DISTRESSED M&A

RECENT TRANSACTION PROFILES

This note is provided by way of information only about four recent transactions to be discussed at the Fourth Corporate Control Panel:

- Mirabela Nickel Ltd re-structuring
- Nexus Energy Ltd failed proposed scheme of arrangement and re-structuring
- Coalspur Mines Ltd scheme of arrangement
- Atlas Iron Ltd re-structuring of arrangements with major contractors and capital raising

Mirabela Nickel Ltd (ASX listed “MBN”)

Mirabela, a nickel resource company was placed into voluntary administration in February 2014 following the termination of one of its major sales agreements and declining spot nickel prices.

Mirabela’s administrator’s sought approval from the NSW Supreme Court under 444GA of the Corporations Act for a ‘loan to own’ restructure which would allow an ad hoc group of US noteholders to waive the US$395 million collectively owed, with interest, in exchange for 98.2% shareholding in Mirabela.

The NSW Supreme Court allowed the transfer of a majority of the miner’s shares to its US noteholders, after satisfying itself that the transfer would not unfairly prejudice the interests of members in the company. Black J found that:

- Mirabela shareholders would receive no return if the company were wound up;
- recapitalisation would preserve Mirabela’s business, allow Mirabela’s employees to be retained and their entitlements preserved and allow for payment of trade creditors’ debts; and
- whilst the recapitalisation plan would cause Mirabela’s shareholders to significantly diminish their shareholding, it would provide them with an opportunity to reduce the loss of value in that shareholding.

The Mirabela restructure was struck under a deed of company arrangement entered into on 13 May 2014. The restructure also involved issuance of US$115 million of convertible notes to fund ongoing operations post restructure.

Mirabela was the first local restructure of a listed company through a ‘loan to own’ process without shareholder approval.

Mirabela was handed back to directors on 25 June 2014 and reinstated to official quotation after the capital restructuring.
Further information:

- For the Deed of Company Arrangement, see the [ASX Platform](https://www.asx.com.au).
- “An Australian first: Changing the dynamics of corporate restructuring” (KordaMentha website, July 2014 [click here](https://www.kordamentha.com.au)).

**Nexus Energy Ltd (formerly ASX listed “NXS”)**

From early 2013 until early 2014, Nexus Energy Ltd, a then ASX listed oil and gas exploration and production company, was in a distressed state.

Nexus held interests in three principal projects (through subsidiaries):

1. Longtom (production wells in the Gippsland Basin off Victoria which faced significant technical issues and required further capital to address).
2. 15% of Crux (a large resource in the Browse Basin, WA, with majority holder Shell, for which Nexus likely faced large cash calls).
3. Echuca Shoals (an exploration asset in the Browse Basin, with large expenditure commitments).

Nexus struggled to find investors or purchasers for its assets and engaged in an industry wide search with its advisors between late 2013 and early 2014. It was also heavily in debt with large facilities falling due within months.

In February 2014, Nexus placed a trading halt on its shares (as they traded at around $0.05).

In late March 2014, Nexus and Seven Group Holdings Ltd (SGH) announced they had entered into a scheme implementation agreement to propose a scheme for the takeover of Nexus at $0.02 per share.

SGH, through subsidiaries, had purchased the rights of Nexus’ major lenders, being a senior facility of $42.4 million and senior subordinated notes of $117.6 million.

On 7 May 2014, the Federal Court ordered the holding of meetings of Nexus’ shareholders to consider the proposed scheme and Nexus shares came out of halt and fell to $0.02 per share.

The independent expert opined that in the absence of a superior proposal, the proposed scheme was fair and reasonable and therefore in the best interests of shareholders. This was on the basis that Nexus was likely to be put into administration and shareholders would receive less or nothing.

There was significant shareholder discontent, including opposition on social media and an activist website (called “Nexus Battle Group”) and many pieces in the financial press. Shareholders called for increased consideration, some expressed concerns about governance issues at Nexus and SGH and others complained of the strategy of SGH to obtain control.
On 28 May 2014, the Federal Court approved supplementary dispatch of materials to shareholders prior to voting on the scheme, as SGH had announced to the market it would not increase its offer and truth in takeovers considerations required that this be specifically brought to shareholders’ attention.

On 12 June 2014, shareholders of Nexus voted overwhelmingly against the scheme. Soon after Nexus was put into administration as SGH exercised rights under the facilities and notes.

In proceedings before the New South Wales Supreme Court in the second half of 2014, the administrators obtained the approval under s 444GA of the Corporations Act 2001 for the transfer of shares in Nexus to SGH’s subsidiary.

SGH obtained eventual control of Nexus, even after the failed proposed scheme of arrangement.

**For further information:**

- For the Scheme Implementation Agreement, see the [ASX platform](https://www.asx.com.au).
- For the Scheme Booklet (and expert report), see the [ASX platform](https://www.asx.com.au) and [supplementary disclosure](https://www.asx.com.au).
- Federal Court decisions and orders: Orders convening meeting (visit court portal [site](https://www.federalcourt.gov.au)) and *Re Nexus Energy Ltd* [2014] FCA 558 (supplementary dispatch of disclosure).
- Former shareholders can view the Deed of Company Arrangement on the administrators’ (McGrath Nicholls) [website](https://www.mnc.com.au).
- Rebecca Maslen-Stannage “First takeover by deed of company arrangement – Seven Group acquisition of Nexus Energy” (Herbert Smith Freehills website, 30 March 2015 [click here](https://www.hsf.com)).

**Coalspur Mines Ltd** (formerly ASX listed “CPL”)

From late June 2014, exploration company Coalspur Mines Ltd started a strategic review of its principal asset, the Vista thermal coal project (located east of Hinton, Alberta, Canada), as depressed global coal prices and Coalspur’s existing debts to EIG and Borrowdale (who was also a 20.4% shareholder) made it difficult for Coalspur to finance the project or find new investors.

In February 2015, Coalspur entered into a scheme implementation agreement with a KC Euroholdings S.à r.l. (KCE) and its affiliate Cline Resource and Development Company (Cline), an established US coal producer.
In April 2015, the shareholders of Coalspur considered and approved a scheme of arrangement to effect the acquisition by KCE of all shares in Coalspur for $0.023 per Coalspur share.

Relevantly:

- Coalspur had obligations to EIG to repay US$71 million by 31 March 2015 (extended until termination of the SIA or implementation of the scheme). Coalspur also had obligations to repay CAD$33 million to Borrowdale within a month of the EIG facility falling due.
- Coalspur faced a difficult market for the development of its asset.
- Borrowdale as a 20.4% shareholder and a creditor of Coalspur agreed to transfer its rights and interests in the existing debt facility to KCE in exchange for a royalty linked to coal sales over the life of mine of the Vista project.
- The independent expert opined that in the absence of a superior proposal, the proposed scheme was fair and reasonable and therefore in the best interests of shareholders. The expert also opined Borrowdale would receive no collateral benefit from the scheme (as both a major shareholder and principal lender swapping rights to repayment of a facility for repayment by royalty).
- In 2011, Coalspur shares traded at around $1.80 and it was capitalised at over $1 billion. By the time of the scheme in 2015, it was purchased for around $15 million.
- 46.1% of shares on issue were voted by 285 of 2080 shareholders (or 12.8%), to attain the statutory majorities to approve the scheme.

For further information:

- For the Scheme Implementation Agreement, see the ASX platform or Coalspur website. For the Scheme Booklet (and expert report), see the ASX platform or Coalspur website.

**Atlas Iron Ltd** (ASX listed “AGO”)

In April 2015 Atlas was forced to suspend its three Pilbara iron ore operations in response to the declining iron ore price.

The operations were suspended until its contractors – led by heavy haulage group McAleese – stepped in and assisted with a collaboration agreement backed by A$180 million capital raising.
Under the collaboration agreement with shareholders, the contractors received an uplift in their rates in line with the price of iron ore and 25% of applicable positive net operating cash flows.

The proposed capital raising comprises:

- A placement to key Atlas contractors for up to A$30 million worth of new shares at the same issue price as the broader capital raising;
- A placement to new and existing shareholders (including the general public) to raise up to A$50 million; and
- A shareholder participation offer to eligible shareholders to raise up to A$100 million.

Atlas also offered 1 free $0.075 option with each share, which could raise up to an additional A$270 million if eventually exercised. The capital structuring was approved by the vast majority of shareholders. The offer is expected to close on 17 July 2015.

In April 2015, Atlas’ break even price was US$60 per tonne. The contractor collaboration agreement has lowered Atlas’ break even price to around US$50 per tonne, with shareholders advised that the company could now ride out iron ore prices as low as US$45 per tonne.

Atlas also accepted a royalty relief package offered by the WA government allowing it to access a cash refund of A$12.5 million. The offer entitled Atlas to claim a 50% rebate on royalties until the end of September 2015, backdated from 1 October 2014. Atlas is required to repay the rebate, without interest or premium, in 7 equal quarterly installments from 31 March 2016.

Further information

- For the capital raising prospectus, see the ASX Platform or the Atlas website.

This note does not constitute advice, should not be relied upon as such and readers should confirm the accuracy of any information with in it.

No responsibility is taken for the information in it or materials or materials referred to.