

**ASX ANNOUNCEMENT**

26 April 2013

**COALBANK WHOLE-OF-COMPANY TRANSACTION**

**COALBANK LIMITED (ASX: CBQ, COALBANK or the Company)** has today entered into a binding Scheme Implementation Agreement with Hong Kong-based company, Loyal Strategic Investment Ltd. (Loyal Strategic) in relation to a whole-of-company transaction.

The Scheme Implementation Agreement sets out the terms on which COALBANK will propose a scheme of arrangement with its shareholders for the acquisition of 100% of the Company's ordinary shares by Loyal Strategic (Scheme) at A\$0.0175 per COALBANK ordinary share.

The scheme of arrangement is subject to conditions (described below) which must be satisfied (or waived) in order for the Scheme to proceed. In particular, Loyal Strategic has a three month due diligence and finance period under the Scheme Implementation Agreement. The Scheme is also subject to COALBANK shareholder approval and other regulatory approvals.

The acquisition is not expected to require the approval of The Foreign Investment Review Board (FIRB) if undertaken by Loyal Strategic (and not a nominee) as Loyal Strategic is a private company and the total consideration does not meet the relevant monetary threshold to be subject to FIRB approval.

Loyal Strategic and its directors have significant experience in funding and delivery of new development projects and have been engaged in international coal trading with Australia since 2009. Loyal Strategic advises that, subject to the conditions precedent being satisfied, it has the expertise and resources to complete the acquisition. As a sign of Loyal Strategic's commitment to the Scheme, it has agreed to pay a deposit of A\$1 million, which amount will be paid as consideration (or part consideration) for the acquisition of certain non-core assets of COALBANK in the event that certain of the conditions precedent are not satisfied.

The Board of COALBANK is fully supportive of the Scheme. The Board has agreed that it will unanimously recommend that COALBANK shareholders vote in favour of the Scheme at the Scheme meeting, in the absence of a superior proposal. COALBANK's Executive Deputy-Chairman and major shareholder (representing approximately 49%), Mr Greg Baynton, has advised that he will support the proposed Scheme.

The Loyal Strategic control transaction follows previous announcements made by COALBANK in relation to its discussions with various international parties about potential strategic investments or a whole-of-company transaction.

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## **Scheme Implementation Agreement**

### *Key terms*

Under the terms of the Scheme, Loyal Strategic has committed to acquire all the ordinary shares in COALBANK, at a price of A\$0.0175 per ordinary share payable by Loyal Strategic or its nominee. The obligation to proceed with the Scheme is subject to the satisfaction or waiver of the conditions precedent set out in the Scheme Implementation Agreement. The COALBANK Directors have agreed to support the proposed Scheme, by recommending that shareholder vote in favour of it, in the absence of a superior proposal.

### *Conditions precedent*

The Scheme is subject to a number of conditions precedent, including:

- (1) due diligence to the satisfaction of Loyal Strategic;
- (2) shareholder approval of the Scheme;
- (3) Loyal Strategic providing sufficient funding to complete the transaction (including to repay certain of COALBANK's liabilities); and
- (4) regulatory approvals, including ASIC, court approvals and FIRB approval (if required).

The scope of due diligence, which Loyal Strategic has three months to complete, relates to legal, accounting and technical due diligence. Key areas of due diligence include COALBANK's previously announced JORC inferred coal resource and title to and conditions of COALBANK's tenements.

The parties have until 30 September 2013 to satisfy the other conditions precedent, although the parties will work together to ensure, to the extent practicable, that the work required to satisfy those conditions is undertaken as expeditiously as possible.

The conditions precedent of the Scheme are set out in full in the Annexure.

### *Deposit*

Loyal Strategic has agreed to advance COALBANK a deposit of A\$1 million (Deposit) after the signing of the Scheme Implementation Agreement and after certain charges are given to Loyal Strategic to secure repayment of the Deposit (as set out below).

The Scheme Implementation Agreement provides that if certain conditions precedent cannot be satisfied, Loyal Strategic and COALBANK must complete one of the following alternative transactions:

#### *Alternative Transaction A*

COALBANK must procure that its subsidiary transfers its interests in Coalbank South and Biloela South to Loyal Strategic in exchange for the Deposit as consideration for those transfers.

This alternative transaction will proceed if:

- (a) FIRB (if required) is not obtained before the Scheme's second court date;
- (b) the other relevant regulatory and shareholder approvals are not obtained by 30 September 2013;
- (c) a material adverse change or prescribed occurrence occurs before the Scheme's second court date;

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- (d) the representations and warranties given by Coalbank are not true and correct as at the date of the Scheme Implementation Agreement and the Scheme's second court date;
- (e) Loyal Strategic is not satisfied with its due diligence by the end of the three month period;
- (f) COALBANK's options and performance rights are not exercised, cancelled or transferred to Loyal Strategic before the Scheme becomes effective; or
- (g) Loyal Strategic terminates the Scheme Implementation Agreement on account of a breach of a material term by COALBANK or a COALBANK director changing his recommendation to shareholders to vote in favour of the Scheme.

#### *Alternative Transaction B*

COALBANK must transfer and procure that its subsidiaries transfer their respective interests in Coalbank South, Biloela South, Chinchilla East and shares in Harvest Metals Pty Ltd to Loyal Strategic in exchange for Loyal Strategic paying COALBANK A\$1 million in addition to the Deposit as consideration for the transfers.

This alternative transaction will proceed if:

- (a) Loyal Strategic cannot obtain sufficient funding to complete the transaction; or
- (b) the representations and warranties given by Loyal Strategic are not true or correct as at the date of the Scheme Implementation Agreement and at the Scheme's second court date.

If either of the alternative transactions contemplated above are triggered and COALBANK is unable to complete that alternative transaction (including where the relevant tenements have not been registered in the name of Loyal Strategic within 24 months of the date of the Scheme Implementation Agreement due to no fault of Loyal Strategic), COALBANK must repay Loyal Strategic the Deposit (in cash) plus interest calculated at 15% per annum.

As security for the performance of COALBANK's obligation to repay the Deposit, COALBANK has agreed to grant a charge over its shares in Harvest Metals Pty Ltd and procure its subsidiaries to grant a charge in favour of Loyal Strategic in respect of the tenements relating to Biloela South, Coalbank South and those tenements held by Harvest Metals Pty Ltd (Charges). The Charges must be released immediately upon completion of the Scheme, on repayment of the Deposit, on termination of the Scheme Implementation Agreement by COALBANK for breach by Loyal Strategic, or will otherwise be released to the extent necessary to effect registration of the transfer of assets to Loyal Strategic with the relevant Government Agency under the alternative transactions described above.

#### *Repayment of Convertible Bonds*

If the Scheme is approved by shareholders and by order of the Court, Loyal Strategic will advance COALBANK a short-term loan to repay COALBANK's convertible bond holders and certain other creditors of COALBANK.

#### *Timing*

COALBANK expects to be in a position to despatch a Notice of Meeting and Scheme Booklet to all shareholders in June 2013 with a view to convening a Scheme meeting of shareholders to be held early August. Assuming the Scheme is approved by shareholders, its conditions are satisfied, and that ASIC and the requisite Court approvals are received, it is anticipated that completion of the Scheme and settlement could occur by the end of August 2013.

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## *Exclusivity*

COALBANK has agreed to standard exclusivity arrangements in respect of the proposed Scheme of Arrangement. The detailed terms of those arrangements are set out in the annexure to this announcement.

## *Advisers*

COALBANK is being advised on the transaction by McCullough Robertson.

Further information:

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**ANNEXURE – SUMMARY OF KEY TERMS**

**Conditions precedent**

The Implementation of the Scheme is subject to each of the following conditions precedent being satisfied or waived:

- (a) **(FIRB approval)**: if the Bidder determines, in consultation with the Target, that approval is required under either the FATA or the Policy for the Transaction and gives written notice to the Target by the end of the Exclusivity Period that such approval is required, before 8.00 am on the Second Court Date one of the following occurs:
  - (i) the Bidder notifies the Target in writing that the Treasurer of the Commonwealth of Australia (**Treasurer**) has advised that there are no objections to the Transaction under the FATA or the Policy and such advice is either unconditional or subject to conditions satisfactory to the Bidder; or
  - (ii) to the extent that the Transaction is required to be notified to the Treasurer under sections 26 or 26A of the FATA, but not under the Policy, the Treasurer ceases to be empowered to make an order under FATA in relation to the Transaction;
- (b) **(Court approval)** the Court approves the Scheme in accordance with section 411(4)(b) Corporations Act on or before the End Date;
- (c) **(Shareholder approval)** the Target Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act on or before the End Date;
- (d) **(Restraints)** no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the Transaction is in effect at 8.00 am on the Second Court Date;
- (e) **(No Material Adverse Change)** no Material Adverse Change occurs between the date of the Scheme Implementation Agreement and 8.00 am on the Second Court Date;
- (f) **(No Prescribed Occurrence)** no Prescribed Occurrence occurs between the date of the Scheme Implementation Agreement and 8.00 am on the Second Court Date;
- (g) **(Target Representations and Warranties)** the Target Representations and Warranties are true and correct in each case at the date of the Scheme Implementation Agreement and at 8.00 am on the Second Court Date as though made on and as of that time (except to the extent any such representation or warranty expressly relates to an earlier date, in which case, as of that date);
- (h) **(Bidder Representations and Warranties)** the Bidder Representations and Warranties are true and correct in each case at the date of the Scheme Implementation Agreement and at 8.00 am on the Second Court Date as though made on and as of that time (except to the extent any such representation or warranty expressly relates to an earlier date, in which case, as of that date);
- (i) **(due diligence)** the Bidder does not during the period ending the earlier of the Exclusivity Period and 8.00 am on the Second Court Date give a due diligence failure notice to the Target, which notice may be given by the Bidder in the event it becomes aware of any fact, matter or circumstance that was not disclosed in the Presentations and which is within the scope of the legal, accounting and technical due diligence the Bidder and its representatives will undertake for the purposes of this Transaction that has resulted or will likely result in a diminution in the value of the Target Group's net assets in excess of \$250,000 (except that this monetary threshold will not apply to a matter specified in paragraph (v)(i)(v) below) other than facts, matters or circumstances in connection with the following:
  - (i) exploration expenditure requirements under work programs for the EPCs;

- (ii) future royalty payments in respect of the EPCs; and
- (iii) future rental payments for the EPCs.

For the purpose of this paragraph (i) such matters include, but are not limited, to the following:

- (iv) **(JORC inferred resource)** the Target's JORC compliant inferred resource in respect of the Blackall Coal Project, announced on 20 June 2012, is incorrect, misleading or deceptive in any material particular;
- (v) **(good title)** a member of the Target Group does not have good title to any EPC listed in Schedule 4 of the Scheme Implementation Agreement and is not the applicant to any EPCA listed in Schedule 4 of the Scheme Implementation Agreement, other than as a result of the mandated relinquishment of tenements in the ordinary course;
- (vi) **(good standing)** any of the EPCs is not in good standing with the consequence that there is a reasonable likelihood an EPC will be forfeited or any renewal of an EPC will not be granted; and
- (vii) **(standard conditions)** any of the EPCs includes a condition or conditions which are unusually and materially burdensome or unnecessary to ensure the registered holder's compliance with applicable laws and good coal exploration practices;
- (j) **(funding arrangements)** the Bidder does not, during the period ending the earlier of the Exclusivity Period and 8.00 am on the Second Court Date, give a funding failure notice to the Target, which notice may be given by the Bidder in the event that it is unable to fund the Consideration and other payments due under the Scheme Implementation Agreement;
- (k) **(Target Options)** before 8.00 am on the Second Court Date, all of the Target Options are cancelled or transferred to the Bidder or the subject of agreements or arrangements that will, on or before the Implementation Date and to the satisfaction of the Bidder, cause the Target Options to be cancelled or transferred to the Bidder; and
- (l) **(Target Performance Rights)** before 8.00 am on the Second Court Date, all of the Target Performance Rights are exercised, cancelled or transferred to the Bidder or the subject of agreements or arrangements that will, on or before the Implementation Date and to the satisfaction of the Bidder, cause the Target Performance Rights to be exercised, cancelled or transferred to the Bidder.

## **Exclusivity**

In addition, the Target has granted the Bidder exclusivity during the Exclusivity Period during which:

- (a) **(no-talk)** the Target must not, and must ensure that no member of the Target Group nor any of their respective directors, employees, officers, agents or advisers participate in any negotiations or discussions in respect of any Competing Proposal;
- (b) **(no-shop)** the Target must not, and must ensure that no member of the Target Group nor any of their respective directors, employees, officers, agents directly or indirectly:
  - (i) solicits, invites, facilitates, encourages or initiates any enquiries, negotiations or discussions; or
  - (ii) communicates any intention to do any of these things, with a view to obtaining any approach, expression of interest, offer or proposal from any person in relation to a Competing Proposal.

Those provisions do not prevent a party from undertaking an act otherwise prohibited by the 'no-talk' obligation if, in the opinion of the Target Board determined in good faith and based on the written opinion of legal counsel (which will be made available to the Bidder on

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request), the Competing Proposal could be a Superior Proposal.

During the Exclusivity Period, the Target must not, and must ensure that no member of the Target Group, nor any of their respective directors, employees, officers, agents or advisers, recommends a Competing Proposal, or enters into any agreement, arrangement or understanding to pursue a Competing Proposal, unless it has first:

- (a) notified the Bidder in writing of the existence of the Competing Proposal and the person or persons proposing the Competing Proposal; and
- (b) given the Bidder at least five Business Days after provision of that information to provide a matching or superior deal to the Competing Proposal.

## **Definitions**

In this annexure, capitalised terms have the following meanings:

**Bidder** means Loyal Strategic Investment Ltd.

**Bidder Representations and Warranties** means the representations and warranties of the Bidder set out in Schedule 1 of the Scheme Implementation Agreement.

**Business Day** means a business day as defined in the Listing Rules.

**Competing Proposal** means a transaction which, if completed, would mean a person other than the Bidder or an associate of the Bidder would:

- (a) acquire a relevant interest in 20% or more of the Target's securities;
- (b) acquire control of the Target, within the meaning of section 50AA Corporations Act;
- (c) acquire all or a substantial part of the Target's business, assets or undertaking.

**Consideration** means \$0.0175 for each Scheme Share.

**Court** means the Federal Court or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the Target and the Bidder.

**Effective** means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

**Encumbrance** means any mortgage, charge, pledge or lien and a security interest or a preferential or adverse interest of any kind.

**End Date** means 30 September 2013 or such later date as agreed between the Target and the Bidder.

**EPC** means an exploration permit for coal or an exploration permit for minerals, in each case issued under the *Mineral Resources Act 1989* (Qld).

**EPCA** means an application for an exploration permit for coal or an exploration permit for minerals, in each case to be issued under the *Mineral Resources Act 1989* (Qld).

**Exclusivity Period** means the period from and including the date of the Scheme Implementation Agreement to the earlier of:

- (a) the termination of the Scheme Implementation Agreement in accordance with its terms; and
- (b) the day which is three months from the date of the Scheme Implementation Agreement.

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**FATA** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**Financial Indebtedness** means any debt or other monetary liability (whether actual or contingent) in respect of moneys borrowed or raised or any financial accommodation.

**Government Agency** means any Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State.

**Implementation Date** means the second Business Day after the Record Date.

**Insolvency Event** means any of the following events occurring in relation to a party:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
- (b) the party is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act, or is presumed to be insolvent under the Corporations Act;
- (c) the party ceases to carry on business; or
- (d) an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction.

**Material Adverse Change** means any matter, event or circumstance which occurs, is announced or becomes known to the Bidder after the date of the Scheme Implementation Agreement which (individually or when aggregated with all such matters, events or circumstances) has resulted in or is likely to result in a material diminution in the value of the Target Group but does not include:

- (a) any matter, event or circumstance arising from changes in economic or business conditions (including changes in thermal coal prices, likely operating or capital expenditure requirements or the intentions of other participants in the coal industry) which impact on the Target and its competitors in a similar manner;
- (b) any change in royalty or taxation rates or the law relating to royalties or taxation which impact on the Target and its competitors in a similar manner; or
- (c) any change occurring directly or indirectly as a result of any matter, event or circumstance required to be done or procured by a party pursuant to the Scheme Implementation Agreement.

**Policy** means the Australian foreign investment policy issued by the Foreign Investment Review Board.

**Presentations** means the presentations set out in Annexure G of the Scheme Implementation Agreement.

**Prescribed Occurrence:** means:

- (a) **(conversion)** the Target converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** the Target resolves to reduce its share capital in any way;
- (c) **(buy-back)** the Target:

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- (i) enters into a buy-back agreement; or
- (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** the Target makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (e) **(issuing or granting shares or options)** a member of the Target Group:
  - (i) issues shares;
  - (ii) grants an option over its shares; or
  - (iii) agrees to make such an issue or grant such an option,
 in each case to a person outside the Target Group, other than due to the exercise of Target Options or Target Performance Rights or conversion of Target Convertible Bonds;
- (f) **(securities or other instruments)** a member of the Target Group:
  - (i) issues securities or other instruments convertible into shares or debt securities; or
  - (ii) agrees to issue securities or other instruments convertible into shares or debt securities,
 in each case to a person outside the Target Group;
- (g) **(constitution)** a member of the Target Group adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (h) **(disposals)** a member of the Target Group disposes, or agrees to dispose, or is mandated by a Government Agency to dispose of, a part of its business or property where the value of such business, or property exceeds \$50,000 (either individually or, in the case of related businesses or classes of property, collectively) other than a partial relinquishment in the area of an EPC in accordance with the terms and conditions of the EPC documents or the relinquishment of EPC 1313 or EPC 1524;
- (i) **(acquisitions, disposals or tenders)** a member of the Target Group:
  - (i) acquires or disposes of;
  - (ii) agrees to acquire or dispose of; or
  - (iii) offers, proposes, announces a bid or tenders for,
 any business, asset, interest in a joint venture, entity or undertaking where the value of such business, asset, interest, entity or undertaking exceeds \$50,000 (either individually or, in the case of related businesses or classes of assets, collectively) other than a partial relinquishment in the area of an EPC in accordance with the terms and conditions of the EPC documents;
- (j) **(Encumbrances)** a member of the Target Group creates any Encumbrance over the whole or a part of its business or property (other than a lien which arises by operation of law or legislation securing an obligation not yet due and consistent with past practice) which secures a liability greater than \$20,000;
- (k) **(employment arrangements)** a member of the Target Group:
  - (i) increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees;
  - (ii) accelerates the rights of any of its directors or employees to compensation or benefits of any kind; or
  - (iii) pays any of its directors or employees a termination or retention payment (otherwise than in accordance with an existing contract which, at the date of the Scheme Implementation Agreement, is in place and has been disclosed to the Bidder),

other than as a result of contracted arrangements at the date of the Scheme Implementation Agreement;

- (l) **(commitments and settlements)** a member of the Target Group:
  - (i) enters into any contract or commitment involving revenue or expenditure by the Target Group of more than \$50,000 over the term of the contract or commitment;
  - (ii) waives any material third party default where the financial impact on the Target Group will be in excess of \$50,000;
  - (iii) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$50,000) less than the full compensation due to the Target or a Subsidiary of the Target;
  - (iv) is joined in any capacity in any legal, arbitral, administrative or other proceedings which may result in a fine, penalty, award, judgment, determination, loss, damages, expense or other liability in excess of \$150,000 in aggregate; or
  - (v) is required to pay or discharge a fine, penalty or liability or liabilities to a Government Agency in excess of \$50,000 in aggregate, other than contracts or commitments entered into or expenses incurred in connection with the Scheme Implementation Agreement and the Transaction;
- (m) **(capital expenditure)** a member of the Target Group undertakes or agrees to undertake capital expenditure in excess of \$50,000 in aggregate;
- (n) **(insolvency)** an Insolvency Event occurs in relation to any member of the Target Group;
- (o) **(financial indebtedness)** a member of the Target Group provides financial accommodation (irrespective of what form of Financial Indebtedness that accommodation takes) in excess of \$50,000; or
- (p) **(breach of law)** a member of the Target Group takes or omits to take action which results in a breach of law material to a member of the Target Group, provided that a Prescribed Occurrence does not include:
  - (q) any issue of equity in the Target pursuant to the exercise of rights under Target Performance Rights and Target Options described in Schedule 2 of the Scheme Implementation Agreement;
  - (r) any matter required to be done or procured by a member of the Target Group pursuant to the Scheme Implementation Agreement; or
  - (s) any other matter, the undertaking of which the Bidder has approved in writing.

**Record Date** means 5.00 pm on the third Business Day after the date on which the Scheme becomes Effective.

**Scheme** means the scheme of arrangement between the Target and the Scheme Shareholders, in the form set out as Annexure A in the Scheme Implementation Agreement.

**Scheme Meeting** means the meeting of the Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard.

**Superior Proposal** means a publicly announced Competing Proposal for the Target that, taking into account all aspects of the Competing Proposal, is:

- (a) reasonably capable of being completed; and
- (b) more favourable to the Target Shareholders than the Scheme.

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**Target** means COALBANK Limited ACN 075 877 075.

**Target Board** means the board of directors of the Target.

**Target Group** means the Target and each of its subsidiaries

**Target Options** means options over unissued Target Shares.

**Target Performance Rights** means rights to acquire Target Shares, the exercise of which is subject to performance conditions.

**Target Representations and Warranties** means the representations and warranties of the Target set out in Schedule 2 of the Scheme Implementation Agreement

**Target Share** means a fully paid ordinary share in the Target.

**Target Shareholder** means each person registered as the holder of Target Shares.

**Transaction** means the acquisition of the Target by the Bidder under the Scheme, in accordance with the terms of the Scheme Implementation Agreement.