof, and the matters and the transactions contemplated thereby, are fair and reasonable including to all Persons who are entitled to receive equity in Newco in accordance with the Plan.

5. **THIS COURT ORDERS** that the Plan is hereby sanctioned and approved pursuant to section 6 of the CCAA and section 192 of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.

#### **PLAN IMPLEMENTATION**

6. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby (including, without limitation, the steps in Article 7 of the Plan) are hereby approved, shall be deemed to be implemented and shall be binding and effective as of the Effective Time in accordance with the terms of the Plan or at such other time, times or manner as may be set forth in the Plan in the sequence provided therein, and shall enure to the benefit of and be binding and effective upon the Applicants, the Directors, the Officers, the Consenting Parties, all Affected Creditors, the DIP Lender, the Released Parties and all other Persons and parties named or referred to in, affected by, or subject to the Plan as provided for in the Plan or this Order.

7. **THIS COURT ORDERS** that each of the Applicants, the Directors, the Officers, and the Monitor is authorized and directed to take all steps and actions and to do all things, necessary or appropriate, to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, disbursements, payments, deliveries, allocations, instruments and agreements contemplated by, and subject to the terms and conditions of, the Plan, and all such steps and actions are hereby authorized, ratified and approved. None of the Applicants, the Directors, the Officers or the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan and this Order, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of such parties.

8. **THIS COURT ORDERS** that upon delivery of written notice from the Applicants and the Requisite Consenting Parties (or counsel on their behalf) to the Monitor that the conditions precedent as set out in the Plan have been satisfied or waived, as applicable, in accordance with

the terms of the Plan, the Monitor shall as soon as reasonably practicable following receipt of such written notice, deliver to the Applicants a certificate signed by the Monitor substantially in the form attached hereto as Schedule "B" (the "**Monitor's Certificate**") certifying that all conditions precedent set out in the Plan have been satisfied or waived and that the Implementation Date has occurred and that the Plan and the provisions of this Sanction Order which come into effect on the Implementation Date are effective in accordance with their respective terms. Following the delivery of the Monitor's Certificate to the Applicants, the Monitor shall file the Monitor's Certificate with the Court, and shall post a copy of same, once filed, on the Monitor's website and provide a copy to the Service List. Upon delivery of the Monitor's Certificate to the Applicants, all applicable parties shall take such steps as are required to implement the steps set out in section 7.3 of the Plan.

#### **COMPROMISE OF CLAIMS AND EFFECT OF PLAN**

9. **THIS COURT ORDERS** that, pursuant to and in accordance with the terms of the Plan, on the Implementation Date, all existing Claims of Affected Creditors against the Applicants shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred and all proceedings with respect to, in connection with or relating to such Affected Claims shall permanently be stayed against the Released Parties, subject only to the right of Affected Creditors to receive the distributions pursuant to the Plan and this Order in respect of their Claims, in the manner and to the extent provided for in the Plan.

10. **THIS COURT ORDERS** that the determination of Proven Claims in accordance with the Claims Procedure Order and Plan shall be final and binding on the Applicants and all Affected Creditors.

11. **THIS COURT ORDERS** that an Affected Creditor holding a Disputed Affected Banro Unsecured Claim shall not be entitled to receive a distribution under the Plan in respect of any portion thereof unless and until such Disputed Affected Banro Unsecured Claim becomes a Proven Claim in accordance with the Claims Procedure Order and Plan.

12. **THIS COURT ORDERS** that nothing in the Plan extends to or shall be interpreted as extending or amending the Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order. Any Affected Claim or Director/Officer Claim for which a Proof of Claim or Director/Officer Proof of Claim has not been filed in accordance with the Claims Procedure

Order, whether or not the holder of such Affected Claim or Director/Officer Proof of Claim has received personal notification of the claims process established by the Claims Procedure Order, shall be and are hereby forever barred, extinguished and released with prejudice.

13. **THIS COURT ORDERS** that except to the extent expressly contemplated by the Plan or this Sanction Order, all obligations or agreements to which the Applicants are a party to immediately prior to the Effective Time, will be and shall remain in full force and effect as at the Implementation Date, unamended except as they may have been amended by agreement of the parties to such agreement, and no Person who is a party to any such obligation or agreement shall, following the Implementation Date, accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set-off, option, dilution or other remedy) or make any demand under or in respect of any such obligation or agreement, by reason of (i) any defaults or events of default arising as a result of the insolvency of the Applicants prior to the Implementation Date; (ii) any defaults, events of default or cross-defaults under or in respect of any Priority Lien Debt or Parity Lien Debt (as defined in the Amended and Restated Collateral Trust Agreement dated April 19, 2017), in each case arising prior to the Implementation Date; (iii) any change of control of the Applicants arising from the implementation of the Plan; (iv) the fact that the Applicants have sought or obtained relief under the CCAA or that the Plan has been implemented by the Applicants; (v) the effect on the Applicants of the completion of any of the transactions contemplated by the Plan; (vi) any compromises, arrangements, or reorganization effected pursuant to the Plan; or (vii) any other event(s) which occurred on or prior to the Implementation Date which would have entitled any Person to enforce rights and remedies subject to any express provisions to the contrary in any agreements entered into with the Applicants after the Filing Date.

14. **THIS COURT ORDERS** that from and after the Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Applicants then existing or previously committed by the Applicants, or caused by the Applicants, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and any of the Applicants arising directly or indirectly from the filing by the Applicants under the CCAA and the implementation of the Plan, and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection

therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse the Applicants from performing their obligations under the Plan or be a waiver of defaults by the Applicants under the Plan and the related documents.<sup>1</sup>

15. **THIS COURT ORDERS** that on the Implementation Date, in accordance with the Plan all Equity Interests in Banro Corporation ("**Banro**") shall be cancelled without any liability, payment or other compensation in respect thereof.

## **DISTRIBUTIONS**

16. **THIS COURT ORDERS AND DECLARES** that all distributions or payments by the Monitor, on behalf of the Applicants, to Affected Creditors with Proven Claims under the Plan are for the account of the Applicants and the fulfillment of the Applicants' obligations under the Plan.

17. **THIS COURT ORDERS** that the Applicants are authorized to take any and all such actions as may be necessary or appropriate to comply with applicable withholding and reporting requirements. All amounts withheld on account of Taxes shall be treated for all purposes as having been paid to Affected Creditors in respect of which such withholding was made, provided such withheld amounts are remitted to the appropriate Taxing Authority.

18. **THIS COURT ORDERS AND DECLARES** that the Applicants or the Monitor on behalf of the Applicants, as the case may be, shall be authorized, in connection with the making of any payment or distribution, and in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Governmental Entity for any consent, authorization, certificate or approval in connection therewith.

19. **THIS COURT ORDERS** that, on the Implementation Date, Newco shall issue the New Equity in accordance with the Plan to be held by the Transfer Agent on behalf of each Proven Affected Secured Creditor until such time as each Proven Affected Secured Creditor has delivered its Newco Equityholder Information in accordance with the Plan. In the event that a Proven Affected Secured Creditor fails to deliver its Newco Equityholder Information in accordance with the Plan on or before the date that is six months following the Implementation Date, the New Equity otherwise issuable to such Proven Affected Secured Creditor pursuant to the Plan shall not be delivered to such Proven Affected Secured Creditor and Newco shall be

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<sup>1</sup> Section 14.2 of the Plan

entitled to cancel, and shall have no further obligation to issue or deliver, any New Equity to such Proven Affected Secured Creditors in respect of which Newco Equityholder Information was not received and such Proven Affected Secured Creditors shall cease to have a claim to, or interest of any kind or nature against or in, the Applicants, Newco or the New Equity.

## CHARGES

20. **THIS COURT ORDERS** that the Administration Charge and the Directors' Charge shall continue in full force and effect and shall, from and after the Effective Time, attach solely against the Administrative Reserve.

21. **THIS COURT ORDERS** that as of the Effective Time, the DIP Lenders' Charge and the DIP Claims shall be released without the consent of the Requisite Consenting Parties.

## RELEASES

22. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contemplated in Article 8 of the Plan, including those granted by and for the benefit of the Released Parties are integral components thereof and that, effective on the Implementation Date, all such compromises, releases, discharges and injunctions contemplated in the Plan are effective, sanctioned, approved and given full force and effect.

23. **THIS COURT ORDERS** that, notwithstanding paragraph 22 above, any Person having, or claiming any entitlement or compensation relating to, a Director/Officer Claim (with the exception of any Director/Officer Claims judged by the express terms of a judgment rendered on a final determination on the merits to have resulted from criminal, fraudulent or other wilful misconduct on the part of the Director or Officer (an "**Excluded Director/Officer Claim**")) will be irrevocably limited to recovery in respect of such Director/Officer Claim solely from the proceeds of the applicable insurance policies held by the Applicants (the "**Insurance Policies**"), and Persons with any Director/Officer Claims will have no right to, and shall not, directly or indirectly, make any claim or seek any recoveries from the Applicants or any Released Party, other than enforcing such Person's rights to be paid by the applicable insurer(s) from the proceeds of the applicable Insurance Policies. Nothing in this Plan Sanction Order prejudices, compromises, releases or otherwise affects any right or defence of any insurer in respect of an Insurance Policy or any insured in respect of a Director/Officer Claim. Notwithstanding anything to the contrary herein, from and after the Implementation Date, a Person may only commence an

action for an Excluded Director/Officer Claim against a Director if such Person has first obtained leave of the Court on notice to the applicable Directors and Officers, the Monitor and the Applicants.

24. **THIS COURT ORDERS** that from and after the Implementation Date any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Released Party in respect of all Claims and matters which are released pursuant to Article 8 of the Plan or discharged, compromised or terminated pursuant to the Plan, except as against the applicable insurer(s) to the extent that Persons with Director/Officer Claims seek to enforce rights to be paid from the proceeds of the Insurance Policies, and provided that any claimant in respect of a Director/Officer Claim that was duly filed with the Monitor by the Claims Bar Date shall be permitted to file a statement of claim in respect thereof to the extent necessary solely for the purpose of preserving such claimant's ability to pursue such Director/Officer Claim against an insurer in respect of an Insurance Policy.

25. **THIS COURT ORDERS** that, on the Implementation Date, each Affected Creditor, each holder of a Director/Officer Claim and any Person having a Released Claim shall be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety, and, in particular, each Affected Creditor, each holder of a Director/Officer Claim and any Person having a Released Claim shall be deemed:

- (a) to have executed and delivered to the Monitor, the Applicants and the other Released Parties all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety; and
- (b) to have agreed that if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor, holder of a Director/Officer Claim, and the Applicants as of the Implementation Date and the provisions of the Plan, the provisions of the Plan take precedence and priority, and the provisions of such agreement or other arrangements shall be deemed to be amended accordingly.

## **THE MONITOR**

26. **THIS COURT ORDERS** that in addition to its prescribed rights and obligations under the CCAA and the CCAA Orders, the Monitor is granted the powers, duties and protections contemplated by and required under the Plan and that the Monitor be and is hereby authorized, entitled and empowered to perform its duties and fulfil its obligations under the Plan to facilitate the implementation thereof and to apply to this Court for any orders necessary or advisable to carry out its powers and obligations under any other CCAA Order.

27. **THIS COURT ORDERS** that, without limiting the provisions of the Initial Order or the provisions of any other CCAA Order, including this Order, the Applicants shall remain in possession and control of the Property (as defined in the Initial Order) and the Monitor shall not take possession or be deemed to be in possession and/or control of the Property.

28. **THIS COURT ORDERS** that the Applicants shall be and are hereby directed to maintain the books and records of the Applicants for purposes of assisting the Monitor in the completion of the resolution of the Affected Banro Unsecured Claims;

29. **THIS COURT ORDERS AND DECLARES** that in no circumstance will the Monitor have any liability for any of the Applicants' tax liabilities regardless of how or when such liabilities may have arisen.

#### **APPROVAL OF MONITOR'S THIRD AND FOURTH REPORTS**

30. **THIS COURT ORDERS** that the Third Report and Fourth Report and the conduct and activities of the Monitor described therein be and are hereby approved.

#### **GENERAL**

31. **THIS COURT ORDERS** that the Applicants, the Monitor and any other interested parties are hereby granted leave to apply to this Court for such further advice, directions or assistance as may be necessary to give effect to the terms of the Plan and any other matters that pertain to the completion of the administration of the CCAA Proceedings.

32. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to recognize and give effect to the Plan and this Order, to confirm the Plan and this Order as binding and effective in any appropriate foreign jurisdiction, and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of the Plan and this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully



requested to make such orders and to provide such assistance to the Applicants, and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Applicants in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

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**SCHEDULE "A"**  
**PLAN OF COMPROMISE AND REORGANIZATION**

**SCHEDULE "B"**  
**FORM OF MONITOR'S PLAN IMPLEMENTATION DATE CERTIFICATE**

Court File No. CV-17-589016-00CL

**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**")

**MONITOR'S CERTIFICATE  
(Plan Implementation)**

All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Order of the Honourable Mr. Justice Hailey made in these proceedings on ●, 2018 (the "**Sanction Order**").

Pursuant to paragraph 8 of the Sanction Order, FTI Consulting Canada Inc. in its capacity as Court-appointed Monitor of the Applicants (the "**Monitor**") delivers to the Applicants this certificate and hereby certifies that it has been informed in writing by the Applicants and the Requisite Consenting Parties that all of the conditions precedent set out in the Plan have been satisfied or waived, and that the Implementation Date has occurred and the Plan and the provisions of the Sanction Order which come into effect on the Implementation Date are effective in accordance with their respective terms. This Certificate will be filed with the Court and posted on the website maintained by the Monitor.

DATED at the City of Toronto, in the Province of Ontario, this ● day of ●, 2018 at ● [a.m. / p.m].

**FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of the Applicants and not in its personal or corporate capacity

By: \_\_\_\_\_  
Name:  
Title:

**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**

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**PLAN SANCTION ORDER**

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**Cassels Brock & Blackwell LLP**

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Court File No. CV17-589016-00CL

**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**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**PLAN OF COMPROMISE AND ARRANGEMENT**

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*Lawyers for the Applicants*

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# Appendix C

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## Listed Claims



## Listed Claims

Claim Number	Name of Claimant	Initial Determination Amount
001	Jefferies LLC	US\$3,702,369.73
002	Moody's Canada Inc.	US\$257,075.00
003	Deloitte and Touche LLP	US\$217,195.85
004	Bedford Resources Inc.	US\$11,513.44
005	Robert Half Finance & Accounting	US\$13,727.56
006 - 016	11 employees/former employees	US\$7,665,217.85