

CROSS-BORDER LIQUIDATION PROTOCOL  
FOR AIOC RESOURCES, AG, et al.

I. OVERVIEW

Mr. Edward G. Moran, the duly appointed trustee (the "Chapter 11 Trustee" and, alternatively, a "Party") in the bankruptcy cases of AIOC Corporation ("Corp.") and AIOC Resources AG ("Resources" and, collectively, the "Chapter 11 Debtors") pending in the Southern District of New York with assigned case numbers 96-B 41895 (the "Corp. Chapter 11 Case") and 96-B-41896 (the "Resources Chapter 11 Case" and, collectively, the "Chapter 11 Cases"), and the Bankruptcy Office for the Canton of Zug, Switzerland (the "Swiss Bankruptcy Office," alternatively, a "Party" and, collectively with the Chapter 11 Trustee, the "Parties"), the duly appointed trustee in the case of Resources pending in the Kanton of Zug Switzerland with the assigned case number 1996/180 (the "Swiss Proceeding") hereby agree, subject to (i) entry by the Bankruptcy Court (defined below) of a final Order approving this agreement and (ii) the decision of the Swiss Bankruptcy Office to approve this agreement being (a) transmitted by letter to the

creditors that have filed<sup>1</sup> claims in the Swiss Proceeding and (b) approved in accordance with the laws of Switzerland, as follows:

A. The Chapter 11 Cases were commenced as plenary proceedings by the filing of involuntary petitions on April 11, 1996 with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). The Chapter 11 Cases were assigned to the Honorable Tina L. Brozman, Chief United States Bankruptcy Judge of the Bankruptcy Court. By Order of the Bankruptcy Court dated September 17, 1996, the Chapter 11 Trustee was vested with the authority to act as the corporate governance of the Chapter 11 Debtors.

B. The Swiss Proceeding was commenced by the filing of an involuntary petition on August 13, 1996 before the district court for the canton of Zug, Switzerland (the "Swiss Court"). Thereafter, the Swiss Court referred the Swiss Proceeding to the Swiss Bankruptcy Office for administration as a plenary proceeding pursuant to the laws of Switzerland. The Swiss Bankruptcy Office assigned the Swiss proceeding to Herr Bernhard Häusler for administration.

C. The Chapter 11 Trustee and the Swiss Bankruptcy Office each need to analyze under United States, Swiss and other

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<sup>1</sup> Throughout this Agreement, a claim that has been filed is deemed to include, but not be limited to, claims which have been filed in either the Resources Chapter 11 Case or the Swiss Proceeding whether or not such claim has been subsequently withdrawn.

applicable law their duties and responsibilities concerning the potential rights of the creditors and, where applicable, shareholders of the Resources Group (as defined below) and the Chapter 11 Trustee and Swiss Bankruptcy Office have agreed to work together in good faith to effectuate an orderly and equitable liquidation of the Resources Group.

D. The Chapter 11 Trustee and the Swiss Bankruptcy Office have each reviewed the principles proposed in the article of Committee J of the Section on Business Law of the International Bar Association entitled Cross-Border Insolvency Concordat (the "Concordat"), a copy of which is attached hereto as Exhibit A, and believe that an agreement upon general administrative matters is essential to the orderly and efficient administration of these cross-border insolvency proceedings.

E. The Chapter 11 Trustee and the Swiss Bankruptcy Office confirm that their objective in entering into this agreement is to harmonize the administration of the Chapter 11 Cases and the Swiss Proceeding in order:

(i) to promote international cooperation and respect for comity among the bankruptcy courts, the duly appointed representatives and any other competent authority involved in the Resources Chapter 11 Case and the Swiss Proceeding;

(ii) to facilitate, for the benefit of all of the creditors of Resources and other interested parties, wherever located, the fair and efficient administration of the Resources Chapter 11 Case and the Swiss Proceeding;

(iii) to establish a coordinated claims reconciliation process;

(iv) to establish a coordinated litigation strategy with respect to any matter which cannot be resolved through good faith efforts in the first instance;

(v) to establish a coordinated strategy to marshal and liquidate any remaining assets, wherever located, of Resources and/or any member of the Resources Group;

(vi) to establish a coordinated and fair mechanism for distributing assets to creditors of Resources which, inter alia, (a) is consistent with, to the extent possible, the laws of the United States and Switzerland that establish an entitlement for priority in distributions among unsecured creditors of these insolvency proceedings,<sup>2</sup> and (b) provides an essentially ratable distribution, to the extent possible, to creditors of Resources wherever located;

(vii) to adopt a framework of general principles to address issues that are likely to arise in connection with the administration of these cross-border insolvency proceedings.

F. The Chapter 11 Trustee and the Swiss Bankruptcy Office shall exercise their powers and authority in accordance with paragraphs III-VI hereof.

## II. GENERAL PROVISIONS

A. Annexed hereto as Schedule 1 is a list of all known subsidiaries or affiliates of Resources (collectively, and as may be varied from time to time by further agreement between the Chapter 11 Trustee and the Swiss Bankruptcy Office, the "Resources Group"). The members of the Resources Group that are incorporated under the laws of Switzerland are each identified

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<sup>2</sup> See, e.g., 11 U.S.C. § 507; Article 219 of the Swiss Debt Enforcement and Bankruptcy Law.

with an asterisk on Schedule 1 and shall be referred to as a "Swiss Subsidiary" and collectively, the "Swiss Subsidiaries". All other members of the Resources Group listed on Schedule 1 shall be referred to as a "Non-Swiss Subsidiary" and collectively, the "Non-Swiss Subsidiaries".

B. Annexed hereto as Schedule 2 is a list of entities that are prepetition commercial lenders to the Resources Group (collectively, the "Resources Banks"). The Resources Banks that are organized under the laws of Switzerland are each identified with an asterisk on Schedule 2, and shall be referred to as a "Swiss Bank" and collectively, the "Swiss Banks". All other Resources Banks listed on Schedule 2 shall be referred to as a "Non-Swiss Bank" and collectively, the "Non-Swiss Banks".

C. In furtherance of principle 4c of the Concordat, the Chapter 11 Trustee will seek approval of the Bankruptcy Court and the Swiss Bankruptcy Office will take whatever actions are required under Swiss law to have any and all claims allowed in one proceeding recognized in both the Resources Chapter 11 Case and the Swiss Proceeding without the need for additional filings by any creditor that has not filed a claim in both proceedings.<sup>3</sup> Towards that end, the Chapter 11 Trustee and the Swiss Bankruptcy Office shall exchange periodically a register of the

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<sup>3</sup> Principle 4C of the Concordat provides in relevant part that "[a] claim should be filed in one, and only one, plenary forum, at the election of the holder of the claim."

I. Nothing in this agreement shall prevent the Bankruptcy Court and the Swiss Court from refusing to approve or take an action required by this agreement if such action would be manifestly contrary to public policy.

J. In case a matter is not specifically provided for herein, the parties shall act in a manner designed to promote the goals of Paragraph I(E) hereof.

### III. RESOURCES PROVISIONS

A. The Chapter 11 Trustee and the Swiss Bankruptcy Office will jointly oversee and administer the orderly winddown of Resources. For the avoidance of doubt, except as otherwise provided for herein, transactions relating to the disposition of Resources' assets will be subject to the joint jurisdiction of the Bankruptcy Court and the Swiss Bankruptcy Office.

B. Each Party shall attempt in good faith to obtain the consent of the other Party prior to taking any of the following actions:

1. disposing of shares or interests in any entity in the Resources Group or causing Resources to dispose of any assets;
2. seeking or consenting to the substantive consolidation (or merger, if applicable) of Resources with any other entity;
3. causing Resources or any entity in the Resources Group to take any action which is intended to or the reasonably anticipated consequences of which would have a material adverse impact on any member of the Resources Group.

C. Notwithstanding the preceding two paragraphs, any Party may act without the prior consent of the other Party as though such consent were given and (except as otherwise provided herein) without giving prior notice to the other Party on any matter which does not require notice to be given to interested parties under the law governing the respective case in which the Party is appointed.

D. The Parties shall coordinate mechanisms for providing distributions and recoveries to creditors of Resources wherever located whether such distributions and recoveries are accomplished pursuant to a plan of reorganization,<sup>6</sup> distribution plan and final account, or otherwise.

E. The claims reconciliation process for claims filed in the Resources Chapter 11 Case<sup>7</sup> and/or in the Swiss Proceeding shall be administered as follows:

1. Non-Bank Claims

a. Delegation of Responsibilities: The Chapter 11 Trustee shall administer the claims reconciliation process (as more fully described in paragraph III(E)(1)(c) hereof) for claims filed in the Resources Chapter 11 Case only. The Swiss Bankruptcy Office shall administer the claims reconciliation process (as more fully described in paragraph

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<sup>6</sup> See, e.g., 11 U.S.C. § 1129.

<sup>7</sup> For the avoidance of doubt, this Agreement is not intended to nor shall it be construed to alter the Chapter 11 ... (continued)

III(E)(1)(c) hereof) for all claims filed in the Swiss Proceeding only. The Parties shall jointly determine which Party shall administer the claims reconciliation process (as more fully described in paragraph III(E)(1)(c) hereof) for the claims of creditors, where any such creditor actually filed claims in both the Resources Chapter 11 Case and the Swiss Proceeding.

b. Choice of Law: The claims reconciliation process shall be administered in accordance with the procedural and substantive laws (both bankruptcy and nonbankruptcy) governing the respective case in which the Party is appointed unless considerations of comity otherwise require.

c. Duties: Each Party's authority and responsibility shall include, but not be limited to, the right to:

(1) reconcile the amount of any asserted claim;

(2) review the validity of any asserted lien or priority with respect to an asserted claim;

(3) fix and allow the amount and priority of asserted claims in accordance with paragraph III(E)(3)(a) hereof;

(4) object to asserted claims, if necessary.

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(continued)

Trustee's duty to reconcile the claims filed in the Corp. Chapter 11 Case.

2. Bank Claims

a. Delegation of Responsibilities: The Chapter 11 Trustee shall and the Swiss Bankruptcy Office agrees to coordinate the administration of the claims reconciliation process (the "Bank Reconciliation Process") (as more fully described in paragraph III(E) (2) (b) hereof) with respect to all claims of the Resources Banks. The Chapter 11 Trustee shall have primary responsibility for administering the claims reconciliation process (as more fully described in paragraph III(E) (2) (b) hereof) of the Resources Banks who have filed a claim or claims in the Resources Chapter 11 Case, irrespective of whether such creditors have also filed claims in the Swiss Proceeding. The Swiss Bankruptcy Office shall have primary responsibility for administering the claims reconciliation process (as more fully described in paragraph III(E) (2) (b) hereof) of any Resources Bank which has filed a claim in the Swiss Proceeding only; provided, however, that the Chapter 11 Trustee shall, where appropriate, actively assist the Swiss Bankruptcy Office in any endeavor contemplated by paragraph III(E) (2) (b) (1) and III(E) (2) (b) (2) hereof.

b. Duties: Each Party's authority and responsibility shall include, but not be limited to, the right to:

(1) reconcile the amount of any asserted claim;

(2) review the validity of any asserted lien or priority with respect to an asserted claim;

(3) fix and allow the amount and priority of asserted claims in accordance with paragraph III(E) (3) (b) hereof;

(4) object to asserted claims, if necessary.

3. Procedures For Fixing And Allowing Claims:

a. Non-Bank Claims: Further to Paragraph III(E) (1), any Party may fix and allow a claim in accordance with the laws of the jurisdiction in which the Party is appointed without the prior consent of the other Party and without giving prior notice to the other Party.

b. Bank Claims:

(1) Where a Resources Bank has filed a claim in both the Resources Chapter 11 Proceeding and in the Swiss Proceeding, any compromise reached between the Chapter 11 Trustee and such Resources Bank shall (a) include as a condition of effectiveness that the compromise is subject to (i) final court approval in the Resources Chapter 11 Case, and (ii) final approval in the Swiss Proceeding, and (b) be consummated according to the following procedures:

(a) Bankruptcy Court approval of a compromise shall be obtained first in accordance with the relevant provisions of the Bankruptcy Code and the Bankruptcy Rules.

(b) Promptly after receiving notice of the entry of an order of the Bankruptcy Court approving the compromise, the Resources Bank shall: (i) file an amended claim in the Swiss Proceeding (the "Amended Swiss Claim") which lists, as the amount of the claim, the Swiss currency equivalent (employing the Currency Exchange Rate) of the compromised amount, and (ii) provide notice of the filing of the Amended Swiss Claim to the Chapter 11 Trustee and the Swiss Bankruptcy Office.

(c) Promptly thereafter, the Swiss Bankruptcy Office shall publish notice in accordance with the laws of Switzerland that (i) the Amended Swiss Claim, filed by the respective Resources Bank in connection with the proposed compromise, was accepted by the Swiss Bankruptcy Office, and (ii) interested parties shall have the opportunity to be heard in opposition to the proposed compromise for a period of time prescribed by the laws of Switzerland. At the earliest opportunity after the conclusion of the noticed period, the Swiss Bankruptcy Office shall advise the Chapter 11 Trustee whether the proposed compromise is finally approved under Swiss law.

(d) Promptly after notification to the Chapter 11 Trustee by the Swiss Bankruptcy Office that the proposed compromise is finally approved under Swiss law, the Chapter 11 Trustee shall advise the respective Resources Bank in

writing that the conditions of effectiveness have been satisfied, and of the effective date of the compromise.

(e) If the Swiss Bankruptcy Office notifies the Chapter 11 Trustee that the proposed compromise is not approved under Swiss Law, the Chapter 11 Trustee shall advise the respective Resources Bank in writing that a condition of effectiveness has failed and that the proposed compromise shall be void and of no further force and effect. The Amended Swiss Claim shall be deemed withdrawn in the Swiss Proceeding.

(2) Where a Resources Bank has filed a claim in either proceeding, but not both proceedings, the Parties shall employ a claims adjustment process which (i) is similar (to the extent practicable) to the process set forth in paragraph III(E)(b)(i), and (ii) conforms to the requirements of the laws of the United States and the laws of Switzerland.

#### IV. Litigation and Investigations (Non-Claim Related)

The Chapter 11 Trustee and the Swiss Bankruptcy Office shall consult with respect to litigation strategy on a case-by-case basis. Where appropriate, the Parties shall have the right (consistent with the laws of the jurisdiction where a particular litigation is commenced) to pursue, or join in the pursuit of, claims or causes of action in either proceeding, provided, however that nothing contained herein shall limit any rights under substantive law of either the United States or Switzerland

or require the consent of the other with respect to the commencement of any litigation.

V. NON-SWISS SUBSIDIARY PROVISIONS

A. The Chapter 11 Trustee will oversee and administer the orderly winddown of the Non-Swiss Subsidiaries, with the assistance of the Swiss Bankruptcy Office where needed, and may act without the prior consent of the Swiss Bankruptcy Office as though such consent were given and without giving prior notice to the Swiss Bankruptcy Office on any matter which does not require notice to be given to interested parties under the law governing the Chapter 11 Trustee. The Chapter 11 Trustee shall attempt in good faith to obtain the consent of the Swiss Bankruptcy Office prior to:

1. disposing of shares in any Non-Swiss Subsidiary or causing any Non-Swiss Subsidiary to dispose of any assets;
2. commencing, causing to be commenced or consenting to, dissolution, bankruptcy or insolvency proceedings (whether in the United States, Switzerland or elsewhere) for any Non-Swiss Subsidiary;
3. causing any Non-Swiss Subsidiary to commence material legal proceedings.

B. The Chapter 11 Trustee shall where appropriate effect the appointment of new boards of directors for the Non-Swiss Subsidiaries.

## VI. SWISS SUBSIDIARY PROVISIONS

A. The Swiss Bankruptcy Office will oversee and administer the orderly winddown of the Swiss Subsidiaries, with the assistance of the Chapter 11 Trustee where needed, and may act without the prior consent of the Chapter 11 Trustee as though such consent were given and without giving prior notice to the Chapter 11 Trustee on any matter which does not require notice to be given to interested parties under Swiss law. The Swiss Bankruptcy Office shall attempt in good faith to obtain the consent of the Chapter 11 Trustee prior to:

1. disposing of shares in any Swiss Subsidiary or causing any Swiss Subsidiary to dispose of any assets;
2. commencing, causing to be commenced or consenting to, dissolution, bankruptcy or insolvency proceedings (whether in the United States, Switzerland or elsewhere) for any Swiss Subsidiary;
3. causing any Swiss Subsidiary to commence material legal proceedings.

B. In furtherance of paragraph VI(A)(2), should the Swiss Bankruptcy Office consider it appropriate to commence insolvency or other similar proceedings in respect of all or any of the Swiss Subsidiaries, the Chapter 11 Trustee shall be authorized, if he deems it appropriate under the circumstances and the governing provisions of the Bankruptcy Code, to cause the commencement of a parallel proceeding in the United States for such Swiss Subsidiary and to apply to the Bankruptcy Court for

an Order appointing the Chapter 11 Trustee to serve as chapter 11 trustee in such case.

VII. CORP. PROVISIONS

A. The Chapter 11 Trustee will oversee and administer the orderly winddown of Corp. and may act without the prior consent of the Swiss Bankruptcy Office and without giving notice to him, except that the Chapter 11 Trustee shall provide notice to the Swiss Bankruptcy Office prior to:

1. seeking or consenting to the substantive consolidation (or merger if applicable) of Corp. with Resources or any Swiss Subsidiary;
2. causing Corp. to take any action which is intended to, or the reasonably anticipated consequences of which would, have a material adverse impact on Resources or any Swiss Subsidiary;
3. causing Corp. to (i) obtain confirmation of a plan of reorganization, or (b) convert or consent to the conversion of the Corp. Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code.

Dated: \_\_\_\_\_  
Zug, Switzerland

\_\_\_\_\_  
Edward G. Moran

Dated: \_\_\_\_\_  
Zug, Switzerland

\_\_\_\_\_  
Bernard Häusler

Witness: \_\_\_\_\_  
Michael N. Gottfried, Esq.

SCHEDULE 1  
THE RESOURCES GROUP

AIOC Trading AG\*  
(Zug, Switzerland)

AIOC Alloys Ltd\*  
(Zug, Switzerland)

Saunders Trading (formerly Sibalco Ltd.)  
(Grand Cayman, BWI)

AIOC Africa Properties (Pty) Ltd  
(Johannesburg, South Africa)

AIOC Ferrous GmbH\*  
(Zug, Switzerland)

AIOC Brasil Limitada  
(Rio de Janeiro, Brazil)

AIOC Trading AOZT  
(Moscow, Russia)

AIOC Japan Limited  
(Tokyo, Japan)

AJ Resources AB  
(Sweden)

AIOC Ore & Metals AB  
(Sweden)

AIOC UK Limited  
(London, England)

AIOC Ore & Metals GmbH  
(Cologne, Germany)

AIOC Ore & Metals AG \*  
(Lugano, Switzerland)

Sakoc Trading AG\*  
(Zug, Switzerland)

SCHEDULE 2  
The Resources Banks

	U.S. Proceeding Proof of Claim #	Swiss Claim
Banque Bruxelles Lambert (Suisse) SA	89	Yes
Banque Commerciale Pour L'Europe Du Nord	228	
Credit Agricole Indosuez F/K/A Banque Indosuez	181	
Banque Nationale De Paris	204	
Banque Nationale De Paris (Suisse)	258	Yes
Banque Paribas	196	
Banque Paribas (Suisse) SA	253	Yes
Bayerisches Vereinsbank	None Filed	
BHF Bank AG	251	
Caisse Nationale De Credit Agricole	256	
Credit Suisse	None Filed <sup>8</sup>	Yes
Generale Bank	185	
Hill Samuel Bank Ltd.	235	
ING Bank. N.V.	184	Yes
Investec	None Filed	
Kredietbank N.V.	206	Yes
Meespierson N.V.	90	
Moscow Narodny Bank Ltd.	218	Yes
Rand Merchant Bank	None Filed	
Societe Generale	248	
Swiss Bank Corporation	267	Yes
Toko Bank	271	
United Overseas Bank	132	Yes
Westdeutsche Landesbank Girozentrale	270	

<sup>8</sup> Credit Suisse has filed a claim in the Corp. Chapter 11 Case which claim has been designated as claim 268.