

NEW YORK
LONDON
SINGAPORE
PHILADELPHIA
CHICAGO
WASHINGTON, DC
SAN FRANCISCO
SILICON VALLEY
SAN DIEGO
LOS ANGELES
TAIWAN
BOSTON
HOUSTON
AUSTIN
HANOI
HO CHI MINH CITY

Duane Morris®

FIRM and AFFILIATE OFFICES

FREDERICK D. (RICK) HYMAN
DIRECT DIAL: +1 212 692 1063
PERSONAL FAX: +1 212 208 4521
E-MAIL: RHyman@duanemorris.com

www.duanemorris.com

SHANGHAI
ATLANTA
BALTIMORE
WILMINGTON
MIAMI
BOCA RATON
PITTSBURGH
NEWARK
LAS VEGAS
CHERRY HILL
LAKE TAHOE
MYANMAR
OMAN
A GCC REPRESENTATIVE OFFICE
OF DUANE MORRIS
ALLIANCES IN MEXICO
AND SRI LANKA

August 10, 2020

Via ELECTRONIC MAIL AND CM/ECF

The Honorable Vernon S. Broderick
United States District Court for the
Southern District of New York
40 Foley Square
New York, NY 10007
BroderickNYSDChambers@nysb.uscourts.gov

Re: Vale S.A. v. BSG Resources Limited, No. 19-cv-3619

Dear Judge Broderick:

We represent William Callewaert and Malcolm Cohen (the “Joint Administrators”) in their capacity as Joint Administrators for BSG Resources Limited (in administration) (“BSGR”) in the above-referenced proceeding and as the Foreign Representatives in connection with the Chapter 15 case currently pending before The Honorable Judge Lane in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) and docketed in that court as *In re BSG Resources Limited, No. 19-11845 (SHL)* (the “Chapter 15 Case”).

We write to advise Your Honor that the Joint Administrators have filed with their appointing court in Guernsey an *Application for Discharge of Administration Order and Ancillary Orders* dated July 23, 2020 (the “Discharge Application”) and a related *Affidavit of Malcolm Cohen in Support of the Joint Administrators’ Application* (the “Affidavit”). The Discharge Application and the Affidavit are attached hereto.

As stated in the Affidavit, the Joint Administrators brought the Discharge Application because, due to the absence of funding for past and future work of the Joint Administrators and their relevant professionals, the statutory purpose of BSGR’s administration in Guernsey cannot be achieved. Certain of the Joint Administrators’ professionals have past due invoices from 2019 and 2020 and an aggregate amount of not less than \$4 million remains unpaid and past due to the

The Honorable Vernon S. Broderick
Page 2

Joint Administrators and those professionals. The Joint Administrators were aware that the Discharge Application will be heard in Guernsey in conjunction with a parallel application by Vale S.A. (“Vale”) to place BSGR in liquidation (the “Liquidator Application” and, together with the Discharge Application, the “Guernsey Applications”). If successful, the Guernsey Applications would result in the immediate discharge of the Joint Administrators and the appointment of partners in Alvarez & Marsal as liquidator (the “Liquidator”). The Liquidator, when appointed, would succeed to the Joint Administrators with respect to matters before this Court and, if designated a foreign representative, in the Chapter 15 Case.

The Guernsey Applications were first heard in Guernsey on July 28, 2020. At that hearing, the Guernsey court determined to adjourn consideration of the Guernsey Applications to August 11, 2020 to provide for notice to two additional parties. Notice was not originally provided to those parties at Vale’s request. The Joint Administrators understand that one of those parties -- the party that has failed to comply with its obligations to fund the administration -- has requested an extension to September 15, 2020. Both the Joint Administrators and Vale intend to object to any such extension and the Joint Administrators expect that any extension, if one is granted, would not extend further than August 25, 2020. In any event, a transfer of responsibilities from the Joint Administrators to a Liquidator of Vale’s choosing is near.

In the instant case before this Court, however, Vale has served requests for production, dated June 26, 2020 (the “Document Request”), on the Joint Administrators or any successor with responsibility for the administration or liquidation of BSGR (a “Successor”). Vale has agreed that objections and/or responses to the Document Request are due no earlier than August 10, 2020. Under the current circumstances, the Joint Administrators are unable to respond to the Document Request by August 10, 2020. As noted above, they have no access to the significant funding that would necessarily be required properly to object and/or respond to such requests and will shortly in any case have no access to responsive documents. Vale is aware of these constraints and yet nevertheless demands performance rather than wait the short time for the appointment of the Liquidator (and one who is of their own choosing). Even if they had the resources to do so, any response by the Joint Administrators would be an inefficient waste of resources. Shortly, and as soon as this week, the Liquidator will be appointed and therefore deemed a Successor under the Document Request. The Liquidator, rather than Joint Administrators, should have the opportunity to lodge any objections to the Document Request or alternatively, and perhaps more likely, provide responsive documents to Vale without objection. It would be far more efficient for the Liquidator to deal with the Document Request, given the matters set out in this letter.

Under the circumstances, the Joint Administrators will not be in a position to respond in timely manner to the Document Request. For the avoidance of doubt, the Joint Administrators reserve all rights with respect thereto in favor of the Joint Administrators, the Successor, and BDO LLP and its affiliates.

DuaneMorris

The Honorable Vernon S. Broderick
Page 3

Thank you for Your Honor's attention to this matter.

Respectfully submitted,

/s/ Frederick Hyman
Frederick Hyman, Esq.

cc: Jeffrey Rosenthal, Esq.