

2 October 2019

Todd Lewis  
Adviser, Listings Compliance (Melbourne)  
ASX

Dear Todd

**GBM Gold Ltd ('GBM'): Joint venture related party arrangement**

I refer to your letter dated 24 September 2019. In response (your letter in italics):

1. *Please provide a copy of the following documents (not for release to the market):*
  - (a) *the original Harvest Home JV agreement which was entered into in 2007;*
  - (b) *the amended Harvest Home JV agreement following the renegotiation referred to in GBM's 2014 Annual Report ('Amended Harvest Home JV Agreement'); and*
  - (c) *the recently varied Harvest Home JV agreement referred to in the Supplementary Prospectus ('Current Harvest Home JV Agreement').*

GBM response – Attached (and not for public release) are copies of the documents requested.

2. *It appears that the Amended Harvest Home JV Agreement was:*
  - *entered into by GBM and Silver Bright when Mr Paul Chan was a director of both GBM and Silver Bright Ltd; or*
  - *entered into by GBM and Truelight when Mr Chan was a director of both GBM and Truelight.*

*In light of this:*

  - (a) *Did GBM seek shareholder approval in relation to the Amended Harvest Home JV Agreement for the purposes of section 208 of the Corporations Act?*

GBM response – No.

- (b) *If the answer to (a) above is 'yes', please provide details.*

GBM response – Not applicable.

(c) *If the answer to (a) above is 'no', please explain why GBM did not seek shareholder approval.*

GBM response – Shareholder approval was not sought as GBM’s directors other than Mr Paul Chan determined that the arm’s length exception in section 210 of the Corporations Act applied to the Amended Harvest Home JV Agreement.

(d) *If the answer to (c) above is that the directors determined that the arm’s length exception in section 210 of the Corporations Act applied to the Amended Harvest Home JV Agreement, please outline the factors that that the directors took into account in making that determination, specifically referencing ASIC Regulatory Guide 76: Related Party Transactions ('RG 76') including paragraph 76.70 therein.*

GBM response – by way of background:

- (e) Exploration licence EL4985 (known as Harvest Home) was granted to Fiddlers Creek Gold Mining Company Pty Limited (**Fiddlers Creek**) in January 2007. Fiddlers Creek managed the project.
- (f) Exploration licence EL5029 (known as Queens Birthday), which adjoined Harvest Home, was granted to GBM in January 2007. GBM managed the project.
- (g) In January 2007 Fiddlers Creek and GBM entered into 50:50 joint venture partnerships to explore Harvest Home and Queens Birthday, with the EL to be held and exploration costs shared equally.
- (h) Due to lack of funding GBM was, from November 2008, in breach of its obligations under the Harvest Home and Queens Birthday JVs to contribute for exploration costs on its 50% interest in the joint ventures. Fiddlers Creek had made proposals which would see either joint venture partner sell their interest to the other.
- (i) In mid-2011 Mr Chan, through his controlled entities, invested approximately \$1,570,000 in GBM through subscribing for shares. Despite this, GBM did not have sufficient funds to purchase Fiddlers Creek’s interest in Harvest Home and Queens Birthday. At that time Ian Smith, GBM’s then executive chairman, represented to Mr Chan that if Mr Chan purchased Fiddlers Creek’s interest in Harvest Home and Queens Birthday GBM would fund further exploration and development on the projects, with the profit from mining shared equally.
- (j) In reliance of Mr Smith’s representations, in mid-2011 Mr Chan (though his controlled entity Silver Bright Investments Ltd, a BVI Company) purchased Fiddlers Creek’s 50% interest in Harvest Home and Queens Birthday and the Harvest Home tenement. The purchase price paid by Mr Chan’s entity was \$522,500 in total. To comply with restrictions on foreign ownership, a condition of purchase was that Fiddlers Creek would apply for a Mining Licence over Harvest Home and that Harvest Home Licence be transferred to Truelight Mining Pty Ltd (an entity controlled by Mr Chan) when granted.

- (k) Despite the terms of the joint venture agreements and Mr Smith's representations, GBM did not incur any expenditure on Harvest Home or Queens Birthday. As a result:
  - (i) Truelight spent approximately \$300,000 between 2011 and 2014 in keeping Harvest Home in good standing and advancing the project by applying for and receiving the grant of Mining Licence MIN5510.
  - (ii) GBM did not satisfy the expenditure requirements on EL5029 Queens Birthday and ultimately in March 2014 the licence was not renewed.
- (l) Mr Chan put GBM on notice of Truelight's losses in both funding Harvest Home and losing its 50% interest in Queens Birthday.
- (m) During this time GBM's main corporate activities were selling its Inglewood project and then acquiring the Bendigo Gold Project.

GBM's directors (other than Mr Chan) took into account the following factors in determining that shareholder approval was not required for the purposes of section 208 of the Corporations Act:

- (a) Negotiations on behalf of GBM were undertaken by John Harrison, GBM's managing director. Mr Harrison was familiar with joint venture arrangements and the issues to explore and develop the ground the subject of the Harvest Home JV.
- (b) For the following reasons, the terms of the Amended Joint Venture agreement were reasonable in the circumstances as if the parties were dealing at arm's length:
  - (i) GBM was in breach of its obligations under both joint venture agreements, and Truelight had suffered losses as a result. It was in GBM's best interests to resolve the claim without delay – to preserve the Harvest Home licence and also avoid a dispute with one of its substantial shareholders.
  - (ii) The Directors believed that the Amended Harvest Home JV Agreement, which required GBM to develop a mine and entitled it to be reimbursed this cost prior to the parties sharing the net proceeds from mining, would not result in GBM being out of pocket as a result of the amended terms of the joint venture.
  - (iii) The existing joint venture terms did not adequately deal with mining activities.
- (c) Given the circumstances between the parties, the Directors believed that the amendments were in GBM's best interests. Furthermore and because GBM had not complied with their terms, preserving any value in Harvest Home required amendments to the joint ventures.
- (d) At the time Harvest Home was considered to be a minor project and that the proposed amendments would not have any material impact on GBM.

3. *The Supplementary Prospectus indicates that the directors (other than Mr Chan) consider that the Current Harvest Home JV Agreement was entered into on arm's length terms such that shareholder approval is not required for the purposes of section 208 of the Corporations Act.*

*Please outline the factors that that the directors took into account in forming this view, specifically referencing RG 76 including paragraph 76.70 therein.*

GBM response – GBM's directors (other than Mr Chan) took into account the following factors in determining that shareholder approval was not required for the purposes of section 208 of the Corporations Act:

- (a) Due to government delays in giving approval to mine, GBM had failed to meet its expenditure commitments under the Amended Harvest Home JV Agreement, and was at risk of losing its interest in the Harvest Home joint venture. Under the terms of the Current Harvest Home JV Agreement, the period for GBM to earn its interest is extended to 31 August 2020.
- (b) Under the terms of the Current Harvest Home JV, GBM funds exploration and development; however is entitled to reimbursement prior to the parties sharing the net proceeds of the joint venture equally.
- (c) The Directors believe that the proposed development activities will generate net income, and that as a result it will not be out of pocket had Truelight funded any of the development cost.
- (d) In these circumstances and given Truelight was entitled to terminate the Harvest Home joint venture, the Directors (other than Mr Chan) consider the terms to be reasonable as if the parties were dealing at arm's length.

4. *Please confirm that GBM is complying with the Listing Rules and, in particular, Listing Rule 3.1.*

GBM response – GBM confirms that it is in compliance with the Listing Rules, including Listing Rule 3.1.

5. *Please confirm that GBM's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of GBM with delegated authority from the board to respond to ASX on disclosure matters.*

GBM response – GBM confirms the responses in this letter have been approved by GBM's board of directors.

Yours faithfully,

Andrew Chan  
Company Secretary  
GBM Gold Limited



24 September 2019

Reference: ODIN07581

Mr Andrew Chan  
Company Secretary  
GBM Gold Ltd  
66 Ham Street  
Kangaroo Flat VIC 3550

By email: andrewchan.bright@gmail.com

Dear Mr Chan

**GBM Gold Ltd ('GBM'): Joint venture related party arrangement**

ASX refers to the following:

- A. GBM's 2007 Annual Report released on the ASX Market Announcements Platform ('MAP') on 26 October 2007, which disclosed the 50:50 joint venture partnerships, known as the Harvest Home joint ventures, between Fiddlers Creek Gold Mining Company ('Fiddlers Creek'), as licensed owner of Exploration Licence ('EL') 4985, and GBM, as licensed owner of EL5029 ('Harvest Home JV').
- B. GBM's March 2012 Quarterly Report released on MAP on 1 May 2012, which disclosed that EL4985 was transferred from Fiddlers Creek to Silver Bright Ltd, a BVI company.
- C. GBM's 2012 Annual Report released on MAP on 1 October 2012, which disclosed that Mr Paul Chan, a non-executive director of GBM who was appointed on 17 October 2011, is a director of Silver Bright Investments Ltd ('Silver Bright') (see page 38) and referred to Silver Bright as GBM's 'new JV partner' (see page iii).
- D. GBM's 2014 Annual Report released on MAP on 30 September 2014, which disclosed that the Harvest Home JV was being renegotiated following the grant of mining licence MIN5510 (see page ix).
- E. GBM's March 2015 Quarterly Report released on MAP on 28 April 2015, which disclosed that the Harvest Home JV is now a 50:50 partnership between GBM and Truelight Mining Pty Ltd ('Truelight').
- F. GBM's 2015 Annual Report released on MAP on 25 September 2015, which confirmed that GBM's joint venture partner, Truelight, is 'a company associated with Mr Paul Chan who is a director of GBM' (see page 11).
- G. GBM's Supplementary Prospectus dated 14 August 2019 released on MAP on 27 August 2019 (the 'Supplementary Prospectus'), which included:
  - (i) a summary of the terms of the Harvest Home JV between GBM and Truelight, 'an entity wholly owned by Director Paul Chan', in section 1.2(a)-(d);
  - (ii) the variation to the terms of the Harvest Home JV agreement agreed between GBM and Truelight in section 1.2(e)-(k); and
  - (iii) the following statement in the last paragraph of section 1.2: 'The Directors other than Mr Chan consider the terms of the variation to be reasonable in the circumstances as if GBM and Truelight were dealing at arm's length so that Shareholder approval is not required under Chapter 2E of the Corporations Act'.

H. Listing Rule 10.1, which requires a listed entity to do the following:

*'10.1 An entity (in the case of a trust, the responsible entity) must ensure that neither it, nor any of its +child entities, +acquires a substantial asset from, or +disposes of a substantial asset to, any of the following +persons without the approval of holders of the entity's +ordinary securities.*

*10.1.1 A +related party of the entity.*

*10.1.2 A +child entity of the entity.*

*10.1.3 A +substantial holder in the entity, if the person and the person's +associates have a relevant interest, or had a relevant interest at any time in the 6 months before the transaction, in at least 10% of the total votes attached to the voting +securities in the entity.*

*10.1.4 An +associate of a +person referred to in rules 10.1.1 to 10.1.3.*

*10.1.5 A +person whose relationship to the entity or a +person referred to in rules 10.1.1 to 10.1.4 is such that, in ASX's opinion, the transaction should be approved by +security holders. If an entity breaks this rule, ASX may require it to take the corrective action set out in rule 10.9.'*

I. Chapter 19 of the Listing Rules, which defines 'dispose' to mean:

*'To dispose or agree to dispose directly or through another +person by any means, including the following.*

- Granting or exercising an option.*
- Using an asset as collateral.*
- Decreasing an economic interest.*
- Disposing of part of an asset.'*

### **Questions and Request for Information**

Having regard to the above, ASX asks GBM to respond separately to each of the following questions and requests for information.

1. Please provide a copy of the following documents (not for release to the market):

- the original Harvest Home JV agreement which was entered into in 2007;
- the amended Harvest Home JV agreement following the renegotiation referred to in GBM's 2014 Annual Report ('Amended Harvest Home JV Agreement'); and
- the recently varied Harvest Home JV agreement referred to in the Supplementary Prospectus ('Current Harvest Home JV Agreement').

2. It appears that the Amended Harvest Home JV Agreement was:

- entered into by GBM and Silver Bright when Mr Paul Chan was a director of both GBM and Silver Bright Ltd; or
- entered into by GBM and Truelight when Mr Chan was a director of both GBM and Truelight.

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In light of this:

- a) Did GBM seek shareholder approval in relation to the Amended Harvest Home JV Agreement for the purposes of section 208 of the Corporations Act?
  - b) If the answer to (a) above is 'yes', please provide details.
  - c) If the answer to (a) above is 'no', please explain why GBM did not seek shareholder approval.
  - d) If the answer to (c) above is that the directors determined that the arm's length exception in section 210 of the Corporations Act applied to the Amended Harvest Home JV Agreement, please outline the factors that that the directors took into account in making that determination, specifically referencing ASIC Regulatory Guide 76: Related Party Transactions ('RG 76') including paragraph 76.70 therein.
3. The Supplementary Prospectus indicates that the directors (other than Mr Chan) consider that the Current Harvest Home JV Agreement was entered into on arm's length terms such that shareholder approval is not required for the purposes of section 208 of the Corporations Act.
- Please outline the factors that that the directors took into account in forming this view, specifically referencing RG 76 including paragraph 76.70 therein.
4. Please confirm that GBM is complying with the Listing Rules and, in particular, Listing Rule 3.1.
5. Please confirm that GBM's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of GBM with delegated authority from the board to respond to ASX on disclosure matters.

#### **When and where to send your response**

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **10.00 AM AEST Friday, 27 September 2019**.

You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, GBM's obligation is to disclose the information "immediately". This may require the information to be disclosed before the deadline set out in the previous paragraph.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at [ListingsComplianceMelbourne@asx.com.au](mailto:ListingsComplianceMelbourne@asx.com.au). It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

#### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to GBM's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. It should be noted that GBM's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

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**Listing Rule 10.1**

Subject to the answers and information provided in response to this letter, ASX may request further information and submissions from GBM in relation to the application of Listing Rule 10.1 to the Harvest Home JV.

If you have any queries in relation to this letter, please do not hesitate to contact me.

Yours sincerely

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**Todd Lewis**

Adviser, Listings Compliance (Melbourne)