



Hawthorn
RESOURCES

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17 January 2013

ASX Limited
Market Announcements Office

Company Announcement

re: Proposed Co-operation Deed

- **Feng Hua Mining Investment Holding (HK) Limited**
- **Mr M G Kerr**
- **Mr M E Elliott**

Attached for release to the market is a copy of the proposed Co-operation Deed between the abovementioned parties as referred to in the Form 603 (Notice of Initial Substantial Holder) issued by Messrs M G Kerr and M E Elliott and dated 24 December 2012.

The proposed Co-operation Deed is the subject of the Item 6, Resolution no. 7, on the Notice of Meeting for the Annual General Meeting of the Company to be held on Wednesday 30 January 2013.

A copy of the proposed Co-operation Deed can be inspected at the Company's offices:

Level 2 - 90 William Street
Melbourne Vic 3000

For further information contact:

Mourice Garbutt, Company Secretary
Telephone (03) 9605 5917

Co-operation Deed

Hawthorn Resources Ltd

Feng Hua Mining Investment Holdings (HK) Limited
(**Fenghua**)

Mark Edward Elliott (**Elliott**)

Mark Gregory Kerr (**Kerr**)

Co-operation Deed

Hawthorn Resources Ltd

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Details

Date

Parties

Name **Feng Hua Mining Investment Holding (HK) Limited**
Short form name **Fenghua**
Notice details Room 1606 Westley Square
48 Hoi Yuen Road, Kwun Tong Kln
Hong Kong
Facsimile: (852)2851 8277
Attention: Yongzhong Liao

Name **Mark Edward Elliott**
Short form name **Elliott**
Notice details 189 Hotham Street, East Melbourne Vic 3002
Facsimile:
Attention: Mark Elliott

Name **Mark Gregory Kerr**
Short form name **Kerr**
Notice details 37 Berkeley Street, Hawthorn Vic 3122
Facsimile:
Attention: Mark Kerr

Background

- A Fenghua is the holder of [#] Shares and has agreed with Hawthorn to be issued with a further [#] Shares (**Second Tranche**).
- B Elliott and Kerr are directors of Hawthorn.
- C During the Co-operation Period, the parties have agreed to support the continuance in office as directors of Hawthorn of Elliott and Kerr and of the Fenghua Appointees.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed:

Alternative Resolution means a resolution proposed at a general meeting of Hawthorn to elect or re-elect a person other than Elliott or Kerr or the Fenghua Appointees as a director of Hawthorn.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this deed and Hawthorn was the designated body.

Business Day means:

- (a) for receiving a notice under clause 6, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Australia and Perth, Australia.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Chairman in relation to a general meeting of Hawthorn means the person chairing the meeting.

Co-operation Period means the period:

- (a) commencing on the satisfaction of the following conditions: (i) the relevant approval is obtained from shareholders of Hawthorn for the entry into this deed by the parties (if required by law or by the regulatory authorities); (ii) the existing co-operation deed with Legacy Iron Ore Ltd dated 3 October 2010 is terminated; and (iii) Hawthorn having obtained the approval of Shareholders at general meeting for the issue of the Subscription Shares, for Fenghua acquiring the Subscription Shares for all purposes including under section 611(7) of the Corporations Act for the appointment of all the directors nominated by Fenghua; and
- (b) ending on the first to occur of the following:
 - (i) the date the Share Subscription Agreement is breached by Hawthorn or is terminated;
 - (ii) the shareholders of Hawthorn do not approve the resolutions relating to the issue of the Second Tranche;
 - (iii) a Takeover Event;
 - (iv) Kerr or Elliott breach their duties as director of Hawthorn or breach any provisions of this Deed;
 - (v) the earliest date that neither Kerr nor Elliott is a director of Hawthorn; and
 - (vi) the third anniversary of the date of this deed.

Corporations Act means the *Corporations Act 2001* (Cth).

Fenghua Appointees means the directors nominated by Fenghua from time to time to be directors of the board of Hawthorn in accordance with the terms of the Share Subscription Agreement.

Fenghua Election Resolution means a resolution proposed at a general meeting of Hawthorn to elect or re-elect any Fenghua Appointees as a director of Hawthorn.

Fenghua Removal Resolution means a resolution proposed at a general meeting of Hawthorn to remove any Fenghua Appointees as a director of Hawthorn.

Hawthorn means Hawthorn Resources Limited ACN 009 157 439.

Incumbent Election Resolution means a resolution proposed at a general meeting of Hawthorn to elect or re-elect Elliott or Kerr as a director of Hawthorn

Incumbent Removal Resolution means a resolution proposed at a general meeting of Hawthorn to remove Elliott or Kerr as a director of Hawthorn.

Material Decisions means

- (a) the annual exploration work programme and budget and any amendment to it;
- (b) the annual financial plan and budget for Hawthorn;
- (c) declaration of dividends;
- (d) appointment and removal of directors, and all remuneration matters regarding directors;
- (e) the issue of any new securities (shares, debentures, convertible notes, warrants, options or similar) by Hawthorn;
- (f) engagement or termination of the auditor of Hawthorn;
- (g) the grant or any security over the assets of Hawthorn or its subsidiaries other than in the ordinary course of business; and
- (h) the approval or amendment of any employee share option scheme or similar plan.

Relevant Associate means an Associate of the parties.

Share means a fully paid ordinary share in Hawthorn.

Share Subscription Agreement means the share subscription agreement entered into between Hawthorn and Fenghua on or about the date of this deed.

Takeover Event means any to occur of:

- (a) a takeover bid within the meaning of the Corporations Act is made for the shares in Hawthorn and the bidder becomes entitled to compulsorily acquire all of the shares; or
- (b) a court orders a meeting to be held in relation to a proposed scheme of arrangement in relation to Hawthorn the effect of which may be that a person will have a relevant interest in at least 90% of the ordinary shares in Hawthorn and shareholders pass the resolution by the requisite majorities.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;

- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Melbourne, Victoria, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Co-operation

2.1 Association

The parties agree to be Associates of each other in supporting the continuation as directors of Hawthorn of Elliott and Kerr and of the Fenghua Appointees during the Co-operation Period.

2.2 Incumbent Election Resolution

During the Co-operation Period, Fenghua must exercise or cause the exercise of voting rights attaching to all Shares in which the party has a relevant interest so that the Shares are voted in favour of any Incumbent Election Resolution proposed at a general meeting held during the Co-operation Period.

2.3 Incumbent Removal Resolutions

During the Co-operation Period, Fenghua must exercise or cause the exercise of voting rights attaching to all Shares in which the party has a relevant interest so that the Shares are voted

against any Incumbent Removal Resolution proposed at a general meeting held during the Co-operation Period.

2.4 Fenghua Election Resolution

During the Co-operation Period, Kerry and Elliott must exercise or cause the exercise of voting rights attaching to all Shares in which the party has a relevant interest so that the Shares are voted in favour of any Fenghua Election Resolution proposed at a general meeting held during the Co-operation Period.

2.5 Fenghua Removal Resolutions

During the Co-operation Period, Kerr and Elliott must exercise or cause the exercise of voting rights attaching to all Shares in which the party has a relevant interest so that the Shares are voted against any Fenghua Removal Resolution proposed at a general meeting held during the Co-operation Period.

2.6 Alternative Resolution

During the Co-operation Period, neither Elliott nor Kerr may exercise, nor cause the exercise of voting rights attaching to all Shares in which the party has a relevant interest, so that the Shares are voted in favour of any Alternative Resolution at a general meeting held during the Co-operation Period unless with the prior approval of Fenghua.

2.7 Statutory and Fiduciary Duties

Nothing in this agreement will oblige any party to act contrary to or in breach of their fiduciary duties and statutory duties under the Corporations Act

2.8 No Future Cooperation Deeds

Neither Elliott nor Kerr shall enter into any co-operation deed or agreement concerning voting at the shareholder or board level of Hawthorn with any party during the term of this deed without the written consent of Fenghua.

3. Disclosure and substantial holding

3.1 Disclosure

The parties confirm and acknowledge that as at the date of this deed, the total number of Shares in which all Relevant Associates, Fenghua, Elliott and Kerr respectively have a relevant interest is [insert the number] representing total voting power in Hawthorn of [insert the number]%.

3.2 Substantial holding

- (a) Each party agrees to give a notice of substantial holding in accordance with Part 6C.1 of the Corporations Act not later than 2 Business Days after the date of this deed. A composite notice given on behalf of each party will be sufficient for this purpose.
- (b) Each party acknowledges and agrees that a copy of this deed (endorsed with a statement that the copy is a true copy) will accompany the notice or composite notice as provided in clause 3.2(a).

4. Breach

Without prejudice to any rights by the parties to terminate this deed herein, if either party breaches their obligations under this deed the other party may by notice in writing request the other party to remedy that breach. If the breach has not been remedied within 30 days of the date of that notice, the non-defaulting party may terminate this deed immediately in writing without prejudice to any other rights or remedies it may have. The notice provision in this clause is

without prejudice to any injunctive relief available to a party who may apply for the same at any time.

5. GST

5.1 Interpretation

In this clause 5, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

5.2 GST gross up

If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 5.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

5.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 5.2.

5.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

6. Notices and other communications

6.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

6.2 Effective on receipt

A Notice given in accordance with clause 6.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

7. Miscellaneous

7.1 Alterations

This agreement may be altered only in writing signed by each party.

7.2 Approvals and consents

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

7.3 Assignment

A party may only assign this agreement or a right under this agreement with the prior written consent of each other party.

7.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

7.5 Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this agreement or any transaction contemplated by this agreement must be paid by the parties in equal shares.

7.6 Survival

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.

7.7 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

7.8 No merger

The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

7.9 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

7.10 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

7.11 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.

7.12 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

7.13 Relationship

Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

7.14 Confidentiality

A party may only use confidential information of another party for the purposes of this agreement, and must keep any confidential information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this agreement) or the party has independently created the information;
- (b) disclosure is required by law or a regulatory body (including a relevant financial market);
or
- (c) disclosure is made to a person who must know for the purposes of this agreement on the basis that the person keeps the information confidential.

7.15 Announcements

A public announcement in connection with this agreement or any transaction contemplated by it must be agreed by the parties before it is made, except if required by law or a regulatory body (including a relevant financial market), in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of each other party.

7.16 Governing law and jurisdiction

This agreement is governed by the law of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

7.17 Effectiveness

This Deed and all the rights and obligations hereunder shall become effective from the date of commencement of the Co-operation Period.

