

## **BHP Billiton Background Briefing on Ok Tedi**

At BHP Billiton's Annual General Meeting on 16 October, the Chairman made the following points regarding BHP Billiton's exit from Ok Tedi:

1. "BHP Billiton would have preferred the mine to close early. That was unacceptable to the PNG Government because of the adverse social and economic impacts which would have flowed from the loss of the income which the mine generates for the PNG economy"
2. "We have been working assiduously to exit in a way that minimises the cost to shareholders while meeting the social and environmental obligations you would expect of us"
3. "Under the terms of the agreement with the other shareholders, the future income stream of BHP Billiton's equity in Ok Tedi Mining Limited or OTML will go into an independent entity to fund short and long-term sustainable development programs and projects in PNG. There will be clearly defined corporate governance rules relating to decision-making, distribution of funds and public reporting"
4. "This is not a compensation arrangement. Compensation is an operational matter for OTML"
5. "As we will have no future financial benefits coming from the mine's operations, the agreement will also provide protection for us against future liabilities"
6. "Nor can there be any suggestion, given the mine will continue to operate, that we are planning to exit without concern for the environment. First, we will ensure as part of our exit that there are adequate resources available to the entity, both in the short and long-term, to meet its share of contingencies such as early mine closure or environmental remediation by OTML. Second, we will ensure that the mine continues to be well managed including in regard to the environment. Third, we will ensure that the dredging of the river is maintained by OTML for the remainder of the mine's life [or that alternative mitigation measures are put in place]. Fourth, we will ensure that there is cash provisioning by OTML for normal mine closure"

The background to our decision to exit is that to have stayed would have been potentially at odds with BHP Billiton's Health, Safety, Environment and

Community policy framework, and would have exposed the Company's reputation and the interests of shareholders to unacceptable risk.

It was not an option open to BHP Billiton to close the mine, because

- A. BHP Billiton's equity position did not give us effective control of OTML,
- B. regulatory responsibility and the right to require that production continue was with the PNG Government, and
- C. the environmental benefits of closure had to be balanced against the significant social and economic benefits to PNG associated with the mine's operations.

BHP Billiton offered to continue to operate the mine for a lesser period than the expected mine life, provided that a plan was put in place to close the mine, but that was unacceptable to the other shareholders.

In the case of the PNG Government their opposition to early mine closure reflected the view of the affected landowners that the mine should continue to operate, which OTML and the Government then proceeded to finalise through Mine Continuation Agreements (MCA's)

This is the context in which BHP Billiton negotiated with the PNG Government and Inmet to exit from its involvement with the mine's operation with the objectives of

- A. maximising the social benefits for the people of PNG especially the Western Province;
- B. minimising the environmental impacts of the mine's future operations; and
- C. protecting BHP Billiton shareholders against future liabilities.

The outcome of these negotiations, which BHP Billiton believes has met its objectives, has been described by the PNG Prime Minister as "fair".

The main elements of the agreement relating to BHP Billiton's exit are as follows:

1. PNG Sustainable Development Program
  - Transfer of the shares associated with BHP Billiton's 52% equity to an offshore company based in Singapore, the PNG Sustainable Development Program Limited (the Program Company), the purpose of which will be to fund short and long-term sustainable development projects in PNG
  - Financial support from BHP Billiton to the Program Company for three years (until it has built up its own funds) with repayment arrangements if these are used (see attached) and, in the event of an OTML request in a drought situation, agreement to pre-purchase copper concentrate up to an agreed level.

- this financial support recognises that it would have been irresponsible for BHP Billiton not to ensure sufficient funds are available for environmental remediation or mine closure if calls are made on shareholders and sufficient cash had not accumulated in the Program Company to enable it to participate. The pre-purchase agreement gives OTML some protection in the event of a drought. These arrangements do not require provisioning, and are separate from the loss incurred by BHP Billiton in writing off its share of Ok Tedi's net assets.
- The governance arrangements provide that the Program Company will be independent of BHP Billiton and OTML. It will have seven independent directors with three appointed by each of BHP Billiton in consultation with its Forum on Corporate Responsibility and by agencies designated by the PNG Government, and one additional director to be based in Singapore. Approval of projects will require a majority of directors appointed by BHP Billiton and the PNG agencies; it will operate through an Executive Officer, Program Manager and Advisory Council with clearly defined operating rules, including criteria for selecting programs and projects, for consultation and for public reporting
- Funding allocations provide for one third of the distributions to the Program Company from its OTML shareholding until the end of the mine to be spent on current sustainable development projects, in proportions of two-thirds to PNG/one third to Western Province. Two thirds of the distributions are to be set aside in the Program Company's Long Term Fund for expenditure beyond the end of the mine life. The amount of these distributions is to be limited to interest earned and 2½ % of capital in any one year. The distributions will be determined by the Program Company Directors, and must be allocated to sustainable development projects
- The Program Company's funding may be drawn upon for OTML capital calls (to the extent that the Program Company Directors decide to participate), contractual obligations including indemnities, and operating expenses.

## 2. Environmental Measures

Measures to minimise future environmental impacts including retention of and responsible management team, provision for permanent dredging or alternative mitigation measures for the life of the mine, and cash provisioning for the closure of the mine.

## 3. Legal Arrangements

A series of releases, indemnities and warranties, which protect BHP Billiton from legal liability for the period after its exit.

These are principally:

- BHP Billiton released both by OTML's shareholders and OTML from its obligations under the Management Agreement;
- BHP Billiton released from any legal action relating to regulatory compliance by PNG Government;
- BHP Billiton to warrant the other shareholders and OTML that it has disclosed all material facts, and that it has provided shareholders with copies of all reports on the environmental effects of the Ok Tedi mine during the last five years;
- As part of the future compensation arrangements paid by OTML to the local communities in the six areas affected by the mine release, OTML shareholders past and future to be released from all demands and claims associated with future environmental impacts.
- Program Company will indemnify BHP Billiton and the State against any claims for damages relating to loss from pollution or damage to the environment arising from the operation of the Ok Tedi mine (in the case of BHP Billiton) following the exit date and (in the case of the State) before the exit date

#### 4. Future Management of OTML

- Transfer of the existing BHP Billiton management team to OTML, and implementation of a retention scheme;
- The appointment of three independent directors with relevant skills to the OTML Board together with a representative of each of the shareholders, and the establishment of a Technical Committee.

The agreement relating to BHP Billiton's exit is contingent upon passage of the necessary legislation through the PNG Parliament (which has now been introduced) and the signing of Mine Continuation Agreements (MCA's) between OTML and communities affected by the mine's operations. This process has been going on for many months, and 138 or 93% of the affected villages have now signed the MCA's. The MCA's are an expression of the informed consent of the affected communities to the mine's continued operations, and acceptance of an integrated set of measures to compensate them for the mine's impact on their communities. As compensation will be funded by OTML's earnings prior to dividend distributions to its shareholders, effectively BHP Billiton (or after the transfer of its shares the Program Company receiving the cash flow) contributes to the compensation arrangements in proportion to its equity.

## **Funding Facility**

### Commitment – 3 Years

Year 1 – \$US 100 million

Year 2 – \$US 85 million

Year 3 – \$US 70 million

These amounts are the maximum that can be drawn and are not cumulative. Furthermore, advances drawn in any year reduce the amount available in the following years. The maximum amount that can be drawn is \$US100 million in the first year.

### Purpose of Funding

The Program Company can only access advances for one of the following purposes:

- A. To fund participation by the Program Company in any OTML capital calls.
- B. To pay an indemnity claim.
- C. To pay the operating expenses to the extent that any distributions received by the Program Company are inadequate to do so.

### Repayment

The Program Company is obligated to repay all advances until the amount outstanding is reduced to zero.

- A. For indemnity advances the repayment is to be made immediately without conditions.
- B. Capital call advances are repayable when the Long Term Fund has reached a balance of \$US50 million, and all indemnity advances have been repaid.

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