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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 20-F**

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(Mark One)

☐ **REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR 12(g) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

OR

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE  
ACT OF 1934**

FOR THE FISCAL YEAR ENDED 30 JUNE 2010

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES AND  
EXCHANGE ACT OF 1934**

☐ **SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

Date of event requiring this shell company report \_\_\_\_\_

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-09526

Commission file number: 001-31714

**BHP BILLITON LIMITED**  
**(ABN 49 004 028 077)**

(Exact name of Registrant as specified in its charter)

**BHP BILLITON PLC**  
**(REG. NO. 3196209)**

(Exact name of Registrant as specified in its charter)

**VICTORIA, AUSTRALIA**  
(Jurisdiction of incorporation or organisation)

**180 LONSDALE STREET, MELBOURNE, VICTORIA**  
**3000 AUSTRALIA**  
(Address of principal executive offices)

**ENGLAND AND WALES**  
(Jurisdiction of incorporation or organisation)

**NEATHOUSE PLACE, VICTORIA, LONDON,**  
**UNITED KINGDOM**  
(Address of principal executive offices)

Securities registered or to be registered pursuant to section 12(b) of the Act.

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>	<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
American Depositary Shares*	New York Stock Exchange	American Depositary Shares*	New York Stock Exchange
Ordinary Shares**	New York Stock Exchange	Ordinary Shares, nominal value US\$0.50 each**	New York Stock Exchange

\* Evidenced by American Depositary Receipts. Each American Depositary Receipt represents two ordinary shares of BHP Billiton Limited or BHP Billiton Plc, as the case may be.

\*\* Not for trading, but only in connection with the listing of the applicable American Depositary Shares.

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**Securities registered or to be registered pursuant to Section 12(g) of the Act. None**

**Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act. None**

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Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

	<u>BHP Billiton Limited</u>	<u>BHP Billiton Plc</u>
Fully Paid Ordinary Shares	3,358,359,496	2,231,121,202

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. Yes ☐ No ☒

Note – Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP ☐ International Financial Reporting Standards as issued by the International Accounting Standards Board ☒ Other ☐

If “Other” has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow. Item 17 ☐ Item 18 ☐

If this is an annual report, indicate by checkmark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

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## Form 20-F Cross Reference Table

Item Number	Description	Report section reference
<b>1.</b>	<b>Identity of directors, senior management and advisors</b>	Not applicable
<b>2.</b>	<b>Offer statistics and expected timetable</b>	Not applicable
<b>3.</b>	<b>Key Information</b>	
A	Selected financial information	1.4.1
B	Capitalisation and indebtedness	Not applicable
C	Reasons for the offer and use of proceeds	Not applicable
D	Risk factors	1.5
<b>4.</b>	<b>Information on the company</b>	
A	History and development of the company	2.2.1, 2.2.2 to 2.2.10, 2.3, 2.11 and 3
B	Business overview	1, 2.2 to 2.9 and 3.1
C	Organisational structure	2.11 and Note 25 to the Financial Statements
D	Property, plant and equipment	2.1, 2.2.2 to 2.2.10, 2.3, 2.8, 2.14 and 3.7.2
<b>4A.</b>	<b>Unresolved staff comments</b>	None
<b>5.</b>	<b>Operating and financial review and prospects</b>	
A	Operating results	1.5, 2.7, 3.4, 3.6
B	Liquidity and capital resources	3.7
C	Research and development, patents and licenses etc	2.5, 2.6 and 7.16
D	Trend information	3.4.1 to 3.4.8
E	Off-balance sheet arrangements	3.8 and Notes 21 and 22 to the Financial Statements
F	Tabular disclosure of contractual obligations	3.8 and Notes 21, 22 and 28 to the Financial Statements
<b>6.</b>	<b>Directors, senior management and employees</b>	
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<b>7.</b>	<b>Major shareholders and related party transactions</b>	
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B	Related party transactions	3.9 and Note 31 to the Financial Statements
C	Interests of experts and counsel	Not applicable
<b>8.</b>	<b>Financial Information</b>	
A	Consolidated statements and other financial information	9, 11.3 and F-1 to F-96
B	Significant changes	3.10
<b>9.</b>	<b>The offer and listing</b>	
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C	Markets	11.1
D	Selling shareholders	Not applicable

<b>Item Number</b>	<b>Description</b>	<b>Report section reference</b>
E	Dilution	Not applicable
F	Expenses of the issue	Not applicable
<b>10.</b>	<b>Additional Information</b>	
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F	Dividends and paying agents	Not applicable
G	Statement by experts	Not applicable
H	Documents on display	2.13.14
I	Subsidiary information	3.9 and Note 25 to the Financial Statements
<b>11.</b>	<b>Quantitative and qualitative disclosures about market risk</b>	3.7.4 and Note 28 to the Financial Statements
<b>12.</b>	<b>Description of securities other than equity securities</b>	Not applicable
<b>13.</b>	<b>Defaults, dividend arrearages and delinquencies</b>	There have been no defaults, dividend arrearages or delinquencies
<b>14.</b>	<b>Material modifications to the rights of security holders and use of proceeds</b>	There have been no material modifications to the rights of security holders and use of proceeds since our last Annual Report
<b>15.</b>	<b>Controls and procedures</b>	5.5.1 and 5.13
<b>16.</b>		
A	Audit committee financial expert	4.1 and 5.5.1
B	Code of ethics	5.9
C	Principal accountant fees and services	5.13.2 and Note 34 to the Financial Statements
D	Exemptions from the listing standards for audit committees	Not applicable
E	Purchases of equity securities by the issuer and affiliated purchasers	7.2
F	Change in Registrant's Certifying Accountant	There has been no change of the Registrant's Certifying Accountant since our last Annual Report
G	Corporate Governance	5.11
<b>17.</b>	<b>Financial statements</b>	Not applicable as Item 18 complied with
<b>18.</b>	<b>Financial statements</b>	F-1 to F-96, Exhibit 15.1
<b>19.</b>	<b>Exhibits</b>	12

## 1 Key information

### 1.1 Our business

We are the world's largest diversified natural resources company. Our corporate objective is to create long-term value for shareholders through the discovery, development and conversion of natural resources, and the provision of innovative customer and market-focused solutions. We pursue this objective through our unchanged strategy of investing in 'tier one' assets that are large, low-cost and long-life to provide a balanced portfolio of export-oriented commodities:

- steelmaking products - iron ore, metallurgical coal, manganese;
- non-ferrous products - copper, aluminium, nickel, diamonds, potash;
- energy products - petroleum, energy coal, uranium.

We continue to invest in the future and have a deep inventory of growth assets.

Our operations and investments are designed to ensure the Group remains stable in the long term and responsive to market volatility in the short term.

The Group is headquartered in Melbourne, Australia, and consists of the BHP Billiton Limited Group and the BHP Billiton Plc Group as a combined enterprise, following the completion of the Dual Listed Company (DLC) merger in June 2001. BHP Billiton Limited and BHP Billiton Plc have each retained their separate corporate identities and maintained their separate stock exchange listings, but they are operated and managed as if they are a single unified economic entity, with their boards and senior executive management comprising the same people.

BHP Billiton Limited has a primary listing on the Australian Securities Exchange (ASX) in Australia. BHP Billiton Plc has a premium listing on the London Stock Exchange (LSE) in the UK and a secondary listing on the Johannesburg Stock Exchange in South Africa. In addition, BHP Billiton Limited American Depositary Receipts (ADRs) and BHP Billiton Plc ADRs trade on the New York Stock Exchange (NYSE) in the US.

As at 30 June 2010, we had a market capitalisation of approximately US\$165.6 billion. For the year ended 30 June 2010, we reported net operating cash flow of US\$17.9 billion, profit attributable to shareholders of US\$12.7 billion and revenue of US\$52.8 billion. We have approximately 100,000 employees and contractors working in more than 100 operations in over 25 countries.

We operate nine businesses, called Customer Sector Groups (CSGs), which are aligned with the commodities we extract and market:

- Petroleum
- Aluminium
- Base Metals (including Uranium)
- Diamonds and Specialty Products
- Stainless Steel Materials
- Iron Ore
- Manganese
- Metallurgical Coal
- Energy Coal.

## 1.2 Chairman's Review

I am pleased to report that in a difficult global economic and financial environment, BHP Billiton continued to perform well and strengthened its strategic and financial position.

While the global economic outlook has improved, the recovery remains fragile. Despite a near-term slowing in China, we continue to believe that the fundamentals driving Asian growth are robust. It is clear to the Board that the long-term outlook for BHP Billiton is strong. We have unique assets that are critical to the growth of the world's developing economies, and a geographic and commodity spread that reduces risk and optimises opportunity.

During the year, your Chief Executive, Marius Kloppers, and his team focused on delivering strong production and cost performance as well as investing in new growth opportunities.

Our strategy is clear and remains unchanged since 2001. We focus on large, long-life, low-cost, upstream, high-quality assets, diversified by commodity, geography and markets. This strategy means more predictable business performance over time which, in turn, underpins the creation of value for our shareholders, customers, employees and, importantly, the communities in which we operate.

The execution of our strategy resulted in a profit from operations, excluding exceptional items, of US\$19.7 billion an increase of 8.3 per cent. Net operating cash flows were US\$17.9 billion, US\$7.7 billion of which was reinvested in new growth projects. In addition, the Board increased dividends by 6.1 per cent to 87 cents per share, in line with our progressive dividend policy.

While the Board is pleased with these results, our progress in the critical area of safety is still below expectation. We continued to reduce the number of workplace injuries, however five people lost their lives at our operations this year. This is clearly unacceptable and a tragedy for their families, friends and colleagues.

In August 2010, we announced a fully funded takeover of Potash Corporation of Saskatchewan. The proposed acquisition meets our criteria of developing quality long-life assets using our existing mining skills to gain a leading position in the growing world market for fertiliser. We are committed to being a strong corporate citizen in Saskatchewan and New Brunswick, Canada, and our intention is to establish a global potash business based in Canada.

Important governance developments occurred in the UK, US and Australia during the year responding to the challenges of the global recession. We support the changes, particularly the emphasis on ensuring Boards comprise Directors with the collective set of essential skills and experience to govern the Group supported by robust succession planning and performance evaluation.

As part of our Board succession, Carolyn Hewson and Malcolm Broomhead joined the Board in March 2010. Together they bring deep experience in industrial and resource companies, financial markets and investment risk management. During the year, Don Argus, Paul Anderson, Gail de Planque, David Jenkins and David Morgan retired from the Board. We thank each of them for their contribution, particularly former Chairman Don Argus AC.

We have always believed that corporate governance and executive remuneration practices are critical issues for any company and its stakeholders. We support the need for simplified and transparent executive remuneration reporting, and these have been key influences on the structure of our remuneration report this year.

Our Remuneration Committee reviewed the Group's Long Term Incentive Plan for our most senior executives. The plan was originally introduced in 2004 and, given the changes in the global environment, the Committee believed a review was warranted. We consulted widely with our shareholders as well as governance advisers. As a result, we continue to believe that the duration of our five-year, long-term plan is appropriate. However, we also believe it is important to change some design elements as the plan produced highly leveraged outcomes not reflective of our business strategy. This is a matter on which we will seek shareholder approval.

One thing that has impressed me since the time I started as a Director in 2006 has been the quality of BHP Billiton people throughout the Group. In resources, as in many other industries, results are not only a function of the quality of the assets but the quality of the people operating and managing those assets.

Marius is a talented Chief Executive and he has developed a strong and diverse team with a depth of talent to support him. On your behalf, the Board would like to thank everyone involved with our Company for the contribution they have made in this challenging year.



Finally, since becoming Chairman this year after the retirement of Don Argus, I have had the privilege of meeting many of our institutional and individual shareholders. This is a rewarding part of my role and I look forward to meeting many more of you over the coming years.

### **1.3 Chief Executive Officer's Report**

Financial year 2010 was a year that presented a broad mix of challenges and achievements. Despite continued volatility and ongoing uncertainty across the global economy, BHP Billiton delivered a strong operational and financial performance.

It is our consistent and long-term strategy of focusing on a portfolio of upstream, tier one, low-cost assets diversified by commodity, market and geography that underpinned our ability to overcome the challenges during the year. I am encouraged by the Group's performance, which is testament to our focus on creating shareholder value in the long term.

We are a leading global resources company and our successes and achievements are significant. However, we cannot say we are truly successful until we eliminate fatalities and serious injuries in our workplace. This year we continued to make progress in reducing the number of injuries, though we did not meet our targets. It is with great sadness that I report to you that five of our colleagues lost their lives at work during the year and I personally extend my condolences to the families and friends of those individuals.

This is a stark reminder that we must lead in a way that ensures a safe workplace, and we can only do this by creating operating discipline and simplifying the way we work. Safety starts with strong leadership and I cannot emphasise enough how important this is to me personally and to our Group.

I am pleased to announce that BHP Billiton operations this year delivered solid results, with annual production records achieved in our Iron Ore and Petroleum businesses. In Iron Ore, this marked the tenth consecutive annual production record, and for Petroleum, it was the third consecutive production record. Our long-life, low-cost expandable assets provide our Company with the capacity to continue to deliver and strengthen our position in a range of markets.

By operating at full capacity whenever possible and staying focused on eliminating low value activities, we maintained our low-cost position and our ability to generate robust cash flows.

Of significant note in FY2010 was the move from annually negotiated benchmark prices in metallurgical coal and iron ore to shorter-term reference pricing. We have long advocated a move to a more transparent pricing regime and will actively support the development of a wider traded market in these commodities.

This move brings metallurgical coal and iron ore into line with how the rest of our portfolio is priced globally and moves us closer to achieving our stated objective of market prices for all of our commodities. More broadly, prices for our products recovered during the year driven by demand in China and restocking in the Organisation for Economic Co-operation and Development (OECD) countries. While government stimulus measures generally supported a gradual return to normalised global trade, the improvement in the developed economies was from a low base.

We believe that the recovery momentum of the major economies will remain uncertain as the impact of fiscal and monetary stimuli fades. Therefore, we are still cautious in our short-term view of the economy.

In the longer term, we are encouraged by the fundamentals underpinning sustained growth in China and India, which will continue to drive a strong demand for our products. This, along with our strong balance sheet, supports our capacity for future growth. We have extensive experience operating in emerging resource regions and we have the capability to capture additional opportunities as they arise.

Our disciplined approach to capital deployment has enabled BHP Billiton to both invest in the expansion of high-quality assets and further diversify our portfolio by commodity, market and geography, consistent with our unchanged strategy. The acquisition of Athabasca Potash earlier this year ensures our Group has access to more than 14,000 square kilometres of prospective exploration ground in the world-class Saskatchewan potash basin. Our all-cash bid to acquire Potash Corporation of Saskatchewan, the world's largest integrated fertiliser company and world's largest producer of potash by capacity, is consistent with our strategy and is a natural fit with BHP Billiton's greenfield land holdings in Canada. This acquisition represents an acceleration of our entry into the fertiliser industry.

This, plus the delivery of five major capital projects, is evidence of our growth capabilities.

However, we only earn the right to grow this business if we can do it safely, in an environmentally sound manner and in a way that demonstrates our unqualified commitment to working with integrity. I believe it is worth reiterating that safe growth underpinned by demonstrating our Charter values can only be achieved through leadership commitment and operating discipline. I want to take this opportunity to sincerely thank our employees and contractors and other stakeholders for their efforts in responding to the accountabilities articulated in our operating model.

Our Company has a clear strategy for growing our value, within a disciplined framework, and using prudent decision-making. Who and what we are today is the product of the vision and efforts of previous management teams in executing a consistent strategy. It is our responsibility to not only preserve, but enhance and increase the value of that legacy.

## 1.4 Selected key measures

### 1.4.1 Financial information

Our selected financial information reflects the operations of the BHP Billiton Group, and should be read in conjunction with the 2010 financial statements, together with the accompanying notes.

We prepare our consolidated financial statements in accordance with International Financial Reporting Standards (IFRS), as issued by the International Accounting Standards Board, and as outlined in note 1 'Accounting policies' to the financial statements in this Annual Report. We publish our consolidated financial statements in US dollars.

	2010	2009	2008	2007 <sup>(a)</sup>	2006 <sup>(a)</sup>
<b>Consolidated Income Statement (US\$M except per share data)</b>					
Revenue	52,798	50,211	59,473	47,473	39,099
Profit from operations	20,031	12,160	24,145	19,724	15,716
Profit attributable to members of BHP Billiton Group	12,722	5,877	15,390	13,416	10,450
Dividends per ordinary share – paid during the period (US cents)	83.0	82.0	56.0	38.5	32.0
Dividends per ordinary share – declared in respect of the period (US cents)	87.0	82.0	70.0	47.0	36.0
Earnings per ordinary share (basic) (US cents) <sup>(b)</sup>	228.6	105.6	275.3	229.5	173.2
Earnings per ordinary share (diluted) (US cents) <sup>(b)</sup>	227.8	105.4	274.8	228.9	172.4
Number of ordinary shares (millions)					
- At period end	5,589	5,589	5,589	5,724	5,964
- Weighted average	5,565	5,565	5,590	5,846	6,035
- Diluted	5,595	5,598	5,605	5,866	6,066
<b>Consolidated Balance Sheet (US\$M)</b>					
Total assets	88,852	78,770	76,008	61,404	51,343
Share capital (including share premium)	2,861	2,861	2,861	2,922	3,242
Total equity attributable to members of BHP Billiton Group	48,525	39,954	38,335	29,667	24,218
<b>Other financial information</b>					
Underlying EBIT (US\$M) <sup>(c)</sup>	19,719	18,214	24,282	20,067	15,277
Net operating cash flow (US\$M)	17,920	18,863	17,817	15,957	11,325
Gearing <sup>(d)</sup>	6.3%	12.1%	17.8%	25.0%	27.2%

- (a) On 1 July 2007, the Group adopted the policy of recognising its proportionate interest in the assets, liabilities, revenues and expenses of jointly controlled entities within each applicable line item of the financial statements. All such interests were previously recognised using the equity method. Comparative figures for the years 2007 and 2006 that were affected by the policy change have been restated.
- (b) The calculation of the number of ordinary shares used in the computation of basic earnings per share is the aggregate of the weighted average number of ordinary shares outstanding during the period of BHP Billiton Limited and BHP Billiton Plc after deduction of the weighted average number of shares held by the Billiton share repurchase scheme and the Billiton Employee Share Ownership Plan Trust and the BHP Bonus Equity Plan Trust and adjusting for the BHP Billiton Limited bonus share issue. Included in the calculation of fully diluted earnings per share are shares contingently issuable under Employee Share Ownership Plans.
- (c) Underlying EBIT is profit from operations, excluding the effect of exceptional items. See section 3.6.1 for more information about this measure, including a reconciliation to profit from operations.
- (d) See section 10 for glossary definitions.

### 1.4.2 Operational information

Our Board and Group Management Committee monitor a range of financial and operational performance indicators, reported on a monthly basis, to measure performance over time. We also monitor a comprehensive set of health, safety, environment and community contribution indicators.

	<u>FY2010</u>	<u>FY2009</u>	<u>FY2008</u>
<b>People and Licence to operate – Health, safety, environment and community</b>			
Total Recordable Injury Frequency (TRIF) <sup>(a)</sup>	<b>5.3</b>	5.6	5.9
Community investment (US\$M) <sup>(a) (b)</sup>	<b>200.5</b>	197.8 <sup>(b)</sup>	141.0
<b>Production <sup>(c)</sup></b>			
Total Petroleum Production (million barrels of oil equivalent)	<b>158.56</b>	137.97	130.07
Alumina ('000 tonnes)	<b>3,841</b>	4,396	4,554
Aluminium ('000 tonnes)	<b>1,241</b>	1,233	1,298
Copper cathode and concentrate ('000 tonnes)	<b>1,075.2</b>	1,207.1	1,375.5
Nickel ('000 tonnes)	<b>176.2</b>	173.1	167.9
Iron ore ('000 tonnes)	<b>124,962</b>	114,415	112,260
Metallurgical coal ('000 tonnes)	<b>37,381</b>	36,416	35,193
Manganese alloys ('000 tonnes)	<b>583</b>	513	775
Manganese ores ('000 tonnes)	<b>6,124</b>	4,475	6,575
Energy coal ('000 tonnes)	<b>66,131</b>	66,401	80,868

(a) See section 10 for glossary definitions.

(b) In FY2009 we established a UK-based charitable company, BHP Billiton Sustainable Communities, registered with the UK Charities Commission for the purpose of funding community investment globally. In FY2010 our voluntary community contribution included the provision of US\$80 million (2009: US\$60 million; 2008: \$US0 million) to BHP Billiton Sustainable Communities.

(c) Further details appear in section 2.3 of this Report.

### 1.5 Risk factors

We believe that, because of the international scope of our operations and the industries in which we are engaged, there are numerous factors which may have an effect on our results and operations. The following describes the material risks that could affect the BHP Billiton Group.

#### *Fluctuations in commodity prices and impacts of the global financial crisis may negatively impact our results*

The prices we obtain for our oil, gas, minerals and other commodities are determined by, or linked to, prices in world markets, which have historically been subject to substantial variations. The Group's usual policy is to sell its products at the prevailing market prices. The diversity provided by the Group's broad portfolio of commodities may not fully insulate the effects of price changes. Fluctuations in commodity prices can occur due to sustained price shifts reflecting underlying global economic and geopolitical factors, industry demand and supply balances, product substitution and national tariffs. The ongoing effects of the global financial crisis has impacted commodity markets in terms of lower prices, reduced demand and increased price volatility. The ongoing uncertainty and impact on global economic growth, particularly in the developed economies, may impact future demand and prices for commodities. The influence of hedge and other financial investment funds participating in commodity markets has increased in recent years, contributing to higher levels of price volatility. The impact of potential longer-term sustained price shifts and shorter-term price volatility creates the risk that our financial and operating results and asset values will be materially and adversely affected by unforeseen declines in the prevailing prices of our products.

We seek to maintain a solid 'A' credit rating as part of our strategy. Notwithstanding our financial and capital management programs the ongoing effects of the global financial crisis may impact our future cash flows, ability to adequately access and source capital from financial markets and our credit rating.

***Our profits may be negatively affected by currency exchange rate fluctuations***

Our assets, earnings and cash flows are influenced by a wide variety of currencies due to the geographic diversity of the countries in which we operate. Fluctuations in the exchange rates of those currencies may have a significant impact on our financial results. The US dollar is the currency in which the majority of our sales are denominated. Operating costs are influenced by the currencies of those countries where our mines and processing plants are located and also by those currencies in which the costs of imported equipment and services are determined. The Australian dollar, South African rand, Chilean peso, Brazilian real and US dollar are the most important currencies influencing our operating costs. Given the dominant role of the US currency in our affairs, the US dollar is the currency in which we present financial performance. It is also the natural currency for borrowing and holding surplus cash. We do not generally believe that active currency hedging provides long-term benefits to our shareholders. We may consider currency protection measures appropriate in specific commercial circumstances, subject to strict limits established by our Board. Therefore, in any particular year, currency fluctuations may have a significant impact on our financial results.

***The commercial counterparties we transact with may not meet their obligations and negatively impact our results***

We commercially contract with a large number of commercial and financial counterparties including customers, suppliers, and financial institutions. The global financial crisis has placed strains on global financial markets, reduced liquidity and impacted business conditions generally. Our existing counterparty credit controls may not prevent a material loss due to credit exposure to a major customer or financial counterparty. In addition, customers, suppliers, contractors or joint venture partners may fail to perform against existing contracts and obligations. Non-supply of key inputs or equipment may unfavourably impact our operations. Reduced liquidity and available sources of capital in financial markets may impact the cost and ability to fund planned investments. These factors could negatively affect our financial condition and results of operations.

***Failure to discover new reserves, maintain or enhance existing reserves or develop new operations could negatively affect our future results and financial condition***

The increased demand for our products and increased production rates from our operations in recent years has resulted in existing reserves being depleted at an accelerated rate. As our revenues and profits are related to our oil and gas and minerals operations, our results and financial conditions are directly related to the success of our exploration and acquisition efforts, and our ability to replace existing reserves. Exploration activity occurs adjacent to established operations and in new regions, in developed and less developed countries. These activities may increase land tenure, infrastructure and related political risks. A failure in our ability to discover new reserves, enhance existing reserves or develop new operations in sufficient quantities to maintain or grow the current level of our reserves could negatively affect our results, financial condition and prospects.

There are numerous uncertainties inherent in estimating ore and oil and gas reserves, and geological, technical and economic assumptions that are valid at the time of estimation may change significantly when new information becomes available. The impacts of the global financial crisis may impact economic assumptions related to reserve recovery and require reserve restatements. Reserve restatements could negatively affect our reputation, results, financial condition and prospects.

***Reduction in Chinese demand may negatively impact our results***

The Chinese market has become a significant source of global demand for commodities. In CY2009, China represented 56 per cent of global seaborne iron ore demand, 36 per cent of copper demand, 35 per cent of nickel demand, 39 per cent of aluminium demand, 42 per cent of energy coal demand and nine per cent of oil demand. China's demand for these commodities has been driving global materials demand over the past decade.

The strong economic growth and infrastructure development in China of recent years has been tempered by the global financial crisis. Sales into China generated US\$13.2 billion (FY2009: US\$9.9 billion), or 25.1 per cent (FY2009: 19.7 per cent), of our revenue in the year ended 30 June 2010. A slowing in China's economic growth could result in lower prices and demand for our products and therefore reduce our revenues.

In response to its increased demand for commodities, China is increasingly seeking strategic self-sufficiency in key commodities, including investments in existing businesses or new developments in other countries. These investments may adversely impact future commodity demand and supply balances and prices.

*Actions by governments or political events in the countries in which we operate could have a negative impact on our business*

We have operations in many countries around the globe, some of which have varying degrees of political and commercial stability. We operate in emerging markets, which may involve additional risks that could have an adverse impact upon the profitability of an operation. These risks could include terrorism, civil unrest, nationalisation, renegotiation or nullification of existing contracts, leases, permits or other agreements, and changes in laws and policy, as well as other unforeseeable risks. Risks relating to bribery and corruption may be prevalent in some of the countries in which we operate. If one or more of these risks occurs at one of our major projects, it could have a negative effect on the operations in those countries, as well as the Group's overall operating results and financial condition.

Our operations are based on material long term investments that anticipate long term fiscal stability. Following the global financial crisis some governments face increased debt and funding obligations and may seek additional sources of revenue and economic rent by increasing rates of taxation, royalties or resource rent taxes to levels that are globally uncompetitive to the resource industry. Such taxes may negatively impact the financial results of existing businesses and reduce the anticipated future returns and overall level of prospective investment in those countries.

On 2 May 2010, the Australian Government proposed a Resource Super Profits Tax at a rate of 40 per cent on profits made from the extraction of non-renewable resources. Subsequently, on 2 July 2010, this proposal was amended to a Minerals Resource Rent Tax (MRRT), at a rate of 30 per cent (with a 25 per cent extraction allowance – effectively resulted in a 22.5 per cent additional tax on profits) for iron ore and coal, while the current Petroleum Resource Rent Tax (PRRT) will be extended to all Australian oil and gas projects, including the North West Shelf. Legislation is proposed to be introduced into parliament in late CY2011, and then for the commencement date of the new tax regime to be 1 July 2012. The MRRT would operate in parallel with State and Territory royalty regimes, and those royalties in place or scheduled at 2 May 2010 would be creditable against the MRRT. The proposed MRRT would increase the effective tax rate of Australian coal and iron ore operations and the North West Shelf project. This could have a negative effect on the operating results of the Group's Australian operations. The MRRT is subject to passing by the Australian Parliament and may differ (wholly or in part) in its final form.

With the objective of raising more funds to face the reconstruction following the recent earthquake in Chile, the Chilean Government announced on 16 April 2010 an intention to increase the Corporate Income Tax rate (First Category Tax –FCT) as well as changing the Mining Tax in exchange for extending the tax invariability period available to investors, from 2017 currently in place for an extra eight years to 2025. The current draft legislation proposes a temporary increase of the FCT rate for two years (2010-2011) with the change in the Mining Tax regime having been removed from the current proposed bill. Any potential tax changes in the future if implemented may impact our financial results from Chilean operations.

Our business could be adversely affected by new government regulation, such as controls on imports, exports and prices. Increasing requirements relating to regulatory, environmental and social approvals can potentially result in significant delays in construction and may adversely impact upon the economics of new mining and oil and gas projects, the expansion of existing operations and results of our operations.

Infrastructure, such as rail, ports, power and water, is critical to our business operations. We have operations or potential development projects in countries where government provided infrastructure or regulatory regimes for access to infrastructure, including our own privately operated infrastructure, may be inadequate or uncertain. These may adversely impact the efficient operations and expansion of our businesses. On 30 June 2010, the Australian Competition Tribunal granted declaration of BHP Billiton's Goldsworthy rail line, but rejected the application for declaration of its Newman rail line under Part IIIA of the Trade Practices Act. Following the tribunal's decision, access seekers may now negotiate for access to the Goldsworthy railway. These negotiations, and the availability and terms of access, would be governed by the Part IIIA statutory framework, and either the access seeker or BHP Billiton could refer disputed matters to the ACCC for arbitration. The outcome of this process would govern whether access would be provided and on what terms.

In South Africa, the Mineral and Petroleum Resources Development Act (2002) (MPRDA) came into effect on 1 May 2004. The law provides for the conversion of existing mining rights (so called 'Old Order Rights') to rights under the new regime ('New Order Rights') subject to certain undertakings to be made by the company applying for such conversion. The Mining Charter requires that mining companies achieve 15 per cent ownership by historically disadvantaged South Africans of South African mining assets by 1 May 2009 and 26 per cent ownership by 1 May 2014. If we are unable to convert our South African mining rights in accordance with the MPRDA and the Mining Charter, we could lose some of those rights. Where New Order Rights are obtained under the MPRDA, these rights may not be equivalent to the Old Order Rights in terms of duration, renewal, rights and obligations.

In May 2010, in response to the oil spill from BP's Macondo well, the United States Government announced a deepwater drilling moratorium in the Gulf of Mexico. There is uncertainty as to potential new permitting requirements that may be imposed on deepwater drilling. Our business could be adversely affected by the moratorium and any new regulatory requirements.

We operate in several countries where ownership of land is uncertain and where disputes may arise in relation to ownership. In Australia, the Native Title Act (1993) provides for the establishment and recognition of native title under certain circumstances. In South Africa, the Extension of Security of Tenure Act (1997) and the Restitution of Land Rights Act (1994) provide for various landholding rights. Such legislation could negatively affect new or existing projects.

***We may not be able to successfully integrate our acquired businesses***

We have grown our business in part through acquisitions. We expect that some of our future growth will stem from acquisitions. There are numerous risks encountered in business combinations. These include adverse regulatory conditions and obligations, commercial objectives not achieved due to minority interests, unforeseen liabilities arising from the acquired businesses, retention of key staff, sales revenues and the operational performance not meeting our expectations, anticipated synergies and cost savings being delayed or not being achieved, uncertainty in sales proceeds from planned divestments, and planned expansion projects are delayed or cost more than anticipated. These factors could negatively affect our financial condition and results of operations.

***We may not recover our investments in mining and oil and gas projects***

Our operations may be impacted by changed market or industry structures, commodity prices, technical operating difficulties, inability to recover our mineral, oil or gas reserves and increased operating cost levels. These may impact the ability for assets to recover their historical investment and may require financial write-downs adversely impacting our financial results.

***Our non-controlled assets may not comply with our standards***

Some of our assets are controlled and managed by joint venture partners or by other companies. Some joint venture partners may have divergent business objectives which may impact business and financial results. Management of our non-controlled assets may not comply with our management and operating standards, controls and procedures (including health, safety, and environment). Failure to adopt equivalent standards, controls and procedures at these assets could lead to higher costs and reduced production and adversely impact our results and reputation.

***Operating cost pressures and shortages could negatively impact our operating margins and expansion plans***

Increasing cost pressures and shortages in skilled personnel, contractors, materials and supplies that are required as critical inputs to our existing operations and planned developments may occur across the resources industry. As the prices for our products are determined by the global commodity markets in which we operate we may not have the ability to offset these cost increases resulting in operating margins being reduced. Notwithstanding our efforts to reduce costs and a number of key cost inputs being commodity price-linked, the inability to reduce costs and a timing lag may impact our operating margins for an extended period.

Changing industrial relations legislation such as the Australian Fair Work Act 2009 may impact workforce flexibility, productivity and costs. Labour unions may seek to pursue claims under the new framework. Industrial action may impact our operations resulting in lost production and revenues. Since the introduction of the Australian Fair Work Act in 2009, increasing occurrences of low-level industrial activity have been experienced across many Australian assets. The additional claims relate to increased access and coverage as provided by the legislation. If this activity continues, some negative productivity impacts may result.

A number of our operations are energy or water intensive and, as a result, the Group's costs and earnings could be adversely affected by rising costs or by supply interruptions. These could include the unavailability of energy, fuel or water due to a variety of reasons, including fluctuations in climate, significant increases in costs, inadequate infrastructure capacity, interruptions in supply due to equipment failure or other causes and the inability to extend supply contracts on economical terms.

These factors could lead to increased operating costs at existing operations.

***Increased costs and schedule delays may impact our development projects***

Although we devote significant time and resources to our project planning, approval and review process, we may underestimate the cost or time required to complete a project. In addition, we may fail to manage projects as effectively as we anticipate, and unforeseen challenges may emerge. Any of these may result in increased capital costs and schedule delays at our development projects impacting anticipated financial returns.

***Health, safety, environmental and community exposures and related regulations may impact our operations and reputation negatively***

We are a major producer of carbon-related products such as energy and metallurgical coal, oil, gas, and liquefied natural gas. Our oil and gas operations are both onshore and offshore.

The nature of the industries in which we operate means that our activities are highly regulated by health, safety and environmental laws. As regulatory standards and expectations are constantly developing, we may be exposed to increased litigation, compliance costs and unforeseen environmental rehabilitation expenses.

Potential health, safety, environmental and community events that may materially impact our operations include rockfall incidents in underground mining operations, aircraft incidents, light vehicle incidents, explosions or gas leaks, incidents involving mobile equipment, uncontrolled tailings breaches, escape of polluting substances, community protests or civil unrest.

Longer-term health impacts may arise due to unanticipated workplace exposures by employees or site contractors. These effects may create future financial compensation obligations.

We provide for operational closure and site rehabilitation. Our operating and closed facilities are required to have closure plans. Changes in regulatory or community expectations may result in the relevant plans not being adequate. This may impact financial provisioning and costs at the affected operations.

We contribute to the communities in which we operate by providing skilled employment opportunities, salaries and wages, taxes and royalties and community development programs. Notwithstanding these actions, local communities may become dissatisfied with the impact of our operations, potentially affecting costs and production, and in extreme cases viability.

Legislation requiring manufacturers, importers and downstream users of chemical substances, including metals and minerals, to establish that the substances can be used without negatively affecting health or the environment may impact our operations and markets. These potential compliance costs, litigation expenses, regulatory delays, rehabilitation expenses and operational costs could negatively affect our financial results.

We may continue to be exposed to increased operational costs due to the costs and lost time associated with the HIV/AIDS and malaria infection rate mainly within our African workforce. Because we operate globally, we may be affected by potential pandemic influenza outbreaks, such as A(H1N1) and avian flu, in any of the regions in which we operate.

Despite our best efforts and best intentions, there remains a risk that health, safety, environmental and/or community incidents or accidents may occur that may negatively impact our reputation or licence to operate.

***Unexpected natural and operational catastrophes may adversely impact our operations***

We operate extractive, processing and logistical operations in many geographic locations both onshore and offshore. Our operational processes may be subject to operational accidents such as port and shipping incidents, fire and explosion, pitwall failures, loss of power supply, railroad incidents, loss of well control, environmental pollution and mechanical failures. Our operations and geographic locations may also be subject to unexpected natural catastrophes such as earthquakes, flood, hurricanes and tsunamis. Based on our claims, insurance premiums and loss experience, our risk management approach is to maintain self-insurance for property damage and business interruption related risk exposures. Existing business continuity plans may not provide protection for all of the costs that arise from such events. The impact of these events could lead to disruptions in production and loss of facilities more than offsetting premiums saved and adversely affect our financial results and prospects. Third party claims arising from these events may also exceed the limit of liability insurance policies we have in place.



### ***Climate change and greenhouse effects may adversely impact our operations and markets***

Carbon based energy is a significant input in a number of the Group's mining and processing operations and we have significant sales of carbon based energy products.

A number of governments or governmental bodies have introduced or are contemplating regulatory change in response to the impacts of climate change. The December 1997 Kyoto Protocol established a set of greenhouse gas emission targets for developed countries that have ratified the Protocol. The European Union Emissions Trading System (EU ETS), which came into effect on 1 January 2005, has had an impact on greenhouse gas and energy-intensive businesses based in the EU. Our Petroleum assets in the UK are currently subject to the EU ETS, as are our EU based customers. Elsewhere, there is current and emerging climate change regulation that will affect energy prices, demand and margins for carbon intensive products. The Australian Government's plan of action on climate change includes the introduction of a national emissions trading scheme by 2013 and a mandatory renewable energy target of 20 per cent by the year 2020. From a medium to long-term perspective, we are likely to see some changes in the cost position of our greenhouse-gas-intensive assets and energy-intensive assets as a result of regulatory impacts in the countries in which we operate. These regulatory mechanisms may impact our operations directly or indirectly via our suppliers and customers. Inconsistency of regulations particularly between developed and developing countries may also change the competitive position of some of our assets. Assessments of the potential impact of future climate change regulation are uncertain given the wide scope of potential regulatory change in the many countries in which we operate.

The physical impacts of climate change on our operations are highly uncertain and will be particular to the geographic circumstances. These may include changes in rainfall patterns, water shortages, rising sea levels, increased storm intensities and higher average temperature levels. These effects may adversely impact the productivity and financial performance of our operations.

### ***Our human resource talent pool may not be adequate to support our growth***

Our existing operations and especially our pipeline of development projects in regions of numerous large projects, such as Western Australia, when activated, require many highly skilled staff with relevant industry and technical experience. In such a competitive environment, the inability of the Group and industry to attract and retain such people may adversely impact our ability to adequately meet demand in projects. Skills shortages in engineering, technical service, construction and maintenance may impact activities. These shortages may adversely impact the cost and schedule of development projects and the cost and efficiency of existing operations.

### ***Breaches in our information technology (IT) security processes may adversely impact the conduct of our business activities***

We maintain global IT and communication networks and applications to support our business activities. IT security processes protecting these systems are in place and subject to assessment as part of the review of internal control over financial reporting. These processes may not prevent future malicious action or fraud by individuals or groups, resulting in the corruption of operating systems, theft of commercially sensitive data, misappropriation of funds and disruptions to our business operations.

### ***A breach in our governance processes may lead to regulatory penalties and loss of reputation***

We operate in a global environment straddling multiple jurisdictions and complex regulatory frameworks. Our governance and compliance processes, which include the review of internal control over financial reporting, may not prevent future potential breaches of law, accounting or governance practice. Our *BHP Billiton* Code of Business Conduct, anti-bribery and corruption, and anti-trust standards may not prevent instances of fraudulent behaviour and dishonesty nor guarantee compliance with legal or regulatory requirements. This may lead to regulatory fines, litigation, loss of operating licences or loss of reputation.

## **1.6 Forward looking statements**

This Annual Report contains forward looking statements, including statements regarding:

- estimated reserves
- trends in commodity prices
- demand for commodities
- plans, strategies and objectives of management
- closure or divestment of certain operations or facilities (including associated costs)
- anticipated production or construction commencement dates

- expected costs or production output
- anticipated productive lives of projects, mines and facilities
- provisions and contingent liabilities.

Forward looking statements can be identified by the use of terminology such as ‘intend’, ‘aim’, ‘project’, ‘anticipate’, ‘estimate’, ‘plan’, ‘believe’, ‘expect’, ‘may’, ‘should’, ‘will’, ‘continue’ or similar words. These statements discuss future expectations concerning the results of operations or financial condition, or provide other forward looking statements.

These forward looking statements are not guarantees or predictions of future performance, and involve known and unknown risks, uncertainties and other factors, many of which are beyond our control, and which may cause actual results to differ materially from those expressed in the statements contained in this Annual Report. Readers are cautioned not to put undue reliance on forward looking statements.

For example, our future revenues from our operations, projects or mines described in this Annual Report will be based, in part, upon the market price of the minerals, metals or petroleum produced, which may vary significantly from current levels. These variations, if materially adverse, may affect the timing or the feasibility of the development of a particular project, the expansion of certain facilities or mines, or the continuation of existing operations.

Other factors that may affect the actual construction or production commencement dates, costs or production output and anticipated lives of operations, mines or facilities include our ability to profitably produce and transport the minerals, petroleum and/or metals extracted to applicable markets; the impact of foreign currency exchange rates on the market prices of the minerals, petroleum or metals we produce; activities of government authorities in some of the countries where we are exploring or developing these projects, facilities or mines, including increases in taxes, changes in environmental and other regulations and political uncertainty; and other factors identified in the description of the risk factors above.

We cannot assure you that our estimated economically recoverable reserve figures, closure or divestment of such operations or facilities, including associated costs, actual production or commencement dates, cost or production output or anticipated lives of the projects, mines and facilities discussed in this Annual Report, will not differ materially from the statements contained in this Annual Report.

Except as required by applicable regulations or by law, the Group does not undertake any obligation to publicly update or review any forward looking statements, whether as a result of new information or future events.

## 2 Information on the Company

### 2.1 BHP Billiton locations



#### *Petroleum*

Ref	Country	Asset	Description	Ownership
1	Algeria	Ohanet	Joint operator with Sonatrach of wet gas development	45%
2	Algeria	ROD Integrated Development	Onshore oil development (non-operated)	38%
3	Australia	BassStrait	Producer of oil, condensate, LPG, natural gas and ethane (non-operated)	50%
4	Australia	Minerva	Operator of Minerva gas field development in the Otway Basin of Victoria	90%
5	Australia	North West Shelf	One of Australia's largest resource projects, producing liquids, LNG and domestic gas (non-operated)	8.33 – 16.67%
6	Australia	Pyrenees	Operator of Pyrenees floating, production, storage and offloading vessel, which produces oil in Western Australia	71.43%
7	Australia	Stybarrow	Operator of Stybarrow floating, production, storage and offloading vessel, which produces oil in Western Australia	50%
8	Pakistan	Zamzama	Operator of onshore gas development in Sindh province	38.5%
9	Trinidad and Tobago	Angostura	Operator of oil field located offshore east Trinidad	45%
10	UK	Bruce/Keith	Oil and gas production in the UK North Sea	Bruce – 16% Keith – 31.83%
11	UK	Liverpool Bay	Operator of oil and gas developments in the Irish Sea	46.1%
12	US	Gulf of Mexico	Interests in several producing assets, including deepwater oil and gas production at: - Atlantis (44%) - Shenzi (44%) - Mad Dog (23.9%) - Neptune (35%)  Additional other interests in producing assets and a significant exploration acreage position (4.95–100%)	4.95 – 100%

### *Aluminium*

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
13	Australia	Worsley	Integrated alumina refinery and bauxite mine in Western Australia	86%
14	Brazil	Alumar	Integrated alumina refinery and aluminium smelter	36–40%
15	Brazil	MRN	Bauxite mine	14.8%
16	Mozambique	Mozal	Aluminium smelter near Maputo	47.1%
17	South Africa	Aluminium South Africa	Two aluminium smelters at Richards Bay	100%

### *Base Metals*

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
18	Australia	Cannington	Silver, lead and zinc mine in northwest Queensland	100%
19	Chile	Pampa Norte	Integration of Cerro Colorado and Spence open-cut mines producing copper cathode in Atacama Desert, northern Chile	100%
20	Chile	Escondida	The world's largest copper mine, located in northern Chile	57.5%
21	Peru	Antamina	Copper and zinc mine located in the Andes, north-central Peru	33.75%
22	US	Pinto Valley	Copper mine located in State of Arizona	100%

### *Uranium <sup>(a)</sup>*

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
23	Australia	Olympic Dam	The largest poly-metallic ore body in the world and Australia's biggest underground mine, producing uranium, copper and gold	100%

(a) Uranium forms part of the Base Metals Customer Sector Group.

### *Diamonds and Specialty Products*

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
24	Canada	EKATI	Diamond mines in the Northwest Territories of Canada	80%
25	South Africa	Richards Bay Minerals	Integrated titanium smelter and mineral sands mine	37%

### *Stainless Steel Materials*

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
26	Australia	Nickel West	Sulphide nickel assets including Mt Keith and Leinster nickel operations, Kalgoorlie nickel smelter and Kambalda nickel concentrator and the Kwinana nickel refinery	100%
27	Colombia	Cerro Matoso	Integrated laterite ferronickel mining and smelting complex in northern Colombia	99.94%

### *Iron Ore*

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
28	Australia	Western Australia Iron Ore	Integrated iron ore mines, rail and port operations in the Pilbara	85–100%
29	Brazil	Samarco	An efficient low-cost producer of iron ore pellets in southeast Brazil	50%

### ***Manganese***

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
30	Australia	GEMCO	Producer of manganese ore in the Northern Territory	60%
31	Australia	TEMCO	Producer of manganese alloys in Tasmania	60%
32	South Africa	Samancor Manganese	Integrated producer of manganese ore (Hotazel Manganese Mines) and alloy (Metalloys)	60%

### ***Metallurgical Coal***

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
33	Australia	Illawarra Coal	Underground coal mines (West Cliff, Dendrobium, Appin) in southern NSW, with access to rail and port facilities	100%
34	Australia	BHP Billiton Mitsubishi Alliance	Integrated mine, rail and port operations, including a loading terminal at Hay Point, in the Bowen Basin, Central Queensland	50%
35	Australia	BHP Mitsui Coal	Two open-cut coal mines in the Bowen Basin, Central Queensland	80%

### ***Energy Coal***

<b>Ref</b>	<b>Country</b>	<b>Asset</b>	<b>Description</b>	<b>Ownership</b>
36	Australia	NSW Energy Coal	Open-cut coal mine that supplies thermal coal to export markets and for domestic electricity generation	100%
37	Colombia	Cerrejón	Largest thermal coal exporter in Colombia, with integrated rail and port facilities	33.3%
38	South Africa	BHP Billiton Energy Coal South Africa	One of the largest producers and exporters of thermal coal in South Africa	50–100%
39	US	New Mexico Coal	Two mines in New Mexico supplying energy coal to adjacent power stations	100%

### ***BHP Billiton office locations***

<b>Ref</b>	<b>Country</b>	<b>Office location</b>	<b>Business area</b>
40	Australia	Adelaide	Shared Services Centre Uranium Head Office Marketing
41	Australia	Brisbane	Metallurgical Coal Head Office Project Hub Marketing
42	Australia	Melbourne	Global Headquarters
43	Australia	Newcastle	Marketing
44	Australia	Perth	Iron Ore Head Office Project Hub Stainless Steel Materials Head Office Marketing
45	Australia	Sydney	Energy Coal Head Office
46	Belgium	Antwerp	Marketing
47	Brazil	Rio de Janeiro	Marketing
48	Canada	Vancouver	Diamonds and Specialty Products Head Office Project Hub

Ref	Country	Office location	Business area
49	Chile	Santiago	Base Metals Head Office Marketing Project Hub Shared Services Centre
50	China	Shanghai	Marketing
51	India	New Delhi	Marketing
52	Japan	Tokyo	Marketing
53	Malaysia	Kuala Lumpur	Global Shared Services Centre
54	Netherlands	The Hague	Marketing
55	Pakistan	Islamabad	Marketing
56	Singapore	Singapore	Corporate Centre Marketing Minerals Exploration
57	South Africa	Johannesburg	Manganese Head Office Marketing
58	South Africa	Richards Bay	Marketing
59	South Korea	Seoul	Marketing
60	Switzerland	Baar	Marketing
61	UK	London	Aluminium Head Office Corporate Centre
62	US	Houston	Petroleum Head Office Project Hub Shared Services Centre Marketing
63	US	Pittsburgh	Marketing

*Projects and exploration activities are not shown on this map*

- Offices
- Operations

## 2.2 Business Overview

### 2.2.1 History and development

Since 29 June 2001, we have operated under a Dual Listed Company (DLC) structure. Under the DLC structure, the two parent companies, BHP Billiton Limited (formerly BHP Limited and before that The Broken Hill Proprietary Company Limited) and BHP Billiton Plc (formerly Billiton Plc) operate as a single economic entity, run by a unified Board and management team. More details of the DLC structure are located under section 2.11 of this Report.

BHP Billiton Limited was incorporated in 1885 and is registered in Australia with ABN 49 004 028 077. BHP Billiton Plc was incorporated in 1996 and is registered in England and Wales with registration number 3196209. Successive predecessor entities to BHP Billiton Plc have operated since 1860.

The registered office of BHP Billiton Limited is 180 Lonsdale Street, Melbourne, Victoria 3000, Australia, and its telephone number is 1300 55 47 57 (within Australia) or +61 3 9609 3333 (outside Australia). The registered office of BHP Billiton Plc is Neathouse Place, London SW1V 1BH, UK, and its telephone number is +44 20 7802 4000. Our agent for service in the United States is Earl K. Moore at 1360 Post Oak Boulevard, Suite 150, Houston, TX 77056.

### 2.2.2 Petroleum Customer Sector Group

Our Petroleum CSG comprises a base of large, long-life, low unit cost production operations that are located in six countries throughout the world. We pursue significant upstream opportunities with multiple options for growth to ensure continued success.

During FY2010, Petroleum delivered its third consecutive annual production record by realising 158.56 million barrels of oil equivalent following the successful delivery of a series of growth projects in the Gulf of Mexico and Australia. The Pyrenees facility (Australia) was brought on stream on schedule during the third quarter FY2010 and our deepwater Shenzi field (US) performed at or above design capacity during the year. We also realised strong reservoir performance from Atlantis North (US). All three factors plus strong base operating uptime worldwide contributed to a 27 per cent increase in high margin crude oil and condensate production over the previous year. This was accomplished while keeping our unit operating cost below US\$6 per barrel.

Production in FY2010 from our Gulf of Mexico projects has not been materially impacted by events following the oil spill from BP's Macondo well. However, our current understanding of the Gulf of Mexico drilling moratorium, updated by the US Department of the Interior on 12 July 2010, indicates that it will be extremely unlikely for any new producing wells to commence drilling until at least very late in CY2010 which is expected to have a significant impact on FY2011 production.

We continue to invest in our business through economic cycles and maintain a long-term view. Our consistently strong project execution over the past four years has led us to successfully deliver four major operated projects, the latest one being the Pyrenees floating production storage and offtake facility offshore Western Australia. Combined with Shenzi and Neptune in the deepwater Gulf of Mexico and Stybarrow in Western Australia, we have proven our ability to safely deliver large, technically-challenging projects in diverse and challenging environments.

Our financial strength allows us to continue to aggressively pursue exploration opportunities around the globe. Our focus is on capturing and operating large acreage positions in areas that are material to BHP Billiton. Over the past four years, we have substantially grown our captured acreage position and commenced one of the most aggressive drilling campaigns in the Group's history that will continue into the coming years.

#### *Information on Petroleum operations*

The following table contains additional details of our production operations. This table should be read in conjunction with the production (see section 2.3.1) and reserve tables (see section 2.14.1).

<b>Name, location and type of asset</b>	<b>Ownership and operation</b>	<b>Title/lease</b>	<b>Facilities</b>
<b>AUSTRALIA</b>			
<b>Bass Strait</b>			
Offshore Victoria, Australia Oil and gas production	We hold a 50% interest in the Bass Strait fields. Esso Australia, a subsidiary of Exxon Mobil, owns the other 50% interest and is the operator.  Oil Basins Ltd holds a 2.5% royalty interest in 18 of the production licences.	The venture holds 20 production licences and two retention leases issued by the Commonwealth of Australia with expiry dates ranging between 2016 to end of life of field.  One of the 20 production licences is held with additional partner Santos Ltd.	There are 20 producing fields with 21 offshore developments (14 steel jacket platforms, three subsea developments, two steel gravity based mono towers and two concrete gravity based platforms).  Onshore infrastructure includes the Longford Facility, which includes three gas plants and liquid processing facilities, interconnecting pipelines, the Long Island Point LPG and crude oil storage facilities and an ethane pipeline.

Name, location and type of asset	Ownership and operation	Title/lease	Facilities
<p><b>North West Shelf (NWS) – gas, LNG, LPG and condensate</b></p> <p>North Rankin, Goodwyn, Perseus, Echo-Yodel and Angel, and Searipple fields offshore Dampier in Western Australia, Australia</p> <p>Domestic gas, LPG and condensate production and LNG liquefactions</p>	<p>We are a participant in the NWS Project, an unincorporated joint venture. We hold 8.33% of the original domestic gas joint venture. Our share of domestic gas production will progressively increase from 8.33% to 16.67%. We also hold 16.67% of the Incremental Pipeline Gas (IPG) domestic gas joint venture, 16.67% of the original LNG joint venture, 12.5% of the China LNG joint venture, 16.67% of the LPG joint venture and approximately 15% of current condensate production.</p> <p>Other participants in the respective NWS joint ventures are subsidiaries of Woodside Energy, Chevron, BP, Shell, Mitsubishi/Mitsui and the China National Offshore Oil Corporation.</p> <p>Woodside Petroleum Ltd is the operator.</p>	<p>The venture holds nine production licences issued by the Commonwealth of Australia, of which six expire in 2022 and three expire five years after the end of production.</p>	<p>The Bass Strait production capacity is as follows:</p> <ul style="list-style-type: none"> <li>- Crude – 200 Mbbl/d</li> <li>- Gas – 1,075 MMcf/d</li> <li>- LPG – 5,150 tpd</li> <li>- Ethane – 850 tpd</li> </ul> <p>Production from the North Rankin and Perseus fields is currently processed through the North Rankin A platform, which has the capacity to produce 2,300 MMcf/d of gas and 60 Mbbl/d of condensate.</p> <p>Production from the Goodwyn, Searipple and Echo-Yodel fields is processed through the Goodwyn A platform, which has the capacity to produce 1,450 MMcf/d of gas and 110 Mbbl/d of condensate. Four subsea wells in the Perseus field are tied into the Goodwyn A platform.</p> <p>Production from Angel field is currently processed through the Angel platform, which has the capacity to produce 960 MMcf/d of gas and 50 Mbbl/day of condensate.</p> <p>An onshore gas treatment plant at Withnell Bay has a current capacity to process approximately 600 MMcf/d of gas for the domestic market.</p> <p>An existing five train LNG plant has the capacity to produce an average rate of 45,000 tpd of LNG.</p>
<p><b>North West Shelf – crude oil</b></p> <p>Approximately 30 km northeast of the North Rankin gas and condensate field, offshore Western Australia, Australia</p> <p>Crude oil production is from the Wanaea, Cossack, Lambert and Hermes oil fields.</p>	<p>We hold a 16.67% working interest in oil production from these fields. The other 83.33% is held by Woodside Energy (33.34%), with BP Developments Australia, Chevron Australia, and Japan Australia LNG (MIMI) each holding 16.67%.</p> <p>Woodside Petroleum Ltd is the operator.</p>	<p>The venture holds three production licences issued by the Commonwealth of Australia, with expiry dates ranging between 2012 and 2018.</p>	<p>The oil is produced to a floating production storage and offtake unit, the Cossack Pioneer, which has a production capacity of 140 Mbbl/d and a storage capacity of 1.15 MMbbl of crude oil.</p>
<p><b>Griffin</b></p> <p>Situated in the Carnarvon Basin, 62 km offshore Western Australia, Australia. Comprises the Griffin, Chinook and Scindian offshore oil and gas fields</p>	<p>We hold a 45% interest in the Griffin venture. The other 55% is held by Mobil Exploration and Producing Australia (35%) and Inpex Alpha (20%).</p> <p>We are the operator.</p>	<p>The venture holds a production licence issued by the Commonwealth of Australia that expires in 2014.</p> <p>The venture ceased production in October 2009.</p>	<p>Oil and gas were produced using a floating production storage and offtake facility. Natural gas was piped to shore, where it was delivered directly into a pipeline.</p>
<p><b>Minerva</b></p> <p>Approximately 10 km offshore in the Otway Basin of Victoria, Australia</p> <p>Single offshore gas reservoir with two compartments. Gas plant is situated approximately 4 km inland from Port Campbell.</p>	<p>We hold a 90% share of the Minerva venture. The other 10% is held by Santos (BOL) Pty Ltd.</p> <p>We are the operator.</p>	<p>The venture holds a production licence issued by the Commonwealth of Australia that expires five years after production ceases.</p>	<p>The Minerva development consists of two well completions in 60 m of water. A single flow line transports gas to an onshore gas processing facility with an original production design capacity of 150 TJ/d and 600 bbl/d of condensate.</p>



<b><u>Name, location and type of asset</u></b>	<b><u>Ownership and operation</u></b>	<b><u>Title/lease</u></b>	<b><u>Facilities</u></b>
<b>Stybarrow</b>  Situating in the Exmouth Sub-basin, 65 km offshore Western Australia, Australia  Comprises the Stybarrow and Eskdale oil and gas fields.	We own a 50% share of the Stybarrow venture. The other 50% interest is held by Woodside Energy.  We are the operator.	The venture holds a production licence issued by the Commonwealth of Australia that expires five years after production ceases.	Oil is produced by the Stybarrow development which comprises of a floating production storage and offtake facility, nine subsea well completions (including five producers, three water injectors and one gas injector) in 825 m of water.  The Stybarrow facility has a crude oil production and storage capacity of 80 Mbbl/d and 900 Mbbl respectively. Gas production is reinjected into the reservoirs.
<b>Pyrenees</b>  Situating in the Exmouth Sub-basin, 23 km offshore Western Australia, Australia  Comprises the Crosby, Stickle and Ravensworth oil fields. The Ravensworth field straddles both the WA-42-L and WA-43-L production permits.	We hold a 71.43% share in the WA-42-L permit. The remaining 28.57% is held by Apache PVG. We hold a 40% share in the WA-43-L permit. The remaining 60.01% is held by Apache Permits (31.5%) and Inpex Alpha (28.5%).  We are the operator.	The venture holds a production licence issued by the Commonwealth of Australia that expires five years after production ceases.	Oil is produced by the Pyrenees development which comprises of a floating production storage and offtake facility, 17 subsea well completions (including thirteen producers, three water injectors and one gas injector) in an average water depth of 200 m.  The Pyrenees facility has crude oil production and storage capacity of 96 Mbbl/d and 920 Mbbl respectively. Production commenced in third quarter FY2010.
<b>UNITED STATES</b>			
<b>Neptune (Green Canyon 613)</b>  Gulf of Mexico, approximately 195 km offshore of Fourchon, Louisiana, US  Deepwater oil and gas field	We hold a 35% interest in the joint venture.  The other owners are Marathon Oil (30%), Woodside Energy (20%) and Maxus US Exploration (15%).  We are the operator.	The venture holds a lease from the US as long as oil and gas are produced in paying quantities.	The production facility consists of a tension-leg platform permanently moored in 1,300 m of water.  The facility has nameplate processing capacity of 50 Mbbl/d of oil and 50 MMcf/d of gas.
<b>Shenzi (Green Canyon 653 )</b>  Gulf of Mexico, approximately 200 km offshore of Fourchon, Louisiana, US  Deepwater oil and gas field	We hold a 44% interest in the joint venture.  The other owners are Hess Corporation (28%) and Repsol (28%).  We are the operator.	The venture holds a lease from the US as long as oil and gas are produced in paying quantities.	The Shenzi production facility consists of a stand-alone tension-leg platform (TLP) permanently moored in 1,310 m of water.  The facility has nameplate processing capacity of 100 Mbbl/d of oil and 50 MMcf/d of gas.  The Genghis Khan field is part of the same geological structure as the Shenzi project and consists of a tieback to the existing Marco Polo TLP.
<b>West Cameron 76</b>  Gulf of Mexico, approximately 20 km offshore, Central Louisiana, US  Offshore gas and condensate field	We hold a 33.76% interest in the joint venture.  The other owners are ENI Petroleum (40%), Merit Management Partners (15%) and Ridgewood Energy Company (11.24%).  We are the operator.	The venture holds a lease from the US as long as oil and gas are produced in paying quantities.	The production facility consists of two conventional gas platforms with a capacity of 120 MMcf/d of gas and 800 bbl/d of condensate.

<u>Name, location and type of asset</u>	<u>Ownership and operation</u>	<u>Title/lease</u>	<u>Facilities</u>
<b>Starlifter (West Cameron 77)</b> Gulf of Mexico, approximately 25 km offshore, Central Louisiana, US Offshore gas and condensate field	We hold a 30.95% interest in the joint venture. The other owners are McMoRan (33.75%), Seneca Resources (11.25%) Merit Management Partners (13.75%) and Ridgewood Energy Company (10.3%). We are the operator.	The venture holds a lease from the US as long as oil and gas are produced in paying quantities.	The production facility consists of a single conventional gas platform with a capacity of 40 MMcf/d of gas and 450 bbl/d of condensate.
<b>Mustang (West Cameron 77)</b> Gulf of Mexico, approximately 25 km offshore, Central Louisiana, US Offshore gas and condensate field	We hold a 43.66% interest in the joint venture. The other owners are ENI Petroleum (22.4%), Merit Management Partners (19.4%) and Ridgewood Energy Company (14.54%). We are the operator.	The venture holds a lease from the US as long as oil and gas are produced in paying quantities.	The production facility consists of a single conventional gas platform with a capacity of 40 MMcf/d of gas and 450 bbl/d of condensate.
<b>Atlantis (Green Canyon 743)</b> Gulf of Mexico, approximately 200 km offshore of Fourchon, Louisiana, US Deepwater oil and gas field	We hold a 44% working interest in the joint venture. The other owner is BP (56%). BP is the operator.	The venture holds a lease from the US as long as oil and gas are produced in paying quantities.	The production facility consists of a semi-submersible platform permanently moored in 2,155 m of water. The facility has nameplate processing capacity of 200 Mbbl/d of oil and 180 MMcf/d of gas.
<b>Mad Dog (Green Canyon 782)</b> Gulf of Mexico, approximately 210 km offshore of Fourchon, Louisiana, US Deepwater oil and gas field	We hold a 23.9% interest in the joint venture. The other owners are BP (60.5%) and Chevron (15.6%). BP is the operator.	The venture holds a lease from the US as long as oil and gas are produced in paying quantities.	The production facility consists of an integrated truss spar equipped with facilities for simultaneous production and drilling operations, permanently moored in 1,310 m of water. The facility has the capacity to process 100 Mbbl/d of oil and 60 MMcf/d of gas.
<b>Genesis (Green Canyon 205)</b> Gulf of Mexico, approximately 155 km offshore of Fourchon, Louisiana, US Deepwater oil and gas field	We hold a 4.95% interest in the joint venture. The other owners are Chevron (56.67%) and ExxonMobil (38.38%). Chevron is the operator.	The venture holds a lease from the US as long as oil and gas are produced in paying quantities.	The production facility consists of a floating cylindrical hull (spar) moored to the seabed with integrated drilling facilities and a capacity of 55 Mbbl/d of oil and 72 MMcf/d of gas.

<b>Name, location and type of asset</b>	<b>Ownership and operation</b>	<b>Title/lease</b>	<b>Facilities</b>
<b>OTHER</b>			
<b>Liverpool Bay</b> Douglas and Douglas West oil fields, Hamilton, Hamilton North and Hamilton East gas fields, and Lennox oil and gas field in the Irish Sea, approximately 10 km off the northwest coast of England Offshore oil and gas fields	We hold a 46.1% interest in the joint venture. The other 53.9% is held by ENI. We are the operator.	The joint venture holds three production licences issued by the Crown of the United Kingdom, which expire in 2016, 2025 and 2027.	The Liverpool Bay asset is an integrated development of six fields. Oil from the Lennox and Douglas fields is treated at the Douglas complex and piped 17 km to an oil storage barge for export by tankers. Gas from the Hamilton, Hamilton North, Hamilton East and Lennox fields is initially processed at the Douglas complex then piped by subsea pipeline to the Point of Ayr gas terminal for further processing. The facility has the capacity to produce 308 MMcf/d of gas and 70 Mbbl/d of oil and condensate.
<b>Bruce/Keith</b> North Sea, approximately 380 km northeast offshore of Aberdeen, Scotland The Keith field is located adjacent to the Bruce field. Offshore oil and gas fields	We hold a 16% interest in the Bruce field. The other 84% is owned by BP (37%), Total (43.25%) and Marubeni (3.75%). BP is the operator of Bruce. We hold a 31.83% interest in the Keith field. The other 68.17% is owned by BP (34.84%), Total (25%) and Marubeni (8.33%). We are the operator of Keith.	The joint venture holds three production licences issued by the Crown of the United Kingdom, which expire in 2011, 2015 and 2018.	Production is via an integrated oil and gas platform. The capacity of the Bruce facility has, since 2002, been increased to 920 MMcf/d. The Keith field was developed as a tie-back to the Bruce platform facilities.
<b>Ohanet</b> Approximately 1,300 km southeast of Algiers, Algeria Four onshore gas and condensate fields	We have an effective 45% interest in the Ohanet joint venture. The other 55% is held by Japan Ohanet Oil and Gas Co. Ltd. (30%), Woodside Energy (Algeria) Pty. Ltd. (15%) and Petrofac Energy Developments (Ohanet) LLC (10%). The project is operated by a Sonatrach/BHP Billiton staffed organisation.	The joint venture is party to a risk service contract with the title holder, Sonatrach, which expires in 2011, with an option to extend under certain conditions. Under this contract, the joint venture is reimbursed and remunerated for its investments in liquids.	Ohanet is a wet gas (LPG and condensate) development consisting of four gas and condensate fields and a gas processing plant with the capacity to treat 20 MMcm/d of wet gas and 61 Mbbl/d of associated liquids (LPG and condensate).
<b>ROD Integrated Development</b> Berkine Basin, 900 km southeast of Algiers, Algeria Six onshore oil fields	We hold a 45% interest in the 401a/402a production sharing contract, with ENI holding the remaining 55%. We have an effective 38% interest in ROD unitised integrated development. ENI owns the remaining 62%. Our interest is subject to a contractual determination to ensure that interest from participating association leases is accurately reflected. Future redetermination of our interest may be possible under certain conditions. A joint Sonatrach/ENI entity is the operator.	The venture is party to a production sharing contract with the title holder, Sonatrach, which expires in 2016, with an option for two five-year extensions under certain conditions.	Comprises the development and production of six oil fields, the largest two of which, ROD and SFNE, extend into the neighbouring blocks 403a and 403d. The ROD Integrated Development is being produced through a dedicated processing train located adjacent to BRN processing facilities on block 403, with the capacity to process approximately 80 Mbbl/d of oil.

<u>Name, location and type of asset</u>	<u>Ownership and operation</u>	<u>Title/lease</u>	<u>Facilities</u>
<b>Greater Angostura</b> Approximately 40 km off the east coast of Trinidad Shallow water oil and gas field	We hold a 45% interest in the joint venture. The other 55% is held by Total (30%) and Chaoyang (25%). We are the operator.	The venture has entered into a production sharing contract with the Republic of Trinidad and Tobago that entitles the contractor to operate Greater Angostura until 2021.	Greater Angostura is an integrated oil and gas development. The infrastructure consists of a steel jacketed central processing platform with three satellite wellhead protector platforms and flow lines. A pipeline connects the processing platform to storage facilities at Guayaguayare, where an export pipeline has been installed to allow for offloading to tankers in Guayaguayare Bay. The facility has the capacity to process 100 Mbbl/d of oil.
<b>Zamzama</b> Dadu Block, Sindh Province, Pakistan Onshore gas wells	We hold a 38.5% working interest in the joint venture. The other 61.5% is owned by ENI Pakistan (M) Ltd (17.75%), PKP Exploration Ltd (9.375%), PKP Exploration Ltd 2 (9.375%), and Government Holdings (Private) Limited (25%). We are the operator.	20-year development and production lease starting April 2002 from the Government of Pakistan (with an option to extend five years beyond the 20-year term).	Zamzama currently consists of eight production wells and four process trains, with an existing capacity of 500 MMcf/d of gas and 3,350 bbl/d of condensate.

Our production assets are as follows:

### ***Bass Strait***

Together with our 50–50 joint venture partner, Esso Australia, a subsidiary of ExxonMobil, we have been producing oil and gas from Bass Strait, off the south-eastern coast of the Australian mainland, for 40 years, having participated in the original discovery of hydrocarbons there in 1965. We dispatch the majority of our Bass Strait crude oil and condensate production to refineries along the east coast of Australia. Gas is piped ashore to our Longford processing facility, from where we sell our production to domestic distributors under contracts with periodic price reviews.

### ***North West Shelf***

We are a domestic gas joint venture participant in the North West Shelf Project in Western Australia. The North West Shelf Project was developed in phases: the domestic gas phase, which supplies gas to the Western Australian domestic market mainly under long-term contracts, and a series of LNG expansion phases, which supply LNG to buyers in Japan, Korea and China under a series of long-term contracts. The North West Shelf Project also produces LPG and condensate.

We are also a joint venture participant in four nearby oil fields. Both the North West Shelf gas and oil ventures are operated by Woodside Petroleum Ltd.

### ***Australia Operated***

We are the operator of two oil fields offshore Western Australia and one gas field in Victoria.

The Pyrenees asset came on line in the third quarter FY2010 and is an oil development which consists of three fields (Crosby, Stickle and Ravensworth) located offshore Western Australia. The project uses a floating production storage and offtake facility.

The Stybarrow asset (50 per cent BHP Billiton share) is an oil development located offshore Western Australia. The project uses a floating production storage and offtake facility.

The Minerva asset (90 per cent BHP Billiton share) is a gas field located offshore Victoria. The asset consists of two subsea producing wells which pipe gas onshore to a processing plant. The gas is delivered into a pipeline and sold domestically.

### ***Gulf of Mexico***

We operate three fields in the Gulf of Mexico (Neptune, Shenzi and consolidated operations in the West Cameron area), and hold non-operating interests in a further three fields (Atlantis, Mad Dog and Genesis). We also own 25 per cent and 22 per cent, respectively, of the companies that own and operate the Caesar oil pipeline and the Cleopatra gas pipeline which transport oil and gas from the Green Canyon area, where a number of our fields are located, to connecting pipelines that transport product to the mainland. We deliver our oil production to refineries along the Gulf Coast of the United States.

### ***Liverpool Bay and Bruce/Keith***

The Liverpool Bay integrated development consists of six offshore gas and oil fields in the Irish Sea, the Point of Ayr onshore processing plant in North Wales, and associated infrastructure. We deliver all of the Liverpool Bay gas by pipeline to E.ON's Connah's Quay power station. We own 46.1 per cent of and operate Liverpool Bay. We also hold a 16 per cent non-operating interest in the Bruce oil and gas field in the North Sea and operate the Keith field, a subsea tie-back, which is processed via the Bruce platform facilities.

### ***Algeria***

Our Algerian assets comprise our effective 45 per cent interest in the Ohanet wet gas development and our effective 38 per cent interest in the ROD Integrated Development, which consists of six satellite oil fields that pump oil back to a dedicated processing train.

### ***Trinidad and Tobago***

The Greater Angostura project is an integrated oil and gas development located offshore east Trinidad. We are the operator of the field and have a 45 per cent interest in the production sharing contract for the project.

### ***Zamzama***

We hold a 38.5 per cent working interest in and operate the Zamzama gas project in Sindh province of Pakistan. Both gas and condensate are sold domestically.

### ***Development projects***

#### ***Australia***

##### ***North West Shelf North Rankin gas compression project***

In March 2008, the Board approved the North West Shelf gas compression project to recover remaining lower pressure gas from the North Rankin and Perseus gas fields. A new gas compression platform, North Rankin B, capable of processing 2,500 million cubic feet of gas per day will be constructed adjacent to the existing North Rankin A platform, 135 kilometres offshore from Karratha on the northwest coast of Western Australia. The two platforms will be connected by a 100 metre long bridge and operate as a single facility. Our 16.67 per cent share of development costs is approximately US\$850 million, of which US\$257 million was incurred as of 30 June 2010. First gas is expected in 2012.

##### ***North West Shelf Cossack, Wanaea, Lambert, Hermes (CWLH) life extension***

In December 2008, approval was announced to undertake a redevelopment project to replace and refurbish CWLH facilities because the existing operation had performed above expectation and had an expected field life much longer than originally planned. The project consists of the replacement of the existing Cossack Pioneer floating production storage and offtake vessel and selected refurbishment of existing subsea infrastructure and the existing riser turret mooring. Our 16.67 per cent share of the cost is approximately US\$245 million, of which US\$111 million was incurred as of 30 June 2010. First production through the redeveloped facilities is expected in CY2011.

##### ***Bass Strait Kipper gas field development***

Initial development of the Kipper gas field in the Gippsland Basin located offshore Victoria was approved by the Board in December 2007. The first phase of the project includes two new subsea wells, three new pipelines and platform modifications to supply 10 thousand barrels of condensate per day and 80 million cubic feet of gas per day. Gas and liquids will be processed via the existing Gippsland Basin joint venture facilities. Our share of development costs is approximately US\$500 million, of which US\$216 million was incurred as of 30 June 2010. The initial production target date is CY2011. The schedule and budget are currently under review following advice from the operator.

We own a 32.5 per cent interest in the Kipper Unit Joint Venture, with Esso Australia and Santos owning the remaining 67.5 per cent. We own a 50 per cent interest in the Gippsland Basin joint venture.

### *Bass Strait Turrum field development*

Further expansion of the Gippsland Basin facilities is underway with the Board approving the full field development of the Turrum oil and gas field in July 2008. The project consists of a new platform, Marlin B, linked by a bridge to the existing Marlin A platform. The Turrum field, which has a capacity of 11 thousand barrels of oil per day and 200 million cubic feet of gas per day, is located 42 kilometres from shore in approximately 60 metres of water. Our share of development costs is approximately US\$625 million, of which US\$270 million was incurred as of 30 June 2010. The initial production target date is CY2011. The schedule and budget are currently under review following advice from the operator.

### *Other*

#### *Greater Angostura Phase 2*

In September 2008, we announced the signing of a gas sales contract with the National Gas Company of Trinidad and Tobago Limited (NGC) for the purchase of gas from the second phase of the Greater Angostura field. In August 2008, we sanctioned an investment of approximately US\$400 million (US\$180 million our share, of which US\$117 million was incurred as of 30 June 2010) to construct and install a new gas export platform alongside the Company's existing facilities within the Greater Angostura Field. Fabrication of the 280 million cubic feet per day facility started in February 2009 and is expected to be online during CY2011.

The development also includes modifications to the existing Greater Angostura facilities and the installation of a new flowline. NGC will take delivery of the gas at the new gas export platform and will transport it in their proposed 36 inch diameter Northeastern Offshore Pipeline to Trinidad and a 12 inch diameter Tobago pipeline.

The Greater Angostura field includes oil and gas discoveries at Aripo, Kairi and Canteen. We hold a 45 per cent interest in the joint venture. Other partners are Total (30 per cent interest) and Chaoyang Petroleum (BVI) Limited (25 per cent interest), a consortium between CNOOC and Sinopec.

### *Exploration and appraisal*

We focus on capturing and operating large acreage positions in areas that are material to the Group. We have exploration interests throughout the world, particularly in the Gulf of Mexico, Australia, South East Asia, and Latin America. During the year, our gross expenditure on exploration was US\$817 million, of which US\$563 million was expensed. Our major exploration interests are as follows:

#### *Australia*

We have a 50 per cent interest in the Gippsland Basin joint venture with Esso Australia Ltd. Operations for the South East Remora-1 wildcat well commenced in December 2009 and the well encountered a hydrocarbon-bearing interval. The well has been plugged and abandoned and continues to be evaluated for development potential.

In October 2009, exploration block WA-346-P was renewed for an additional five years following the expiry of the initial six-year term. WA-346-P contains the existing Thebe and Jupiter gas fields and the northern portion of the Scarborough gas field. The work program in the five year term includes one exploration well as well as continued evaluation of the development potential of the existing discoveries. We operate WA-346-P and hold a 100 per cent interest.

Exploration block WA-351-P, located on the Exmouth Plateau south of Scarborough, was also renewed in June 2010 for an additional five years following the initial six-year term. The work program includes one exploration well and geological and geophysical studies within the five-year term. We operate WA-351-P and hold a 55 per cent interest with Tap Oil (25 per cent) and Roc Oil (20 per cent) holding the remainder.

In June 2009, we farmed into block WA-335-P to the south of WA-351-P, acquiring 30 per cent equity from the joint venture partners Apache (45.5 per cent) and Kufpec (24.5 per cent). A 3D seismic survey covering all of block WA-335-P has commenced.

In August 2009, Woodside Browse Pty Ltd farmed into the AC/RL8 retention lease over the Argus gas field, acquiring a 43.33 per cent working interest from us. Woodside subsequently acquired Petronas' equity in the block, taking their interest to 60 per cent with BHP Billiton retaining a 40 per cent interest.

## ***United States***

### ***Knotty Head - Green Canyon 512***

We currently own a 25 per cent interest in the Knotty Head prospect, located in Green Canyon Block 512. Partners in the field are Nexen (25 per cent), Unocal (25 per cent) and Statoil (25 per cent). Knotty Head appraisal well-2 was drilled in October 2009 and concluded in March 2010. The appraisal well was drilled to a total of 33,227 feet measured depth or 32,446 feet true vertical depth and evaluated the western portion of the block. Development options for the field are currently being evaluated.

### ***Deep Blue - Green Canyon 723***

We currently own a 31.875 per cent interest in the Deep Blue prospect located in the Green Canyon area. Partners in the well are Noble (33.75 per cent), Statoil (15.625 per cent), Samson (9.375 per cent) and Murphy (9.375 per cent). Deep Blue exploration well-1 was drilled in November 2009 and concluded in May 2010. The sidetrack drilling started in May and was suspended in June 2010 due to the Gulf of Mexico drilling moratorium issued by the US Federal Government. The Green Canyon 723 #1 original hole drilled to a total depth of 32,684 feet measured depth and encountered hydrocarbons. The forward plan is to complete the sidetrack operations once the moratorium is lifted. There is insufficient information to confirm the extent of hydrocarbons until drilling operations have been completed.

### ***Gulf of Mexico - Other***

We drilled the Double Mountain (70 per cent interest) and Firefox (50 per cent interest) exploration wells which were completed in April 2010. Both wells were plugged and abandoned and expensed as dry holes.

## ***Other***

### ***Canada***

In January 2010, we were awarded two offshore non-operated licenses in the Laurentian Basin, Newfoundland, Canada - E.L. 1118 (45 per cent interest) and E.L. 1119 (36 per cent interest). ConocoPhillips Canada Resources Corp. is the operator and holds the balance of the interests.

In April 2010, the East Wolverine well was plugged and abandoned and expensed as a dry hole. We had 45 per cent interest with ConocoPhillips holding the remaining 55 per cent. In June 2010, we and ConocoPhillips relinquished our interest in Laurentian Basin Newfoundland Licenses E.L. 1081R, 1082R, 1086R and 1087R and also relinquished interest in Laurentian Basin St. Pierre-et-Miquelon (SPM) exploration permit and pending SPM Langlade permit application.

### ***Colombia***

In April 2006, we entered into two Exploration and Production Contracts for the Fuerte Norte and Fuerte Sur blocks located offshore Colombia. We held a 75 per cent operating interest in each block with Ecopetrol holding the remaining 25 per cent. The joint venture has completed acquisition and processing of 3D seismic over the area as part of the Phase 2 work program commitment. In October 2009, we elected not to enter into Phase 3 of Fuerte Norte and Fuerte Sur projects and transferred all of our interest to Ecopetrol in December 2009.

In September 2008, we entered into a technical evaluation assignment for the evaluation of hydrocarbons in Block 5 in the Llanos basin onshore Colombia. We are the operator of the project and hold a 71.4 per cent working interest in the joint venture, with SK Energy Co holding the remaining 28.6 per cent interest. The minimum work program includes the acquisition of 1,000 kilometres of 2D seismic plus the drilling of five stratigraphic wells. The airborne survey was completed in January 2010, and plans to complete the 2D seismic drilling program are currently underway.

### ***Falkland Islands***

In December 2007, we farmed into Northern and Southern area licences offshore the Falkland Islands. We acquired a 51 per cent interest from our joint venture partner Falkland Oil and Gas Limited and assumed operatorship in January 2008. The minimum exploration work program includes drilling two wells in the first phase by the end of 2010. Site surveys on both blocks were completed in 2009. The first exploration well began drilling in June 2010 and was plugged and abandoned and expensed as a dry hole in July 2010.

### *India*

In December 2008, we were awarded seven offshore blocks in India. We are the operator of all seven blocks, each with its own production sharing contract. The minimum exploration program includes the acquisition and processing of 2D seismic data across the seven blocks. We currently own a 26 per cent interest in all seven blocks, with our partner GVK holding the remaining 74 per cent. In June 2010, we were awarded three additional offshore blocks. The minimum work program associated with the three blocks includes the acquisition and processing of 2D and 3D seismic data. We hold a 100 per cent interest in each of these three blocks.

### *Malaysia*

In March 2007, we were awarded offshore Blocks N and Q in Malaysia with a 60 per cent interest and operatorship, with Petronas Carigali holding the residual 40 per cent. The minimum exploration program includes the acquisition and processing of seismic data across the two blocks and the drilling of four exploration wells within the first seven years. The initial seismic acquisition program commenced in June 2008 and was completed in September 2008. The first exploration well was drilled in February 2010 and was plugged, abandoned and expensed as a dry hole.

### *Philippines*

In November 2009, we acquired a 75 per cent interest in Service Contract 59, located offshore Philippines and assumed operatorship in April 2010. PNO Exploration Corp owns the remaining 25 per cent interest. As part of the minimum work program, the joint venture completed the acquisition and processing of a 2D seismic survey in April 2010. Plans to complete a 3D seismic survey are currently underway.

In August 2009, we exercised our option with partner Mitra Energy (25 per cent) to acquire a 25 per cent non-operating interest in Service Contract 56 located offshore Philippines. The joint venture completed drilling of the first exploration well in December 2009, and the second consecutive well was completed in February 2010. Both wells were expensed as dry holes. The block is operated by ExxonMobil (50 per cent).

### *Vietnam*

In October 2009, we became operator of Vietnam Blocks 28 and 29/03 that are located approximately 200 kilometres offshore southern Vietnam. We have a 50 per cent interest in each of the blocks, with Mitra Energy holding the remaining 50 per cent. The minimum work program for the first sub-phase includes 2D seismic data and two wells. In addition to the 2D seismic data requirement, we acquired and processed 3D data.

### *Present Activities*

#### ***Drilling***

The number of wells in the process of being drilled as of 30 June 2010 was as follows:

	Exploratory Wells		Development Wells		Total	
	Gross	Net <sup>(a)</sup>	Gross	Net <sup>(a)</sup>	Gross	Net <sup>(a)</sup>
Australia	–	–	3	2	3	2
United States	1	–	6	2	7	2
Other	1	1	–	–	1	1
<b>Total <sup>(b)</sup></b>	<b>2</b>	<b>1</b>	<b>9</b>	<b>4</b>	<b>11</b>	<b>5</b>

(a) Represents our share of the gross well count.

(b) 1 (Net: 0.3) exploratory well and 3 (Net: 1.3) development wells were suspended as a result of the Gulf of Mexico drilling moratorium.



## *Other significant activities*

### ***Australia***

#### ***Browse***

The Browse LNG Development comprises the development of the Torosa, Brecknock and Calliance gas fields, which were discovered in 1971, 1979, and 2000, respectively. The fields are approximately 270 kilometres from the Kimberley coast and 440 kilometres north-northwest of Broome, Australia in water depths ranging from 30 to 800 metres. Retention Leases were renewed during FY2010. Evaluation of an LNG plant located at James Price Point in the Kimberley area of Western Australia is underway in addition to the upstream development. Woodside is the operator and we currently own 8.33 per cent in East Browse and 20 per cent in West Browse; however, the partnership is currently working to align the equity interests for the overall development.

#### ***Macedon***

The Macedon project is in the final stages of evaluation and is a lean dry gas field that is ideally placed to meet growing Western Australian domestic gas demand. The project is scheduled to meet a market window governed by the end of existing gas supply contracts and the start of supply from green field LNG projects.

The Macedon field was discovered in 1992. The field lies in Production Licence WA-42L. We are operator with a 71.43 per cent share and Apache Northwest Pty Ltd holds a 28.57 per cent share.

#### ***Scarborough***

The development planning for the large Scarborough gasfield offshore Western Australia is in progress. Development options are being evaluated for an LNG plant and offshore production facilities. Esso is the operator of the WA-1-R lease and we hold a 50 per cent working interest. We also have a 100 per cent working interest in the WA-346-P block.

### ***United States***

#### ***Shenzi Water Injection***

The Shenzi Water Injection program includes drilling and completion of five water injection wells and provides facilities to inject up to 125 thousand barrels of water per day at 7,000 psi. The Shenzi Water Injection program was approved as part of the original sanctioned Shenzi project which began producing in 2009 and is intended to supplement aquifer pressure for additional recovery.

#### ***Atlantis South Water Injection***

The Atlantis South Water Injection project, which is in the execution phase, involves drilling four subsea water injectors, tying them into the existing infrastructure and commissioning the 75 thousand barrels of water per day injection facilities. This water injection project mitigates low aquifer pressure which could result in a swift production decline. BP is the operator and we hold a 44 per cent working interest.

#### ***Atlantis North Phase 2B***

The Atlantis North Flank began production in July 2009; and the North Phase 2B is a brownfield capital investment program being developed to improve production rates. Phase 2B includes a three well program and associated subsea infrastructure. As with the original Atlantis North project, BP is the operator, and we hold a 44 per cent working interest.

#### ***Mad Dog Phase 2***

The Mad Dog Phase 2 project is in response to the successful Mad Dog South appraisal well, which confirmed significant resource in the southern portion of the Mad Dog field. We are working with our partners in the project to select the optimum concept for development.

### ***Other***

#### ***Zamzama Front End Compression***

Zamzama Front End Compression is a brownfield project which allows for the additional drawdown of the reservoir, adding reserves and extending the plateau. Development is currently underway.

### *Delivery Commitments*

We have delivery commitments of natural gas and LNG of approximately 2,594 billion cubic feet through 2031 (67 per cent Australia and 33 per cent Other) and crude, condensate and NGL commitments of 33.3 million barrels through 2011 (72 per cent Australia, 27 per cent United States and 1 per cent Other). We have sufficient proved reserves and production capacity to fulfil these delivery commitments. Further information can be found in Section 2.14.1.

### **2.2.3 Aluminium Customer Sector Group**

Our Aluminium business is a portfolio of assets at three stages of the aluminium value chain: we mine bauxite, we refine bauxite into alumina, and we smelt alumina into aluminium metal. We are the world's seventh-largest producer of aluminium, with total production in FY2010 of 1.2 million tonnes of aluminium. We also produced 13.9 million tonnes of bauxite and 3.8 million tonnes of alumina.

During FY2010, 52 per cent of our alumina production was used in our aluminium smelters and we sold the balance to other smelters. Our alumina sales are a mixture of long-term contract sales at London Metal Exchange (LME)-linked prices and spot sales at negotiated prices. Prices for our aluminium sales are generally linked to prevailing LME prices.

As with our other businesses, our strategy with bauxite and alumina is to own large, low-cost assets that provide good returns through the investment cycle and provide us with options for brownfield development. With aluminium smelters, where the availability and cost of power are critical, our investment decisions have been driven in part by the availability of stranded power generation capacity.

We have interests in one integrated bauxite mining/alumina refining asset:

- **Boddington/Worsley**

The Boddington bauxite mine in Western Australia supplies bauxite ore via a 51 kilometre long conveyor to the Worsley alumina refinery. Worsley is one of the largest and lowest-cost refineries in the world, and is currently undergoing a major expansion (see Development projects below). Our share of Worsley's FY2010 production was 3.054 million tonnes of alumina. Worsley's export customers include our own Hillside, Bayside and Mozal smelters in southern Africa. Boddington has a reserve life of 23.9 years at current production rates. We own 86 per cent of the mine and the refinery.

- **Kaaimangrasie/ Klaverblad/Caramacca/Coermotibo/Paranam**

On 31 July 2009, we executed transaction agreements to pass all of our 45 per cent interest in the Suriname bauxite and alumina joint venture that comprised bauxite mines in the Kaaimangrasie, Klaverblad, Caramacca and Coermotibo areas of Suriname and the nearby Paranam alumina refinery to Suralco effective on that date. Our share of Paranam's FY2010 production to the date of sale was 78,000 tonnes of alumina.

We also own 14.8 per cent of Mineração Rio do Norte (MRN) which owns and operates a large bauxite mine in Brazil.

We have interests in the Alumar integrated alumina refinery/aluminium smelter and three stand-alone aluminium smelters:

- **Alumar**

We own 36 per cent of the Alumar refinery and 40 per cent of the smelter. Alcoa operates both facilities. The operations, and their integrated port facility, are located at São Luís in the Maranhão province of Brazil. Alumar sources bauxite from MRN. During FY2010, approximately 46 per cent of Alumar's alumina production was used to feed the smelter, while the remainder was exported. Our share of Alumar's FY2010 saleable production was 709,000 tonnes of alumina and 174,000 tonnes of aluminium. The Alumar refinery completed a significant expansion in October 2009.

- **Hillside and Bayside**

Our Hillside and Bayside smelters are located at Richards Bay, South Africa. Hillside's capacity of approximately 715,000 tonnes per annum makes it the largest aluminium smelter in the southern hemisphere and it is one of the most efficient. Bayside has a smelting capacity of approximately 96,000 tonnes per annum, but it also uses its own aluminium and liquid aluminium from Hillside to produce various slab products. Both operations import alumina predominantly from our Worsley refinery and source power from Eskom, the South African state utility, under long-term contracts with prices linked to the LME price of aluminium except for Hillside Potline 3, the price of which is linked to the South African and US producer price indices.

In January 2008, Eskom determined that it had insufficient power to meet the national demand in South Africa, and mandated an emergency 10 per cent reduction in power consumption by many large industrial users, including BHP Billiton. Although our contracts with Eskom specify that power supply to our aluminium smelters can only be interrupted approximately one per cent of the time per calendar year, we have respected the emergency situation faced by the country and reduced our demand by the requested 10 per cent. To achieve this in the most economically efficient way, we have mothballed the B and C potlines at Bayside, reducing production there by approximately 90,400 tonnes per annum. Across both South African smelters, associated production losses were approximately 86,000 tonnes per annum.

- **Mozal**

We own 47.1 per cent of and operate the Mozal aluminium smelter in Mozambique, which has a total capacity of approximately 563,000 tonnes per annum. Mozal sources power generated by Hydro Cahora Basa via Motraco, a transmission joint venture between Eskom and the national electricity utilities of Mozambique and Swaziland. Our share of Mozal's FY2010 production was 259,000 tonnes.

*Information on the Aluminium CSG's bauxite mining operations*

The following table contains additional details of our mining operations. This table should be read in conjunction with the production (see section 2.3.2) and reserve tables (see section 2.14.2).

<b>Name, location, mineralisation style, type of mine and access</b>	<b>Ownership, operation and title/lease</b>	<b>History</b>	<b>Facilities and power source</b>
<b>Boddington bauxite mine</b>  123 km southeast of Perth at Boddington, Western Australia, Australia  Surficial gibbsite-rich lateritic bauxite, residual weathering of Darling Range metamorphic and volcanic rocks  Open-cut mine  The mine is accessible by sealed public roads. The ore is transported to Worsley alumina refinery via a 51 km overland conveyor.	We own 86% of the Worsley joint venture. The other 14% interest is owned by Sojitz Alumina Pty Ltd (4%), and Japan Alumina Associates (Australia) Pty Ltd (10%).  BHP Billiton Worsley Alumina Pty Ltd is the manager of the joint venture on behalf of the participants. BHP Billiton Worsley Alumina Pty Ltd has the same ownership structure as the Worsley joint venture.  We hold a 2,631 km <sup>2</sup> mining lease from the Western Australian government and two sub leases totalling 855 km <sup>2</sup> from Alcoa of Australia Limited. The lease expires in 2025 with a 21-year renewal available.	The Boddington bauxite mine opened in 1983 and was significantly extended in 2000.	The mine has a crushing plant with the capacity of approximately 13 mtpa of bauxite. Power is supplied from the Worsley alumina refinery site via a joint venture-owned powerline.  A description of the Worsley alumina refinery can be found in the table below.

<b>Name, location, mineralisation style, type of mine and access</b>	<b>Ownership, operation and title/lease</b>	<b>History</b>	<b>Facilities and power source</b>
<b>Suriname Kaaimangrasie mine</b>  38 km southeast of Paramaribo and 30 km east of the Paranam refinery, Suriname  Lateritic gibbsite-rich bauxite, residual weathering of Precambrian meta-sediments overlain by thick sediments  Open-cut mine  The mine is accessible by a joint venture-owned haul road. The ore is hauled by truck over a distance of 30 km to the Paranam refinery.	During the first month of FY2010, we owned 45% of the refining and mining joint venture. The other 55% interest was held by Suralco (a subsidiary of Alcoa World Alumina and Chemicals (AWAC), a venture of Alcoa and Alumina Limited).  We managed all mining operations.  We transferred our ownership to Suralco on 31 July 2009.	The development of the Kaaimangrasie mine started in November 2005.  Operations/delivery of bauxite to the refinery commenced in July 2006.	Kaaimangrasie mine has a nominal production capacity of approximately 1.2 mtpa of bauxite; there are no processing facilities at the mine.  Electricity is partly sourced from JV partner Suralco and from power generators that run on diesel fuel.
<b>Suriname Klaverblad mine</b>  23 km southeast of Paramaribo and 19 km east of the Paranam refinery, Suriname  Lateritic gibbsite-rich bauxite, residual weathering of Precambrian meta-sediments overlain by thick sediments  Open-cut mine  The mine is accessible by a joint venture-owned haul road. The ore is hauled by truck over a distance of 19 km to the Paranam refinery.	During the first month of FY2010, we owned 45% of the refining and mining joint venture. The other 55% interest was held by Suralco.  We managed all mining operations.  We transferred our ownership to Suralco on 31 July 2009.	The development of the Klaverblad mine started in July 2005.  Delivery of bauxite to the refinery commenced in April 2007.	Klaverblad mine has a nominal production capacity of approximately 1.7 mtpa of bauxite; there are no processing facilities at the mine.  Electricity is partly sourced from JV partner Suralco and from power generators that run on diesel fuel.
<b>Suriname Caramacca mine</b>  45 km southeast of Paramaribo and 37 km east of the Paranam refinery, Suriname  Lateritic gibbsite-rich bauxite, residual weathering of Precambrian meta-sediments overlain by thick sediments  Open-cut mine  The mine is accessible by a joint venture-owned haul road. The ore is hauled by truck over a distance of 37 km to the Paranam refinery.	During the first month of FY2010, we owned 45% of the refining and mining joint venture. The other 55% interest was held by Suralco.  We managed all mining operations.  We transferred our ownership to Suralco on 31 July 2009.	The development of the Caramacca mine started in July 2007.  Operations/delivery of bauxite to the refinery commenced in August 2008.	Caramacca mine has a nominal production capacity of approximately 0.9 mtpa of bauxite; there are no processing facilities at the mine.  Electricity is partly sourced from JV partner Suralco and from power generators that run on diesel fuel.
<b>Suriname Coermotibo mine</b>  150 km east of Paranam, Suriname  Lateritic gibbsite-rich bauxite, residual weathering of Precambrian meta-sediments occurring on hills  Open-cut mine  The mine is accessible by joint venture-owned haul roads.  The ore is hauled to the Coermotibo crushing and loading facility and subsequently barged along the Commewijne River to the Paranam refinery.	During the first month of FY2010, we owned 45% of the Coermotibo joint venture. The other 55% interest was held by Suralco.  We managed all mining operations.  We transferred our ownership to Suralco on 31 July 2009.	The Coermotibo mine started operations in 1991.	Coermotibo mine has a nominal production capacity of 1.7 mtpa. There are primary crushing, beneficiation plant and barge loading facilities.  Coermotibo generates its own electricity from power generators that run on diesel fuel.

<b>Name, location, mineralisation style, type of mine and access</b>	<b>Ownership, operation and title/lease</b>	<b>History</b>	<b>Facilities and power source</b>
<b>MRN</b>  Porto Trombetas, Pará, Brazil  Lateritic bauxite, residual weathering of nepheline syenite occurring primarily as gibbsite in a clay matrix overlain by thick clay sediments  Open-cut mine  The mine is situated approximately 40 km from Porto Trombetas. Porto Trombetas can only be reached by air or by river. An asphalt road connects the mine area with the village at Porto Trombetas.	MRN is operated as an incorporated joint venture between BHP Billiton (14.8%), Alcoa and affiliates (18.2%), Vale (40%), Rio-Tinto Alcan (12%), Votorantim (10%) and Hydro (5%).  MRN holds valid mining rights granted by the Brazilian Federal Government to all its reserves until exhaustion of the reserves.  Run of mine bauxite is mined from various plateaus, and after crushing is conveyed to the washing facilities, where the quality of bauxite is improved. The washed bauxite is then transported by rail, approximately 28 km to the loading facilities at Porto Trombetas.	Production started in 1979 and after the last expansion in 2003, MRN reached its current nominal production capacity of 18 mtpa of washed bauxite.	The mine is supported by a village of approximately 6,000 people which is owned and maintained by MRN with all required facilities to maintain the residents in the village.  Crushing facilities, long distance conveyors and the wash plant are situated near the mine area. Drying and ship loading facilities are situated close to the main mine village at Porto Trombetas.  A small airport is also maintained by MRN at Porto Trombetas.  Power is generated on-site by fuel oil generators.  All infrastructure in the area is owned by MRN.

### *Information on the Aluminium CSG's aluminium smelters and alumina refineries*

<b>Operation and location</b>	<b>Ownership, operation and title</b>	<b>Plant type/product</b>	<b>Capacity and power source</b>
<b>Hillside aluminium smelter</b>  Richards Bay, 200 km north of Durban, KwaZulu-Natal province, South Africa	We own and operate the smelter.  We hold freehold title over the property, plant and equipment. We have long-term leases over the harbour facilities.	The Hillside smelter uses the Aluminium Pechiney AP35 technology to produce standard aluminium ingots and aluminium T-Bars.	The nominal production capacity of the smelter is 0.715 mtpa of primary aluminium.  The plant's power requirements are sourced from the national power supplier Eskom under long-term contracts. The prices in the contract for Hillside 1 and 2 are currently linked to the LME price for aluminium, while the prices for Hillside 3 are linked to the SA and US producer price index.
<b>Bayside aluminium smelter</b>  Richards Bay, 200 km north of Durban, KwaZulu-Natal province, South Africa	We own and operate the smelter.  We hold freehold title over the property, plant and equipment. We have long-term leases over the harbour facilities.	The Bayside smelter currently uses Alusuisse pre-bake technology to produce primary aluminium. Bayside uses its own aluminium and liquid aluminium acquired from Hillside to produce the various slab products.	The nominal potline production capacity is 0.095 mtpa of primary aluminium on the remaining Potline A.  The plant's power requirements are sourced from the national power supplier Eskom, under a long-term contract with prices currently linked to the LME price for aluminium.
<b>Mozal aluminium smelter</b>  17 km from Maputo, Mozambique	We hold a 47.1% interest in the Mozal joint venture and operate the smelter. The other 52.9% is owned by Mitsubishi (25%), Industrial Development Corporation of South Africa Limited (24%), and the Government of Mozambique (3.9%).  The joint venture has a 50-year right to use the land, renewable for another 50 years under a government concession.	The Mozal aluminium smelter uses the Aluminium Pechiney AP35 technology to produce standard aluminium ingots.	The nominal production capacity of the smelter is 0.563 mtpa.  The plant's power requirements are purchased from Motraco.

<b><u>Operation and location</u></b>	<b><u>Ownership, operation and title</u></b>	<b><u>Plant type/product</u></b>	<b><u>Capacity and power source</u></b>
<b>Worsley alumina refinery</b>  Approximately 55 km northeast of Bunbury, Western Australia, Australia	<p>We own 86% of this asset through the Worsley joint venture. The other 14% is owned by Sojitz Alumina Pty Ltd (4%), and Japan Alumina Associates (Australia) Pty Ltd (10%).</p> <p>BHP Billiton Worsley Alumina Pty Ltd is the manager of the joint venture on behalf of the participants. BHP Billiton Worsley Alumina Pty Ltd has the same ownership structure as the Worsley joint venture.</p> <p>We hold a 2,480 ha refinery lease from the Western Australian Government. The lease expires in 2025 with a 21-year renewal available.</p>	<p>The Worsley alumina refinery uses the Bayer process to produce metallurgical grade alumina, which is used as feedstock for aluminium smelting.</p>	<p>The nominal production capacity is 3.5 mtpa.</p> <p>Power and steam needed for the refinery are provided by a joint venture-owned on-site coal power station and a non-joint venture-owned on-site gas fired steam power generation plant.</p>
<b>Paranam refinery</b>  Paranam, Suriname	<p>During the first month of FY2010, we owned 45% of the Paranam joint venture. The other 55% of the joint venture was owned by Suralco.</p> <p>Suralco managed the alumina refinery.</p> <p>We transferred our ownership to Suralco on 31 July 2009.</p>	<p>The Paranam alumina refinery utilises the Bayer process to produce metallurgical grade alumina, which is used as feedstock for aluminium smelting.</p>	<p>Capacity is 2.2 mtpa. The Paranam refinery generates its own power.</p>
<b>Alumar</b>  São Luís, Maranhão, Brazil	<p>The Alumar Consortium is an unincorporated joint venture that holds the smelter, refinery, ingot plant and support facilities.</p> <p>We own 40% of the aluminium smelter. The other 60% is owned by Alcoa Aluminio SA (Alcoa).</p> <p>We own 36% of the alumina refinery. The other 64% is owned by Alcoa and its affiliate Abalco SA (35.1% and 18.9% respectively) and Rio Tinto (10%).</p> <p>Alcoa operates both facilities. The consortium comprises an integrated port, an alumina refinery and an aluminium smelter together with areas for the production of anodes and aluminium ingots.</p> <p>All the above are freehold interests of the joint venture participants.</p>	<p>The alumina refinery and aluminium smelter use Alcoa technology to produce alumina and aluminium ingots.</p>	<p>The refinery complex was last expanded in October 2009, increasing nominal capacity to 3.5 mtpa.</p> <p>The smelter has a nominal capacity of approximately 0.45 mtpa of primary aluminium.</p> <p>The electricity requirements are supplied by Brazilian public power generation concessionaire Electronorte, pursuant to a 20-year contract.</p>

## ***Development projects***

### ***Worsley Efficiency and Growth Project***

In May 2008, we announced approval for an expansion project to lift capacity of the Worsley refinery from 3.5 million tonnes per annum of alumina to 4.6 million tonnes per annum (100 per cent capacity) of alumina through expanded mining operations at Boddington, additional refinery capacity and upgraded port facilities. The project is budgeted to cost US\$1.9 billion (our share), with first production anticipated in first half of CY2011 and with mechanical completion in the second half of CY2011. To date we have spent US\$1.2 billion.

### ***Guinea Alumina***

We have a one-third interest in a joint venture that is undergoing a feasibility study into the construction of a 10 million tonnes per annum bauxite mine, an alumina refinery with processing capacity exceeding 3.3 million tonnes per annum and associated infrastructure approximately 110 kilometres from the port of Kamsar in Guinea.

## ***2.2.4 Base Metals Customer Sector Group***

Our Base Metals CSG is one of the world's top producers of copper, silver, lead and uranium, and a leading producer of zinc. Our portfolio of large, low-cost mining operations includes the Escondida mine in Chile, which is the world's largest single producer of copper, and Olympic Dam in South Australia, which is already a major producer of copper and uranium and has the potential to be significantly expanded.

In recent years, we have commissioned the Spence copper mine and the Escondida Sulphide Leach projects. Our total copper production in FY2010 was 1.0 million tonnes. In addition to conventional mine development, we continue to pursue advanced treatment technologies, such as the leaching of low-grade chalcopyrite ores, which we believe has the potential to recover copper from ores which were previously uneconomic to treat.

We market five primary products:

- copper concentrates
- copper cathodes
- uranium oxide
- lead concentrates
- zinc concentrates.

We sell most of our copper, lead and zinc concentrates to smelters under long-term volume contracts with prices based on the LME price for the contained metal three or four months after shipment, less treatment charges and refining charges (collectively referred to as 'TCRCs') that we negotiate with the smelters on an annual or bi-annual basis. Some of the ores we mine contain quantities of silver and gold, which remain in the base metal concentrates we sell. We receive payment credits for the silver and gold recovered by our customers in the smelting and refining process.

We sell most of our copper cathode production to rod and brass mills and casting plants around the world under annual contracts with premiums to LME prices. We sell uranium oxide to electricity generating utilities, principally in western Europe, north America and north Asia. Uranium is typically sold under long-term contracts. A significant portion of production is sold into fixed price contracts although increasingly sales are based on flexible pricing terms.

We have seven production assets:

#### *Escondida*

Our 57.5 per cent owned and operated Escondida mine is the largest and one of the lowest-cost copper producers in the world. In FY2010, our share of Escondida production was 448,111 tonnes of payable copper in concentrate and 174,199 tonnes of copper cathode. Current reserves will support mining for a further 30 years at current production rates. Availability of key inputs like power and water supply at competitive prices is an important focus at Escondida. To ensure security of supply and competitive power costs in the long term, we supported the construction of an LNG facility to supply gas to the Northern grid system, which has been operating since June 2010 and have signed-off-take agreements underwriting the construction of a 460 megawatt coal-fired power plant, which is scheduled for completion in CY2011. To address limitations on the availability of water, we carefully manage our use and re-use of available water, and explore for alternative sources including desalination of seawater.

During FY2009, Escondida experienced an electrical motor failure at the SAG Mill in the Laguna Seca concentrator plant. This impacted the throughput at the plant given the increased maintenance requirements. A permanent repair was successfully completed in the first quarter of FY2010.

#### *Olympic Dam*

While it is already a significant producer of copper cathode and uranium oxide, and a refiner of smaller amounts of gold and silver bullion, we are continuing to explore a series of staged development options that would make our wholly owned Olympic Dam operation one of the world's largest producers of copper, the largest producer of uranium and a significant producer of gold (see Development projects below).

During the second quarter of FY2010, the haulage system in the Clark Shaft at Olympic Dam was damaged. Ore hoisting operated at approximately 25 per cent of capacity until the fourth quarter of FY2010, when hoisting from the Clark Shaft resumed achieving a return to full production following the completion of repair works. Production in FY2010 was impacted due to this incident with Olympic Dam producing 103,253 tonnes of copper cathode, 2,279 tonnes of uranium oxide, 65,494 ounces of refined gold and 500,346 ounces of refined silver.

### *Antamina*

We own 33.75 per cent of Antamina, a large, low-cost, long-life copper/zinc mine in Peru. Opened in 2001, its reserves will support mining at current rates for a further 20 years. Our share of Antamina's FY2010 production was 98,600 tonnes of copper in concentrate, and 135,573 tonnes of zinc in concentrate. In addition to its primary copper and zinc concentrate products, Antamina also produces smaller amounts of molybdenum and lead/bismuth concentrate.

### *Spence*

We completed our wholly owned greenfield Spence copper mine development in Chile and began ramping up cathode production in December 2006. During FY2010, we produced 159,604 tonnes of copper cathode which was impacted by industrial action during the second quarter. Spence's current reserves will support mining at current rates for a further 16 years.

### *Cerro Colorado*

Our wholly owned Cerro Colorado mine in Chile remains a significant producer of copper cathode, although production levels have declined in recent years as grades have declined. Production in FY2010 was 85,200 tonnes of copper cathode. Our current mine plan sees production continuing until FY2021, although we are currently evaluating the extent of hypogene mineralisation that may support further extension options.

### *Cannington*

Our wholly owned Cannington mine in northwest Queensland has grown to become the world's largest and, we believe, one of the lowest-cost producers of silver and lead. In FY2010, Cannington produced concentrates containing 245,445 tonnes of lead, 62,706 tonnes of zinc and approximately 37 million ounces of silver. The current mine plan sees production continuing until 2019.

### *Pinto Valley*

As a result of the global economic slowdown in FY2009, we made the decision to stop sulphide mining and milling operations at our Pinto Valley Mine located in Arizona, US, placing the operations in care and maintenance.

We continue to produce copper cathode at the Pinto Valley site and the neighbouring Miami Unit from our residual solvent extraction electrowinning (SXEW) operations. Current reserves would support mining operations for approximately four years.



### Information on the Base Metals CSG's mining operations

The following table contains additional details of our mining operations. This table should be read in conjunction with the production (see section 2.3.2) and reserve tables (see section 2.14.2).

Name, location, mineralisation style, type of mine and access	Ownership, operation and title/ lease	History	Facilities and power source
<b>COPPER</b>			
<p><b>Escondida</b></p> <p>Atacama Desert, at an altitude of approximately 3,100 m and 170 km southeast of Antofagasta, Chile</p> <p>The Escondida mining complex includes the Escondida and Escondida Norte mineral deposits that are adjacent, but distinct, supergene-enriched porphyry copper deposits</p> <p>Two open-cut pits</p> <p>The mine is accessible by public road.</p> <p>Copper cathode is transported by privately-owned rail line to the Antofagasta port (government-operated) or Mejillones port (privately operated).</p> <p>Copper concentrate is transported by Company-owned pipeline to its Coloso port facilities.</p>	<p>The mine is owned by Minera Escondida Limitada and operated by BHP Billiton.</p> <p>We own 57.5% of Minera Escondida. The other 42.5% is owned by affiliates of Rio Tinto (30%), the JECO Corporation (10%), a consortium represented by Mitsubishi Corporation (7%), Mitsubishi Materials Corporation (1%), Nippon Mining and Metals (2%) and Jeco 2 Ltd (2.5%).</p> <p>Minera Escondida Limitada holds a mining concession from the Chilean state that remains valid indefinitely (subject to payment of annual fees).</p>	<p>Original construction of the operation was completed in 1990. The project has since undergone various expansion projects at an additional cost of US\$3.0 billion (100% terms).</p> <p>In June 2006, the Escondida Sulphide Leach copper project achieved first production. The cost of the project was US\$1.0 billion (100% terms).</p>	<p>Escondida has two processing streams: two concentrator plants in which high-quality copper concentrate is extracted from sulphide ore through a flotation extraction process; and two solvent extraction plants in which leaching, solvent extraction and electrowinning are used to produce copper cathode.</p> <p>Nominal production capacity is 3.2 mtpa of copper concentrate and 330,000 tpa of copper cathode.</p> <p>Separate transmission circuits provide power for the Escondida mine facilities. These transmission lines, which are connected to Chile's northern power grid, are Group-owned. Electricity is purchased under contracts with local generating companies.</p>
<p><b>Spence</b></p> <p>Atacama Desert, 150 km northeast of Antofagasta, Chile</p> <p>A porphyry copper deposit that contains significant copper oxide (atacamite and chrysocolla) overlying the supergene sulphide enrichment zone</p> <p>Open-cut mine</p> <p>The mine is accessible by public road and company-owned rail access.</p> <p>Copper cathode produced is transported by rail line to Mejillones port (privately operated) and to Antofagasta port on an exceptional basis.</p>	<p>We own and operate the mine (100%).</p> <p>We hold a mining concession from the Chilean state that remains valid indefinitely (subject to payment of annual fees).</p>	<p>Spence received Board approval for execution in October 2004. The cost was US\$1.1 billion.</p> <p>First ore was crushed in September 2006 with first copper produced in December 2006.</p>	<p>Spence has facilities to support the open-cut mining operations and ore processing/crushing operations.</p> <p>The crushed oxide and sulphide ores are leached on separate dynamic (on-off) leach pads. Acid leaching is applied to oxide ores and bio-leaching is applied to supergene sulphide ores. Solvent extraction consists of four trains in a series-parallel configuration, with extraction stages for both oxide and sulphide Pregnant Leach Solution. A single electrowinning plant produces the copper cathode.</p> <p>Nominal capacity is 200,000 tpa of copper cathode.</p> <p>Electrical power is supplied via a Company-owned voltage transmission line connected to Chile's northern power grid. Electricity is purchased under contracts from a local generating company.</p>
<p><b>Cerro Colorado</b></p> <p>Atacama Desert at an altitude of 2,600 m, 120 km east of Iquique, Chile</p> <p>A supergene porphyry copper deposit that consists of a sulphide enrichment zone overlaid by oxide ore (chrysocolla + brochantite)</p> <p>Open-cut mine</p> <p>The mine is accessible by public road.</p> <p>Copper cathode production is trucked to the port at Iquique, which is privately operated.</p>	<p>We own and operate the mine.</p> <p>We hold a mining concession from the Chilean state that remains valid indefinitely (subject to payment of annual fees).</p>	<p>Commercial production at Cerro Colorado commenced in June 1994.</p> <p>Expansions took place in 1995 and 1998 to increase the mine's crushing capacity, leach pad area and mine fleet. With these expansions, production was increased to 100,000 tpa. Production was then increased to the nameplate capacity of 120,000 tpa with optimisation and efficiency improvements. Due to lower copper grades of the ore the production is now approximately 100,000 tpa.</p>	<p>Cerro Colorado's facilities for this process include two primary, secondary and tertiary crushers, leaching pads and solvent extraction and electrowinning plants.</p> <p>Electricity is supplied under long-term contracts to the facilities through the northern Chile power grid.</p>

**Name, location, mineralisation style, type of mine and access**

**Pinto Valley**

Located in the US approximately 125 km east of Phoenix, Arizona.

A porphyry copper deposit of low-grade primary mineralisation

Open-pit mine (Pinto Valley)

In-situ leach (Miami Unit)

The mine is accessible by public road. Current copper cathode production is trucked to domestic customers in the US.

**Ownership, operation and title/lease**

We own and operate 100% of Pinto Valley and we hold title to the land.

**History**

Pinto Valley was acquired through the acquisition of Magma Copper Company in 1996. The sulphide mining operations were discontinued in 1998. In October 2007, the mining and milling operations were restarted. As a result of the global economic slowdown, Pinto Valley mining and milling operations were stopped in January 2009. During cessation of the mining and milling operations, residual SXEW production from both the Pinto Valley site and neighbouring Miami Unit continues to produce small amounts of copper cathode.

**Facilities and power source**

Pinto Valley facilities include two SXEW operations at the Pinto Valley and Miami sites. Concentrate production facilities in care and maintenance include a primary crusher, secondary and tertiary crushers, six ball mills and copper concentrate and molybdenum flotation circuits.

Power is supplied to the site by the Salt River Project.

**COPPER URANIUM**

**Olympic Dam**

560 km northwest of Adelaide, South Australia, Australia

A large poly-metallic deposit of the iron oxide-copper-gold style of mineralisation

Underground mine

The mine is accessible by public road. Copper cathode is transported by public road to public ports. Uranium oxide is transported by public road and rail to public ports.

We own and operate Olympic Dam.

The mining lease was granted by the Government of South Australia by an Act of Parliament for the period of 50 years from 1986, with a right of extension for a further period of 50 years in accordance with the Roxby Downs (Indenture Ratification) Act 1982.

Production of copper began in 1988. Between 1989 and 1995, the production rate was increased, ultimately raising the ore mining capacity to approximately 3 mtpa. During 1997 through 1999 a major expansion was conducted to raise throughput from 3 mtpa to 9 mtpa.

In 2002, Olympic Dam completed an optimisation project. A new copper solvent extraction plant was commissioned in the first quarter of 2004.

We acquired Olympic Dam as part of our acquisition of WMC in 2005.

The underground mine extracts copper uranium ore and hauls the ore by an automated train and trucking network feeding underground crushing, storage and ore hoisting facilities.

The processing plant consists of two grinding circuits in which high-quality copper concentrate is extracted from sulphide ore through a flotation extraction process. The concentrate is fed into an Outokumpu flash furnace having a nominal concentrate smelting capacity of 450 ktpa to produce copper anodes, then into an ISA electro-refinery to produce copper cathodes and slimes treated to recover gold and silver. The flotation tailings are further processed through leaching and solvent extraction to produce electrowon copper cathode and high-grade uranium oxide concentrate.

Power for the Olympic Dam operations is supplied via a 275 kV powerline from Port Augusta, transmitted by ElectraNet.

**COPPER ZINC**

**Antamina**

Located in the Andes mountain range, North Central Peru at an altitude of 4,300 meters, 270 km north of Lima

A zoned porphyry skarn deposit with central Cu-only ores and an outer band of Cu-Zn ore zone.

Open-cut mine

The mine is accessible by a Company-maintained 115 km access road.

A 300 km pipeline transports the copper and zinc concentrates to the port of Huarmey.

The molybdenum and lead/bismuth concentrates are transported by truck to different locations for shipment.

Antamina is owned and operated by a joint venture company called Compañía Minera Antamina S.A., in which we hold a 33.75% interest. The other joint venture partners are Xstrata (33.75%), Teck Cominco Limited (22.5%) and Mitsubishi Corp (10%).

Antamina holds mining rights from the Peruvian state over its mine and operations. These rights can be held indefinitely, contingent upon the annual payment of licence fees and the supply of information on investment and production.

The Antamina project achieved mechanical completion in May 2001 - more than four months ahead of the original schedule. The project began commercial production on 1 October 2001 ahead of schedule and under budget, following two years of exploration and three years of construction at a capital cost of US\$2.3 billion.

The principal project facilities include a primary crusher, a nominal 94,000 tpd concentrator, copper and zinc flotation circuits and a bismuth/moly cleaning circuit, a 300 km concentrate pipeline with single-stage pumping, and port facilities at Huarmey. The pipeline design throughput is 2.3 dry mtpa.

Power to the mine site is being supplied under long-term contracts with individual power producers through a 58 km 220 kV transmission line, which is connected to Peru's national energy grid.

Name, location, mineralisation style, type of mine and access	Ownership, operation and title/ lease	History	Facilities and power source
<b>SILVER, LEAD AND ZINC</b>			
<b>Cannington</b>	We own and operate Cannington.	The deposit was discovered in 1990. Concentrate production commenced in 1997.	The beneficiation plant consists of a primary grinding circuit (AG mill), secondary grinding circuit (tower mill), pre-flotation circuit, fine lead flotation circuit, coarse lead flotation circuit, zinc flotation circuit, concentrate and tailings thickening, lead and zinc concentrate leaching circuits, lead and zinc concentrate filtration circuit and a paste plant.
300 km southeast of Mt Isa, Queensland, Australia	The Cannington deposit is contained within mining leases granted by the State of Queensland in 1994 and which expire in 2029.	In February 2003, the Cannington Growth Project commenced to improve mill throughput and metal recovery. The project was completed during FY2005.	Nominal capacity is 3.2 mtpa.
A Broken Hill-type silver-lead-zinc sulphide deposit			A power station, consisting of a combination of gas-fired and diesel-fired engines, located at Cannington, is operated under contract to supply power solely to Cannington.
Underground mine			
The mine is accessible by public road and a Company-owned airstrip.			
Product is transported 187 km by road to Yurbi, a Company-owned loading facility, where it is loaded on public rail and transported to a public port at which we lease a berth.			

### ***Development projects***

#### ***Olympic Dam***

Pre-feasibility study work on the proposed expansion of Olympic Dam has addressed production capacities, mining methods, processing (including smelting) options and supporting infrastructure requirements. The proposed expansion would be a progressive development requiring construction activity to increase production to up to 750,000 tonnes per annum of copper, 19,000 tonnes per annum of uranium oxide and 800,000 ounces of gold. The Group released a draft Environmental Impact Statement (EIS) in May 2009 and received more than 4,000 public submissions on the project. The issues raised in the public submissions are addressed in a Supplementary EIS which the Group expects to complete by the end of CY2010. Government decisions on the project are expected in the second half of CY2011. After that, the expansion project will depend on successfully completing all required feasibility studies and on Board approval of the final investment case.

#### ***Yeelirrie***

Pre-feasibility study work relating to the proposed Yeelirrie uranium oxide mine is in progress and will be reviewed by the Group to determine whether feasibility study work should commence in early 2011. The work currently underway includes resource definition drilling, test work, process plant concept design, environment impact assessment, capital and operating costing and economic evaluation.

#### ***Escondida***

Exploration of the Escondida lease and early drilling results suggest that there is extensive additional mineralisation in close proximity to existing infrastructure and processing facilities, including a prospect known as Pampa Escondida. In FY2010 Escondida has expensed US\$125 million (US\$72 million our share) in exploration. Escondida is planning to invest a further estimated US\$541 million (US\$311 million our share) in drilling, assaying and metallurgical test work in exploration over the next five years.

The Laguna Seca Debottlenecking project which will provide additional processing capacity has moved into feasibility. It is expected that this project will move into execution during FY2011. Development of Organic Growth Project 1 continues which is the replacement of the Los Colorados concentrator allowing access to higher grade ore and additional processing capacity.

#### ***Antamina***

In FY2010 Antamina announced the approval of the Expansion project. With a total investment of US\$1.3 billion (US\$434.7 million our share), the project will expand milling capacity by 38 per cent to 130,000 tpd. The Expansion project includes a new SAG mill, a new 55 kilometre power transmission line, an expanded truck shop facility and upgrades to the crushing and tailing systems, flotation circuit and port capacity. Commissioning of the project is scheduled to start at the end of CY2011. Our share of the capital expenditures in the Antamina expansion project totalled US\$47 million in FY2010.

### *Resolution Copper*

We hold a 45 per cent interest in the Resolution Copper project in Arizona, which is operated by our partner, Rio Tinto, which owns the other 55 per cent. Resolution Copper is currently undertaking a pre-feasibility study into a substantial underground copper mine and processing facility.

Resolution Copper continued to advance the sinking of the No. 10 Shaft in order to gain access to the ore deposit for characterisation work of mineralisation and geotechnical conditions. In addition to work completed at the project site, efforts continued towards gaining approval within the US Congress for a Federal Land Exchange to access the ore deposit.

### **2.2.5 Diamonds and Specialty Products Customer Sector Group**

Our Diamonds and Specialty Products CSG operates our diamonds and titanium minerals businesses and the exploration and development of a potash business.

#### *Diamonds*

The cornerstone of our diamonds business is the EKATI diamond mine in the Northwest Territories of Canada, of which we own 80 per cent. EKATI has produced on average over three million carats per year of rough diamonds over the last three years. However, the grade of ore we process fluctuates from year to year, resulting in variations in carats produced. In addition, the proportion of our production consisting of high-value carats (larger and/or higher-quality stones) and low-value carats (smaller and/or lower-quality stones) will fluctuate from year to year. During the year mining of the higher grade Panda underground was completed. The mine life based on the mine plan is eight years.

Annual sales from EKATI (100 per cent terms) represent approximately three per cent of current world rough diamond supply by weight and approximately nine per cent by value. We sell most of our rough diamonds to international diamond buyers through our Antwerp sales office. We also sell a smaller amount of our diamond production to two Canadian manufacturers based in the Northwest Territories.

#### *Titanium minerals*

Our principal interest in titanium minerals consists of our 37.76 per cent interest in Richards Bay Minerals (RBM). RBM is one of the largest and lowest-cost producers of titania slag, high-purity pig iron, rutile and zircon from mineral sands. Approximately 90 per cent of the titanium dioxide slag produced by RBM is suitable for the chloride process of titanium dioxide pigment manufacture and is sold internationally under a variety of short, medium and long-term contracts.

In December 2009, RBM completed its Broad-Based Black Economic Empowerment ('BBBEE') transaction by transferring 26 per cent to the BBBEE Consortium. The BBBEE Consortium includes investors, local communities and RBM employees.

#### *Potash*

We believe potash has significant growth potential underpinned by increasing demand for food and decreasing arable land, which is largely driven by growing economies in developing countries.

On 18 August 2010, BHP Billiton announced its intention to make an all-cash offer, and on 20 August 2010 formally commenced the offer, to acquire all of the issued and outstanding common shares of Potash Corporation of Saskatchewan Inc. (PotashCorp) at a price of US\$130 in cash per PotashCorp common share (the 'Offer'). The Offer values the total equity of PotashCorp at approximately US\$40 billion on a fully diluted basis.

On 23 March 2010, we completed the acquisition of all the issued and outstanding common shares of Athabasca Potash Inc (API) for C\$8.35 cash per common share. This acquisition provided us with 100 per cent control of the Burr project and various additional potash exploration properties in Saskatchewan, Canada. Our permit positions for potash extend over 14,000 square kilometres in the Saskatchewan basin and have expiry dates between 2013 and 2016. We are currently studying development opportunities (see Development projects below).

## Information on Diamonds and Specialty Products mining operations

The following table contains additional details of our mining operations. This table should be read in conjunction with the production (see section 2.3.2) and reserve tables (see section 2.14.2).

Name, location, mineralisation style, type of mine and access	Ownership, operation and title/lease	History	Facilities and power source
<b>DIAMONDS</b>			
<b>EKATI Diamond Mine</b>			
310 km northeast of Yellowknife, Northwest Territories, Canada	We own an 80% interest in the Core Zone joint venture, which includes the existing operations. The remaining 20% interest is held by two individuals.	Construction began in 1997 and production from the first open-cut was initiated in 1997. The mine and processing plant began operation in mid 1998.	The processing plant consists of crushers, washers/scrubber and grinder and heavy media separator. The diamond recovery process makes use of magnetics and X-ray sorters.
Eocene age kimberlite pipes-dominantly volcanoclastic infill	We also own a 58.8% interest in the Buffer Zone joint venture, made up predominantly of exploration targets.	In October 2001, we acquired Dia Met Minerals Ltd, bringing our interest in the Core Zone and Buffer Zone joint ventures up to 80% and 58.8% respectively.	All the electric power is generated by our Company-owned and operated diesel power station. In addition, there is storage for approximately 90 million litres of diesel fuel on-site.
Fox is an open-cut mine and Koala is an underground mine	We are the operator of the mines.	Current active mines include one open-cut (Fox) and one underground mine (Koala). Mining at Panda underground mine was completed during FY2010.	
The mines are accessible year round by contracted aircraft.	Tenure is secured through ownership of mining leases granted by the Government of Canada. Mining leases have been granted for reserves until 2017.		
Road access is available for approximately 10 weeks per year via an ice road.			
<b>TITANIUM MINERALS</b>			
<b>Richards Bay Minerals</b>			
RBM has four beach sand dredge mines located 10 to 50 km north of Richards Bay, KwaZulu-Natal, South Africa	RBM comprises two legal entities, Richards Bay Mining (Proprietary) Limited and Richards Bay Titanium (Proprietary) Limited, in each of which the Group has a 50% interest and functions as a single economic entity. After deducting non-controlling interests in subsidiaries of RBM, the Group's economic interest in the operations of RBM is 37.76%.	Richards Bay Minerals was formed in 1976 to mine and beneficiate the sands in the coastal dunes.	Mining is conducted largely by sand dredge mining, with minor supplementary dry mining. Gravity separation is then utilised to produce a heavy mineral concentrate. This concentrate is then trucked to a central processing plant to produce the finished products, being rutile and zircon and the ilmenite for smelter feed.
Quaternary age coastal dune deposits - heavy mineral sands concentrated by wave action and aeolian processes		The mining operations were expanded to five, with the last mine added in 2000. In 2006, this was reduced to four, with the closure of one mining pond.	
The mines are accessible via public rail, road and port.	Rio Tinto operates the joint venture on behalf of the shareholders.		The smelter processes the ilmenite to produce titanium dioxide slag, with a titanium dioxide content of approximately 85% and high-purity iron.
The rail between the mine site, harbour and shipping facilities are owned by Spoornet and Portnet (both government business enterprises supplying services on behalf of the state). The roads accessing the smelter are government-owned.	RBM holds long-term renewable leases from the state of South Africa.		The nominal titanium slag capacity is 1.06 mtpa.
	These leases are subject to the South African Mining Charter and an application has been lodged for a conversion to a New Order Rights (see section 2.7, 'Government regulations').		Power for the operation is purchased from the South African grid.

## Development projects

### Potash

We continued advancing the Jansen Project, a greenfield potash project near Saskatoon, Saskatchewan, Canada which is being designed to produce approximately eight million tonnes per annum of saleable potash. The Project is nearing the end of its pre-feasibility study and is anticipated to progress to feasibility in the first half of FY2011. Based on the current schedule and subject to investment approval, the project is expected to produce saleable potash from CY2015. We have also allotted pre-commitment funding of US\$240 million to support the development of the first stages of the Jansen Potash Project. This pre-approval expenditure will facilitate the early stage work for the establishment of the production and service shafts.

Jansen is the most advanced of our multiple development options in potash, with nearby Young and Boulder projects both in the concept study phase. We continued exploration activities in Saskatchewan, Canada. The Burr project, acquired with Athabasca Potash on 23 March 2010, is currently under review in the context of our full potash development portfolio. Exploration in the Melville area, also acquired with Athabasca Potash, began in July 2010.

### Diamonds

We are working on pre-feasibility and concept studies for developments at EKATI. Because of the nature of the kimberlite pipes in which diamonds are found, individual pipes are relatively short-lived, so we are continually working on options to bring new pipes on-stream.

### ***2.2.6 Stainless Steel Materials Customer Sector Group***

Our Stainless Steel Materials business is primarily a supplier of nickel to the stainless steel industry. Nickel is an important component of the most commonly used types of stainless steel. In addition, we supply nickel to other markets, including the specialty alloy, foundry, chemicals, and refractory material industries. We are the world's fourth-largest producer of nickel and we sell our nickel products under a mix of long-term, medium-term and spot volume contracts, with prices linked to the London Metal Exchange (LME) nickel price.

For the duration of FY2010, our nickel business comprised two sets of production assets:

#### *Nickel West*

Nickel West is the name for our wholly owned Western Australian nickel assets, which consist of an integrated system of mines, concentrators, a smelter and a refinery. We mine nickel-bearing sulphide ore at our Mt Keith, Leinster and Cliffs operations north of Kalgoorlie, Western Australia. We operate concentrator plants at Mt Keith and at Leinster, which also concentrates ore from Cliffs. Leinster and Mt Keith have reserve lives of eight and 14 years respectively at current rates of production, and both have options for further expansion. Cliffs is a high-grade underground mine with an expected reserve life of three years. The extraction of ore at Cliffs commenced in FY2008.

We also operate the Kambalda concentrator south of Kalgoorlie, where ore is sourced through tolling and concentrate purchase arrangements with third parties in the Kambalda region. In addition, we have a regular purchase agreement in place for the direct purchase of concentrate, which we dry and blend with other concentrate processed at Kambalda.

We transport concentrate from Leinster, Mt Keith and Kambalda to our Kalgoorlie smelter, which processes it into nickel matte, containing approximately 66 per cent nickel. In FY2010, we exported approximately 43 per cent of our nickel matte production. We processed the remaining nickel matte at our Kwinana nickel refinery, which produces nickel metal in the form of LME grade briquettes and nickel powder, together with a range of saleable by-products.

During FY2010, production of nickel metal from the Kwinana nickel refinery was impacted by a restriction in hydrogen supply, resulting in the redirection of matte feed stocks for external sale. A new hydrogen plant is under construction at the Kwinana nickel refinery and construction is expected to be completed in the second quarter of FY2012.

#### *Cerro Matoso*

Cerro Matoso, our 99.94 per cent owned nickel operation in Colombia, combines a lateritic nickel ore deposit with a low-cost ferronickel smelter. Cerro Matoso is the world's second-largest producer of ferronickel and one of the lowest-cost producers of ferronickel. The smelter produces high-purity, low-carbon ferronickel granules. Cerro Matoso has an estimated current reserve life of 39 years, based on current production levels.

#### *Significant changes to the Stainless Steel Materials business*

During FY2010 Stainless Steel Materials made two significant business divestments. In July 2009 we completed the sale of the Yabulu nickel refinery. In February 2010 we completed the sale of the Ravensthorpe nickel operation following the suspension of production activities in January 2009.

### Information on Stainless Steel Materials mining operations

The following table contains additional details of our mining operations. This table should be read in conjunction with the production (see section 2.3.2) and reserve tables (see section 2.14.2).

Name, location, mineralisation style, type of mine and access	Ownership, operation and title/lease	History	Facilities and power source
<b>NICKEL</b>			
<b>Mt Keith</b> 460 km north of Kalgoorlie, Western Australia, Australia Disseminated textured magmatic nickel-sulphide mineralisation, associated with metamorphosed ultramafic lava flows and intrusions Open-cut mine The mine is accessible by private road. Nickel concentrate is transported by road to Leinster nickel operations from where it is dried and transported by public road and rail to the Kalgoorlie nickel smelter.	We own and operate the mine at Mt Keith. We hold leases over the land from the Western Australian Government. The key leases have expiry dates between 2011 and 2029. Further renewals are at the government's discretion.	The Mt Keith mine was officially commissioned in January 1995 by WMC. In June 2005, we gained control of Nickel West (Leinster, Mt Keith and Cliffs) as part of the acquisition of WMC.	Concentration plant with a capacity of 11.5 mtpa of ore. Power at Mt Keith nickel operations is primarily derived from on-site third party gas-fired turbines. Gas for these turbines is sourced by us from the North West Shelf gas fields. The existing gas supply contract expires in 2013. The gas is transported through the Goldfields Gas Pipeline, pursuant to an agreement with Southern Cross Pipeline Australia that expires in 2037.
<b>Leinster</b> 375 km north of Kalgoorlie in Western Australia, Australia Steeply dipping disseminated and massive textured nickel-sulphide mineralisation, associated with metamorphosed ultramafic lava flows and intrusions Underground and open-cut mines. The mine is accessible by government-owned road and rail. Nickel concentrate is shipped by road and rail to the Kalgoorlie nickel smelter.	We own and operate the mines at Leinster. We hold leases over the land from the Western Australian Government. The key leases have expiry dates between 2019 and 2030. Further renewals are at the government's discretion.	Production commenced in 1967. In June 2005, we gained control of Nickel West (Leinster, Mt Keith and Cliffs) as part of the acquisition of WMC.	Concentration plant with a capacity of 3 mtpa of ore. Power at Leinster nickel operations is primarily derived from on-site third party gas-fired turbines. Gas for these turbines is sourced by us from the North West Shelf gas fields. The existing gas supply contract expires in 2013. The gas is transported through the Goldfields Gas Pipeline, pursuant to an agreement with Southern Cross Pipeline Australia that expires in 2037.
<b>Cliffs</b> 430 km north of Kalgoorlie in Western Australia, Australia Steeply dipping massive textured nickel-sulphide mineralisation, associated with metamorphosed ultramafic lava flows Underground mine The mine is accessible by private road. Nickel ore is transported by road to the Leinster nickel operations for further processing.	We own and operate the mine at Cliffs. We hold leases over the land from the Western Australian Government. The key leases have expiry dates between 2025 and 2026. Further renewals are at the government's discretion.	Production commenced in 2008. In June 2005, we gained control of Nickel West (Leinster, Mt Keith and Cliffs) as part of the acquisition of WMC.	Power at our Cliffs mining operations is primarily derived from Mt Keith's on-site third party gas-fired turbines. Gas for these turbines is sourced by us from the North West Shelf gas fields. The existing gas supply contract expires in 2013. The gas is transported through the Goldfields Gas Pipeline, pursuant to an agreement with Southern Cross Pipeline Australia that expires in 2037.
<b>Cerro Matoso</b> Montelibano, Córdoba, Colombia Nickel-laterite mineralisation formed from residual weathering of ophiolitic peridotite Open-cut mine The mine is accessible by public highway.	We own 99.94% of CMSA, and 0.06% is held by employees. Existing mining concessions are renewable in 2012 with a 30-year extension period until 2042. Further extension is possible at that time. Land on which reserves are located is owned.	Mining commenced in 1980 and nickel production started in 1982 under Colombian Government, BHP Billiton and Hanna Mining ownership. In 1989, we increased our ownership to 53%, in 1997 to 99.8% and in 2007 to 99.94%. In 2001, we completed an expansion project to double installed capacity.	The ferronickel smelter and refinery are integrated with the mine. Beneficiation plant for the mine consists of a primary and secondary crusher. Ore is sent to a stacker for stockpiling and blending. Process design capacity is 50,000 tpa of nickel in ferronickel form. Actual capacity depends on nickel grade from the mine. Electricity is supplied from the national grid based on supply contracts negotiated periodically. Existing contracts are in place until December 2011. A pipeline supplies domestic natural gas for drier and kiln operation. The existing gas supply contract terminates in 2011.

## *Information on Stainless Steel Materials smelters, refineries and processing plants*

<u>Operation and location</u>	<u>Ownership, operation and title</u>	<u>Plant type/product</u>	<u>Capacity and power source</u>
<b>Kambalda nickel concentrator</b> 56 km south of Kalgoorlie, Western Australia, Australia	We own and operate the Kambalda nickel concentrator and hold mineral leases over the land from the Western Australian Government that expire in 2028.  Further renewals are at the government's discretion.  Ore is sourced through tolling and concentrate purchase arrangements with third parties in the Kambalda region.	Mill and concentrator plant producing concentrate containing approximately 13% nickel.	The Kambalda concentrator has a capacity of approximately 1.6 mtpa of ore.  Power at the Kambalda concentrator is primarily derived from on-site third party gas-fired turbines. Gas for these turbines is sourced by us from the North West Shelf gas fields. The existing gas supply contract expires in 2013.  The gas is transported through the Goldfields Gas Pipeline, pursuant to an agreement with Southern Cross Pipeline Australia that expires in 2037.
<b>Kalgoorlie nickel smelter</b> Kalgoorlie, Western Australia, Australia	We own and operate the Kalgoorlie nickel smelter operation and hold freehold title over the property.	The flash smelting process produces matte containing approximately 66% nickel.	The Kalgoorlie smelter has a capacity of approximately 110,000 tpa of nickel matte.  Power at the Kalgoorlie smelter is primarily derived from on-site third party gas-fired turbines. Gas for these turbines is sourced by us from the North West Shelf gas fields. The existing gas supply contract expires in 2013.  The gas is transported through the Goldfields Gas Pipeline, pursuant to an agreement with Southern Cross Pipeline Australia that expires in 2037.
<b>Kwinana nickel refinery</b> 30 km south of Perth, Western Australia, Australia	We own and operate the Kwinana nickel refinery operation and hold freehold title over the property.	The refinery uses the Sherritt-Gordon ammonia leach process to convert nickel matte from the Kalgoorlie nickel smelter into LME-grade nickel briquettes and nickel powder.  The refinery also produces a number of intermediate products, including copper sulphide, cobalt-nickel sulphide and ammonium sulphate.	The Kwinana nickel refinery has a capacity of approximately 65,000 tpa of nickel metal.  Power generated by Southern Cross Energy in the goldfields is distributed across Western Power's network for use at the Kwinana nickel refinery.  The existing gas supply contract terminates in 2013.

### *Development projects*

#### *Cerro Matoso Nickel Ore Smelting System*

During FY2010, the Nickel Ore Smelting System project was approved to progress into execution phase. The project will deliver a replacement of the 27-year-old Line 1 furnace to improve operational reliability and accommodate changes in the mineralogy of the ore feed. The construction phase will take approximately six months, followed by heating and ramp-up of the new furnace over a further three months. The shutdown is planned to commence during the second half of FY2011.

#### *Cerro Matoso expansion options*

Cerro Matoso has undertaken conceptual studies on options for expanding production, including a heap leaching operation. A completed feasibility study and Board approval would be required before any project based on these studies proceeds.

#### *Mt Keith Talc co-processing*

In September 2009 the Mt Keith Talc re-design project was approved to move into execution phase. This will enable Mt Keith to process talcose ore to supplement the current ore supply. The general scope of this project is the installation of additional grinding and flotation equipment within the existing circuits at Mt Keith and the addition of a high magnesium oxide concentrate flotation circuit. This project allows us to treat talcose ores which make up approximately 15 per cent of the Mt Keith orebody and which were not previously able to be processed economically with existing technology. The project is expected to be commissioned in the second quarter of FY2012.



## 2.2.7 Iron Ore Customer Sector Group

Our Iron Ore CSG consists of our Western Australia Iron Ore (WAIO) business and a 50 per cent interest in the Samarco joint venture in Brazil.

### Western Australia Iron Ore

WAIO's operations involve a complex integrated system of seven mines and more than 1,000 kilometres of rail infrastructure and port facilities, all located in the Pilbara region of northern Western Australia. Our strategy is to maximise output utilising available infrastructure at our disposal.

In response to increasing demand for iron ore, we have been expanding our WAIO operations. Since 2001, we have completed six expansion projects to increase our system production capacity from 69 million tonnes per annum to 155 million tonnes per annum (100 per cent basis). We now have a project under construction to further increase system capacity to 205 million tonnes per annum (100 per cent basis). Additional projects now undergoing pre-feasibility or feasibility studies would further increase system capacity. Our share of FY2010 production was 113.9 million tonnes of ore.

Our Pilbara reserve base is relatively concentrated, allowing us to plan our development around a series of integrated 'mining hubs' joined to the orebodies by conveyors or spur lines. The mining hub approach enables us to maximise the value of installed infrastructure by using the same processing plant and rail infrastructure for a number of orebodies. Blending ore at the hub gives us greater flexibility to respond to changing customer requirements and changing properties in the ore being mined, as well as reducing the risk of port bottlenecks.

In conjunction with our capacity expansion, we have continued to explore and refine our understanding of existing tenements. Our proven ore reserves are high-grade, with average iron content ranging from 57.1 per cent at Yandi to 63.0 per cent at Mt Newman. The reserve lives of our mines at current production levels range from 11 years at Mt Goldsworthy (JV Northern) to 72 years at Jimblebar.

### Samarco

We are a 50–50 joint venture partner with Vale at the Samarco operations in Brazil. During the FY2008, Samarco completed an expansion project consisting of a third pellet plant, a mine expansion, a new concentrator, port enhancements and a second slurry pipeline.

In FY2010, our share of production was 10.35 million tonnes of pellets. Samarco's total ore reserve is about 2.11 billion tonnes. In addition, Samarco completed the selection (pre-feasibility) study for its fourth pellet plant which is expected to increase the iron ore pellet capacity by 8.2 million tonnes per annum to 30.7 million tonnes per annum (100 per cent share). This project is still subject to shareholder and Samarco Board approval.

### Information on Iron Ore mining operations

The following table contains additional details of our mining operations. This table should be read in conjunction with the production (see section 2.3.2) and reserve tables (see section 2.14.2).

Name, location, mineralisation style, type of mine and access	Ownership, operation and title/lease	History	Facilities and power source
<b>Mt Newman joint venture</b>			
Pilbara region, Western Australia, Australia	We hold an 85% interest in the Mt Newman joint venture. The other 15% is held by Mitsui ITOCHU Iron (10%), ITOCHU Minerals and Energy of Australia (5%).	Production began at the Mt Whaleback orebody in 1969.	The Newman Hub consists of primary and secondary crushing and screening plants (capacity of 58 mtpa); a heavy media beneficiation plant, stockyard blending facility, a single cell rotary car-dumper, and train-loading facility.
Mt Newman joint venture iron ore products are derived from bedded ore types. These are classified as per the host Archaean or Proterozoic iron formation, which are Brockman, Marra Mamba and Nimingarra.	We are the operators of the Mt Whaleback orebody. Independent contractors operate the mining of orebodies 18, 23, 25, 29 and 30.	Production continues to be sourced from the major Mt Whaleback orebody, complemented by production from orebodies 18, 23, 25, 29 and 30.	At orebody 23/25, primary and secondary crushing and screening plant.
Open-cut mine	Mining lease under the Iron Ore (Mt Newman) Agreement Act 1964, expires in 2030 with the right to successive renewals of 21 years.	First ore from the Newman Hub as part of our RGP4 construction was delivered in 2009.	Power comes from Alinta Dewap's Newman gas-fired power station via Company-owned powerlines under long-term contracts.
The mines are accessible by public road and Company-owned rail to the joint venture's Nelson Point shipping facility at Port Hedland.			

**Name, location, mineralisation style, type of mine and access**

**Yandi joint venture**

Pilbara region, Western Australia, Australia  
Yandi joint venture iron ore products are derived from bedded and channel ore types. Bedded ores are classified as per the host Proterozoic banded iron formation names, which for Yandi is Brockman and Channel Iron Deposits are Cainozoic fluvial sediments.

Open-cut mine

The mines are accessible by public road and Company-owned rail to the Finucane Island shipping facility and Nelson Point shipping facility at Port Hedland.

Our railway spur links Yandi mine to the Newman main line.

**Jimblebar**

Pilbara region, Western Australia, Australia  
Jimblebar iron ore products are derived from bedded ore types. These are classified based on the host Archaean or Proterozoic banded iron formation names, which are Brockman and Marra Mamba.

Open-cut mine

The mine is accessible by public road and Company-owned rail to Port Hedland via a 32 km spur line linking with the main Newman to Port Hedland railway.

**Mt Goldsworthy joint venture**

Pilbara region, Western Australia, Australia  
Mt Goldsworthy joint venture iron ore products are derived from bedded ore types. These are classified as per the host Archaean or Proterozoic iron formation names, which are Brockman, Marra Mamba and Nimingarra.

Open-cut mine includes Area C, Yarrie and Nimingarra.

The mines are accessible by public road and Company-owned rail to the joint venture's Finucane Island shipping facilities and the Nelson Point shipping facilities, both located at Port Hedland.

Our railway spur links Area C mine to the Newman main line.

**Samarco**

Southeast Brazil

Samarco iron ore products are derived from Itabirites (metamorphic quartz-hematite rock) and friable hematite ores.

Open-cut mine

The mine is accessible by public road. Conveyor belts transport iron ore to the beneficiation plant and a 396 km slurry pipeline transports pellet feed to the pellet plants on the coast.

Iron pellets are exported via private port facilities.

**Ownership, operation and title/lease**

We hold an 85% interest in the Yandi joint venture. The other 15% is held by Mitsui Iron Ore Corporation (7%), ITOCHU Minerals and Energy of Australia (8%).

An independent contract mining company is the operator of the mine.

Mining lease under the Iron Ore (Marillana Creek) Agreement Act 1991 expires in 2012 with renewal right to a further 42 years.

We own 100% of the Jimblebar lease. We have a sublease agreement over the Wheelara deposit with ITOCHU Minerals and Energy of Australia, Mitsui Iron Ore and four separate subsidiaries of Chinese steelmakers. As a consequence of this arrangement, we are entitled to 85% of production from the Wheelara sublease.

An independent contract mining company is the operator of the mine.

Mining lease under the Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972 expires in 2030 with the rights to successive renewals of 21 years.

We hold an 85% interest in the Mt Goldsworthy joint venture. The other 15% is held by Mitsui Iron Ore Corporation (7%) and ITOCHU Minerals and Energy of Australia (8%).

An independent contract mining company is the operator of the mine.

Four mineral leases under the Iron Ore (Mt Goldsworthy) Agreement Act 1964 and the Iron Ore (Goldsworthy – Nimingarra) Agreement Act 1972, which have expiry dates between 2014 and 2028 with rights to successive renewals of 21 years.

A number of smaller mining leases granted under the Mining Act 1978 in 2005 expiring in 2026.

We own 50% of Samarco. The other 50% is owned by Vale. Samarco is operated as an independent business with its own management team.

The Brazilian Government has granted mining concessions to Samarco as long as it mines the Alegria complex according to an agreed plan.

**History**

We began development of the orebody in 1991. The first shipment occurred in 1992.

Capacity was progressively expanded between 1994 and 2003 and production is currently 41 mtpa.

Production at Jimblebar began in March 1989.

The ore currently being produced is blended with ore produced from Mt Whaleback and satellite orebodies 18, 23, 25, 29 and 30 to create the Mt Newman blend.

Operations originally commenced at the Mt Goldsworthy project in 1966 and the Shay Gap mine in 1973. The original Goldsworthy mine closed in 1982 and the associated Shay Gap mine closed in 1993. Mining at the Nimingarra mine ceased in 2007 and has since continued from the adjacent Yarrie area.

We opened Area C mine in 2003.

Production began at the Germano mine in 1977 and at the Alegria complex in 1992. The Alegria complex has now replaced the depleted Germano mine.

An expansion occurred in 1997 when a second pellet plant was built. In 2005, an optimisation project increased pellet feed and pellet production.

The most recent expansion occurred in 2008 when a third pellet plant was built as well as a second pipeline.

**Facilities and power source**

Two processing plants and a primary crusher and overland conveyor are used to crush and screen ore and deliver it to one of two train-loading facilities.

Power comes from Alinta Dewap's Newman gas-fired power station via Company owned powerlines under long-term contracts.

Primary and secondary crushing plant (capacity of 14 mtpa).

Power comes from Alinta Dewap's Newman gas-fired power station via Company-owned powerlines under long-term contracts.

The primary crushers at Yarrie and Nimingarra, with a combined capacity of 8 mtpa, have been placed into care and maintenance. Yarrie is currently using mobile in-pit crushing plant at a rate of 2 mtpa.

An ore processing plant, primary crusher and overland conveyor are located at Area C with capacity of 42 mtpa.

Power for Yarrie and Nimingarra is sourced via overhead powerlines from the Port Hedland gas-fired powered station operated by Alinta Dewap under long-term contracts.

Area C sources its power from the Newman gas-fired power station also operated by Alinta Dewap under long-term contracts.

There are two 396 km iron ore slurry pipelines integrating the mining complex to pellet plants.

With the addition of the third pellet plant expansion, Samarco has the capacity to process and pump a total of 24 mtpa of ore concentrate and produce and ship approximately 22.5 mtpa of pellets (100% basis).

Samarco holds interests in two hydro-electric power plants. These plants furnish approximately 19.2% of Samarco's electricity requirements.

Samarco has signed two agreements expiring in 2014 to purchase remaining power needs from two local concessionaires that operate other hydro-electric power plants.

## ***Development projects***

### ***Western Australia Iron Ore***

Construction of Rapid Growth Project (RGP) 5 is ongoing. Project expenditure of US\$4.8 billion was approved in November 2008 for RGP 5, our share of spend to date amounts to US\$3.1 billion. The focus of this expansion project is to substantially double track the Newman mainline rail, construction of two new shipping berths on the Finucane Island side of the Port Hedland harbour and additional crushing, screening and stockpiling facilities at Yandi. RGP 5 is expected to increase the installed capacity of our WAIO operations by a further 50 million tonnes per annum to 205 million tonnes per annum (100 per cent share).

In January 2010, we announced approval of US\$1.93 billion (100 per cent share) of capital expenditure to underpin further growth activities in the business. This expenditure represents early spend for the Group's RGP 6. The capital will allow for early procurement of long lead items and detailed engineering to continue the expansion of the inner harbour at Port Hedland, progress rail track duplication works and expand the mining operations. As at 30 June 2010, our capital spend on this project amounted to US\$687 million.

### ***Western Australia Iron Ore – Rio Tinto Joint Venture***

On 5 June 2009, BHP Billiton signed a Framework Agreement, including non-binding core principles, with Rio Tinto to form a 50–50 production joint venture combining the economic interests of both companies' current and future iron ore assets in Western Australia. On 5 December 2009, BHP Billiton and Rio Tinto signed binding agreements that set out the terms that will regulate the establishment of the joint venture and its ongoing operation. Those terms are consistent with the core principles set out in the Framework Agreement, except that the joint marketing of 15 per cent of output contemplated by the core principles will not take place: all output will be sold by BHP Billiton and Rio Tinto separately.

The joint venture offers an excellent opportunity to capture substantial production and development synergies from the companies' overlapping world-class resources. These synergies are anticipated to come from:

- combining adjacent mines into single operations;
- reducing costs through shorter rail hauls and more efficient allocations of port capacity;
- blending opportunities which will maximise product recovery and provide further operating efficiencies;
- optimising future growth opportunities through the development of consolidated, larger and more capital efficient expansion projects;
- combining the management, procurement and general overhead activities into a single entity.

It is intended that BHP Billiton's Iron Ore President, Ian Ashby, will be appointed as the initial Chief Executive Officer of the joint venture, while Sam Walsh, currently Rio Tinto's Chief Executive Iron Ore and Australia will be appointed as initial Chairman of the non-executive owners' council.

Pre-conditions for formation of the joint venture include receipt of regulatory and relevant governmental clearances and approval from the shareholders of both Rio Tinto and BHP Billiton. The Framework Agreement and the binding agreements will terminate if the pre-conditions are not satisfied by 31 December 2010 unless extended by agreement of Rio Tinto and BHP Billiton.

### ***Heads of Agreement with Western Australian Government***

On 21 June 2010, BHP Billiton and Rio Tinto announced that they had signed a non-binding Heads of Agreement with the Government of Western Australia (HoA).

Based on the HoA, the State will proceed with amendments to the State Agreement Acts covering operations managed by BHP Billiton and operations managed by Rio Tinto, to require payment of royalties on iron ore shipments at the rates specified in the WA Mining Regulations with effect from 1 July 2010. Royalty rates will increase from 3.75 per cent of sales revenue to 5.625 per cent for fine ore and from 3.25 per cent to five per cent for beneficiated ore. The lump ore royalty will be 7.5 per cent, which is already the prevailing rate in most cases. The rates as amended will apply to all existing operations and future projects covered by the State Agreements.

Additionally, the HoA permits sharing of infrastructure and blending of products across the network operated by BHP Billiton and the network operated by Rio Tinto, and (subject to agreement between the parties) across both networks.

The State Agreement amendments are subject to the approval of relevant co-venturers under existing joint venture arrangements and the passage of ratifying legislation by the Western Australian Parliament. The amendments are not conditional on finalisation of the joint venture.

In recognition of the value that the amendments to the State Agreements are expected to generate and the need to support local communities, the parties to the relevant State Agreements will make a contribution totalling A\$350 million to the consolidated revenue of the State.

#### *West Africa*

We are currently carrying out exploration activities in the West African countries of Guinea and Liberia. At Nimba in Guinea, we are conducting concept studies to determine economic viability, sustainability impacts and management implications of operations in this area. During the year, we signed a Mineral Development Agreement with the Government of Liberia to enable the further exploration and development of our mineral leases in that country, this is currently before the Legislature for ratification.

#### **2.2.8 Manganese Customer Sector Group**

Our Manganese operations produce a combination of ores and alloys from sites in South Africa and Australia. The Manganese CSG is the world's largest producer of manganese ore and among the top three global producers of manganese alloy.

Manganese alloy is a key input into the steelmaking process. Manganese high-grade ore is particularly valuable to alloy producers because of the 'value in use differential' over low-grade ore, which is the degree to which high-grade ore is proportionately more efficient in the alloying process than low-grade ore.

Our strategy is to focus on upstream resource businesses which have been significant contributors to our profit in FY2010. However, our alloy smelters add value to the overall manganese business because they enable us to access markets with an optimal mix of ore and alloy, optimise production to best suit market conditions and give us insight into the performance of our ores in smelters.

Approximately 80 per cent of ore production is sold directly to external customers and the remainder is used as feedstock in our alloy smelters.

The Group owns and manages all manganese mining assets and alloy plants through a joint venture with Anglo-American in which the Group owns 60 per cent. The joint venture assets are Samancor Manganese, which owns 74 per cent of Hotazel Manganese Mines (Pty) Ltd (HMM) and Metalloys, both situated in South Africa and the Groote Eylandt Mining Company Pty Ltd (GEMCO) and Tasmanian Electro Metallurgical Company Pty Ltd (TEMCO) located in Australia. In July 2009, Samancor Manganese (Pty) Ltd sold 26 per cent of HMM in a series of transactions designed to comply with South Africa's Black Economic Empowerment requirements. In May 2010, Samancor Manganese sold its 51 per cent equity stake in Manganese Metal Company (Pty) Ltd to Agattu Trading 195 (Pty) Ltd.

#### *Mines:*

- **Hotazel**

HMM owns the Mamatwan open-cut mine and the Wessels underground mine. The ore contained in these mines require only crushing and screening to create saleable product with no further upgrade steps required. During FY2010, production was increased in response to higher demand.

- **GEMCO**

As a result of its location near our own port facilities and its simple, open-cut mining operation, GEMCO is one of the lowest-cost manganese ore producers in the world. Simple operations combined with its high-grade of ore and relative proximity to Asian export markets, make GEMCO unique among the world's manganese mines. During FY2010, production was increased in response to higher demand.

#### *Alloy Plants:*

- **Metalloys**

The Samancor Manganese Metalloys alloy plant is one of the largest manganese alloy producers in the world. Due to its size and access to high-quality feedstock from the Hotazel operations, it is also one of the lowest-cost alloy producers. Metalloys produces high and medium-carbon ferromanganese and silicomanganese.

- **TEMCO**

TEMCO is a medium-sized producer of high-carbon ferromanganese, silicomanganese and sinter using ore shipped from GEMCO, primarily using hydro-electric power.

### *Information on Manganese mining operations*

The following table contains additional details of our mining operations. These tables should be read in conjunction with the production (see section 2.3.2) and reserve tables (see section 2.14.2).

<b>Name, location, mineralisation style, type of mine and access</b>	<b>Ownership, operation and title/lease</b>	<b>History</b>	<b>Facilities and power source</b>
<b>Hotazel Manganese Mines (Pty) Ltd</b>  Kalahari Basin, South Africa Mamatwan is an open-cut mine.  Wessels is an underground mine.  The ore occurs in Proterozoic volcanogenic sediments associated with banded iron formation hosted by the Hotazel Formation.  The mines are accessible by rail and public road. Most ore and sinter products are transported by government-owned rail. Approximately one third of the ore produced is beneficiated locally with the balance exported via Port Elizabeth, Richards Bay and Durban.	Hotazel Manganese Mines (Pty) Ltd, a 74% owned subsidiary of Samancor Manganese. HMM is the owner of Mamatwan and Wessels mines. The other 26% is held by: Ntsimbintle 9%; NCAB, 7%; Iziko, 5% and HMM Education Trust, 5%. BHP Billiton is the operator of the mines.  The existing New Order Rights are valid until 2036.  In implementing the transformation strategy, Samancor Manganese undertook four empowerment transactions to increase the HDSA shareholding in HMM to 26%. This is aligned to the Mining Charter intents.	Mamatwan was commissioned in 1964.  Wessels was commissioned in 1973.	Mamatwan's capacity is currently 3.5 mtpa of ore and sinter based on the current product mix at the mine. The beneficiation plant consists of primary, secondary and tertiary crushing with associated screening plants. There is a dense medium separator and a sinter plant with a capacity of 1 mtpa of sinter.  Wessels has eight loaders and seven haulers with an annual capacity of approximately 1 mtpa of ore. The processing is a simple crushing and screening circuit consisting of primary and secondary crushing circuits with associated screening capacity.  The power source is the national utility company Eskom.
<b>Groote Eylandt Mining Company Pty Ltd (GEMCO)</b>  Groote Eylandt, Northern Territory, Australia  The ore occurs in partially supergene enriched stratiform Cretaceous sandstone – claystone associated type sedimentary orebodies  Open-cut mine  Ore is transported from the concentrator by road train directly to our shipping facilities at the port at Milner Bay.	BHP Billiton own 60% of GEMCO and operates the mine. The remaining 40% is owned by Anglo American.  All leases situated on Aboriginal land held under the Aboriginal Land Rights (Northern Territory) Act 1976. The existing leases are valid until 2031.	The mine was first commissioned in 1965.	The beneficiation process consists of crushing, screening, washing and dense media separation with lump and fines products being produced. The existing capacity is 4.2 wet mtpa.  GEMCO owns and operates its own on-site diesel power generation facility.

### *Information on Manganese smelters, refineries and processing plants*

<b>Operation and location</b>	<b>Ownership, operation and title</b>	<b>Plant type/product</b>	<b>Capacity and power source</b>
<b>Metalloys</b>  Meyerton, South Africa	Metalloys is a division of Samancor Manganese (Pty) Ltd. Samancor Manganese (Pty) Ltd holds freehold title over the property, plant and equipment.	The manganese alloy plant uses eight submerged arc furnaces to produce manganese alloys such as high-carbon ferromanganese and silicomanganese and an oxygen blown converter process producing refined (medium-carbon ferromanganese) alloy.	400,000 tpa of high-carbon ferromanganese (including hot metal), 135,000 tpa of silicomanganese and 90,000 tpa of medium-carbon ferromanganese in various size fractions.  The power source is the national utility company Eskom plus 30 MW of internal power generated from waste heat.
<b>Tasmanian Electro Metallurgical Company Pty Ltd (TEMCO)</b>  Bell Bay, Tasmania, Australia	BHP Billiton own 60% of TEMCO. Anglo American owns the remaining 40%.  TEMCO holds freehold title over the property, plant and equipment.	Four electric arc furnaces and a sinter plant produce ferroalloys, including high-carbon ferromanganese, silicomanganese and sinter.	Nominal capacity based on the 2011 budget product mix is 130,000 tpa of high-carbon ferromanganese, 125,000 tpa of silicomanganese and 350,000 tpa of sinter.  TEMCO sources its electrical power from Aurora Energy, the state-owned power distribution and retailing company. Power in Tasmania is principally generated from hydro stations, but supplemented with a 240 MW gas generation station. TEMCO also self-generates 11 MW for internal use from an on-site energy recovery unit.

## ***Development projects***

### ***GEMCO expansion***

The selection study (pre-feasibility study) into a further expansion of the GEMCO mine (GEMCO 2nd expansion) from 4.2 to 4.8 wet million tonnes per annum (100 per cent, or about 2.9 wet million tonnes per annum BHP Billiton share) is reaching its conclusion. The project is subject to approval and is expected to advance into execution at the end of second quarter in FY2011. The total investment amount is approximately US\$130 million (BHP Billiton share).

### ***Hotazel Manganese Mines***

The central block development project at Wessels mine is expected to be completed in FY2013. The project will enable Wessels mine to increase production from 1 million tonnes per annum to 1.5 million tonnes per annum of capacity (100 per cent, or about 0.7 million tonnes per annum BHP Billiton share). The forecast capital expenditure to completion of the project is an estimated US\$26 million (BHP Billiton share).

### ***Metalloys***

The definition study (feasibility study) for the High Carbon Ferro Manganese furnace M14 at the Metalloys smelter in Meyerton, South Africa is reaching its conclusion. This furnace would add an additional 130,000 tonnes per annum capacity (100 per cent, or about 78,000 tonnes per annum BHP Billiton share) to the smelter for capital at a cost of US\$54 million (BHP Billiton share).

### ***Samancor Gabon Manganese project***

The selection study (pre-feasibility study) for the establishment of a manganese mine in Gabon was completed in July 2010. A small entry mine of approximately 300,000 tonnes per annum (100 per cent, or about 180,000 tonnes per annum BHP Billiton share) was selected as the preferred option. The small entry mine requires growth capital investment of US\$43 million (BHP Billiton share) to establish the asset producing approximately 300,000 tonnes per annum of manganese ore by FY2012.

## ***2.2.9 Metallurgical Coal Customer Sector Group***

Our Metallurgical Coal CSG is the world's largest supplier of seaborne metallurgical coal. Metallurgical coal, along with iron ore and manganese, is a key input in the production of steel.

We have production assets in two major resource basins: the Bowen Basin in Central Queensland, Australia and the Illawarra region of New South Wales, Australia.

### ***Bowen Basin***

In comparison with other coal producing regions, the Bowen Basin is extremely well positioned to supply the seaborne market because of:

- its high-quality metallurgical coals, which are more efficient in blast furnace use;
- the relatively low cost of production because of its extensive near-surface deposits; and
- its geographical proximity to Asian customers.

We also have access to key infrastructure, including a modern, integrated electric rail network and our own coal loading terminal at Hay Point, Mackay. This infrastructure enables us to maximise throughput and blending of products from multiple mines to optimise the value of our production and satisfy customer requirements.

Our Bowen Basin mines are owned through a series of joint ventures. We share 50–50 ownership with Mitsubishi Development Pty Ltd in BHP Billiton Mitsubishi Alliance (BMA), which operates the Goonyella Riverside, Broadmeadow, Peak Downs, Saraji, Norwich Park, Blackwater and Gregory Crinum mines, together with the Hay Point terminal. The two BHP Mitsui Coal (BMC) operations – South Walker Creek and Poitrel mines – are owned by BHP Billiton (80 per cent) and Mitsui and Co (20 per cent). The reserve lives of the Bowen Basin mines at target production rates range from six years to 65 years.

Our export customers are steel producers around the world. In FY2010 most of our contracts were long-term or annual volume contracts with prices negotiated annually, however we are now moving predominantly to short-term pricing.

Total attributable production in FY2010 was approximately 30.8 million tonnes, compared with 30.1 million tonnes in FY2009. Production in FY2010 was higher due to improved operational and supply chain performance, supported by strong demand.

### *Illawarra*

We own and operate three underground coal mines in the Illawarra region of New South Wales, which supply metallurgical coal to the nearby BlueScope Port Kembla steelworks, and other domestic and export markets. Total production in FY2010 was approximately 6.5 million tonnes and the reserve lives of the Illawarra mines at target production rates range from four years to 19 years.

Production figures for both the Bowen Basin and Illawarra include some energy coal (less than six per cent and 13 per cent, respectively).

### **Information on Metallurgical Coal mining operations**

The following table contains additional details of our mining operations. The tables should be read in conjunction with the production (see section 2.3.2) and reserves tables (see section 2.14.2).

<b>Name, location, mineralisation style, type of mine and access</b>	<b>Ownership, operation and title/lease</b>	<b>History</b>	<b>Facilities and power source</b>
<b>Central Queensland Coal Associates (CQCA) joint venture</b> Bowen Basin, Queensland, Australia Produces a range of products from premium-quality, low volatile, high vitrinite, hard coking coal to medium volatile hard coking coal, to weak coking coal, and some medium ash thermal coal as a by-product. Seams currently mined are from the Permian Moranbah and Rangal Coal Measures which are comprised of layered fine to medium grained siltstones and sandstones interbedded with coal. Goonyella Riverside, Peak Downs, Saraji, Norwich Park and Blackwater are open-cut mines. Broadmeadow is a longwall underground mine. The mines are accessible by public road. All coal is transported on government-owned railways to the port of Hay Point near Mackay (incorporating CQCA's Hay Point Coal Terminal and the Dalrymple Bay Coal Terminal) and the port of Gladstone.	We own 50% of the CQCA joint venture. Mitsubishi Development Pty Ltd owns the other 50%. BMA operates the mines. Mining leases, including those associated with undeveloped tenements, have expiry dates between 2010 and 2037 and are renewable for such further periods as the Queensland Government/legislation allows. Renewal applications for mining leases expiring in CY2010 have been lodged.	Goonyella Mine, which commenced in 1971, merged with the adjoining Riverside mine in 1989 and is operated as the Goonyella Riverside Mine. Reserves at the Riverside mine were depleted in 2005. Peak Downs commenced production in 1972. Saraji mine commenced production in 1974. Norwich Park commenced production in 1979. Blackwater Mine commenced production in 1967. South Blackwater and Blackwater mines were integrated from late 2000. Broadmeadow, an underground mine developed on the Goonyella mining lease, commenced longwall operations in 2005.	All coal is beneficiated at on-site processing facilities, which have a combined capacity in excess of 53.5 mtpa. Power is sourced from the State of Queensland's electricity grid.
<b>Gregory joint venture</b> Bowen Basin, Queensland, Australia Produces a high volatile, low ash hard coking coal, and a medium ash thermal coal. Mining is limited to the Lilyvale Seam, part of the Permian German Creek Coal Measures, which are composed of layered fine to medium grained sandstones and siltstones interbedded with coal. Gregory is an open-cut mine. Crimum is a longwall underground mine. The mines are accessible by public road. All coal is transported on government-owned railways to the port of Hay Point near Mackay (incorporating CQCA's Hay Point Coal Terminal and the Dalrymple Bay Coal Terminal) and the port of Gladstone.	We own 50% of the Gregory joint venture. Mitsubishi Development Pty Ltd owns the other 50%. BMA operates the mines. Mining leases, including those associated with undeveloped tenements, have expiry dates between 2014 and 2027 and are renewable for such further periods as the Queensland Government/legislation allows.	The Gregory Mine became operational in 1979. Crimum Mine commenced longwall production in 1997.	All coal is beneficiated at an on-site processing facility, with a capacity in excess of 5 mtpa. Power is sourced from the State of Queensland's electricity grid.

**Name, location, mineralisation style, type of mine and access**

**BHP Mitsui Coal Pty Limited**

Bowen Basin, Queensland, Australia

Produces a range of coking coal, pulverised coal injection (PCI) coal, and thermal coal products with medium to high phosphorus and ash properties. Production is sourced from the Permian Rangal Coal Measures are the main economic stratum and are comprised of layered sedimentary formations.

South Walker Creek and Poitrel are open-cut mines.

The mines are accessible by public road. All coal is transported on government-owned railways to the port of Hay Point near Mackay (incorporating CQCA's Hay Point Coal Terminal and the Dalrymple Bay Coal Terminal).

**Ownership, operation and title/lease**

We own 80% of BHP Mitsui Coal Pty Limited (BMC). Mitsui and Co owns the other 20%. BMA managed the mines during FY2010, however from 1 July 2010, management was transferred to BMC.

Mining leases, including those associated with undeveloped tenements, have expiry dates between 2010 and 2020 and are renewable for such further periods as the Queensland Government/legislation allows. Renewal applications for mining leases expiring in CY2010 have been lodged.

**History**

South Walker Creek became operational in 1996, producing PCI product and minor quantities of thermal coal.

Poitrel mine commenced operations in 2006, producing both coking coal and PCI.

**Facilities and power source**

South Walker Creek coal is beneficiated at on-site processing facilities with a capacity to produce 3.5 mtpa of coal.

Poitrel Mine has a joint venture agreement (Red Mountain Joint Venture) with the adjacent Millennium Coal mine to share coal processing and rail loading facilities. Poitrel has access to 3 mtpa capacity from the processing facilities.

Power is sourced from the State of Queensland's electricity grid.

**Illawarra Coal**

Illawarra, New South Wales, Australia

Produces premium quality hard coking coal and some thermal coal from the Wongawilli and Bulli seams contained in layered sedimentary formations within the Permian Illawarra Coal Measures.

Dendrobium, Appin and West Cliff are all underground mines.

All the mines are accessible by public road. All coal is transported by road or rail to our major customer, BlueScope Steel's Port Kembla steelworks, or to Port Kembla for export.

We are owner and operator of the Illawarra Coal mines.

Mining leases have expiry dates between 2010 and 2026 and are renewable for such further periods as the NSW Government/legislation allows. Renewal applications for mining leases expiring in 2010 have been lodged.

Appin commenced in 1962 with longwall mining starting in 1969.

West Cliff was commissioned in 1976.

Dendrobium Mine opened in 2005.

Coal is beneficiated at two processing facilities with a capacity to produce approximately 8 mtpa of coal.

Power is sourced from the State of New South Wales' electricity grid.

**Development projects**

**IndoMet Coal Project (Indonesia)**

Indomet Coal includes the Maruwai and Juloi metallurgical coal concessions in Kalimantan, Indonesia and was discovered by BHP Billiton Exploration in the 1990's. Following a strategic assessment of the importance of local participation in the development of the project in 2010, a 25 per cent interest in the project was sold to a subsidiary of PT Adaro Energy TBK. We retain 75 per cent of the project.

Study work is underway to identify development options across our mining areas of interest (Coal Contracts of Work).

**Bowen Basin Expansions**

BMA is currently investigating a number of brownfield and greenfield expansion options in the Bowen Basin, including:

- Daunia Coal Mine (greenfield project);
- Caval Ridge Mine (greenfield project);
- Goonyella Riverside Mine Expansion (brownfield project);
- Hay Point Coal Terminal Expansion (brownfield project).

Daunia, located to the east of the Poitrel mine, has been designed with capacity to produce up to 4 million tonnes per annum, and the production capacity of Caval Ridge, located to the north of the Peak Downs mine, would be up to 5.5 million tonnes per annum (100 per cent, or 2.75 million tonnes per annum BHP Billiton share) in addition to potential expansion of Peak Downs mine of 2.5 million tonnes per annum (100 per cent, or 1.25 million tonnes per annum BHP Billiton share). Both developments would include coal handling preparation plants. We are assessing the optimal time to advance these projects and we are continuing to progress owner and government approvals.



To support this growth, BMA is progressing owner and government approvals to increase the capacity of the Hay Point Coal Terminal from 44 million tonnes per annum to 55 million tonnes per annum in a first phase expansion (HPX3). We have committed pre-approval expenditure for further project studies and items requiring long lead times. A potential further stage (HPX4) would increase capacity from 55 million tonnes per annum to approximately 75 million tonnes per annum. We were also awarded 'preferred developer' status for the construction of a new coal terminal at the X80 site at Abbot Point, with a capacity of at least 30 million tonnes per annum.

### ***2.2.10 Energy Coal Customer Sector Group***

Our Energy Coal CSG is one of the world's largest producers and marketers of export energy coal (also known as thermal or steaming coal) and is also a significant domestic supplier to the electricity generation industry in Australia, South Africa and the United States. Our global portfolio of energy coal assets, our insights into the broader energy market through our sales of other fuels such as gas, uranium and oil, and our control of options for bulk freight provide our business with key advantages as a supplier. Like our other businesses, our Energy Coal CSG owns large, long-life assets with substantial options for expansion.

We generally make our domestic sales under long-term fixed-price contracts with power stations that are located in close proximity to the mine. We make export sales to power generators and some industrial users in Asia, Europe and the United States, usually under contracts for delivery of a fixed volume of coal. Pricing is either index-linked, or fixed, in which case we use financial instruments to swap our fixed-price exposure for exposure to market indexed prices.

We recognise that the need to control carbon dioxide emissions has substantial implications for the use of thermal coal as an energy source. We have committed to invest US\$300 million over five years from June 2007 to support the research, development and demonstration of low-emissions technologies, including 'clean coal' and carbon sequestration technologies.

We operate three sets of assets: a group of mines and associated infrastructure collectively known as BHP Billiton Energy Coal South Africa (BECSA); our New Mexico Coal operations in the United States; and our NSW Energy Coal operations in Australia. We also own a one-third share of the Cerrejón Coal Company, which operates a coal mine in Colombia.

#### ***BHP Billiton Energy Coal South Africa***

BECSA operates three coal mines in the Witbank region of Mpumalanga province of South Africa, which produced a total of approximately 30.5 million tonnes in FY2010. We have a major mine expansion project underway in South Africa (see Development projects below). In FY2010, BECSA sold approximately 64 per cent of its production to Eskom, the government-owned electricity utility in South Africa, and exported the rest via the Richards Bay Coal Terminal, in which we own a 24 per cent share. The reserve lives of the BECSA mines at current production rates range from 11 to 24 years.

#### ***New Mexico Coal***

We own and operate the Navajo mine, located on Navajo land in New Mexico, and the nearby San Juan mine. Each of these mines transports its production directly to a nearby power station. The reserve lives of Navajo and San Juan at current production rates are 21 and 10 years, respectively. New Mexico Coal produced approximately 13.5 million tonnes in FY2010.

#### ***NSW Energy Coal***

Our NSW Energy Coal operating asset is the Mt Arthur open-cut coal mine located in the Hunter Valley region of New South Wales, which produced approximately 12 million tonnes in FY2010 and has a reserve life at current production rates of 55 years. We have a project in execution and a number of studies underway to evaluate expansion opportunities for this operation (see Development projects below). In FY2010, we delivered approximately 18 per cent of Mt Arthur's production to a local power station and exported the rest via the port of Newcastle.

#### ***Cerrejón Coal Company***

Cerrejón Coal Company owns and operates one of the largest open-cut export coal mines in the world in La Guajira province of Colombia, together with integrated rail and port facilities through which the majority of production is exported. In FY2008, Cerrejón completed an expansion that increased capacity to 32 million tonnes per annum (100 per cent terms). At Cerrejón's current rate of production, Cerrejón has a reserve life of 21 years.

### Information on Energy Coal mining operations

The following table contains additional details of our mining operations. The tables should be read in conjunction with the production (see section 2.3.2) and reserves tables (see section 2.14.2).

Name, location, mineralisation style, type of mine and access	Ownership, operation and title/lease	History	Facilities and power source
<b>SOUTH AFRICA</b>			
<b>Khutala</b> 100 km east of Johannesburg, Gauteng Province, South Africa Produces a medium rank bituminous thermal coal (non-coking). Combination of open-cut and underground mines. The mines are accessible by public roads. Domestic coal is transported via overland conveyor to the Kendal Power Station.	We own and operate the mine at Khutala. BECSA is the holder of an Old Order Right. An application for conversion to a New Order Right, submitted in 2004, is still being processed (see section 2.7.1).	Khutala was commissioned in 1984. Open-cut operations began in 1996. The mining of a thermal/metallurgical coal deposit for a domestic market commenced in 2003.	Beneficiation facilities consist of a crushing plant, for the energy coal with a nominal capacity of 18 mtpa. A separate smaller crusher and wash plant with a nominal capacity of 0.6 mtpa is used to beneficiate the metallurgical coal supplied from the open-cut operation. Power is supplied by Eskom under long-term contracts.
<b>Douglas/Middelburg</b> 20 km southeast of Witbank, Mpumalanga Province, South Africa Produces a medium rank bituminous thermal coal, most of which can be beneficiated for the European or Asian export market. Open-cut mine The mine is accessible by public roads. Export coal is transported to RBCT by rail, while the domestic coal is transported via conveyor belt to the nearby Duvha Power Station.	We own and operate the mine (100%) after entering into an agreement with Xstrata Plc (through Tavistock Collieries Plc) to dissolve the joint venture (84:16). The dissolution transaction was completed on 1 December 2009. BECSA and Tavistock are the joint holders of three Old Order Rights in the previous joint venture ratio (84:16) and BECSA is the 100% holder of a fourth Old Order Right. All four Old Order Rights were lodged with the Department of Mineral Resources for conversion in December 2008. BECSA and Tavistock previously amended their joint venture agreement such that, upon conversion of the four Old Order Rights, the mining area will be divided into an area wholly owned and operated by Tavistock and an area wholly owned and operated by BECSA as the new Douglas/Middelburg mine (see section 2.7.1).	Douglas/Middelburg mine was commissioned in 1982. Middelburg Mine Services (MMS) and Duvha Opencast became one operation in 1996.	Beneficiation facilities consist of the following: tips and crushing plants, two export wash plants, a middlings wash plant and a de-stone plant. The overall capacity is 30 mtpa. Replacement of these facilities is part of the DMO project currently in execution. (see Development projects below). Power is supplied by Eskom under long-term contracts.
<b>Klipspruit</b> 30 km west of Witbank, Mpumalanga Province, South Africa Produces a medium rank bituminous thermal coal, most of which can be beneficiated for the European or Asian export market. Open-cut mine Access to the mine is via public roads. Export coal is transported to RBCT by rail.	We own and operate the mine at Klipspruit. BECSA is the holder of an Old Order Right. An application for conversion to a New Order Right was submitted in 2004 and is still being processed (see section 2.7.1).	The project was approved by the Mpumalanga Department of Agriculture, Conservation and Environment in 2003. An initial mini-pit was started in August 2003 as a truck and shovel contractor operation. The Klipspruit Expansion Project was completed in FY2010. The project included a 50% share in the Phola Coal Plant and is expected to increase ROM capacity of the mine to approximately 8.0 mtpa at full ramp-up.	Beneficiation facilities consist of a tip and crushing plant, as well as an export wash plant. We own 50% of the Phola Coal Plant in a joint venture with Anglo Inyosi Coal. The overall capacity of the plant is 16 mtpa (100% terms). Power is supplied by Eskom under long-term contracts.

Name, location, mineralisation style, type of mine and access	Ownership, operation and title/lease	History	Facilities and power source
<b>AUSTRALIA</b>			
<b>Mt Arthur Coal</b> Approximately 125 km from Newcastle, New South Wales, Australia Produces a medium rank bituminous thermal coal (non-coking). Open-cut mine The mine is accessible by public road. Domestic coal is transported by an overland conveyor to Bayswater Power Station. Export coal is transported by a combination of private and public rail, approximately 125 km to the port of Newcastle.	We own and operate the mine at Mt Arthur. We hold various mining leases and licences that expire between 2010 and 2028. Applications have been submitted to renew leases due to expire in CY2010.	Coal production from the Mt Arthur area commenced in 2002.	Main beneficiation facilities include coal handling, preparation and washing plants capable of producing in excess of 14 mtpa product (currently being upgraded as part of the expansion project - see Development projects below). Washery by-pass coal is also sold. We are a 35.5% shareholder in a joint venture company that is operating a 30 mtpa export coal loading facility in the port of Newcastle. The first ship load of coal was dispatched in June 2010, and the port is expected to progressively ramp-up to nameplate capacity. Power is supplied by local energy providers, from the eastern Australia power grid.
<b>AMERICA</b>			
<b>BHP Navajo Coal Company</b> 30 km southwest of Farmington, New Mexico, US Produces a medium rank bituminous thermal coal (non-coking suitable for the domestic market only). Open-cut mine Navajo mine is accessible by public roads located on the Navajo Nation Indian Reservation. We transport all coal 21 km from the production areas via our dedicated railroad to the Four Corners Power Plant (FCPP).	We own and operate the mine. The mine is subject to a long-term lease from the Navajo Nation. The lease continues for as long as coal can be economically produced and sold in paying quantities.	The mine has been in operation since 1963, and coal sales are contracted to 2016.	The mine has the capacity to produce and process 7.8 mtpa. Mined coal is sized and blended to contract specifications using stackers and reclaimers with no further beneficiation. Power is supplied from FCPP.
<b>San Juan Coal Company</b> 25 km west of Farmington, New Mexico, US Produces a medium rank bituminous thermal coal (non-coking suitable for the domestic market only). The San Juan underground mine is accessible by public roads. Transport of coal to the San Juan Generating Station (SJGS) is by truck and conveyor belt.	We own and operate the mine. We hold mining leases from federal and state governments. The leases are viable as long as minimum production criteria are achieved.	The San Juan mine began operating in 1973 as a surface mine. In October 2000, development of the San Juan underground mine was approved to replace production from the existing open-cut mine. Coal sales are contracted to December 2017.	The mine has the capacity to produce 6.1 mtpa of coal. Mined coal is sized and blended to contract specifications using stockpiles with no further beneficiation. Power is supplied from SJGS.
<b>COLOMBIA</b>			
<b>Correjón Coal Company</b> Maicao, La Guajira state, Colombia Produces a medium rank bituminous thermal coal (non-coking, suitable for the export market). Open-cut mine The export facility is 150 km northeast of the mine on the Caribbean coast at Puerto Bolivar and is connected to the mine by a single-track railway. Access to the mine is via public roads and by charter aircraft to the mine's airstrip.	We own 33.33% of the Correjón Coal Company in a joint venture. The remaining 66.67% interest is owned by Anglo American Plc (33.33%) and Xstrata Plc (33.33%). Mining leases expire in 2034.	The original mine began as a joint venture between Exxon's Intercor and the Colombian Government entity Carbocol in 1976. Over time, the partners have changed, nearby operations have been merged and progressive expansion resulted in the current 32 mtpa operation.	Beneficiation facilities include a crushing plant with a capacity of 32 mtpa and a washing plant with a capacity of 2 mtpa. Electricity is supplied through the local Colombian power system.

## Development projects

### Douglas-Middelburg Optimisation Project

This project involves works to optimise the development of existing reserves across the Douglas and Middelburg collieries, the development of additional mining areas and the construction of a new 14 million tonnes per annum coal processing plant, which will replace the less efficient existing plant at Douglas. The work will enable us to maintain energy coal exports from the combined Douglas and Middelburg colliery at around current levels (approximately 10 million tonnes per annum) while also fulfilling our domestic contractual commitments. The capital investment is expected to be within budget and the new plant is currently being completed with the first train load of coal railed on 30 July 2010.

### Mt Arthur open-cut expansions

On 24 July 2009, we announced the Mt Arthur Coal (MAC) mine expansion, which is designed to increase production of saleable thermal coal by an increment of approximately 3.5 million tonnes per annum. Known as the MAC 20 Project, it is expected to commence operation in the first half of CY2011 at an estimated capital investment of US\$260 million.

We have submitted a development consent application to expand the production capacity of the mine to 32 million tonnes per annum open-cut and 4 million tonnes per annum underground. Studies are underway to examine the expansion of the mine to utilise this capacity.

## 2.3 Production

### 2.3.1 Petroleum

The table below details Petroleum's historical net crude oil and condensate, natural gas and natural gas liquids production, primarily by geographic segment, for each of the three years ended 30 June 2010, 2009 and 2008. We have shown volumes of marketable production after deduction of applicable royalties, fuel and flare. We have included in the table average production costs per unit of production and average sales prices for oil and condensate and natural gas for each of those periods.

	BHP Billiton Group share of production Year ended 30 June		
	2010	2009	2008
<b>Production volumes</b>			
<b>Crude oil and condensate ('000 of barrels)</b>			
Australia	31,540	32,496	30,386
United States	41,522	20,818	12,437
Other	11,325	13,014	14,621
<b>Total crude oil and condensate</b>	<b>84,387</b>	<b>66,328</b>	<b>57,444</b>
<b>Natural gas <sup>(1)</sup> (billion cubic feet)</b>			
Australia	259.65	258.14	262.69
United States	17.68	11.91	10.44
Other	91.24	92.75	93.41
<b>Total natural gas <sup>(1)</sup></b>	<b>368.57</b>	<b>362.80</b>	<b>366.54</b>
<b>Natural Gas Liquids <sup>(1) (2)</sup> ('000 of barrels)</b>			
Australia	8,652	7,977	9,253
United States	2,545	1,128	809
Other	1,552	2,071	1,471
<b>Total NGL <sup>(1) (2)</sup></b>	<b>12,749</b>	<b>11,176</b>	<b>11,533</b>
<b>Total petroleum products production (million barrels of oil equivalent) <sup>(3)</sup></b>			
Australia	83.47	83.50	83.42
United States	47.01	23.93	14.99
Other	28.08	30.54	31.66
<b>Total petroleum products production (million barrels of oil equivalent) <sup>(3)</sup></b>	<b>158.56</b>	<b>137.97</b>	<b>130.07</b>

	BHP Billiton Group share of production Year ended 30 June		
	2010	2009	2008
<b>Average sales price</b>			
<b>Crude oil and condensate (US\$ per barrel)</b>			
Australia	74.12	70.32	98.00
United States	71.55	62.90	97.69
Other	75.57	60.69	91.60
<b>Total crude oil and condensate</b>	<b>73.05</b>	<b>66.18</b>	<b>96.27</b>
<b>Natural gas (US\$ per thousand cubic feet)</b>			
Australia	3.52	3.07	3.20
United States	4.80	6.61	10.37
Other	3.05	4.08	4.09
<b>Total natural gas</b>	<b>3.43</b>	<b>3.57</b>	<b>3.75</b>
<b>Natural Gas Liquids (US\$ per barrel)</b>			
Australia	48.20	44.71	56.97
United States	39.51	48.19	58.98
Other	49.40	38.88	49.83
<b>Total NGL</b>	<b>46.47</b>	<b>43.91</b>	<b>56.15</b>
<b>Average Production Cost (US\$ per barrel of oil equivalent) <sup>(4)</sup></b>			
Australia	5.59	4.51	3.61
United States	5.62	7.20	6.84
Other	7.48	6.74	7.37
<b>Average Production Cost (US\$ per barrel of oil equivalent) <sup>(4)</sup></b>	<b>5.93</b>	<b>5.47</b>	<b>4.90</b>

- (1) Gulf of Mexico natural gas production was restated to a dry gas number. NGL production is now shown separately. The change resulted in 2,545 thousand barrels, 1,129 thousand barrels and 809 thousand barrels additional NGL production and 5.41 billion cubic feet, 2.05 billion cubic feet and 1.48 billion cubic feet lower natural gas production in the years ended 30 June 2010, 2009 and 2008, respectively. Prior amounts have been restated to ensure consistency.
- (2) LPG and Ethane are reported as Natural Gas Liquids (NGL).
- (3) Total boe conversion is based on the following: 6,000 scf of natural gas equals 1 boe.
- (4) Average production costs include direct and indirect costs relating to the production of hydrocarbons and the foreign exchange effect of translating local currency denominated costs into US dollars but excludes ad valorem and severance taxes.

### 2.3.2 Minerals

The table below details our mineral and derivative product production for all CSGs except Petroleum for the three years ended 30 June 2010, 2009 and 2008. Production shows our share unless otherwise stated.

	BHP Billiton Group interest %	BHP Billiton Group share of production Year ended 30 June		
		2010	2009	2008
Aluminium				
Alumina				
Production ('000 tonnes)				
Worsley, Australia	86.0	3,054	2,924	3,035
Paranam, Suriname <sup>(1)</sup>	45.0	78	935	983
Alumar, Brazil	36.0	709	537	536
Total alumina		3,841	4,396	4,554
Aluminium				
Production ('000 tonnes)				
Hillside, RSA	100.0	710	702	695
Bayside, RSA	100.0	98	99	168
Alumar, Brazil	40.0	174	177	178
Mozal, Mozambique	47.1	259	255	257
Total aluminium		1,241	1,233	1,298

	BHP Billiton Group interest %	BHP Billiton Group share of production Year ended 30 June		
		2010	2009	2008
Base Metals <sup>(2)</sup>				
Copper				
Payable metal in concentrate ('000 tonnes)				
Escondida, Chile	57.5	448.1	417.6	679.5
Antamina, Peru	33.8	98.6	109.0	111.7
Pinto Valley, US <sup>(3)</sup>	100.0	—	33.3	26.8
Total copper concentrate		546.7	559.9	818.0
Cathode ('000 tonnes)				
Escondida, Chile	57.5	174.2	172.1	131.6
Cerro Colorado, Chile	100.0	85.2	102.1	106.4
Spence, Chile	100.0	159.6	172.7	142.7
Pinto Valley, US <sup>(3)</sup>	100.0	6.2	6.2	6.9
Olympic Dam, Australia	100.0	103.3	194.1	169.9
Total copper cathode		528.5	647.2	557.5
Total copper concentrate and cathode		1,075.2	1,207.1	1,375.5
Lead				
Payable metal in concentrate ('000 tonnes)				
Cannington, Australia	100.0	245.4	226.8	251.5
Antamina, Peru	33.8	3.0	3.3	1.6
Total lead		248.4	230.1	253.1
Zinc				
Payable metal in concentrate ('000 tonnes)				
Cannington, Australia	100.0	62.7	54.8	61.0
Antamina, Peru	33.8	135.6	108.4	83.5
Total zinc		198.3	163.2	144.5
Gold				
Payable metal in concentrate ('000 ounces)				
Escondida, Chile	57.5	76.4	67.3	79.7
Olympic Dam, Australia (refined gold)	100.0	65.5	108.0	80.5
Pinto Valley, US <sup>(3)</sup>	100.0	—	0.9	1.3
Total gold		141.9	176.2	161.5
Silver				
Payable metal in concentrate ('000 ounces)				
Escondida, Chile	57.5	2,874	2,765	3,604
Antamina, Peru	33.8	4,712	4,090	3,505
Cannington, Australia	100.0	37,276	33,367	35,485
Olympic Dam, Australia (refined silver)	100.0	500	937	780
Pinto Valley, US <sup>(3)</sup>	100.0	—	182	113
Total silver		45,362	41,341	43,487
Uranium oxide				
Payable metal in concentrate (tonnes)				
Olympic Dam, Australia	100.0	2,279	4,007	4,144
Total uranium oxide		2,279	4,007	4,144
Molybdenum				
Payable metal in concentrate (tonnes)				
Antamina, Peru	33.8	813	1,363	2,542
Pinto Valley, US <sup>(3)</sup>	100.0	—	159	—
Total molybdenum		813	1,522	2,542

	BHP Billiton Group interest %	BHP Billiton Group share of production Year ended 30 June		
		2010	2009	2008
Diamonds and Specialty Products				
Diamonds				
Production ('000 carats)				
EKATI, Canada	80.0	3,050	3,221	3,349
Total diamonds		3,050	3,221	3,349
Titanium minerals <sup>(4)</sup>				
Production ('000 tonnes)				
Titanium slag				
Richards Bay Minerals, RSA <sup>(5)</sup>	37.76	317	490	480
Rutile				
Richards Bay Minerals, RSA <sup>(5)</sup>	37.76	34	44	43
Zircon				
Richards Bay Minerals, RSA <sup>(5)</sup>	37.76	83	120	120
Total titanium minerals		434	654	643
Stainless Steel Materials				
Nickel				
Production ('000 tonnes)				
Cerro Matoso, Colombia	99.9	49.6	50.5	41.8
Yabulu, Australia <sup>(6)</sup>	100.0	2.8	33.9	28.0
Nickel West, Australia	100.0	123.8	88.7	98.1
Total nickel		176.2	173.1	167.9
Cobalt				
Production ('000 tonnes)				
Yabulu, Australia <sup>(6)</sup>	100.0	0.1	1.4	1.7
Total cobalt		0.1	1.4	1.7
Iron Ore <sup>(7)</sup>				
Production ('000 tonnes)				
Newman, Australia <sup>(8)</sup>	85.0	32,097	31,350	35,449
Mt Goldsworthy, Australia	85.0	1,688	1,416	941
Area C joint venture, Australia	85.0	38,687	35,513	27,130
Yandi, Australia	85.0	41,396	37,818	40,276
Samarco, Brazil	50.0	11,094	8,318	8,464
Total iron ore		124,962	114,415	112,260
Manganese				
Manganese ores				
Saleable production ('000 tonnes)				
Hotazel, South Africa <sup>(9)</sup>	44.4	2,718	2,191	3,040
GEMCO, Australia <sup>(9)</sup>	60.0	3,406	2,284	3,535
Total manganese ores		6,124	4,475	6,575
Manganese alloys				
Saleable production ('000 tonnes)				
South Africa <sup>(9)(10)</sup>	60.0	364	301	513
Australia <sup>(9)</sup>	60.0	219	212	262
Total manganese alloys		583	513	775

	BHP Billiton Group interest %	BHP Billiton Group share of production Year ended 30 June		
		2010	2009	2008
<b>Metallurgical Coal</b> <sup>(11)</sup>				
<i>Production ('000 tonnes)</i>				
Blackwater	50.0	5,733	5,382	5,632
Goonyella Riverside <sup>(12)</sup>	50.0	6,668	6,685	6,037
Peak Downs	50.0	4,332	4,390	4,094
Saraji	50.0	3,402	3,505	2,896
Norwich Park	50.0	1,870	1,984	2,026
Gregory Joint Venture	50.0	2,398	2,762	2,110
Total BMA, Australia		24,403	24,708	22,795
South Walker Creek		3,609	2,978	2,862
Poitrel		2,834	2,457	2,271
Total BHP Mitsui Coal, Australia <sup>(13)</sup>	80.0	6,443	5,435	5,133
Illawarra, Australia	100.0	6,535	6,273	7,265
<b>Total metallurgical coal</b>		<b>37,381</b>	<b>36,416</b>	<b>35,193</b>
<b>Energy Coal</b>				
<i>Production ('000 tonnes)</i>				
Navajo	100.0	7,465	8,363	7,533
San Juan	100.0	6,013	5,773	6,119
Total New Mexico		13,478	14,136	13,652
Douglas/Middelburg <sup>(14)</sup>	100.0	14,703	14,807	17,003
Khutala	100.0	10,868	11,125	13,327
Klipspruit	100.0	4,887	3,964	3,440
Optimum	—	—	—	11,302
Total BECSA <sup>(15)</sup>		30,459	29,896	45,072
Mt Arthur Coal, Australia	100.0	12,039	11,775	11,776
Cerrejón Coal Company, Colombia	33.3	10,155	10,594	10,368
<b>Total energy coal</b>		<b>66,131</b>	<b>66,401</b>	<b>80,868</b>

(1) Suriname was sold effective 31 July 2009.

(2) Metal production is reported on the basis of payable metal.

(3) The Pinto Valley mining operations were placed on care and maintenance in January 2009, and continue to produce copper cathode through sulphide leaching.

(4) Data was sourced from the TZ Minerals International Pty Ltd Mineral Sands Annual Review 2010 and amounts represent production for the preceding year ended 31 December.

(5) The Group's economic interest in Richards Bay Minerals is 37.76 per cent in FY2010 (50 per cent in FY2009 and FY2008).

(6) Yabulu was sold effective 31 July 2009.

(7) Iron ore production is reported on a wet tonnes basis with the exception of Samarco, being reported in dry (pellet) tonnes.

(8) Newman includes Mt Newman Joint Venture and Jimblebar, previously Jimblebar was reported separately.

(9) Shown on 100 per cent basis. BHP Billiton interest in saleable production is 60 per cent.

(10) Production includes Medium Carbon Ferro Manganese.

(11) Metallurgical coal production is reported on the basis of saleable product. Production figures include some thermal coal.

(12) Goonyella Riverside includes the Broadmeadow underground mine.

(13) Shown on 100 per cent basis. BHP Billiton interest in saleable production is 80 per cent.

(14) The Douglas and Middelburg mines are now combined, consistent with the Douglas/Middelburg Optimisation Project.

(15) FY2008 includes 11.3 million tonnes of production from our South African Optimum operation (3.96 million tonnes export and 7.3 million tonnes domestic). Earnings on these tonnes were excluded as the entitlement to those earnings was vested with the purchaser effective from 1 July 2007.

## 2.4 Marketing

BHP Billiton's Marketing network manages the Group's revenue line and is responsible for:

- selling the Group's products and for the purchase of all major raw materials;
- the supply chain for our various products, from assets to market, and also for raw materials, from suppliers to our production Assets;
- achieving market clearing prices for the Group's products;
- developing a single Group view of the markets.



This requires an active and significant presence in the various commodities markets and also the global freight market.

Our marketing activities are centralised in Singapore, The Hague and Antwerp. Our Iron Ore, Metallurgical Coal, Manganese, Base Metals, Stainless Steel Materials, Petroleum and Uranium marketing teams are headquartered in Singapore. The Hague is the hub for our Aluminium, Energy Coal and Freight marketing teams. Our Antwerp office serves our diamonds customers.

These three marketing offices incorporate all the functions required to manage product marketing and distribution - from the point of production to final customer delivery. In addition, we have marketers located in 15 regional offices around the world.

## **2.5 Minerals exploration**

Our exploration program is integral to our growth strategy and is focused on identifying and capturing new world-class projects for future development or projects that add significant value to existing operations. Targets for exploration are generally large low-cost mining projects in a range of minerals, including copper, uranium, nickel, diamonds, bauxite, iron ore, manganese, coal and potash. The process of discovery runs from early-stage mapping through to drilling and evaluation. The program is global and prioritises targets based on our assessment of the relative attractiveness of each mineral.

We continue to pursue opportunities and build our position in prospective countries, including exploring for copper in South America, Zambia and South East Asia; nickel in Australia; and diamonds in Canada. In the bulk commodities, activities are focused on a number of highly prospective terrains in Australia and Africa.

Our exploration activities are organised from four principal offices in Singapore, Perth (Australia), Johannesburg (South Africa) and Santiago (Chile).

In addition to our activities focused on finding new world-class deposits, several of our CSGs undertake exploration, principally aimed at delineating and categorising mineral deposits near existing operations, and advancing projects through the development pipeline.

In FY2010, we spent US\$516 million on minerals exploration. Of this, US\$126 million was spent on greenfield exploration, US\$390 million was spent on brownfield exploration and advanced projects.

## **2.6 Resource and Business Optimisation**

Group Resource and Business Optimisation (RBO) provides governance and technical leadership for resource development and Ore Reserve reporting. RBO's 41 professionals are focused on ensuring optimal value recovery from our resources. The team includes functional experts in mineral resource evaluation, brownfields exploration, planning, research and development, work management, production reporting, mine engineering and mineral process engineering.

RBO engages directly with operating assets to deliver guidance and assess compliance in resource development and Ore Reserve reporting. It provides the Group Management Committee with assurance reports and portfolio analysis. RBO also provides functional expertise to audits and to investment review programs conducted by other Group Functions.

RBO's accountabilities include governance for all resource and reserve estimation and Ore Reserve reporting.

## **2.7 Government regulations**

Government regulations touch all aspects of our operations. However, because of the geographical diversity of our operations, no one set of government regulations is likely to have a material effect on our business, taken as a whole.

The ability to extract minerals, oil and natural gas is fundamental to our business. In most jurisdictions, the rights to undeveloped mineral or petroleum deposits are owned by the state. Accordingly, we rely upon the rights granted to us by the government that owns the mineral, oil or natural gas. These rights usually take the form of a lease or licence, which gives us the right to access the land and extract the product. The terms of the lease or licence, including the time period for which it is effective, are specific to the laws of the relevant government. Generally, we own the product we extract and royalties or similar taxes are payable to the government. Some of our operations, such as our oil and gas operations in Trinidad and Tobago and Algeria, are subject to production sharing contracts under which both we as the contractor and the government are entitled to a share of the production. Under such production sharing contracts, the contractor is entitled to recover its exploration and production costs from the government's share of production.

Related to the ability to extract is the ability to process the minerals, oil or natural gas. Again, we rely upon the relevant government to grant the rights necessary to transport and treat the extracted material in order to ready it for sale.

Underlying our business of extracting and processing natural resources is the ability to explore for those orebodies. The rights to explore for minerals, oil and natural gas are granted to us by the government that owns those natural resources that we wish to explore. Usually, the right to explore carries with it the obligation to spend a defined amount of money on the exploration or to undertake particular exploration activities.

Governments also impose obligations on us in respect of environmental protection, land rehabilitation, occupational health and safety, and native land title with which we must comply in order to continue to enjoy the right to conduct our operations within that jurisdiction. These obligations often require us to make substantial expenditures to minimise or remediate the environmental impact of our operations, to ensure the safety of our employees and contractors and the like. For further information on these types of obligations, refer to section 2.8 and 2.9 of this Report.

Of particular note are the following regulatory regimes:

#### ***2.7.1 South African Mining Charter and Black Economic Empowerment***

In 2003, the Government released a strategy for broad-based black economic empowerment (BBBEE) that defined empowerment as ‘an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings significant increases in the numbers of black people who manage, own and control the country’s economy, as well as significant decreases in income inequalities’. This strategy laid the foundation for the Black Economic Empowerment Act of 2003, which granted government the power to legislate how it wanted black economic empowerment (BEE) to be implemented in South Africa.

As outlined in section 1.5 of this Report, on 1 May 2004, the Mineral and Petroleum Resources Development Act 2002 (MPRDA) took effect, providing for state custodianship of all mineral deposits and abolishing the prior system of privately held mineral rights. It is administered by the Department of Minerals and Energy of South Africa. In February 2007, the codes of good practice were gazetted, further crystallising government’s BEE strategy into a single binding document. The codes make provision for businesses to measure their success in contributing to the economic transformation and empowerment of historically disadvantaged South Africans (HDSAs) in the local economy and a scorecard comprising seven metrics was also developed to assist businesses in achieving this success.

In terms of the MPRDA, holders of mining rights granted under the previous system, known as ‘Old Order Rights’, must have applied to convert their rights to ‘New Order Rights’ prior to 30 April 2009. In order for the conversions to be effected, applicants are required to comply with the terms of the Black Economic Empowerment Act of 2003 and the Mining Charter, which has been published under the MPRDA. The Mining Charter requires holders of mining rights to achieve 26 per cent ownership participation by historically disadvantaged South Africans in their mining operations by 30 April 2014, of which 15 per cent needed to have been achieved by 30 April 2009. We have submitted to the Department of Mineral Resources of South Africa transactions to meet the legislative requirements and support the conversion to ‘New Order Rights’.

We support broad-based black economic empowerment in South Africa. We believe it is imperative to both the growth and stability of the South African economy and the Company’s strategic objectives and long-term sustainability in that country.

The principles of transformation and empowerment are in line with the BHP Billiton Charter, which underscores the Group’s ‘Courage to Lead Change’.

We have established a transformation and empowerment technical committee comprising senior managers with diverse skills to ensure our transformation and empowerment agenda is coordinated and comprehensive.

#### ***2.7.2 Uranium production in Australia***

To mine, process, transport and sell uranium from within Australia, we are required to hold possession and export permissions, which are also subject to regulation by the Australian Government or bodies that report to the Australian Government.

To possess ‘nuclear material’, such as uranium, in Australia, a Permit to Possess Nuclear Materials (Possession Permit) must be held pursuant to the Australian Nuclear Non-Proliferation (Safeguards) Act 1987 (Non-Proliferation Act). A Possession Permit is issued by the Australian Safeguards and Non-Proliferation Office, an office established under the Non-Proliferation Act, which administers Australia’s domestic nuclear safeguards requirements and reports to the Australian Government.

To export uranium from Australia, a Permit to Export Natural Uranium (Export Permit) must be held pursuant to the Australian Customs (Prohibited Exports) Regulations 1958. The Export Permit is issued by the Minister for Industry, Tourism and Resources.

A special transport permit will be required under the Non-Proliferation Act by a party that transports nuclear material from one specified location to another specified location. As we engage service providers to transport uranium, those service providers are required to hold a special transport permit.

### ***2.7.3 Exchange controls and shareholding limits***

#### ***BHP Billiton Plc***

There are no laws or regulations currently in force in the UK that restrict the export or import of capital or the remittance of dividends to non-resident holders of BHP Billiton Plc's shares, although the Group does operate in some other jurisdictions where remittances of funds could be affected as they are subject to exchange control approvals. There are certain sanctions adopted by the UK Government which implement resolutions of the Security Council of the United Nations and sanctions imposed by the European Union against certain countries, entities and individuals. Any enforcement of the sanctions by the UK Government would be initiated by HM Treasury. Such sanctions may be in force from time to time and include those against: (i) certain entities and/or individuals associated with the Burmese regime (Myanmar), Cote d'Ivoire, The Democratic People's Republic of Korea (North Korea), the Democratic Republic of Congo, the Republic of Guinea, Lebanon, Liberia, Iran, Sudan and the previous regimes of Iraq and Yugoslavia; (ii) certain officials of Belarus, Syria and Zimbabwe; (iii) individuals indicted by the International Criminal Tribunal for the former Yugoslavia; and (iv) entities and individuals linked with the Taliban, Al-Qaeda and other terrorist organisations.

There are no restrictions under BHP Billiton Plc's Articles of Association or (subject to the effect of any sanctions) under English law that limit the right of non-resident or foreign owners to hold or vote BHP Billiton Plc's shares.

There are certain restrictions on shareholding levels under BHP Billiton Plc's Articles of Association described under the heading 'BHP Billiton Limited' below.

#### ***BHP Billiton Limited***

The Australian Banking (Foreign Exchange) Regulations 1959 may impose restrictions on certain financial transactions and require the consent of the Reserve Bank of Australia for the movement of funds into and out of Australia. Based on our searches, restrictions currently apply if funds are to be paid to or received from specified supporters of the former Government of the Federal Republic of Yugoslavia, specified ministers and senior officials of the Government of Zimbabwe, certain specified entities associated with the Democratic People's Republic of Korea (North Korea) and specified individuals associated with the Burmese regime and certain Iranian entities and persons not already listed by the Security Council of the United Nations. In addition, legislation and regulations are in place restricting transactions with certain individuals or entities linked with the Taliban, Al-Qaeda and other terrorist organisations and certain entities and individuals associated with the Democratic Republic of Congo, Cote d'Ivoire, Eritrea, Iran, Iraq, Lebanon, Liberia, Sudan, Afghanistan, Rwanda and Somalia. The controls impose certain approval and reporting requirements on transactions involving such countries, entities and individuals and/or assets controlled or owned by them. Transfers into or out of Australia of amounts greater than A\$10,000 in any currency are also subject to reporting requirements.

Remittances of any dividends, interest or other payments by BHP Billiton Limited to non-resident holders of BHP Billiton Limited's securities are not restricted by exchange controls or other limitations, save that in certain circumstances, BHP Billiton may be required to withhold Australian taxes.

There are no limitations, either under the laws of Australia or under the Constitution of BHP Billiton Limited, on the right of non-residents to hold or vote BHP Billiton Limited ordinary shares other than as set out below.

The Australian Foreign Acquisitions and Takeovers Act 1975 (the FATA) restricts certain acquisitions of interests in shares in BHP Billiton. Generally, under the FATA, the prior approval of the Australian Treasurer must be obtained for proposals by a foreign person (either alone or together with associates) to acquire control of 15 per cent or more of the voting power or issued shares in BHP Billiton Limited.

The FATA also empowers the Treasurer to make certain orders prohibiting acquisitions by foreign persons in BHP Billiton Limited (and requiring divestiture if the acquisition has occurred) where he considers the acquisition to be contrary to the national interest and the 15 per cent threshold referred to above would be exceeded as a result. Such orders may also be made in respect of acquisitions by foreign persons where two or more foreign persons (and their associates) in aggregate already control 40 per cent or more of the issued shares or voting power in BHP Billiton Limited.

There are certain other statutory restrictions, and restrictions under BHP Billiton Limited's Constitution and BHP Billiton Plc's Articles of Association, that apply generally to acquisitions of shares in BHP Billiton (i.e. the restrictions are not targeted at foreign persons only). These include restrictions on a person (and associates) breaching a voting power threshold of:

- 20 per cent in relation to BHP Billiton Limited on a 'stand alone' basis, i.e. calculated as if there were no special voting share and only counting BHP Billiton Limited's ordinary shares.
- 30 per cent of BHP Billiton Plc. This is the threshold for a mandatory offer under Rule 9 of the UK takeover code and this threshold applies to all voting rights of BHP Billiton Plc (therefore including voting rights attached to the BHP Billiton Plc Special Voting Share).
- 30 per cent in relation to BHP Billiton Plc on a 'stand alone' basis, i.e. calculated as if there were no special voting share and only counting BHP Billiton Plc's ordinary shares.
- 20 per cent in relation to the BHP Billiton Group, calculated having regard to all the voting power on a joint electorate basis, i.e. calculated on the aggregate of BHP Billiton Limited's and BHP Billiton Plc's ordinary shares.

Under BHP Billiton Limited's Constitution and BHP Billiton Plc's Articles of Association, sanctions for breach of any of these thresholds, other than by means of certain 'permitted acquisitions', include withholding of dividends, voting restrictions and compulsory divestment of shares to the extent a shareholder and its associates exceed the relevant threshold.

## **2.8 Sustainable Development – Health, Safety, Environment and Community**

As the world's largest diversified natural resources company, our operations touch every corner of the globe. We recognise and embrace our responsibility to consider and respond to the needs of many different stakeholders.

Our Charter sets out what we value. In particular, we must remain committed to ensuring the safety of our people, respecting our environment and the communities where we work.

In addition to the wider Group corporate governance processes, we have systems in place to implement our policy commitment to sustainable development. The Sustainability Committee of the Board continues to oversee our sustainability strategy, policy, initiatives and activities. Management holds primary responsibility for our Health, Safety, Environment and Community (HSEC) processes and performance.

Our Code of Business Conduct applies to every member of our workforce and provides a framework for decision-making. It is based on the values contained in our Charter and highlights that we care as much about how results are obtained as we do about delivering good results.

Our HSEC Standards are part of a wider suite of Group Level Documents (GLD). They provide mandatory performance requirements and performance controls which are the basis for developing and applying management systems at all sites operated by BHP Billiton.

These documents highlight four key components of sustainable development:

- Health – focusing on the elimination of risks through the control of potential workplace exposures to noise and substances which could result in long-term harm.
- Safety – providing a workplace where people can work without being injured.
- Environment – delivering efficient resource use, reducing and preventing pollution and enhancing biodiversity protection.
- Community – engaging with those affected by our operations, including employees, contractors and communities; and respecting and upholding fundamental human rights.

### ***Health***

The health and wellbeing of our people is central to our business success. Our focus is on eliminating risk through the control of workplace exposures that may result in long-term harm. The main sources of potential exposure are noise, silica, manganese, diesel exhaust particulate, fluorides, coal tar pitch, nickel and sulphuric acid mist.

Our approach is to identify and manage sources of exposure to reduce the minimum number of people required to undertake additional protective measures, such as the wearing of personal protective equipment. Our Health GLD requires all operations to establish and maintain the exposure risk profile of all personnel to harmful agents and then implement appropriate controls. Controls are prioritised on the basis of the potential health consequence of the exposure and operations are required to maintain and monitor their effectiveness.

Significant community-based health risks, such as HIV/AIDS and malaria, also exist in our business. We continue to contribute to the management of these issues, on both a local and global basis.

### ***Safety***

Providing a safe and healthy workplace and ensuring our activities do not adversely impact on our host communities are core values.

Despite strong performance improvement across the organisation, sadly we experienced the loss of five colleagues at our operations during the year.

In FY2010, we completed the integration of our catastrophic risk and risk management procedures into a single process. This process requires that for all material risks critical controls are identified, performance standards set and critical control effectiveness measured.

Our Total Recordable Injury Frequency (TRIF) for FY2010 was 5.3 per million hours worked (TRIF includes fatalities, lost-time cases, restricted work cases and medical treatment cases).

### ***Environment***

We own and operate a diverse range of businesses in different countries around the world that, by their nature, have the potential to affect the environment.

Effective strategies to address the issues associated with climate change must include policies that provide a path to reduce emissions. Our evaluation of policy options are covered in the Sustainability Report and Summary Review of this report.

The results of our participation in the Australian Government's Energy Efficiency Opportunities Act (EEO) program will be available publicly in December 2010.

We define a significant environmental incident as one with a severity rating of four or above based on our internal severity rating scale (tiered from one to five by increasing severity). One significant incident occurred during FY2010 at our Pinto Valley Operations (US) involving a tailings release. The majority of the eroded tailings and cover material were recovered. Metal concentrations in surface water and sediments appear to be well below levels that could present a hazard. While there were a number of incidents that had the potential to be significant, controls and mitigation actions prevented these incidents escalating in severity.

### ***Community***

Our operations are diverse and the scale and nature of their social impact varies significantly. Regular, open and honest dialogue is the key to building win-win relationships. Our goal is to minimise negative social impacts while maximising the opportunities and benefits the Group's presence brings.

While our businesses tailor their community relations programs to suit the local context, our Community GLD sets the mandatory requirements to be implemented by all our operations. For example, our sites are required to have community development plans that aim to help contribute to the sustainable development of our host communities. As part of the community planning process, all key stakeholders, including local and Indigenous communities, must be identified and an analysis undertaken to understand their interests and relationship with the business.

We require all our operations to record stakeholder engagement activities, responses to concerns and complaints, outcomes, agreements and commitments.

Community development projects are selected on the basis of their capacity to impact positively on quality of life indicators (education, health and environment). We monitor their progress by tracking changes in these indicators every three years.

The BHP Billiton Forum on Corporate Responsibility, which comprises our executive management and leaders from non-government organisations (NGOs) chaired by our Chief Executive Officer, met twice during FY2010.

No significant human rights-related issues were identified in this reporting period and there were no reported community resettlements.

We continue to invest one per cent of our pre-tax profits (based on the average of the previous three years' pre-tax profit publicly reported in each of those years) in community programs.

## **2.9 Closure and rehabilitation**

The requirements in Our Sustainability Framework are incorporated through the planning of development projects, through operations and into closure. Significant projects are governed by the performance requirements of our project management Group Level Documents (GLD). Health, Safety, Environment and Community (HSEC) risks, legislated obligations and stakeholder requirements form important inputs to the project planning and execution process.

Once in operation, our assets undertake annual 'life of asset' planning, a process that incorporates all aspects of the business. Closure planning is integrated into life of asset planning with each operation required to develop a closure plan. We are responsible for a number of legacy operations that are in various stages of decommissioning, rehabilitation or post-closure care and maintenance. The HSEC audit program covers the activities of these closed operations as well as closure-related issues at operations that are approaching closure. Closure plans provide the basis for estimating the financial costs of closure and the associated provisions. Information on our closure provisions can be found in notes 1 and 18 of the Financial Statements.

In FY2010, a review of the Group's closure planning and provisioning requirement was conducted. The recommendations from the review are in the process of being implemented and include further integration of closure into planning and accounting processes and the development of more detailed requirements for the content of closure plans.

## **2.10 Employees**

Our corporate objective is to create long-term value for shareholders through the discovery, development and conversion of natural resources and the provision of innovative customer and market-focused solutions.

People are the foundation of our business and underpin our success. We value our people and encourage the development of talented and motivated individuals to support the continued performance and growth of our diverse operations. It is our aim as an organisation to strive to build a sense of purpose and achievement amongst all of our people in the work we do.

By working to our Charter we align our people around our common purpose and values. We all use the Charter as a vital reference point for how we do business, wherever we are in the world, and whatever work we do.

Our organisation is structured in four component parts:

- Minerals Exploration
- Marketing
- Customer Sector Groups
- Group Functions.

Each has a clear mandate that articulates its accountabilities.

As a global business, our success depends on fostering a culture where diverse and often remotely located people behave in a manner that reflects our Charter and our commitment to open, honest and productive relationships with our people. We believe these relationships should be determined by local conditions, but always be consistent with our Charter values and *BHP Billiton Code of Business Conduct*.

Diversity of gender, ethnicity, skill, thought, experience, style and language are important elements of our people strategy and are key drivers for our success. In FY2010, we demonstrated our commitment to local employment. An average of 41 per cent of our workforce and 24 per cent of management were hired from the relevant local community.

Ensuring diversity in our local workforce and management populations is also supported by the work we have undertaken in our Accelerated Leadership Development Program and our Foundations for Graduates Program. Our Accelerated Leadership Development Program identifies employees with the potential to move into senior leadership roles and supports them with a structured development and learning program. 32 per cent of current participants are female.

Participation in the Foundations for Graduates Program in 2010 is 677 participants, up from 501 participants in 2009.

Females currently represent 15 per cent of our workforce. The number of females in management positions is approximately eight per cent. The representation of females across our workforce has remained consistent with FY2009.

In FY2011 we have committed to the following measurable objectives to enhance our gender diversity profile;

- Each CSG, Group Function, Marketing and Minerals Exploration will be required to develop and implement a diversity plan in FY2011 that meets the corporations strategic imperative of diversity. The principles that underpin the development of those plans are set out in Section 5.8 of the Corporate Governance Statement.
- Continue to focus on increasing female participation in the Accelerated Leadership Development Program, moving to 40 per cent for FY2012 .
- Reviewing the means by which we recruit graduates and setting appropriate targets for female intake by end of FY2015 and identifying and implementing the necessary actions to achieve those targets.

The diverse nature of our business means we have a mix of collective and individually regulated employment arrangements. Whatever the nature of those arrangements, we recognise the right of our employees to freely associate and join trade unions. We strive to conduct constructive relationships with those trade unions. During FY2010, approximately 53 per cent of our global workforce was covered by collective bargaining agreements. We believe that successful relations with all our employees, unionised and non-unionised, must be built on values of mutual trust and respect.

In FY2010, we had an average of 39,570 employees working in more than 100 operations worldwide. We had an average of 58,563 contractors globally. The multitude of cultures and nationalities represented offer a diversity that enriches the working lives of all.

The table below provides a breakdown of the average number of employees, in accordance with our IFRS reporting requirements, which includes our proportionate share of jointly controlled entities' employees and executive Directors, by CSG for each of the past three financial years.

<b>CSG</b>	<b>FY2010</b>	<b>FY2009</b>	<b>FY2008</b>
Petroleum	<b>2,178</b>	2,105	2,143
Aluminium	<b>4,471</b>	4,938	5,145
Base Metals	<b>7,434</b>	7,731	7,443
Diamonds and Specialty Products	<b>1,689</b>	1,923	2,043
Stainless Steel Materials	<b>3,481</b>	4,039	4,223
Iron Ore	<b>3,624</b>	3,254	3,105
Manganese	<b>2,549</b>	2,532	2,142
Metallurgical Coal	<b>3,533</b>	3,892	3,680
Energy Coal	<b>8,762</b>	8,437	9,183
Group and unallocated	<b>1,849</b>	2,139	2,625
<b>Total <sup>(1)</sup></b>	<b>39,570</b>	40,990	41,732

<sup>(1)</sup> Average employee numbers include executive Directors, 100 per cent of employees of subsidiary companies and our share of proportionally consolidated entities and operations. Part-time employees are included on a full-time equivalent basis. Employees of businesses acquired or disposed of during the year are included for the period of ownership. Contractors are not included.

The table below provides a breakdown of our average number of employees by geographic location for each of the past three financial years.

	<b>FY2010</b>	<b>FY2009</b>	<b>FY2008</b>
Australia	<b>15,178</b>	15,697	15,426
Southern Africa	<b>9,730</b>	9,626	10,860
South America	<b>9,468</b>	9,897	9,342
North America	<b>2,971</b>	2,824	2,994
Europe	<b>515</b>	563	606
Rest of World	<b>1,708</b>	2,383	2,504
<b>Total</b>	<b>39,570</b>	40,990	41,732

## 2.11 Organisational structure

### 2.11.1 General

The BHP Billiton Group consists of the BHP Billiton Limited Group and the BHP Billiton Plc Group as a combined enterprise, following the completion of the Dual Listed Company (DLC) merger in June 2001. Refer to note 25 'Subsidiaries' in the financial statements for a list of BHP Billiton Limited and BHP Billiton Plc significant subsidiaries.

The BHP Billiton DLC merger was designed to place shareholders of both companies in a position where they effectively have an interest in a single group that combines the assets and is subject to the liabilities of both companies. BHP Billiton Limited and BHP Billiton Plc have each retained their separate corporate identities and maintained separate stock exchange listings, but they are operated and managed as if they are a single unified economic entity, with their boards and senior executive management comprising the same people.

### 2.11.2 DLC structure

The principles of the BHP Billiton DLC are reflected in the BHP Billiton Sharing Agreement and include the following:

- the two companies are to operate as if they are a single unified economic entity, through Boards of Directors that comprise the same individuals and a unified senior executive management;
- the Directors of both companies will, in addition to their duties to the company concerned, have regard to the interests of BHP Billiton Limited shareholders and BHP Billiton Plc shareholders as if the two companies were a single unified economic entity and, for that purpose, the Directors of each company take into account in the exercise of their powers the interests of the shareholders of the other; and
- certain DLC equalisation principles must be observed. These are designed to ensure that for so long as the 'Equalisation Ratio' between a BHP Billiton Limited share and a BHP Billiton Plc share is 1:1, the economic and voting interests in the combined BHP Billiton Group resulting from the holding of one BHP Billiton Limited share are equivalent to that resulting from one BHP Billiton Plc share. Further details are set out in the sub-section 'Equalisation of economic and voting rights' below.

Additional documents that affect the DLC include:

- BHP Billiton Limited Constitution
- BHP Billiton Plc Memorandum and Articles of Association
- BHP Billiton Special Voting Shares Deed
- BHP Billiton Limited Deed Poll Guarantee
- BHP Billiton Plc Deed Poll Guarantee.

#### *Australian Foreign Investment Review Board (FIRB) conditions*

The Treasurer of Australia approved the DLC merger subject to certain conditions, the effect of which was to require that, among other things, BHP Billiton Limited continues to:

- be an Australian company, which is managed from Australia;



- ultimately manage and control the companies conducting the business that was conducted by it at the time of the merger for as long as those businesses form part of the BHP Billiton Group.

The conditions have effect indefinitely, subject to amendment of the Australian Foreign Acquisitions Takeover Act 1975 or any revocation or amendment by the Treasurer of Australia. If BHP Billiton Limited no longer wishes to comply with these conditions, it must obtain the prior approval of the Treasurer. Failure to comply with the conditions attracts substantial penalties under the Act.

#### *Equalisation of economic and voting rights*

BHP Billiton Limited shareholders and BHP Billiton Plc shareholders have economic and voting interests in the combined BHP Billiton Group. The economic and voting interests represented by a share in one company relative to the economic and voting interests of a share in the other company is determined by reference to a ratio known as the 'Equalisation Ratio'. Presently, the economic and voting interests attached to each BHP Billiton Limited share and each BHP Billiton Plc share are the same, since the Equalisation Ratio is 1:1. The Equalisation Ratio would change if either BHP Billiton Limited or BHP Billiton Plc returned value to only its shareholders and no matching action were taken.

This means that the amount of any cash dividend paid by BHP Billiton Limited in respect of each BHP Billiton Limited share is normally matched by an equivalent cash dividend by BHP Billiton Plc in respect of each BHP Billiton Plc share, and vice versa. If one company has insufficient profits or is otherwise unable to pay the agreed dividend, BHP Billiton Limited and BHP Billiton Plc will, as far as practicable, enter into such transactions as are necessary so as to enable both companies to pay the amount of pre-tax dividends per share.

#### *Joint Electorate Actions*

Under the terms of the DLC agreements, the BHP Billiton Limited Constitution and the BHP Billiton Plc Articles of Association special voting arrangements have been implemented so that the shareholders of both companies vote together as a single decision-making body on matters affecting the shareholders of each company in similar ways (such matters are referred to as Joint Electorate Actions). For so long as the Equalisation Ratio remains 1:1, each BHP Billiton Limited share will effectively have the same voting rights as each BHP Billiton Plc share on Joint Electorate Actions.

A Joint Electorate Action requires approval by ordinary resolution (or special resolution if required by statute, regulation, applicable listing rules or other applicable requirements) of BHP Billiton Limited, with both the BHP Billiton Limited ordinary shareholders and the holder of the BHP Billiton Limited Special Voting Share voting as a single class and also of BHP Billiton Plc, with the BHP Billiton Plc ordinary shareholders and the holder of the BHP Billiton Plc Special Voting Share voting as a single class.

#### *Class Rights Actions*

In the case of certain actions in relation to which the two bodies of shareholders may have divergent interests (referred to as Class Rights Actions), the company wishing to carry out the Class Rights Action requires the prior approval of the shareholders in the other company voting separately and, where appropriate, the approval of its own shareholders voting separately. Depending on the type of Class Rights Action undertaken, the approval required is either an ordinary or special resolution of the relevant company.

These voting arrangements are secured through the constitutional documents of the two companies, the BHP Billiton Sharing Agreement, the Special Voting Shares Deed and rights attaching to a specially created Special Voting Share issued by each company and held in each case by a Special Voting Company. The shares in the Special Voting Companies are held legally and beneficially by Law Debenture Trust Corporation Plc.

#### *Cross guarantees*

BHP Billiton Limited and BHP Billiton Plc have each executed a Deed Poll Guarantee, pursuant to which creditors entitled to the benefit of the BHP Billiton Limited Deed Poll Guarantee and the BHP Billiton Plc Deed Poll Guarantee will, to the extent possible, be placed in the same position as if the relevant debts were owed by both BHP Billiton Limited and BHP Billiton Plc combined.

### *Restrictions on takeovers of one company only*

The BHP Billiton Limited Constitution and the BHP Billiton Plc Articles of Association have been drafted to ensure that, except with the consent of the Board, a person cannot gain control of one company without having made an equivalent offer to the shareholders of both companies on equivalent terms. Sanctions for breach of these provisions would include withholding of dividends, voting restrictions and the compulsory divestment of shares to the extent a shareholder and its associates exceed the relevant threshold.

## **2.12 Material contracts**

### ***2.12.1 DLC agreements***

On 29 June 2001, BHP Billiton Limited (then known as BHP Limited) and BHP Billiton Plc (then known as Billiton Plc) merged by way of a DLC structure. To effect the DLC, BHP Limited and Billiton Plc (as they were then known) entered into the following agreements designed to place the shareholders of both companies in a position where they effectively have an interest in a single group that combines the assets, and is subject to all the liabilities, of both companies:

- BHP Billiton Sharing Agreement
- BHP Billiton Special Voting Shares Deed
- BHP Billiton Limited Deed Poll Guarantee
- BHP Billiton Plc Deed Poll Guarantee.

The effect of each of these agreements and the manner in which they operate are described in section 2.11 of this Report. It is expected that these agreements will remain in effect until such time as a change in control of the BHP Billiton Group may occur.

### ***2.12.2 Proposed iron ore production joint venture with Rio Tinto***

#### *Iron Ore Joint Venture Framework Agreement*

On 5 June 2009, BHP Billiton and Rio Tinto signed a Framework Agreement to establish an iron ore production joint venture combining the operation and management of their respective Western Australian iron ore production assets.

The Framework Agreement contains exclusivity provisions preventing either party from soliciting or engaging in discussions with respect to a proposal that (in broad terms) enables a person to acquire an economic or security interest in assets within the scope of the joint venture; which may adversely impact on its benefits; which is likely to be inconsistent with completion of the joint venture; or which might require a restructuring of it.

The Framework Agreement provides for a mutual break fee of US\$275.5 million payable in the event that either party: announces that it does not intend to proceed with the joint venture; after satisfaction of the key regulatory approvals, fails to recommend the joint venture to its shareholders or fails to take the steps necessary to obtain the approval of its shareholders; or breaches the exclusivity provisions. It also set out core principles that would apply to the establishment of the joint venture.

#### *Description of binding agreements*

On 5 December 2009, BHP Billiton and Rio Tinto signed binding agreements that set out the terms that will regulate the establishment of the joint venture and its ongoing operation. Those terms are consistent with the core principles set out in the Framework Agreement, except that the joint marketing of 15 per cent of output contemplated by the core principles will not take place: all output will be sold by BHP Billiton and Rio Tinto separately.

#### ***Scope of joint venture***

The joint venture will encompass the management and operation of the economic interests of BHP Billiton and Rio Tinto in all current and future iron ore operations in Western Australia, including exploration interests, leases, mines, rail lines, ports and associated infrastructure, and all related employees and contractors. However, the joint venture will not include BHP Billiton's Hot Briquetted Iron plant (HBI) or Rio Tinto's interest in HIs melt™, and its application to other secondary processing activities will be limited. Marketing activities and business development outside Western Australia are also outside the scope of the joint venture.

The parties to the joint venture will share the economic burden of all related liabilities, other than material undisclosed liabilities (with a minimum claim of US\$300 million and a maximum claim period of 10 years) and certain pre-July 2009 tax liabilities. It is intended that the joint venture will continue in perpetuity.

### ***Conditions precedent***

The binding agreements remain subject to satisfaction of certain conditions precedent, including satisfying relevant anti-trust requirements, obtaining Australian foreign investment clearance from the Commonwealth Treasurer and favourable rulings from the Australian Taxation Office and State revenue authorities, obtaining certain other government approvals, and obtaining the approval of BHP Billiton and Rio Tinto shareholders. The Framework Agreement and the binding agreements will terminate if the conditions precedent are not satisfied by 31 December 2010, unless extended by agreement of Rio Tinto and BHP Billiton.

### ***Financial adjustments***

The economic interests of BHP Billiton and Rio Tinto in the joint venture will be equal. The joint venture is a contractual arrangement and the parties will not be acquiring shares in each other's iron ore companies or legal or beneficial interests in each other's iron ore assets. The parties will obtain an economic exposure to each other's iron ore production assets through each of them subscribing for debentures in an interposed company in the other's group that holds shares in the other's asset holding subsidiaries.

To equalise the net value of the parties' asset contributions to the joint venture, BHP Billiton will also subscribe US\$5.8 billion in cash for additional debentures in the Rio Tinto interposed company. This amount will be inflated from 1 July 2009 to completion at a rate of 6.5 per cent per annum, and will also be adjusted to reflect equalisation of net cash flows from 1 July 2009 in the manner described below.

The parties have agreed that they will bear the economic benefit and burden of the after-tax cash flows of their respective assets in the period from 1 July 2009 to commencement of the joint venture. To achieve this, the BHP Billiton cash subscription payment described above will be adjusted for 50 per cent of the difference between the net cash flows (after tax) from the Rio Tinto operations and the BHP Billiton operations during the period from 1 July 2009 until completion, inflated at a rate of 6.5 per cent per annum.

### ***Governance of the joint venture***

Management of the joint venture will be overseen by a 'nonexecutive' Owners' Council comprised of four representatives of each party. All decisions of the Owners' Council must be approved by both parties, subject to certain deadlock-breaking mechanisms.

The initial chairman of the Owners' Council will be Sam Walsh (Rio Tinto's Chief Executive Iron Ore and Australia), who will hold that office for a period of four years. The Owners' Council will have the power to approve high-level policies (such as accounting, business conduct, communities and health, safety and environment) relating to the joint venture, review the conduct of activities undertaken by the manager and give general direction to the manager.

The Owners' Council will also have powers and functions, much like a board of directors, in relation to other matters, including: approval of business and synergy plans; approving major contracts and capital projects; reviewing performance of the joint venture; approving major asset acquisitions, disposals and closures; approving strategies for dealing with third party access requests; approving product types, volumes and specifications; approving entry into or amendment of State Agreements; and approving the appointment and remuneration of senior executive team members. Standing and ad hoc committees comprised of an equal number of representatives of BHP Billiton and Rio Tinto will be established to advise the Owners' Council in relation to the exercise of some of its powers and functions.

### ***Overview***

#### ***Management***

The joint venture manager, a new entity owned equally by BHP Billiton and Rio Tinto, will, subject to the powers held by the Owners' Council, manage all day to day activities of the joint venture without interference from BHP Billiton and Rio Tinto. In addition, the manager will develop plans for realisation of synergies and will present the Owners' Council with annual business plans and budgets designed to achieve full utilisation of system capacity and options for maximisation of production capacity through expansion. The manager must ensure joint venture operations are conducted safely at all times, act equitably and fairly to the parties, and act in accordance with business plans and budgets approved by the Owners' Council.

Senior management of the manager will be selected jointly, with broadly equal participation from BHP Billiton and Rio Tinto. The initial chief executive officer of the joint venture will be BHP Billiton Iron Ore President Ian Ashby, who will hold that office for a period of four years. Future chief executive officers will be appointed by the Owners' Council.

### ***Funding and default***

The joint venture will operate with a minimum cash balance and will be financed entirely by the parties, through money subscribed for debentures and money advanced by loan to the relevant iron ore companies conducting operations. The manager of the joint venture will call for cash from BHP Billiton and Rio Tinto on a regular basis to fund the joint venture and capital expenditure programs. The parties may elect to fund their proportionate share of an expansion or acquisition by way of project financing and may use their interests in the joint venture to secure corporate debt.

Failure to advance funds to meet calls made by the manager will give rise to a suspension of the defaulting party's Owners' Council voting rights and may trigger dilution of the defaulting party's interest in the joint venture or a right to buy out the defaulting party.

### ***Expansions and acquisitions***

Sole risk rights will exist for expansion projects which involve capital expenditure exceeding US\$250 million (indexed). Disagreements in relation to preferred expansion pathways (where more than one option exists) will be resolved by the manager determining which expansion pathway has the highest net present value.

Proposals for new iron ore acquisitions or investments in Western Australia will be referred to the Owners' Council and, if both parties agree, be undertaken within the joint venture. Absent this agreement, the opportunity may be undertaken by the proposing party as a sole risk project.

### ***Marketing of product and adjustments and tonnage supply***

BHP Billiton and Rio Tinto will continue to compete and market iron ore to their customers separately. A separation protocol will ensure that the manager has no knowledge of BHP Billiton's and Rio Tinto's marketing strategies or sale terms relating to production from the joint venture. The manager will supply equal product volumes and specifications of product to each party to the extent possible. Where equal supply is not possible, adjustments will be made to ensure that each party receives equal value. These adjustments may include differential distributions on the debentures.

### ***Disposal of interests***

The parties will both be free to sell some or all of their respective interests in the joint venture without any pre-emptive rights or change of control restrictions applying (although certain principles and restrictions will apply depending on the nature and extent of the disposal). The right to vote on the Owners' Council can, however, only be exercised by a person with an economic interest of more than 25 per cent of the joint venture, except in the unlikely scenario where no party holds an economic interest above 25 per cent. Neither party will be entitled to sell the underlying assets or interests separately from the joint venture interest, and rights to create security interests over the underlying assets and interests are limited.

### ***2.12.3 Facility Agreement***

On 18 August 2010, we entered into a multicurrency term and revolving facility and subscription agreement (the 'facility agreement') with, among others, Banco Santander, S.A., London Branch, Barclays Bank PLC, BNP Paribas, JPMorgan Chase Bank, N.A., The Royal Bank of Scotland plc and The Toronto-Dominion Bank as lenders (the 'Lenders') to, among other things, meet potential funding requirements in relation to our offer to acquire PotashCorp. The facility agreement provides for four credit facilities in an aggregate amount of US\$45 billion as follows:

- a US\$25 billion term loan facility with a term of 364 days, which may be extended by BHP Billiton for a further 12 months subject to the payment of an extension fee;
- a US\$10 billion term loan facility with a term of three years;
- a US\$5 billion revolving facility with a term of three years; and
- a US\$5 billion revolving facility with a term of four years, incorporating a US dollar swingline facility and a euro swingline facility.

The proceeds of loans drawn under the credit facilities may be used for the following purposes:

- financing the acquisition of the outstanding common shares of PotashCorp pursuant to the offer and any subsequent acquisition or pursuant to a plan of arrangement;

- payments to holders of options, warrants or other rights to receive the outstanding common shares of PotashCorp;
- the payment of fees, costs and expenses relating to the acquisition of PotashCorp and the credit facilities;
- refinancing the indebtedness of PotashCorp or its subsidiaries; and
- in the case of the revolving credit facilities, the general corporate purposes of the Group.

Loans drawn down under the credit facilities bear interest at a margin over the London Interbank Offered Rate (LIBOR).

The ability to draw down under the credit facilities is subject to certain conditions being met on the date of drawdown, including, among other things, all conditions to the consummation of the offer having been met without being amended, varied or waived (or otherwise treated as satisfied in circumstances where they have not been satisfied) except as permitted under the terms of the facility agreement. The facility agreement contains customary representations and warranties, affirmative and negative covenants (including requirements relating to the financial indebtedness of PotashCorp and certain restrictions on disposals and subsidiary indebtedness), indemnities and events of default, each with applicable qualifications or carve-outs. The facility agreement also contains a net borrowing to EBITDA financial covenant.

The facility agreement contains a requirement to use the net cash proceeds arising from certain disposals, debt issuances or equity issuances, to prepay or cancel the US\$25 billion term facility, subject to certain exceptions and thresholds.

Each of BHP Billiton Limited and BHP Billiton Plc is a guarantor under the facility agreement. The credit facilities are unsecured. The facility agreement also contains certain other terms including treatment of withholding tax, quarterly commitment fees and increased costs payable to the Lenders and the giving of certain indemnities.

## **2.13 Constitution**

The following text summarises the Constitution of BHP Billiton Limited and the Articles of Association of BHP Billiton Plc. The effect of the Constitution of BHP Billiton Limited and the Articles of Association of BHP Billiton Plc is, so far as possible, identical. Where the term ‘BHP Billiton’ is used in this description of the Constitution and Articles of Association, it can be read to mean either BHP Billiton Limited or BHP Billiton Plc.

Certain provisions of the Constitution of BHP Billiton Limited and the Articles of Association of BHP Billiton Plc can only be amended where such amendment is approved by special resolution either:

- by approval as a Class Rights Action, where the amendment results in a change to an ‘Entrenched Provision’; or
- otherwise, as a Joint Electorate Action.

A description of Joint Electorate Actions and Class Rights Actions is contained under the heading ‘Equalisation of economic and voting rights’ in section 2.11.2 of this Report. The objects of BHP Billiton Plc are contained in clause 4 of its Memorandum of Association.

### **2.13.1 Directors**

The management and control of the business and affairs of BHP Billiton are vested in the Board of Directors, which may exercise all powers and do everything that is within the power of BHP Billiton, other than what is required to be exercised or done by BHP Billiton in a general meeting.

### **2.13.2 Power to issue securities**

BHP Billiton may, pursuant to the Constitution and Articles of Association, issue any shares or other securities with preferred, deferred or other special rights, obligations or restrictions as and when the Directors may determine and on any other terms the Directors consider appropriate, provided that any such issue:

- does not affect any special rights conferred on the holders of any shares;
- is subject to the provisions regarding shareholder approval in the Constitution and Articles of Association.

The rights attaching to a class other than ordinary shares are expressed at the date of issue.

### ***2.13.3 Restrictions on voting by Directors***

A Director may not vote in respect of any contract or arrangement or any other proposal in which he or she has a material personal interest. A Director shall not be counted in the quorum at a meeting in relation to any resolution on which he or she is not entitled to vote.

In addition, under the UK Companies Act 2006, a Director has a duty to avoid a situation in which he or she has (or can have) a direct or indirect interest that conflicts (or may conflict) with the interests of the company. The duty is not infringed, if among other things, the situation is authorised by non-interested Directors. In 2008, the Articles of Association of BHP Billiton Plc were amended to enable the Board to authorise a matter that might otherwise involve a Director breaching his or her duty to avoid conflicts of interest. An interested Director may not vote or be counted towards a quorum for a resolution authorising such a situation. Where the Board gives such authorisation, the Board may prohibit, or may establish regulations which prohibit, the relevant Director from voting on any matter relating to the conflict. The Board has adopted procedures to manage these voting restrictions.

Subject to applicable laws, a Director is entitled to vote, and be counted in the quorum, in respect of any resolution concerning any of the following matters, namely where the material personal interest:

- arises because the Director is a shareholder of BHP Billiton and is held in common with the other shareholders of BHP Billiton;
- arises in relation to the Director's remuneration as a Director of BHP Billiton;
- relates to a contract BHP Billiton is proposing to enter into that is subject to approval by the shareholders and will not impose any obligation on BHP Billiton if it is not approved by the shareholders;
- arises merely because the Director is a guarantor or has given an indemnity or security for all or part of a loan, or proposed loan, to BHP Billiton;
- arises merely because the Director has a right of subrogation in relation to a guarantee or indemnity referred to above;
- relates to a contract that insures, or would insure, the Director against liabilities the Director incurs as an officer of BHP Billiton, but only if the contract does not make BHP Billiton or a related body corporate the insurer;
- relates to any payment by BHP Billiton or a related body corporate in respect of an indemnity permitted by law, or any contract relating to such an indemnity; or
- is in a contract, or proposed contract with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the Director is a director of a related body corporate.

### ***2.13.4 Loans by Directors***

Any Director may lend money to BHP Billiton at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by BHP Billiton and underwrite or guarantee the subscription of shares or securities of BHP Billiton or of any corporation in which BHP Billiton may be interested without being disqualified as a Director and without being liable to account for BHP Billiton for any commission or profit.

### ***2.13.5 Retirement of Directors***

At every Annual General Meeting one-third of the Directors or, if their number is not a multiple of three, then the number nearest to but not less than one-third, must retire from office. The Directors to retire are those longest in office since last being elected. As between Directors who were elected on the same day, the Directors to retire are determined by lot (in default of agreement between them). Further, a Director must retire from office at the conclusion of the third Annual General Meeting after which the Director was elected or re-elected. A retiring director is eligible for re-election.

The Board continues to have a policy that requires a non-executive Director who has served on the Board for nine years from the date of their first election to stand for annual re-election from the first Annual General Meeting after the expiration of their current term.

### **2.13.6 Rights attaching to shares**

#### *Dividend rights*

Under English law, dividends on shares may only be paid out of profits available for distribution. Under Australian law, dividends on shares may only be paid out of net assets, provided that the payment is fair and reasonable to the company's shareholders as a whole and the payment of the dividend does not materially prejudice the company's ability to pay its creditors. The Constitution and Articles of Association provide that payment of any dividend may be made in any manner, by any means and in any currency determined by the Board.

All unclaimed dividends may be invested or otherwise used by the Board for the benefit of whichever of BHP Billiton Limited or BHP Billiton Plc declared that dividend, until claimed or, in the case of BHP Billiton Limited, otherwise disposed of according to law. In the case of BHP Billiton Plc, any dividend unclaimed after a period of 12 years from the date on which such dividend was declared or became due for payment shall be forfeited and shall revert to BHP Billiton Plc.

#### *Voting rights*

Voting at any general meeting of BHP Billiton Limited shareholders is in the first instance to be conducted by a show of hands unless a poll is demanded by any of the following (except in relation to the election of a chairman of a meeting or, unless the Chairman otherwise determines, the adjournment of a meeting):

- the Chairman;
- any shareholder under the law; or
- the holder of the BHP Billiton Limited Special Voting Share.

Voting at any general meeting of BHP Billiton Plc is in the first instance to be conducted by a show of hands unless a poll is demanded by any of the following:

- the Chairman;
- not less than five members present in person or by proxy and entitled to vote;
- a member or members present in person or by proxy and representing not less than five per cent of the total voting rights of all the members having the right to vote at the meeting; or
- the holder of the Billiton Special Voting Share.

As described under the heading 'Equalisation of economic and voting rights' in section 2.11.2 of this Report, certain matters may be decided as Joint Electorate Actions or Class Rights Actions. Any matter considered by shareholders at an Annual General Meeting of BHP Billiton Limited or BHP Billiton Plc constitutes a Joint Electorate Action and shall therefore be decided on a poll. Therefore, in practice, generally all items of business at Annual General Meetings proceed directly to poll.

In addition, at any general meeting a resolution, other than a procedural resolution, put to the vote of the meeting on which the holder of the relevant BHP Billiton Special Voting Share is entitled to vote shall be decided on a poll.

For the purposes of determining which shareholders are entitled to attend or vote at a meeting of BHP Billiton Plc or BHP Billiton Limited, and how many votes such shareholder may cast, the relevant company will specify in any notice of meeting a time, not more than 48 hours before the time fixed for the meeting, by which a shareholder must be entered on the Register of Shareholders in order to have the right to attend or vote at the relevant meeting.

Shareholders who wish to appoint a proxy to attend, vote or speak at a meeting of BHP Billiton Plc or BHP Billiton Limited (as appropriate) on their behalf, must deposit the relevant form appointing a proxy in accordance with the instructions contained in any notice of meeting, so as to be received in the specified manner not less than 48 hours before the time appointed for holding the meeting to which the appointment of a proxy relates.

#### *Rights to share in BHP Billiton Limited's profits*

The rights attached to the shares of BHP Billiton Limited, as regards the participation in the profits available for distribution, are as follows:

- The holders of any preference shares shall be entitled, in priority to any payment of dividend to the holders of any other class of shares, to a preferred right to participate as regards dividends up to but not beyond a specified amount in distribution.
- Subject to the special rights attaching to any preference shares, but in priority to any payment of dividends on all other classes of shares, the holder of the Equalisation Share (if any) shall be entitled to be paid such dividends as are declared.
- Any surplus remaining after payment of the distributions above shall be payable to the holders of BHP Billiton Limited ordinary shares and the BHP Billiton Limited Special Voting Share in equal amounts per share.

#### *Rights to share in BHP Billiton Plc's profits*

The rights attached to the shares of BHP Billiton Plc, in relation to the participation in the profits available for distribution, are as follows:

- The holders of the cumulative preference shares shall be entitled, in priority to any payment of dividend to the holders of any other class of shares, to be paid a fixed cumulative preferential dividend (Preferential Dividend) at a rate of 5.5 per cent per annum, to be paid annually in arrears on 31 July in each year or, if any such date shall be a Saturday, Sunday or public holiday in England, on the first business day following such date in each year. Payments of Preferential Dividends shall be made to holders on the register at any date selected by the Directors up to 42 days prior to the relevant fixed dividend date.
- Subject to the rights attaching to the cumulative preference shares, but in priority to any payment of dividends on all other classes of shares, the holder of the BHP Billiton Plc Special Voting Share shall be entitled to be paid a fixed dividend of US\$0.01 per annum, payable annually in arrears on 31 July.
- Subject to the rights attaching to the cumulative preference shares and the BHP Billiton Plc Special Voting Share, but in priority to any payment of dividends on all other classes of shares, the holder of the Equalisation Share shall be entitled to be paid such dividends as the Board may decide to pay thereupon.
- Any surplus remaining after payment of the distributions above shall be payable to the holders of the BHP Billiton Plc ordinary shares in equal amounts per BHP Billiton Plc ordinary share.

#### **2.13.7 Right on a return of assets on liquidation**

On a return of assets on liquidation of BHP Billiton Limited, subject to the payment of all prior ranking amounts owed to all creditors of BHP Billiton Limited and preference shareholders, the assets of BHP Billiton Limited remaining available for distribution among shareholders, after giving effect to the payment of all prior ranking amounts owed to all creditors and holders of preference shares, shall be applied in paying to the holders of the BHP Billiton Limited Special Voting Share and the Equalisation Share (if any) an amount of up to A\$2.00 on each such share, on an equal priority with any amount paid to the holders of BHP Billiton Limited ordinary shares, and any surplus remaining shall be applied in making payments solely to the holders of BHP Billiton Limited ordinary shares in accordance with their entitlements.

On a return of assets on liquidation of BHP Billiton Plc, subject to the payment of all prior ranking amounts owed to the creditors of BHP Billiton Plc and prior ranking statutory entitlements, the assets of BHP Billiton Plc to be distributed on a winding-up shall be distributed to the holders of shares in the following order of priority:

- To the holders of the cumulative preference shares, the repayment of a sum equal to the nominal capital paid up or credited as paid up on the cumulative preference shares held by them and accrual, if any, of the Preferential Dividend, whether such dividend has been earned or declared or not, calculated up to the date of commencement of the winding-up.
- To the holders of the BHP Billiton Plc ordinary shares and to the holders of the BHP Billiton Plc Special Voting Share and the Equalisation Share (if any), the payment out of surplus, if any, remaining after the distribution above of an equal amount for each BHP Billiton Plc ordinary share, the BHP Billiton Plc Special Voting Share and the Equalisation Share, if issued, subject to a maximum in the case of the BHP Billiton Plc Special Voting Share and the Equalisation Share of the nominal capital paid up on such shares.



### ***2.13.8 Redemption of preference shares***

If BHP Billiton Limited at any time proposes to create and issue any preference shares, the preference shares may be issued on the terms that they are to be redeemed or, at the option of either or both BHP Billiton Limited and the holder, are liable to be redeemed, whether out of share capital, profits or otherwise.

The preference shares confer on the holders the right to convert the preference shares into ordinary shares if, and on the basis, the Board determines at the time of issue of the preference shares.

The preference shares are to confer on the holders:

- the right (on redemption and on a winding up) to payment in cash in priority to any other class of shares of (i) the amount paid or agreed to be considered as paid on each of the preference shares; (ii) the amount, if any, equal to the aggregate of any dividends accrued but unpaid and of any arrears of dividends;
- the right, in priority to any payment of dividend on any other class of shares, to the preferential dividend.

There is no equivalent provision in the Articles of Association of BHP Billiton Plc.

### ***2.13.9 Capital calls***

Subject to the terms on which any shares may have been issued, the Board may make calls on the shareholders in respect of all monies unpaid on their shares. BHP Billiton has a lien on every partly paid share for all amounts payable in respect of that share. Each shareholder is liable to pay the amount of each call in the manner, at the time and at the place specified by the Board (subject to receiving at least 14 days notice specifying the time and place for payment). A call is considered to have been made at the time when the resolution of the Board authorising the call was passed.

### ***2.13.10 Borrowing powers***

Subject to relevant law, the Directors may exercise all powers of BHP Billiton to borrow money, and to mortgage or charge its undertaking, property, assets (both present and future) and all uncalled capital or any part or parts thereof and to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of BHP Billiton or of any third party.

### ***2.13.11 Changes to rights of shareholders***

Rights attached to any class of shares issued by either BHP Billiton Limited or BHP Billiton Plc can only be varied (whether as a Joint Electorate Action or a Class Rights Action) where such variation is approved both:

- by the Company that issued the relevant shares, as a special resolution;
- by the holders of the issued shares of the affected class, either by a special resolution passed at a separate meeting of the holders of the issued shares of the class affected, or with the written consent of members with at least 75 per cent of the votes of that class.

### ***2.13.12 Conditions governing general meetings***

All provisions relating to general meetings apply with any necessary modifications to any special meeting of any class of shareholders that may be held. Therefore, the following information relates equally to general meetings and any special meeting of any class of shareholders.

The Board may and shall on requisition in accordance with applicable laws call a general meeting of the shareholders at the time and place or places and in the manner determined by the Board. No shareholder may convene a general meeting of BHP Billiton except where entitled under law to do so. Any Director may convene a general meeting whenever the Director thinks fit. General meetings can also be cancelled, postponed or adjourned. Notice of a general meeting must be given to each shareholder entitled to vote at the meeting and such notice of meeting must be given in the form and manner in which the Board thinks fit. Five shareholders of the relevant company present in person or by proxy constitute a quorum for a meeting. A shareholder who is entitled to attend and cast a vote at a general meeting of BHP Billiton Limited may appoint a person as a proxy to attend and vote for the shareholder in accordance with the law.

### ***2.13.13 Limitations on rights to own securities***

Neither the Constitution of BHP Billiton Limited nor the Articles of Association of BHP Billiton Plc impose any limitations on the rights to own securities other than restrictions that reflect the takeovers codes under relevant Australian and UK law. In addition, the Australian Foreign Acquisitions and Takeovers Act 1975 imposes a number of conditions that restrict foreign ownership of Australian-based companies.

Share control limits imposed by the Constitution and the Articles of Association, as well as relevant laws, are described in section 2.7 and 2.11.2 of this Report.

### ***2.13.14 Documents on display***

You can consult reports and other information about BHP Billiton Limited that it has filed pursuant to the rules of the ASX at [www.asx.com.au](http://www.asx.com.au). You can consult reports and other information filed for publication by BHP Billiton Plc pursuant to the rules of the UK Listing Authority at the Authority's document viewing facility. Information filed on the ASX, or pursuant to the rules of the UK Listing Authority is not incorporated by reference into this Annual Report. The documents referred to in this Annual Report as being available on our website, [www.bhpbilliton.com](http://www.bhpbilliton.com), are not incorporated by reference and do not form part of this Annual Report.

BHP Billiton Limited and BHP Billiton Plc both file annual and special reports and other information with the SEC. You may read and copy any document that either BHP Billiton Limited or BHP Billiton Plc files at the SEC's public reference room located at 100 F Street, NE, Room 1,580, Washington, DC 20549. Please call the SEC at 1-800-SEC-0330 or access the SEC website at [www.sec.gov](http://www.sec.gov) for further information on the public reference room. The SEC filings of BHP Billiton Limited since November 2002, and those of BHP Billiton Plc since April 2003, are also available on the SEC website.

## **2.14 Reserves**

### ***2.14.1 Petroleum reserves***

#### ***Reserves and production***

BHP Billiton Petroleum reserves are estimated and reported according to SEC standards. For FY2010, our proved oil and gas reserves have been determined in accordance with recent revisions to SEC Rule 4-10(a) of Regulation S-X. Proved oil and gas reserves are those quantities of crude oil, natural gas and natural gas liquids (NGL), which, by analysis of geoscience and engineering data can be estimated with reasonable certainty to be economically producible, from a given date forward, from known reservoirs, and under existing economic conditions, operating methods and government regulations. Unless evidence indicates that renewal is reasonably certain, estimates of economically producible reserves only reflect the period before the contracts providing the right to operate expire. The project to extract the hydrocarbons must have commenced or the operator must be reasonably certain that it will commence within a reasonable time. Developed oil and gas reserves are reserves that can be expected to be recovered through existing wells with existing equipment and operating methods and through installed extraction equipment and infrastructure operational at the time of the reserve estimate if the extraction is by means not involving a well. As specified in the revised regulation, oil and gas prices are taken as the unweighted average of the corresponding first day of the month prices for the twelve months prior to the ending date of the period covered.

Estimates of oil and gas reserves are inherently imprecise, require the application of judgement and are subject to future revision. Accordingly, financial and accounting measures (such as the standardised measure of discounted cash flows, depreciation, depletion and amortisation charges, the assessment of impairments and the assessment of valuation allowances against deferred tax assets) that are based on reserve estimates are also subject to change.

Proved reserves are estimated by reference to available seismic, well and reservoir information, including production and pressure trends for producing reservoirs and, in some cases, to similar data from other analogous, producing reservoirs. Proved reserves estimates are attributed to future development projects only where there is a significant commitment to project funding and execution, and for which applicable governmental and regulatory approvals have been secured or are reasonably certain to be secured. Furthermore, estimates of proved reserves only include volumes for which access to market is assured with reasonable certainty. All proved reserve estimates are subject to revision, either upward or downward, based on new information, such as from development drilling and production activities or from changes in economic factors, including product prices, contract terms or development plans.

The Petroleum Reserves Group (PRG), organised separately from the operating organisation, provides overall oversight of the reserves assessment and reporting processes. The PRG is staffed by individuals averaging over 30 years experience in the Oil and Gas industry. The Manager of the Petroleum Reserves Group is the individual primarily responsible for overseeing the preparation of the reserves estimate. He has an advanced degree in engineering and over 30 years of diversified industry experience in reservoir engineering, reserves assessment, and technical management. He is a 30+ year member of the Society of Petroleum Engineers (SPE). No part of the individual compensation for members of this group is dependent on reported reserves.

Reserve assessments are conducted by technical staff within the operating organisation. These individuals meet the professional qualifications outlined by the Society of Petroleum Engineers, are trained in the fundamentals of SEC reserves reporting and the corporate reserves processes, and are endorsed by the PRG. Each reserve assessment is reviewed annually by the PRG to ensure technical quality, adherence to internally published Petroleum CSG Guidelines, and compliance with SEC reporting requirements. Once endorsed by the PRG, all reserves receive final endorsement by senior management and the Risk and Audit Committee prior to public reporting. Our internal Group Audit Services provides secondary assurance of the oil and gas reserve reporting processes through annual audits.

During FY2010, Petroleum added 172 million barrel oil equivalent (boe)<sup>1</sup> of proved oil and gas reserves, replacing 108 per cent of production of 159 million barrel oil equivalent. These additions were primarily revisions of 84 million boe due to infill drilling results and analysis of performance in producing properties, and extensions of 65 million boe. The largest of these extensions occurred in the Mad Dog field and was supported by the integration of wireline log and pressure data, core information and high resolution seismic interpretation, as well as data from other portions of the field and relevant analogous fields.

These changes are summarised (on a barrel oil equivalent basis) in the table below. These tables detail estimated oil, condensate, NGL and natural gas reserves at 30 June 2010, 30 June 2009 and 30 June 2008, with a reconciliation of the changes in each year. Reserves have been calculated using the economic interest method and represent net interest volumes after deduction of applicable royalty, fuel and flare volumes. Reserves include quantities of oil, condensate, NGL and gas that will be produced under several production and risk sharing arrangements that involve the BHP Billiton Group in upstream risks and rewards without transfer of ownership of the products. At 30 June 2010, approximately six per cent (2009: seven per cent; 2008: six per cent) of proved developed and undeveloped oil, condensate and NGL reserves and five per cent (2009: five per cent; 2008: five per cent) of natural gas reserves are attributable to those arrangements. Reserves also include volumes calculated by probabilistic aggregation of certain fields that share common infrastructure. These aggregation procedures result in enterprise-wide proved reserves volumes which may not be realised upon divestment on an individual property basis.

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<sup>1</sup> Total barrel oil equivalent conversion is based on the following: 6,000 scf of natural gas equals 1 barrel oil equivalent.

## Petroleum Reserves

Millions of barrels	Australia	United States	Other	Total
<b>Proved developed and undeveloped oil, condensate and NGL reserves <sup>(a) (b)</sup></b>				
<b>Reserves at 30 June 2007</b>	<b>329.7</b>	<b>169.4</b>	<b>66.0</b>	<b>565.1</b>
Improved Recovery	17.6	0.0	0.0	17.6
Revisions of previous estimates	20.1	17.6	(3.7)	34.0
Extensions and discoveries	26.6	23.2	0.2	50.0
Purchase/sales of reserves	0.0	0.0	0.0	0.0
Production <sup>(c)</sup>	(39.7)	(12.4)	(16.0)	(68.1)
Total changes	24.7	28.4	(19.6)	33.5
<b>Reserves at 30 June 2008</b>	<b>354.3</b>	<b>197.8</b>	<b>46.5</b>	<b>598.6</b>
Improved Recovery	0.0	0.0	1.2	1.2
Revisions of previous estimates	13.3	5.0	24.0	42.3
Extensions and discoveries	5.9	14.0	0.0	19.9
Purchase/sales of reserves	0.0	0.0	0.0	0.0
Production <sup>(c)</sup>	(40.4)	(20.9)	(15.1)	(76.4)
Total changes	(21.3)	(1.9)	10.1	(13.1)
<b>Reserves at 30 June 2009</b>	<b>333.1</b>	<b>195.9</b>	<b>56.6</b>	<b>585.6</b>
Improved Recovery	11.0	0.0	0.0	11.0
Revisions of previous estimates	5.9	73.4	(2.4)	76.9
Extensions and discoveries	6.9	49.2	7.5	63.6
Purchase/sales of reserves	0.0	0.0	0.0	0.0
Production <sup>(c)</sup>	(40.2)	(44.1)	(12.8)	(97.1)
Total changes	(16.4)	78.5	(7.7)	54.4
<b>Reserves at 30 June 2010 <sup>(d)</sup></b>	<b>316.7</b>	<b>274.4</b>	<b>48.9</b>	<b>640.0</b>
<b>Developed</b>				
Proved developed oil, condensate and NGL reserves				
at 30 June 2007	178.6	20.5	63.0	262.1
at 30 June 2008	189.1	90.0	42.0	321.1
at 30 June 2009	182.2	98.7	51.5	332.4
<b>Developed Reserves as of 30 June 2010</b>	<b>217.1</b>	<b>108.9</b>	<b>44.4</b>	<b>370.4</b>
<b>Undeveloped</b>				
Proved undeveloped oil, condensate and NGL reserves				
at 30 June 2007	151.1	148.9	3.0	303.0
at 30 June 2008	165.2	107.8	4.5	277.5
at 30 June 2009	150.9	97.2	5.1	253.2
<b>Undeveloped Reserves as of 30 June 2010</b>	<b>99.6</b>	<b>165.5</b>	<b>4.5</b>	<b>269.6</b>

(a) Small differences are due to rounding to first decimal place.

(b) NGL is extracted separately from crude oil and natural gas and reported as a liquid.

(c) Production for reserves reconciliation differs slightly from marketable production due to timing of sales and corrections to previous estimates.

(d) Total proved oil, condensate and NGL reserves include 6.2 million barrels derived from probabilistic aggregation of reserves from reservoirs dedicated to the North West Shelf gas project only.

<u>Billions of cubic feet</u>	<u>Australia <sup>(b)</sup></u>	<u>United States</u>	<u>Other</u>	<u>Total</u>
<b>Proved developed and undeveloped natural gas reserves</b>				
<b>Reserves at 30 June 2007 <sup>(a)</sup></b>	<b><u>3,735.9</u></b>	<b><u>103.8</u></b>	<b><u>887.5</u></b>	<b><u>4,727.2</u></b>
Improved Recovery	0.0	0.0	0.0	0.0
Revisions of previous estimates	42.8	1.7	(1.9)	42.6
Extensions and discoveries	239.9	5.9	11.1	256.9
Purchase/sales of reserves	0.0	0.0	0.0	0.0
Production <sup>(c)</sup>	(262.6)	(11.8)	(94.1)	(368.5)
Total changes	<u>20.1</u>	<u>(4.2)</u>	<u>(84.9)</u>	<u>(69.0)</u>
<b>Reserves at 30 June 2008</b>	<b><u>3,756.0</u></b>	<b><u>99.6</u></b>	<b><u>802.6</u></b>	<b><u>4,658.2</u></b>
Improved Recovery	0.0	0.0	179.5	179.5
Revisions of previous estimates	24.5	1.5	2.7	28.7
Extensions and discoveries	267.5	7.5	0.0	275.0
Purchase/sales of reserves	0.0	(2.4)	0.0	(2.4)
Production <sup>(c)</sup>	(258.3)	(13.4)	(92.9)	(364.6)
Total changes	<u>33.7</u>	<u>(6.8)</u>	<u>89.3</u>	<u>116.2</u>
<b>Reserves at 30 June 2009</b>	<b><u>3,789.7</u></b>	<b><u>92.8</u></b>	<b><u>892.0</u></b>	<b><u>4,774.5</u></b>
Improved Recovery	40.5	0.0	23.6	64.1
Revisions of previous estimates	94.2	2.2	(51.5)	44.9
Extensions and discoveries	1.6	9.3	0.0	10.9
Purchase/sales of reserves	0.0	0.0	0.0	0.0
Production <sup>(c)</sup>	(259.7)	(17.7)	(91.3)	(368.7)
Total changes	<u>(123.4)</u>	<u>(6.1)</u>	<u>(119.2)</u>	<u>(248.8)</u>
<b>Reserves at 30 June 2010 <sup>(d)</sup></b>	<b><u>3,666.3</u></b>	<b><u>86.6</u></b>	<b><u>772.8</u></b>	<b><u>4,525.7</u></b>
<b>Developed</b>				
Proved developed natural gas reserves				
at 30 June 2007	1,804.0	15.9	495.8	2,315.7
at 30 June 2008	1,882.3	46.4	441.4	2,370.1
at 30 June 2009	1,899.0	38.5	383.7	2,321.2
<b>Developed Reserves as of 30 June 2010</b>	<b><u>1,724.8</u></b>	<b><u>30.3</u></b>	<b><u>236.8</u></b>	<b><u>1,991.9</u></b>
<b>Undeveloped</b>				
Proved undeveloped natural gas reserves				
at 30 June 2007	1,931.9	87.9	391.7	2,411.5
at 30 June 2008	1,873.7	53.2	361.2	2,288.1
at 30 June 2009	1,890.7	54.3	508.3	2,453.3
<b>Undeveloped Reserves as of 30 June 2010</b>	<b><u>1,941.5</u></b>	<b><u>56.3</u></b>	<b><u>536.0</u></b>	<b><u>2,533.8</u></b>

(a) Small differences are due to rounding to first decimal place.

(b) Production for Australia includes gas sold as LNG.

(c) Production for reserves reconciliation differs slightly from marketable production due to timing of sales and corrections to previous estimates.

(d) Total proved natural gas reserves include 121 billion cubic feet derived from probabilistic aggregation of reserves from reservoirs dedicated to the North West Shelf gas project only.

Millions of barrels oil equivalent <sup>(a)</sup>	Australia	United States	Other	Total
<b>Proved developed and undeveloped oil, condensate and NGL reserves <sup>(b)</sup></b>				
<b>Reserves at 30 June 2007</b>	<b>952.4</b>	<b>186.7</b>	<b>213.9</b>	<b>1353.0</b>
Improved Recovery	17.6	0.0	0.0	17.6
Revisions of previous estimates	27.2	17.9	(4.0)	41.1
Extensions and discoveries	66.6	24.2	2.1	92.8
Purchase/sales of reserves	0.0	0.0	0.0	0.0
Production <sup>(c)</sup>	(83.5)	(14.4)	(31.7)	(129.5)
Total changes	28.0	27.6	(33.7)	22.0
<b>Reserves at 30 June 2008</b>	<b>980.3</b>	<b>214.4</b>	<b>180.3</b>	<b>1,375.0</b>
Improved Recovery	0.0	0.0	31.1	31.1
Revisions of previous estimates	17.4	5.3	24.5	47.1
Extensions and discoveries	50.5	15.3	0.0	65.7
Purchase/sales of reserves	0.0	(0.4)	0.0	(0.4)
Production <sup>(c)</sup>	(83.5)	(23.1)	(30.6)	(137.2)
Total changes	(15.7)	(3.0)	25.0	6.4
<b>Reserves at 30 June 2009</b>	<b>964.7</b>	<b>211.4</b>	<b>205.3</b>	<b>1,381.4</b>
Improved Recovery	17.8	0.0	3.9	21.7
Revisions of previous estimates	21.6	73.8	(11.0)	84.4
Extensions and discoveries	7.2	50.8	7.5	65.4
Purchase/sales of reserves	0.0	0.0	0.0	0.0
Production <sup>(c)</sup>	(83.5)	(47.1)	(28.0)	(158.6)
Total changes	(36.9)	77.5	(27.6)	12.9
<b>Reserves at 30 June 2010 <sup>(d)</sup></b>	<b>927.8</b>	<b>288.8</b>	<b>177.7</b>	<b>1,394.3</b>
<b>Developed</b>				
Proved developed oil, condensate and NGL reserves				
at 30 June 2007	479.3	23.2	145.6	648.1
at 30 June 2008	502.8	97.7	115.6	716.1
at 30 June 2009	498.7	105.1	115.5	719.3
<b>Developed Reserves as of 30 June 2010</b>	<b>504.6</b>	<b>114.0</b>	<b>83.9</b>	<b>702.4</b>
<b>Undeveloped</b>				
Proved undeveloped oil, condensate and NGL reserves				
at 30 June 2007	473.1	163.6	68.3	704.9
at 30 June 2008	477.5	116.7	64.7	658.9
at 30 June 2009	466.0	106.3	89.8	662.1
<b>Undeveloped Reserves as of 30 June 2010</b>	<b>423.2</b>	<b>174.9</b>	<b>93.8</b>	<b>691.9</b>

- (a) Barrel oil equivalent conversion based on 6,000 scf of natural gas equals 1 boe.
- (b) Small differences are due to rounding to first decimal place.
- (c) Production for reserves reconciliation differs slightly from marketable production due to timing of sales and corrections to previous estimates.
- (d) Total proved reserves include 26.4 mmboe derived from probabilistic aggregation of reserves from reservoirs dedicated to the North West Shelf gas project only.

### *Proved undeveloped reserves*

At year-end, Petroleum had 692 million boe of proved undeveloped reserves, as compared with 662 million boe at the end of FY2009. During this period, Petroleum moved 70 million boe of proved reserves from undeveloped to developed with the startup of the Pyrenees project in Western Australia and several individual wells elsewhere in the Company. This was more than offset by the additions due to revisions and extensions described above. During FY2010, Petroleum spent \$2,006 million progressing development of proved undeveloped reserves in the Northwest Shelf Oil and Gas Projects, the Bass Strait field, and the Macedon field in Australia; in Pakistan's Zamzama gas field; on the Angostura Gas Project in Trinidad; and in the Atlantis, Mad Dog, Neptune, and Shenzi developments in the Gulf of Mexico.

Most of the Group's projects require significant capital expenditure and multi-year lead times before initial production can be achieved with the associated movement of reserves from undeveloped to developed. Based on current project schedules, more than 95 per cent of the 692 MMboe currently classified as undeveloped are actively being pursued and are scheduled to be on stream within the next five years. The remaining undeveloped reserves are located in active fields expected to produce well into the next decade and will be brought on stream in a phased manner to best optimise the use of production facilities and to meet long-term gas supply contracts. Petroleum has a dependable history of progressing large undeveloped volumes from undeveloped to developed, evidenced by the past three years, which have averaged 90 million boe per year.

## 2.14.2 Ore Reserves

### Introduction

Ore Reserves are estimates of the amount of ore that can be economically and legally extracted and processed from our mining properties. In order to estimate reserves, assumptions are required about a range of geological, technical and economic factors, including quantities, grades, production techniques, recovery rates, production costs, transport costs, commodity demand, commodity prices and exchange rates. Estimating the quantity and/or grade of reserves requires the size, shape and depth of ore bodies to be determined by analysing geological data such as drilling samples. Because the economic assumptions used to estimate reserves change from period to period, and because additional geological and operational data is generated during the course of operations, estimates of reserves may change from period to period. All of the Ore Reserve figures presented are reported in 100 per cent terms and represent estimates at 30 June 2010 (unless otherwise stated). All tonnes and grade information has been rounded, hence small differences may be present in the totals. Reserve life is calculated as Total Ore Reserve divided by the current nominal capacity of the operation.

Our mineral leases are of sufficient duration (or convey a legal right to renew for sufficient duration) to enable all reserves on the leased properties to be mined in accordance with current production schedules. Our Ore Reserves may include areas where some additional approvals remain outstanding but where, based on the technical investigations we carry out as part of our mine planning process and our knowledge and experience of the approvals process, we expect that such approvals will be obtained as part of the normal course of business and within the timeframe required by the current life-of-mine schedule.

The reported reserves contained in this annual report do not exceed the quantities that we estimate could be extracted economically if future prices were at similar levels to the average historical prices for traded metals for the three years to 31 December 2009, or for bulk commodities the three year historical contracted prices. However, we do not use a bauxite, aluminium or alumina price to determine bauxite reserves. The primary criteria for determining bauxite reserves are the feed specifications required by the captive alumina refinery. In addition to these specifications a number of modifying factors are used to differentiate bauxite reserves from other mineralised material. For our Manganese assets, historical price is used to determine reserves at only one asset (GEMCO). Geological stratigraphic controls, cut-off grade and plant feed requirements are used to determine reserves at our other Manganese assets.

Current operating costs have been matched to the average historical prices in our test for impairment in accordance with Industry Guide 7. The reported reserves may differ in some respects from the reserves we report in our home jurisdictions of Australia and the UK. Those jurisdictions require the use of the Australasian Code for reporting of Exploration Results, Mineral Resources and Ore Reserves, December 2004 (the JORC Code), which contemplates the use of reasonable investment assumptions in calculating reserve estimates.

The three-year historical average prices used for each commodity to test for impairment of the reserves of traded metals contained in this annual report are as follows:

<u>Commodity Price</u>	<u>US\$</u>
Copper (a)	2.90/lb
Gold	847/oz
Nickel	11.00/lb
Silver	14.30/oz
Lead	0.97/lb
Zinc	1.02/lb
Uranium	69.90/lb

- (a) All our copper operations have used a copper price at or below the three-year historical average copper price to estimate, or test for impairment of, the copper reserves disclosed in this report.



## Aluminium Customer Sector Group

### Ore Reserves

The table below details the total Ore Reserves for the Aluminium Customer Sector Group estimated as at 30 June 2010 in 100 per cent terms (unless otherwise stated).

As at 30 June 2010

															As at 30 June 2009					
Commodity Deposit <sup>(1)(2)(3)(4)</sup>	Ore Type	Proved Ore Reserve				Probable Ore Reserve				Total Ore Reserve				Reserve Life (years)	Total Ore Reserve					BHP Billiton Interest %
		Millions of dry metric tonnes	%	%	%	Millions of dry metric tonnes	%	%	%	Millions of dry metric tonnes	%	%	%		Millions of dry metric tonnes	%	%	%	Reserve Life (years)	
Bauxite																				
Australia																				
Worsley	Laterite	252	31.1	1.8	—	59	30.4	1.8	—	311	31.0	1.8	—	19	324	31.0	1.8	—	19	86
Brazil																				
MRN <sup>(5)</sup>	MRN Washed	27	49.8	4.8	—	—	—	—	—	27	49.8	4.8	—	2	200	50.6	3.8	—	13	14.8
Suriname <sup>(6)</sup>																				
Coermotibo	Laterite	—	—	—	—	—	—	—	—	—	—	—	—	—	0.6	42.4	3.5	17.5	0.4	—
Onverdacht	Laterite	—	—	—	—	—	—	—	—	—	—	—	—	—	5.9	47.2	4.4	10.9	4	—

(1) Approximate drill hole spacings used to classify the reserves are:

Deposit	Proved Ore Reserves	Probable Ore Reserves
Worsley	Maximum 80m	Maximum 160m
MRN	A bauxite intersection grid of 200m, plus at least 10 samples reached by searching ellipsoid. Mining and metallurgical characterisation (test pit/bulk sample), plus a reliable suite of chemical and size distribution data.	Those areas with a bauxite intersection grid spacing of less than 400m and/or a 400m spaced grid with a 200m offset fill in, plus a minimum of seven samples reached by searching ellipsoid and a reliable suite of chemical and size distribution data.

(2) Metallurgical recoveries for the operations are:

Deposit	Estimated Metallurgical Recovery of A.Al <sub>2</sub> O <sub>3</sub>
Worsley (Worsley Refinery)	90%
MRN (Alumar Refinery)	94%

(3) A.Al<sub>2</sub>O<sub>3</sub> is available alumina determined for expected refinery conditions. R.SiO<sub>2</sub> is silica that is reactive in the refinery process. Fe<sub>2</sub>O<sub>3</sub> is iron oxide.

(4) For Worsley and MRN bauxite deposits the reserves are determined based on applicable A.Al<sub>2</sub>O<sub>3</sub> and R.SiO<sub>2</sub>. MRN – Washed tonnes and grade represent expected product based on forecast beneficiated yield in the reserve area.

(5) The MRN Reserves are located on mining leases that provide MRN the right to mine. Current mining areas have full environmental approvals and reflect the nature of environmental permits in Brazil where a three stage process is adopted. The MRN Reserve has been reduced by 160 Mt. For these reserves, stated in 2009, MRN has received the preliminary and, in some cases, the second stage approvals. Negotiation with the Brazilian environmental authorities on these mining areas is ongoing. As such, the reserves will be re-instated in the immediate future once the license approval is granted. The remaining changes to Reserves are due to production depletion and a geological model update which now includes the expected dilution.

(6) Suriname – On 31 July 2009, BHP Billiton Maatschappij Suriname (BMS) was sold to Suralco, an Alcoa subsidiary.

## Base Metals Customer Sector Group

### Ore Reserves

The table below details the total Ore Reserves for the Base Metals Customer Sector Group estimated as at 30 June 2010 in 100 per cent terms (unless otherwise stated).

As at 30 June 2010

																			As at 30 June 2009												
Commodity Deposit <sup>(1)(2)(3)</sup>	Ore Type	Proved Ore Reserve			Probable Ore Reserve					Total Ore Reserve					Reserve Life (years)	Total Ore Reserve					Reserve Life (years)	BHP Billiton Interest %									
		Millions of dry metric tonnes	% TCu	% SCu	Millions of dry metric tonnes	% TCu	% SCu	Millions of dry metric tonnes	% TCu	% SCu	Millions of dry metric tonnes	% TCu	% SCu	Millions of dry metric tonnes		% TCu	% SCu														
Copper																															
Escondida <sup>(4)</sup>	Oxide	81	0.73	—				58	0.89	—				139	0.80	—								30	142	0.82	—		21	57.5	
	Sulphide	765	1.15	—				873	0.91	—				1,638	1.02	—									1,699	1.07	—				
	Sulphide leach	801	0.52	—				1,742	0.53	—				2,543	0.53	—									2,421	0.54	—				
Cerro Colorado <sup>(5)</sup>	Oxide	77	0.60	0.44				63	0.66	0.47				141	0.63	0.45								11	117	0.63	0.46		9	100	
	Sulphide	26	0.70	0.13				34	0.70	0.13				60	0.70	0.13									51	0.71	0.13				
Spence	Oxide	22	0.97	0.81				5.9	0.82	0.71				28	0.94	0.79								16	37	1.09	0.82		18	100	
	Oxide - low solubility	25	1.29	0.72				10	0.94	0.47				35	1.19	0.65									28	1.19	0.60				
	Sulphide	128	1.08	—				81	0.72	—				209	0.94	—									219	0.99	—				
	ROM	—	—	—				39	0.51	0.07				39	0.51	0.07									33	0.50	0.10				
Pinto Valley <sup>(6)</sup>	Low-grade leach	6.0	0.22	—				7.0	0.21	—				13	0.21	—								4	13	0.21	—		4	100	
	Sulphide	36	0.37	—				53	0.42	—				89	0.40	—									89	0.40	—				
		Millions of dry metric tonnes	% Cu	kg/tonne U <sub>3</sub> O <sub>8</sub>	g/t Au	g/t Ag	g/t Ag	Millions of dry metric tonnes	% Cu	kg/tonne U <sub>3</sub> O <sub>8</sub>	g/t Au	g/t Ag	g/t Ag	Millions of dry metric tonnes	% Cu	kg/tonne U <sub>3</sub> O <sub>8</sub>	g/t Au	g/t Ag	g/t Ag	g/t Ag	g/t Ag	g/t Ag	g/t Ag	Millions of dry metric tonnes	% Cu	kg/tonne U <sub>3</sub> O <sub>8</sub>	g/t Au	g/t Ag	g/t Ag	g/t Ag	
Copper Uranium																															
Olympic Dam	Sulphide	182	1.97	0.59	0.61	3.88	g/t Ag	416	1.78	0.58	0.75	3.25	g/t Ag	598	1.84	0.58	0.71	3.44	g/t Ag	g/t Ag	g/t Ag	g/t Ag	54	589	1.81	0.59	0.66	3.36	g/t Ag	54	100
		Millions of dry metric tonnes	% Cu	% Zn	g/t Ag	% Mo	g/t Ag	Millions of dry metric tonnes	% Cu	% Zn	g/t Ag	% Mo	g/t Ag	Millions of dry metric tonnes	% Cu	% Zn	g/t Ag	% Mo	g/t Ag	% Mo	g/t Ag	% Mo	g/t Ag	Millions of dry metric tonnes	% Cu	% Zn	g/t Ag	% Mo	g/t Ag	% Mo	g/t Ag
Copper Zinc																															
Antamina	Sulphide Cu only	75	1.10	0.2	8.6	0.04	g/t Ag	441	1.05	0.2	9.7	0.03	g/t Ag	516	1.06	0.2	9.5	0.03	g/t Ag	g/t Ag	g/t Ag	g/t Ag	20	536	1.05	0.2	9.5	0.03	g/t Ag	21	33.75
	Sulphide Cu-Zn	29	0.92	1.8	17.0	0.01	g/t Ag	131	1.06	2.0	17.6	0.01	g/t Ag	161	1.03	2.0	17.5	0.01	g/t Ag	g/t Ag	g/t Ag	g/t Ag		181	1.02	2.1	18.0	0.01	g/t Ag		
		Millions of dry metric tonnes	g/t Ag	% Pb	% Zn	g/t Ag	g/t Ag	Millions of dry metric tonnes	g/t Ag	% Pb	% Zn	g/t Ag	g/t Ag	Millions of dry metric tonnes	g/t Ag	% Pb	% Zn	g/t Ag	g/t Ag	g/t Ag	g/t Ag	g/t Ag	Millions of dry metric tonnes	g/t Ag	% Pb	% Zn	g/t Ag	g/t Ag	g/t Ag	g/t Ag	g/t Ag
Silver Lead Zinc																															
Cannington <sup>(7)</sup>	Sulphide	23	297	7.5	3.7	g/t Ag	g/t Ag	4.5	210	5.5	3.6	g/t Ag	g/t Ag	27	283	7.2	3.7	g/t Ag	g/t Ag	g/t Ag	g/t Ag	9	24	324	8.0	4.1	g/t Ag	g/t Ag	8	100	

(1) %TCu – per cent total copper, %SCu – per cent soluble copper, %Cu – per cent copper, kg/tonne U<sub>3</sub>O<sub>8</sub> – kilograms per tonne uranium oxide, g/tAu – grams per tonne gold, g/tAg – grams per tonne silver, %Zn – per cent zinc, %Pb – per cent lead, %Mo – per cent molybdenum, ROM – run of mine leach stockpile for low grade oxide, supergene sulphide and transitional sulphide mineralisation.

- (2) Approximate drill hole spacings used to classify the reserves are:

<b>Deposit</b>	<b>Proved Ore Reserves</b>	<b>Probable Ore Reserves</b>
Escondida	Oxide: 35m x 35m Sulphide: 50m x 50m Sulphide leach: 60m x 60m	Oxide: 50m x 50m Sulphide: 80m x 80m Sulphide leach: 100m x 100m
Cerro Colorado	55m x 55m on first kriging pass	120m x 120m on second kriging pass
Spence	Oxides: 50m x 50m Sulphides: 75m x 75m	Oxides and Sulphides: 100m x 100m
Pinto Valley	60m x 120m rectangular grid	200m x 200m
Olympic Dam	Drilling grid of 20m to 30m	Drilling grid of 30m to 70m
Antamina	High Grade: 25m sample grid completed within the high-grade zone. Low Grade: 30m sample grid completed within the low-grade zone.	50m sample grid, completed within the appropriate grade zone.
Cannington	12.5m sectional x 15m vertical	25m sectional x 25m vertical

- (3) Metallurgical recoveries for the operations are:

<b>Deposit</b>	<b>Metallurgical Recovery</b>						
	<b>Cu</b>	<b>Ag</b>	<b>Pb</b>	<b>Zn</b>	<b>Au</b>	<b>U<sub>3</sub>O<sub>8</sub></b>	<b>Mo</b>
Escondida	Oxide: 68% Sulphide: 82% Sulphide leach: 32%						
Cerro Colorado	Sulphide and Oxide: 73% of TCu						
Spence	Oxide: 81% of TCu Oxide - low solubility: 70% of TCu Sulphide: 70% of TCu ROM: 30% of TCu						
Pinto Valley	Low-grade leach: 25% Sulphide: 86%						
Olympic Dam	94%	65%			65%	72%	
Antamina	Sulphide Cu: 94% Sulphide Cu-Zn: 82%	Sulphide Cu: 70% Sulphide Cu-Zn: 59%		Sulphide Cu: 0% Sulphide Cu-Zn: 80%			Sulphide Cu: 71% Sulphide Cu-Zn: 0%
Cannington		88%	90%	74%			

- (4) Escondida – Changes are mainly due to production depletion and updating of the reserve model that included a revised hardness estimate, leading to decreased mill throughput for Sulphide ore. As a result, the reserve life has increased from earlier mine plans.
- (5) Cerro Colorado – The increase in reserves is the result of a step-out exploration drilling program.
- (6) Pinto Valley – The Pinto Valley mine and mill operations continue to be carried on care and maintenance status.
- (7) Cannington – The increase in reserves is due to a change in cut-off grade strategy.

## *Diamonds and Specialty Products Customer Sector Group*

### *Ore Reserves*

The table below details the total Ore Reserves for the Diamonds and Specialty Products Customer Sector Group estimated as at 30 June 2010 in 100 per cent terms (unless otherwise stated).

**As at 30 June 2010**

Commodity Deposit <sup>(1)(2)(3)</sup>	Ore Type	Proved Ore Reserve		Probable Ore Reserve		Total Ore Reserve		Reserve Life (years)	As at 30 June 2009			BHP Billiton Interest %
		Millions of dry metric tonnes	Carats per tonne	Millions of dry metric tonnes	Carats per tonne	Millions of dry metric tonnes	Carats per tonne		Total Ore Reserve		Reserve Life (years)	
									Millions of dry metric tonnes	Carats per tonne		
<b>Diamonds</b>												
EKATI Core Zone <sup>(4)</sup>	OC	14	0.3	6.5	0.4	20	0.3	5	31	0.4	8	80
	UG	2.5	0.6	3.2	0.8	5.7	0.7		7.3	0.8		
	SP	0.1	0.4	—	—	0.1	0.4		0.2	0.5		
		Millions of tonnes		Millions of tonnes		Millions of tonnes			Millions of tonnes			
<b>Mineral Sands</b>												
Richards Bay Minerals <sup>(5)</sup>	TiO <sub>2</sub> slag		9.5		15		25	25		24	24	37.76

(1) Approximate drill hole spacings used to classify the reserves are:

Deposit	Proved Ore Reserves	Probable Ore Reserves
EKATI Core Zone	Less than 30m	Less than 60m
Richards Bay Minerals	50m x 50m reverse circulation drilling and 200m x 100m sonic drilling data	400m x 100m reverse circulation drilling and 800m x 100m sonic drilling data

(2) Metallurgical recoveries for the operations are:

Deposit	Metallurgical Recovery
EKATI Core Zone	Factors are assigned per geological domain and deposit
Richards Bay Minerals	45.4% including conversion to slag

(3) OC – open-cut, SP – stockpile, UG – underground, TiO<sub>2</sub> – titanium dioxide.

(4) EKATI Core Zone – An effective 1.5mm square aperture (equivalent to 1.2mm slot) stone size cut-off is used to estimate the reserves. Following a review of project economics during 2010, some reserves have been removed from Ekati OC ore type.

(5) Richards Bay Minerals – As the result of a Broad Based Black Economic Empowerment transaction BHP Billiton now hold a 37.76% interest. Rio Tinto Ltd has responsibility for the management of the operation. Reserves are reported as at 31 December 2009.

## Stainless Steel Materials Customer Sector Group

### Ore Reserves

The table below details the total Ore Reserves for the Stainless Steel Materials Customer Sector Group estimated as at 30 June 2010 in 100 per cent terms (unless otherwise stated).

As at 30 June 2010

									As at 30 June 2009			
Commodity Deposit <sup>(1)(2)(3)</sup>	Ore Type	Proved Ore Reserve		Probable Ore Reserve		Total Ore Reserve		Reserve Life (years)	Total Ore Reserve			BHP Billiton Interest %
		Millions of dry metric tonnes	% Ni	Millions of dry metric tonnes	% Ni	Millions of dry metric tonnes	% Ni		Millions of dry metric tonnes	% Ni	Reserve Life (years)	
Nickel - Colombia												
Cerro Matoso <sup>(4)</sup>	Laterite	48	1.3	40	1.2	89	1.2	39	96	1.27	40	99.94
	SP	32	1.4	—	—	32	1.4		29	1.38		
	MNR Ore	21	0.2	—	—	21	0.2		23	0.20		
Nickel West												
Leinster <sup>(5)</sup>	OC	2.9	1.3	0.2	0.90	3.1	1.3	8	3.1	1.3	6	100
	UG	6.1	1.9	6.4	1.8	12	1.8		9.1	1.9		
	SP	1.4	1.0	—	—	1.4	1.0		—	—		
	SP Oxidised	—	—	1.9	1.7	1.9	1.7		—	—		
Mt Keith	OC	117	0.56	2.1	0.45	119	0.56	14	129	0.57	15	100
	SP	32	0.53	—	—	32	0.53		24	0.53		
Cliffs	UG	0.2	2.9	1.1	3.0	1.2	3.0	3	1.4	3.9	4	100

(1) Approximate drill hole spacings used to classify the reserves are:

Deposit	Proved Ore Reserves	Probable Ore Reserves
Cerro Matoso	25m or less	Greater than 25m and less than 70m
Leinster	25m x 25m	25m x 50m
Mt Keith	60m x 40m	80m x 80m
Cliffs	25m x 25m (and development)	50m x 50m

(2) Metallurgical recoveries for the operations are:

Deposit	Metallurgical recovery
Cerro Matoso	90% (reserve to metal)
Leinster	83.5% based on blended plant recovery curves and 12.1% Ni in concentrate.
Mt Keith	68%
Cliffs	92%

(3) OC – open-cut, UG – underground, SP – stockpile, MNR Ore – Metal Nickel Recovery ore, %Ni – per cent nickel.

(4) Cerro Matoso – Reserve life extends 5 years beyond the assured tenement entitlement. Additional extension is available but is not certain; the loss of the additional extension has been tested and found to be not economically material.

(5) Leinster – Reserves increase due to extension of the underground mine plan below 11 Level.

# Iron Ore Customer Sector Group

## Ore Reserves

The table below details the total Ore Reserves for the Iron Ore Customer Sector Group estimated as at 30 June 2010 in 100 per cent terms (unless otherwise stated).

As at 30 June 2010

																				As at 30 June 2009						
Commodity Deposit <sup>(1)(2)(3)(4)(5)</sup>	Ore Type	Proved Ore Reserve						Probable Ore Reserve						Total Ore Reserve						Reserve life (years)	Total Ore Reserve		BHP Billiton Interest %			
		Millions of wet metric tonnes	% Fe	% P	% SiO <sub>2</sub>	% Al <sub>2</sub> O <sub>3</sub>	% LOI	Millions of wet metric tonnes	% Fe	% P	% SiO <sub>2</sub>	% Al <sub>2</sub> O <sub>3</sub>	% LOI	Millions of wet metric tonnes	% Fe	% P	% SiO <sub>2</sub>	% Al <sub>2</sub> O <sub>3</sub>	% LOI		Millions of wet metric tonnes	Reserve life (years)				
Iron Ore <sup>(6)</sup>																										
Mt Newman JV <sup>(7)</sup>	BKM	328	63.7	0.07	4.3	2.0	2.0	776	62.7	0.10	4.3	2.0	3.3	1,104	63.0	0.09	4.3	2.0	2.9	32	868	28	85			
	MM	6.1	61.1	0.07	2.6	1.5	7.8	60	61.9	0.07	3.0	1.8	6.0	66	61.8	0.07	2.9	1.8	6.2		63					
Jimblebar <sup>(8)</sup>	BKM	92	63.1	0.09	3.5	2.4	3.4	282	62.8	0.11	3.1	2.3	4.3	375	62.9	0.11	3.2	2.3	4.1	72	420	92	100			
	MM	—	—	—	—	—	—	131	62.1	0.08	2.8	1.8	5.8	131	62.1	0.08	2.8	1.8	5.8		131					
Mt Goldsworthy JV Northern	NIM	6.5	61.0	0.06	7.9	1.6	2.6	16	61.1	0.05	8.3	1.1	2.2	22	61.1	0.06	8.2	1.2	2.3	11	27	14	85			
Mt Goldsworthy JV Area C <sup>(9)</sup>	BKM	72	63.3	0.14	2.4	1.8	4.8	192	61.8	0.13	3.7	2.1	5.2	264	62.2	0.13	3.4	2.0	5.1	14	182	13	85			
	MM	180	62.3	0.06	2.9	1.7	5.8	206	61.4	0.06	3.8	1.8	5.9	385	61.8	0.06	3.4	1.8	5.9		372					
Yandi JV	CID	612	57.1	0.04	5.7	1.5	10.7	385	57.1	0.05	5.9	1.5	10.6	996	57.1	0.04	5.8	1.5	10.6	20	1,051	23	85			
		Millions of wet metric tonnes	% Fe	% Pc					Millions of wet metric tonnes	% Fe	% Pc					Millions of wet metric tonnes	% Fe	% Pc					Millions of dry metric tonnes			
Samarco JV <sup>(10)</sup>	ROM	1,146	42.5	0.05					932	39.8	0.05					2,078	41.3	0.05					42	1,590	39	50

(1) Approximate drill hole spacings used to classify the reserves are:

Deposit	Proved Ore Reserves	Probable Ore Reserves
Mt Newman JV	50m x 50m	300m x 50m
Jimblebar	50m x 50m	300m x 50m
Mt Goldsworthy JV Northern	25m x 25m	50m x 50m
Mt Goldsworthy JV Area C	50m x 50m	300m x 50m
Yandi JV	50m x 50m	150m x 150m
Samarco JV	200m x 200m x 16m	400m x 400m x 16m

- (2) Metallurgical recovery is 100%, except for Mt Newman JV – Whaleback (BKM) where recovery is 92% (tonnage basis) and Samarco where recovery is 83% (metal basis).
- (3) For Western Australia Iron Ore (WAIO) the reserves are divided into joint ventures and material types that reflect the various products. BKM – Brockman, MM – Marra Mamba, NIM – Nimingarra, CID – Channel Iron Deposits. ROM is run of mine for Samarco.
- (4) The reserve grades listed, Fe – iron, P – phosphorous, SiO<sub>2</sub> – silica, Al<sub>2</sub>O<sub>3</sub> – alumina, LOI – loss on ignition, refer to *in situ* mass percentage on a dry weight basis. For Samarco %Pc is phosphorous in concentrate. For Mt Newman, Mt Goldsworthy and Yandi joint ventures, and Jimblebar, tonnages represent wet tonnes based on the following moisture contents: BKM – 3%, MM – 4%, CID – 8%, NIM – 3.5%. For Samarco the reserve tonnages also represent wet tonnes for FY2010 based on a moisture content of 6.5% for ROM. Iron ore is marketed as Lump (direct blast furnace feed), Fines (sinter plant feed) and direct reduction and blast furnace pellets (Samarco).
- (5) Cut-off grades used to estimate reserves: Mt Newman 50–62%Fe for BKM, 59%Fe for MM; Jimblebar 59%Fe for BKM, 58% Fe for MM; Mt Goldsworthy 50%Fe for NIM, 57%Fe for MM, 59%Fe for BKM; Yandi 55–55.5%Fe for CID; Samarco Fe<sub>2</sub>O<sub>3</sub> ≥ 34%.
- (6) WAIO reserves are all located on State Agreement mining leases that guarantee the right to mine, except Cattle Gorge and Callawa (part of Mt Goldsworthy JV Northern), which reside on standard Western Australian mining leases. We are required to obtain certain State Government approvals (including environmental and heritage clearances) before we commence mining operations in a particular area. We have included in our reserves areas where one or more approvals remain outstanding, but where, based on the technical investigations we carry out as part of our mine planning process and our knowledge and experience of the approvals process, we expect that such approvals will be obtained as part of the normal course of business and within the time frame required by the current mine schedule.
- (7) Mt Newman JV – New drilling and estimates for Jinayri (BKM).
- (8) Jimblebar – New drilling and estimates for Hashimoto (BKM) deposits included some confidence downgrading. Nominal production has increased in 2010.
- (9) Mt Goldsworthy JV Area C - New drilling and estimates for D and E Deposits (MM), Packsaddle 3 and 6 (BKM).
- (10) Samarco JV – The increase in the Samarco reserve is due to a change to a wet tonnes reporting basis and revision in the mine plan, which has coalesced and deepened the open-pit reserve. The June 2010 Reserve Life is based on the Samarco nominal production capacity, which is supplemented by the contracted ore supply from Vale Fazendao mine until 2027.

## Manganese Customer Sector Group

### Ore Reserves

The table below details the total Ore Reserves for the Manganese Customer Sector Group estimated as at 30 June 2010 in 100 per cent terms (unless otherwise stated)

As at 30 June 2010

Commodity Deposit <sup>(1)(2)(3)</sup>	Ore Type	Proved Ore Reserve			Probable Ore Reserve			Total Ore Reserve			Reserve Life (years)	As at 30 June 2009 Total Ore Reserve				BHP Billiton Interest %
		Millions of dry metric tonnes	% Mn	% Yield	Millions of dry metric tonnes	% Mn	% Yield	Millions of dry metric tonnes	% Mn	% Yield		Millions of dry metric tonnes	% Mn	% Yield	Reserve Life (years)	
Manganese																
GEMCO <sup>(4)</sup>	ROM	66	46.8	50	43	46.4	48	109	46.7	49	13	114	46.7	49	14	60
		Millions of dry metric tonnes	% Mn	% Fe	Millions of dry metric tonnes	% Mn	% Fe	Millions of dry metric tonnes	% Mn	% Fe		Millions of dry metric tonnes	% Mn	% Fe		
Wessels <sup>(5)</sup>	Lower Body-HG	1.9	47.0	11.0	6.0	47.2	11.9	7.9	47.2	11.7	49	8.2	47.1	11.7	49	44.4
	Lower Body-LG	1.9	42.2	12.2	8.2	41.4	14.5	10	41.6	14.1		10	41.6	14.0		
	NTS-Lower Body-HG	1.0	48.8	11.2	5.9	48.5	11.4	6.9	48.5	11.4		6.9	48.5	11.4		
	NTS-Lower body-LG	0.1	44.5	12.5	0.9	42.8	16.6	1.0	42.9	16.3		1.0	42.9	16.3		
	Upper Body	—	—	—	47	42.1	17.3	47	42.1	17.3		47	42.1	17.3		
		Millions of dry metric tonnes	% Mn	% Fe	Millions of dry metric tonnes	% Mn	% Fe	Millions of dry metric tonnes	% Mn	% Fe		Millions of wet metric tonnes	% Mn	% Fe		
Mamatwan <sup>(5)(6)</sup>	M, C, N Zones	39	37.8	4.5	9.1	36.6	4.6	48	37.6	4.5	22	51	37.6	4.5	22	44.4
	X Zone	3.8	37.5	4.8	0.3	36.4	4.4	4.1	37.4	4.8		4.5	37.4	4.8		
	NTS-M,C,N Zones	8.2	37.8	4.5	14	37.6	4.5	22	37.7	4.5		22	37.7	4.5		
	NTS-X Zone	1.2	37.5	4.8	1.8	37.4	4.7	3.0	37.4	4.7		3.0	37.4	4.7		

<sup>(1)</sup> Approximate drill hole spacings used to classify the reserves are:

Deposit	Proved Ore Reserves	Probable Ore Reserves
GEMCO	60m x 120m and 60m x 60m	120m x 120m
Wessels	Defined as rim ±30m wide around mined-out areas, plus ±132m spaced surface drill holes, supplemented by some economically viable remnant blocks within mined-out areas, underground drilling and sampling	Underground chip sampling, limited underground drill holes and ±132m spaced surface drill holes
Mamatwan	80m x 80m	160m x 160m



- (2) Metallurgical recoveries for the operations are:

<u>Deposit</u>	<u>Metallurgical Recovery</u>
GEMCO	See yield in the Reserve table
Wessels	88% (76% lump product and 12% fines product)
Mamatwan	96%

- (3) ROM – run of mine, %Mn – per cent manganese, %Fe – per cent iron, HG – high grade, LG – low grade, NTS – Ntsimbintle, M, C, N, X Zones – individual stratigraphic manganese zones.
- (4) GEMCO – Tonnes are stated as ROM, manganese grades are given as per washed ore samples and should be read together with their respective tonnage yields.
- (5) Wessels and Mamatwan (Hotazel) – Our interest has been reduced as a result of a sequence of Broad Based Black Economic Empowerment agreements with Ntsimbintle Mining Pty Ltd, Iziko, NCAB and the HMM Educational Trust. BHP Billiton's share in Hotazel Manganese Mines Pty Ltd is now 44.4%. A Section 102 application has been lodged with the Dept of Mineral Resources to amend the Wessels Mining Rights area to include the Ntsimbintle Prospecting Right. The Section 102 application for Mamatwan is pending. The Wessels and Ntsimbintle reserves, as well as the Mamatwan and Ntsimbintle reserves, are at present declared separately and will be declared as one upon finalisation of the applications.
- (6) Mamatwan is now reported on a dry tonnes basis.

## Metallurgical Coal Customer Sector Group

### Coal Reserves

The table below details the total Coal Reserves for the Metallurgical Coal Customer Sector Group estimated as at 30 June 2010 in 100 per cent terms (unless otherwise stated).

### As at 30 June 2010

											As at 30 June 2009						
Commodity Deposit <sup>(1)(2)(3)</sup>	Mining Method	Coal Type	Proved Coal Reserve	Probable Coal Reserve	Total Coal Reserve	Total Marketable Coal Reserve				Reserve Life (years)	Total Marketable Coal Reserve					Reserve Life (years)	BHP Billiton Interest %
			Millions of metric tonnes	Millions of metric tonnes	Millions of metric tonnes	Millions of metric tonnes	% Ash	% VM	% S		Millions of metric tonnes	% Ash	% VM	% S			
Queensland Coal, Reserves at operating mines - CQCA JV																	
Goonyella Riverside <sup>(4)</sup>	OC	Met	327	191	518	387	9.8	23.0	0.50	32	391	8.9	23.0	0.50	32	50	
	UG	Met	38	114	152	130	6.9	23.9	0.51		110	6.6	23.6	0.50			
Peak Downs	OC	Met	412	620	1,032	581	9.1	21.0	0.60	65	577	9.3	20.9	0.60	66	50	
Saraji	OC	Met	364	157	521	308	10.2	18.1	0.63	39	315	10.2	18.1	0.63	38	50	
Norwich Park <sup>(4)</sup>	OC	Met	176	99	275	196	10.2	16.9	0.69	30	159	9.8	17.6	0.70	24	50	
Blackwater <sup>(5)</sup>	OC	Met/Th	106	397	503	448	9.9	24.8	0.40	33	460	9.8	24.8	0.40	34	50	
Gregory JV																	
Gregory Crinum	OC	Met	11	2.5	14	11	7.7	32.8	0.60	6	10	7.5	33.2	0.60	7	50	
	UG	Met	—	26	26	20	6.8	33.2	0.60		24	7.5	33.1	0.60			
BHP Mitsui																	
South Walker Creek <sup>(6)</sup>	OC	Met/Th	58	66	124	98	9.3	13.1	0.30	23	101	8.4	11.1	0.21	25	80	
Poitrel -Winchester	OC	Met/Th	32	34	66	47	8.9	23.8	0.40	17	51	8.6	23.7	0.40	17	80	
Illawarra Coal Reserves at operating mines																	
Appin <sup>(7)</sup>	UG	Met/Th	5.3	73	78	69	8.9	24.0	0.37	19	44	8.9	23.5	0.36	14	100	
West Cliff <sup>(8)</sup>	UG	Met/Th	11	3.3	14	10	8.9	21.3	0.36	4	13	8.9	21.5	0.37	5	100	
Dendrobium <sup>(9)</sup>	UG	Met/Th	3.0	55	58	40	9.7	24.0	0.59	13	33	9.7	23.6	0.59	13	100	

- (1) Only geophysically logged, fully analysed cored holes with greater than 95% recovery are used to classify the Reserves. Drill hole spacings vary between seams and geological domains and are determined in conjunction with geostatistical analyses where applicable. The range of maximum spacings are:

<b>Deposit</b>	<b>Proved Coal Reserves</b>	<b>Probable Coal Reserves</b>
Goonyella Riverside	500m to 1000m	1000m to 2000m
Peak Downs	440m to 1050m	870m to 2100m
Saraji	440m to 1040m	900m to 2100m
Norwich Park	650m to 1040m	1250m to 2800m
Blackwater	500m	1000m
Gregory Crinum	850m	850m to 1700m
South Walker Ck	500m to 800m	800m to 1500m
Poitrel / Winchester	300m to 950m	550m to 1850m
Appin, West Cliff, Dendrobium	700m	1000m

- (2) OC – open-cut, UG – underground, Met – metallurgical coal, Th – thermal coal, %VM – per cent volatile matter, %S – per cent sulphur.
- (3) Total Coal Reserve (tonnes) is the sum of Proved and Probable Coal Reserve estimates, which includes allowances for diluting materials, and for losses that occur when the coal is mined, and are at the moisture content when mined. Marketable Coal Reserve (tonnes) is the tonnage of coal available, at specified moisture and air-dried quality, for sale after the beneficiation of the Total Coal Reserve. Note that where the coal is not beneficiated, the Total Coal Reserve tonnes are the Marketable Coal Reserve tonnes, with moisture adjustment where applicable.
- (4) Goonyella Riverside was previously referred to as Goonyella Riverside Broadmeadow.
- (5) Norwich Park - The increase in Marketable Coal Reserve is due to an increase in the mine plan footprint.
- (6) Blackwater - The Total Marketable Coal Reserve includes 86Mt of thermal coal at an average 6,900 kilo-calories per kilogram (kcal/kg) calorific value.
- (7) South Walker Creek - The Total Marketable Coal Reserve consists of 86.1Mt Pulverised Coal Injection (PCI) product and 11.4Mt thermal coal with an average calorific value of 7700 kcal/kg.
- (8) Appin - The increase in Marketable Coal Reserves is a result of exploration and expansion of planned mining area into Appin Area 9.
- (9) West Cliff - 10Mt of Probable Coal Reserve has been re-classified to Proved as a result of mining approvals being granted for the next three panels.
- (10) Dendrobium - The increase in Marketable Coal Reserves is a result of revisions to the mine plan and additional drilling. The nominal mine production rate has increased in 2010.

## Energy Coal Customer Sector Group

### Coal Reserves

The table below detail the total Coal Reserves for the Energy Coal Customer Sector Group estimated as at 30 June 2010 in 100 per cent terms (unless otherwise stated).

As at 30 June 2010

													As at 30 June 2009									
Deposit (1)(2)(3)(4)(5)	Mining Method	Coal Type	Proved	Probable	Total								Reserve Life (years)								Reserve Life (years)	BHP Billiton Interest %
			Coal Reserve	Coal Reserve	Coal Reserve	Total Marketable Coal Reserve								Total Marketable Coal Reserve								
			Millions of metric tonnes	Millions of metric tonnes	Millions of metric tonnes	Millions of metric tonnes	% Ash	% VM	% S	kcal/ kg CV	%Total Moisture	Millions of metric tonnes		% Ash	% VM	% S	kcal/kg CV	%Total Moisture				
New Mexico - Operating mines																						
San Juan	UG	Th	55	7.0	62	62	19.1	—	0.74	5,600	10.0	10	68	19.1	—	0.70	5,600	9.9	11	100		
Navajo	OC	Th	152	10	162	162	23.0	—	0.90	4,800	13.0	21	172	23.1	—	0.90	4,700	13.0	22	100		
South Africa - Operating mines																						
Khutala <sup>(6)</sup>	OC	Met	14	—	14	12	17.2	31.1	1.57	5,600	7.0	22	13	18.0	30.5	1.57	6,300	8.0	22	100		
	OC	Th	141	9.0	150	150	38.3	19.4	0.99	4,400	7.0		102	36.3	20.1	1.03	4,400	8.0				
	UG	Th	93	—	93	93	34.2	20.5	0.86	4,500	7.0		139	35.5	21.0	0.80	4,600	8.0				
Douglas-Middelburg	OC	Th	477	130	607	436	20.2	22.9	0.59	6,000	7.4	24	431	21.3	23.4	0.61	6,000	7.1	22	100		
Klipspruit	OC	Th	75	10	84	70	21.6	22.5	0.58	5,700	7.6	11	75	20.1	24.0	0.59	6,000	8.8	12	100		
Australia - Operating mine																						
Mt Arthur Coal <sup>(7)</sup>	OC	Th	568	527	1,095	869	16.9	30.3	0.55	6,400	8.2	55	753	15.1	29.6	0.60	6,300	8.5	51	100		
Colombia - Operating mine																						
Cerrejon Coal Company <sup>(8)</sup>	OC	Th	630	51	681	655	9.4	32.9	0.59	6,200	12.0	21	720	7.8	33.0	0.60	6,200	12.0	23	33.33		

(1) Approximate drill hole spacings used to classify the reserves are:

Deposit	Proved Coal Reserves	Probable Coal Reserves
San Juan	<500m (250m radius from drill hole)	500m-1,000m (250m to 500m radius from drill hole)
Navajo	<500m (250m radius from drill hole)	500m-1,000m (250m to 500m radius from drill hole)
Khutala	>8 boreholes per 100ha	4-8 boreholes per 100ha
Douglas-Middelburg	>8 boreholes per 100ha	4-8 boreholes per 100ha
Klipspruit	>8 boreholes per 100ha	4-8 boreholes per 100ha
Mt Arthur Coal	<500m	500m - 1,000m
Cerrejon Coal Company	>6 boreholes per 100ha	2-6 boreholes per 100ha

- (2) OC – open-cut, UG – underground, Th – thermal coal, Met – metallurgical coal.
- (3) Total Coal Reserve (tonnes) is the sum of Proved and Probable Coal Reserve estimates, which includes allowances for diluting materials, and for losses that occur when the coal is mined, and are at the moisture content when mined. Marketable Coal Reserve (tonnes) is the tonnage of coal available, at specified moisture and air-dried quality, for sale after the beneficiation of the Total Coal Reserves. Note that where the coal is not beneficiated, the Total Coal Reserve tonnes are the Marketable Coal Reserve tonnes, with moisture adjustment where applicable.
- (4) %VM – per cent volatile matter, % S – per cent sulphur, kcal/kg CV – kilo-calories per kilogram calorific value.
- (5) Marketable Coal Reserves moisture content is on an as received basis.
- (6) Khutala – The increase in OC reserves of thermal coal is due to a re-evaluation of the mine plan. Some blocks previously scheduled as underground are now going to be mined by open-cut methods.
- (7) Mt Arthur Coal – Marketable Coal Reserves have increased due to changes in the product specification, an increase in the wash plant yield and partial plant bypass strategy.
- (8) Cerrejon Coal Company – The reduction in the Marketable Coal Reserves is due to review and updating of the geological confidence, modifications to pit design, changes to wash plant yield and production depletion.

### 3 Operating and financial review and prospects

#### 3.1 Introduction

This 'Operating and financial review and prospects' section is intended to convey management's perspective of the BHP Billiton Group and its operational and financial performance as measured and prepared in accordance with IFRS as issued by the International Accounting Standards Board ('IFRS'). We intend this disclosure to assist readers to understand and interpret the financial statements included in this Report. This section should be read in conjunction with the financial statements, together with the accompanying notes.

We are the world's largest diversified natural resources company, with a combined market capitalisation of approximately US\$165.6 billion as at 30 June 2010. We generated revenue of US\$52.8 billion and profit attributable to shareholders of US\$12.7 billion for FY2010.

We extract and process minerals, oil and gas from our production operations located primarily in Australia, the Americas and southern Africa. We sell our products globally with sales and marketing taking place principally through our hubs in The Hague and Singapore.

The following table shows the revenue by location of our customers:

US\$M	Revenue by location of customer		
	2010	2009	2008
Australia	4,515	4,621	5,841
United Kingdom	1,289	3,042	3,091
Rest of Europe	8,554	7,764	11,258
China	13,236	9,873	11,670
Japan	5,336	7,138	6,885
Other Asia	9,840	9,280	10,111
North America	5,547	4,020	4,771
South America	2,013	1,652	2,640
Southern Africa	1,227	1,374	2,003
Rest of world	1,241	1,447	1,203
<b>BHP Billiton Group</b>	<b>52,798</b>	<b>50,211</b>	<b>59,473</b>

We operate nine Customer Sector Groups (CSGs) aligned with the commodities we extract and market, reflecting the structure we use to assess the performance of the Group:

<u>Customer Sector Group</u>	<u>Principal activities</u>
Petroleum	Exploration, development and production of oil and gas
Aluminium	Mining of bauxite, refining of bauxite into alumina and smelting of alumina into aluminium metal
Base Metals	Mining of copper, silver, lead, zinc, molybdenum, uranium and gold
Diamonds and Specialty Products	Mining of diamonds and titanium minerals; potash development
Stainless Steel Materials	Mining and production of nickel products
Iron Ore	Mining of iron ore
Manganese	Mining of manganese ore and production of manganese metal and alloys
Metallurgical Coal	Mining of metallurgical coal
Energy Coal	Mining of thermal (energy) coal

The work of our nine CSGs is supported by our Minerals Exploration and Marketing teams and Group-wide functions.

A detailed discussion on our CSGs is located in section 2.2 of this Report. A detailed discussion of Marketing and Minerals Exploration is located in sections 2.4 and 2.5 respectively of this Report.

### **3.2 Our strategy**

Our objective as a corporation is to create long-term value for shareholders through the discovery, development and conversion of natural resources, and the provision of innovative customer and market-focused solutions.

To achieve this, we aim to own and operate a portfolio of upstream, large, long-life, low-cost, expandable, export-oriented assets across a diversified geographic and commodity base, and pursue growth opportunities consistent with our core skills by:

- discovering resources through our exploration activities;
- developing and converting them in our CSGs;
- developing customer and market-focused solutions through our Marketing arm;

- adding shareholder value beyond the capacity of these groups through the activities of the Group Functions.

In pursuing our objective, we are guided by our commitment to safety, simplicity and accountability.

Our overriding commitment is to safety: ensuring the safety of our people, respecting our environment and the communities in which we work. This commitment transcends everything we do and guides every aspect of our work.

Our commitment to simplicity and accountability allows us to focus on the most important drivers of value while empowering our people to operate within their authority and make a difference.

Our objective and commitments are pursued through our six strategic drivers:

- *People* – the foundation of our business is our people. We require people to find resources, develop those resources, operate the businesses that produce our products, and then deliver those products to our customers. Talented and motivated people are our most precious resource.
- *Licence to operate* – we aim to ensure that the communities in which we operate value our citizenship. Licence to operate means win-win relationships and partnerships. This includes a central focus on health, safety, environment and the community, and making a positive difference to our host communities.
- *World-class assets* – our world-class assets provide the cash flows that are required to build new projects, to contribute to the economies of the countries in which we operate, to meet our obligations to our employees, suppliers and partners, and ultimately to pay dividends to our shareholders. We maintain high-quality assets by managing them in the most effective and efficient way.
- *Financial strength and discipline* – we have a solid ‘A’ credit rating, which balances financial flexibility with the cost of finance. Our capital management program has three priorities:
  - To return excess capital to shareholders.
  - To reinvest in our extensive pipeline of world-class projects that carry attractive rates of return regardless of the economic climate.
  - To ensure a solid balance sheet.
- *Project pipeline* – we are focused on delivering an enhanced resource endowment to underpin future generations of growth. We have an abundance of tier one resources in stable countries that provide us with a unique set of options to deliver brownfield growth.
- *Growth options* – we use exploration, technology and our global footprint to look beyond our current pipeline to secure a foundation of growth for future generations. We pursue growth options in several ways - covering the range from extending existing operations to new projects in emerging regions, through exploration, technology and, on occasion, merger and acquisition activity.

### 3.3 Key measures

Our management and Board monitor a range of financial and operational performance indicators, reported on a monthly basis, to measure performance over time.

#### *Overall financial success*

We use several financial measures to monitor the financial success of our overall strategy.

	2010	2009	2008
Profit attributable to members	12,722	5,877	15,390
Profit from operations	20,031	12,160	24,145
Underlying EBIT <sup>(1)</sup>	19,719	18,214	24,282
Net operating cash flow (US\$M)	17,920	18,863	17,817
Gearing <sup>(2)</sup>	6.3%	12.1%	17.8%
Basic earnings per share (US cents)	228.6	105.6	275.3

- <sup>(1)</sup> Underlying EBIT is profit from operations, excluding the effect of exceptional items. See section 3.6.1 for more information about this measure, including a reconciliation to profit from operations.
- <sup>(2)</sup> See section 10 for glossary definitions.

The two key measures are profit attributable to members of the BHP Billiton Group and Underlying EBIT. Underlying EBIT is the internally defined key financial measure used by management for monitoring the performance of our operations. We explain the calculations and why we use this measure in section 3.6.1.

The following are other measures that assist us to monitor our overall performance.

### ***People and licence to operate***

These foundational strategic drivers bring together health, safety, environment and community (HSEC) related measures. These measures are a subset of the HSEC Targets Scorecard, which can be found in each corresponding section of our Sustainability Report at [www.bhpbilliton.com](http://www.bhpbilliton.com).

We monitor a comprehensive set of health, safety, environment and community contribution indicators. Two key measures are the Total Recordable Injury Frequency (TRIF) and community investment.

	2010	2009	2008
<b>People and licence to operate – health, safety, environment and community</b>			
Total Recordable Injury Frequency (TRIF) <sup>(1)</sup>	5.3	5.6	5.9
Community investment (US\$M) <sup>(1)</sup>	200.5	197.8	141.0

- <sup>(1)</sup> See section 10 for glossary definitions.

### ***Safety***

Despite strong performance improvement across the organisation, sadly we experienced the loss of five colleagues at our operations during the year.

We made an incremental improvement in Total Recordable Injury Frequency (which comprises fatalities, lost-time cases, restricted work cases and medical treatment cases per million hours worked) from 5.6 to 5.3 per million hours worked. This is over halfway towards our target of a 50 per cent reduction on 2007 TRIF performance of 7.4 by 2012.

### ***Health***

We are progressing well with our health performance objectives. We had 164 new cases of occupational disease reported in FY2010, 52 fewer new cases compared with the FY2007 base year. The overall reduction in occupational disease since FY2007 is 27 per cent, which is on track to meet our target of a 30 per cent reduction in incidences in occupational disease among our employees by June 2012.

It is mandatory for our employees who may be potentially exposed to airborne substances or noise in excess of our occupational exposure limits (OELs) to wear personal protective equipment. Compared with the FY2007 base year there was a 3.9 per cent reduction in the proportion of employees potentially exposed in excess of OELs in FY2010, which is behind schedule to meet our target of a 15 per cent reduction in potential employee exposures over our occupational exposure limits.

### ***Environment***

In FY2010, we reduced absolute greenhouse gas emissions by more than three million tonnes compared with FY2009.

We have five-year targets of a six per cent reduction in our greenhouse gas emissions intensity index and a 13 per cent reduction in our carbon-based energy intensity index, both by 30 June 2012. Our greenhouse intensity index is currently tracking at seven per cent below our FY2006 base year. Our carbon-based energy intensity index is currently tracking at six per cent below our FY2006 base year.



### 3. Operating and financial review and prospects *continued*

We have a five-year target of a 10 per cent improvement in our land rehabilitation index by 2012. This index is based on a ratio of land rehabilitated compared with our land footprint. In FY2010, the index improved by one per cent due to the development of new green and brownfield projects and the divestment of a number of operations, including Optimum Colliery in 2008, which had large areas of land under rehabilitation.

We have a five-year target of a 10 per cent improvement in the ratio of water recycled to high-quality water consumed by 30 June 2012. This water use index has improved seven per cent on our FY2007 base year.

We define a significant environmental incident as one with a severity rating of four or above based on our internal severity rating scale (tiered from one to five by increasing severity). One significant incident occurred during FY2010 at our Pinto Valley Operations (US) involving a tailings release. The majority of the eroded tailings and cover material were recovered. Metal concentrations in surface water and sediments appear to be well below levels that could present a hazard.

#### *Community*

We continue to invest one per cent of our pre-tax profits in community programs, based on the average of the previous three years' pre-tax profit publicly reported in each of those years. During FY2010, our voluntary investment totalled US\$200.5 million comprising cash, in-kind support and administrative costs and includes a US\$80 million contribution to BHP Billiton Sustainable Communities.

Despite the global financial crisis, our direct expenditure on community programs during the year was similar to our expenditure in FY2009.

#### *World-class assets*

Actual production volumes for our most significant commodities for this year and the previous two years are shown below. Further details appear in section 2.3 of this Report.

	30 June 2010	30 June 2009	30 June 2008
<b>World-class assets</b>			
<b>Production</b>			
Total Petroleum Production (millions of barrels of oil equivalent)	158.56	137.97	130.07
Alumina ('000 tonnes)	3,841	4,396	4,554
Aluminium ('000 tonnes)	1,241	1,233	1,298
Copper ('000 tonnes)	1,075.2	1,207.1	1,375.5
Nickel ('000 tonnes)	176.2	173.1	167.9
Iron ore ('000 tonnes)	124,962	114,415	112,260
Metallurgical coal ('000 tonnes)	37,381	36,416	35,193
Manganese alloys ('000 tonnes)	583	513	775
Manganese ores ('000 tonnes)	6,124	4,475	6,575
Energy coal ('000 tonnes)	66,131	66,401	80,868

#### *Financial strength and discipline*

Financial strength is measured by attributable profit and Underlying EBIT as overall measures, along with liquidity and capital management. Our solid 'A' credit rating and gearing and net debt are discussed in section 3.7.3 of this Report. The final dividend declared for FY2010 maintains our progressive dividend policy.

### 3. Operating and financial review and prospects *continued*

#### *Project pipeline and growth options*

Our project pipeline focuses on high-margin commodities that are expected to create significant future value. The details of our project pipeline are located in section 3.7.2 of this Report, with a summary presented below.

	30 June 2010	30 June 2009	30 June 2008
<b>Project pipeline and growth options (major projects)</b>			
Number of projects approved during the year	2	4	7
Number of projects currently under development (approved in prior years)	8	8	6
Number of completed projects	5	7	10
Budgeted capital expenditure for projects (approved in the year) (US\$M)	695	5,850	5,175
Budgeted capital expenditure for projects under development (approved in prior years) (US\$M)	10,075	8,115	6,265
Capital expenditure of completed projects (US\$M)	4,738	4,061	7,549

#### 3.4 External factors and trends affecting our results

The following section describes some of the external factors and trends that have had a material impact on our financial condition and results of operations. We operate our business in a dynamic and changing environment, and with information that is rarely complete and exact. We primarily manage the risks discussed in this section under our portfolio management approach, which relies on the effects of diversification, rather than individual price risk management programs. Details of our financial risk management strategies and financial instruments outstanding at 30 June 2010 may be found in note 28 'Financial risk management' in the financial statements.

Management monitors particular trends arising in the external factors with a view to managing the potential impact on our future financial condition and results of operations. The following external factors could have a material adverse effect on our business and areas where we make decisions on the basis of information that is incomplete or uncertain.

##### *3.4.1 Commodity prices*

Prices for most commodities in our portfolio increased substantially during FY2010, ranging from 41 to 149 per cent for steel making commodities, eight to 60 per cent for energy commodities and 19 to 28 per cent for metal commodities. Price recovery began slowly, as markets warmed to the theme of a broad global economic recovery following the global economic downturn, which impacted FY2009. Developed market demand growth was significantly slower than the more robust demand recovery seen in emerging markets, specifically China and India.

Our commodities continued to trade in a volatile, but upward trending range, with peaks in prices for most commodities in April 2010. In late April, the rating agencies downgraded credit ratings for several European countries on concerns over their ability to repay sovereign debt. This marked the peak in commodity prices, and triggered a turn in market sentiment as investors pursued more risk-averse assets on fears of debt contagion. In April, the Chinese Government also introduced tighter credit and liquidity measures in an attempt to slow down the high levels of growth in some commodity intensive sectors, including residential property. These macroeconomic factors resulted in a re-tracement of prices over the remainder of FY2010.

### 3. Operating and financial review and prospects *continued*

The following table shows prices of our most significant commodities for the years ended 30 June 2010, 2009 and 2008. These prices represent the average quoted price except where otherwise indicated.

Commodity	2010	2009	2008
Crude oil (WTI) (US\$/bbl)	<b>75.14</b>	70.29	96.93
Aluminium (LME cash) <sup>(1)</sup> (US\$/t)	<b>2,018</b>	1,862	2,668
Alumina <sup>(2)</sup> (US\$/t)	<b>314</b>	255	391
Copper (LME) <sup>(1)</sup> (cash) (US\$/lb)	<b>3.04</b>	2.23	3.53
Nickel (LME) <sup>(1)</sup> (US\$/lb)	<b>8.81</b>	6.03	12.90
Iron ore <sup>(3)(4)</sup> (US\$/dmt)	<b>118.61</b>	89.83	141.76
Energy coal (API4) (US\$/t)	<b>75.93</b>	95.16	94.60
Metallurgical coal <sup>(5)</sup> (US\$/t)	<b>146.75</b>	257.25	148.50
Manganese alloys <sup>(6)</sup> (US\$/t)	<b>1,328</b>	1,854	2,208
Manganese ores <sup>(7)</sup> (US\$/dmtu)	<b>6.46</b>	9.43	11.20
Gas (US\$/MMBtu) <sup>(8)</sup>	<b>4.21</b>	5.96	8.24

(1) Refer to section 10, 'Glossary' for definitions.

(2) CRU spot Australia.

(3) 2010 Platts 62 per cent Fe CIF China.

(4) 2008 and 2009: SBB 63.5 per cent Fe CIF China.

(5) Tex Reports Hard coking coal FOB Australia.

(6) Bulk FerroAlloy HCFeMn US ex-warehouse.

(7) CRU China spot import (M+1) 45per cent contained.

(8) Platts Gas daily based on Henry Hub.

The following summarises the trends of our most significant commodities for FY2010.

**Crude oil:** Prices improved over FY2010 with the New York Mercantile Exchange West Texas Intermediate (NYMEX WTI) crude oil price increasing from US\$69.82/bbl at the start of FY2010, to US\$75.59/bbl at year-end. The annual average NYMEX WTI price in FY2010 was US\$75.14/bbl, compared with the FY2009 average of US\$70.29/bbl. Oil prices fluctuated from lows of US\$59.62/bbl in mid-July 2009 to highs of US\$86.54/bbl in early April 2010. The correction post April 2010 was driven by market concerns over European sovereign debt issues and mixed sentiment about the longevity of the sustainable global economic recovery. Despite the market price volatility, the average oil price was US\$6.24/bbl higher in the second half of FY2010 compared with the first half of FY2010.

**Aluminium:** LME prices increased from US\$1,616/t at the start of FY2010 to US\$1,924/t at year-end. The average spot cash aluminium price in FY2010 was US\$2,018/t, eight per cent above the average for FY2009. The spot LME low in FY2010 was US\$1,532/t in July 2009, and the high was US\$2,448/t in mid-April 2010, which was reached on the back of stronger market demand. These higher prices encouraged production re-starts, with the International Aluminium Institute (IAI) reporting a global aluminium production increase of seven per cent year-on-year, mostly led by Chinese producers. Aluminium prices declined over May and June 2010 as global economic concerns resurfaced. Regional physical premiums maintained high levels, principally due to ongoing tightness in spot physical markets with more than 70 per cent of total exchange stocks tied up in financing deals. During January 2010, LME stocks peaked at 4.6 million tonnes before dropping back to 4.4 million tonnes at the end of FY2010.

**Alumina:** At the start of FY2010, spot prices were trading between US\$245 and US\$255/t FOB Australia and had increased to around US\$320/t at the end of FY2010. The average FY2010 alumina price was US\$314/t, 23 per cent above the average FY2009 price. Strong Chinese alumina imports were driven by the reactivation of idled and newly commissioned Chinese smelting capacity, ensuring prices increased steadily throughout the year. Global alumina production increased three per cent year-on-year. April was the high point for spot prices, with prompt material changing hands for US\$350/t FOB. At the year-end, the increased domestic volumes in China reduced the need for additional imports from Australia, putting some downward pressure on prices.

### 3. Operating and financial review and prospects *continued*

*Copper:* LME prices increased 28 per cent from US\$2.32/lb at the start of FY2010, to US\$2.96/lb at year-end. The FY2010 average LME copper price was US\$3.04/lb, 36 per cent above the FY2009 average price. The trading range through the year was volatile with a low of US\$2.18/lb in July 2009 and rising to a monthly peak of US\$3.51/lb in April 2010. Prices in the first half of FY2010 were driven by positive sentiment from stronger Chinese demand and restricted supply-side delivery, underpinning strong fundamentals for copper cathode. Demand improved slowly ex-China through to April 2010, with longer order lead times and generally stronger premiums. June average copper prices were US\$2.95/lb, reflecting a level of solid support given increasing physical demand from Asian economies and material supply tightness. The spot copper concentrate market remained tight during FY2010 driven by lower than expected output from existing and recently commissioned mines, and strong Chinese import demand.

*Nickel:* Prices increased 21 per cent in FY2010, finishing the year at US\$8.81/lb. The daily price low was US\$6.51/lb in July 2009, and the peak was US\$12.52/lb in mid-April 2010. The average nickel price in FY2010 was US\$8.81/lb, 46 per cent above the average FY2009 price. FY2010 started off positively for nickel on the back of improved underlying demand and worldwide stainless steel re-stocking. Chinese nickel imports were particularly strong in the first quarter of FY2010. In the second quarter of FY2010, most major mills reduced production, signalling the conclusion of the re-stocking phase. In the second half of FY2010, the stainless steel and nickel markets rallied on strong end-user demand, renewed re-stock requirements and tight scrap availability. The mill utilisation rate in western countries increased to high levels whilst Chinese stainless capacity and production continued to expand. On the supply side, strong nickel pig iron production was partly offset by the continuation of the Vale Sudbury strike action, together with a number of other unplanned production disruptions. LME stocks increased to a historic high of 166 kilotonnes in February 2010 before declining to 124 kilotonnes by the end of FY2010.

*Iron ore:* The Platts Iron Ore Index increased from US\$79/dmt at the start of FY2010, to US\$134/dmt at the year-end. The average spot price, based on the Platts Index in FY2010 was US\$118.6/dmt, 32 per cent above the average price for FY2009. Global iron ore demand reached record levels by February 2010, driven primarily by the overall steel and iron ore re-stocking cycles in developed economies, and continuing strong growth in China. During the same period, traditional supply sources struggled to ramp-up production to meet demand, with marginal high cost supply from India and China, required to balance the market. Platts Index prices peaked at US\$186/dmt in mid-April 2010, reflecting this strong demand and supply-side constraints. Prices then fell back to US\$134/dmt at 30 June 2010. Annual benchmark pricing of iron ore ceased from April 2010, with the majority of global sales from major producers moving to quarterly, or shorter-term, pricing.

*Energy coal:* Amsterdam Rotterdam Antwerp quoted prices for delivery in Europe (API2) increased from lows of US\$63.48/t at the start of FY2010 due to the low coal burn and high port stockpiles in Europe, rising to US\$94.47/t at the year-end. This price appreciation was driven by a steady recovery in global industrial production as developed economy demand slowly improved, plus strong Asian demand. Richards Bay coal terminal FOB (API4) prices increased 60 per cent during FY2010, supported by strong demand from India and China. Newcastle FOB (API3) prices gained 42 per cent during FY2010, with a peak of US\$109/t in April 2010, driven by weather-induced supply restrictions. Whilst prices did soften from peaks in April 2010, they remained at relatively strong levels through to 30 June 2010 on the back of high metallurgical coal prices, incentivising producers to switch high-grade energy coal into metallurgical coal markets.

*Metallurgical coal:* The market moved from annual benchmark to quarterly reference pricing from 1 April 2010. The premium for Hard Coking Coal (HCC), increased to US\$200/t for the quarter ending in June 2010 compared with a Japanese financial year ending 31 March 2010 benchmark of US\$129/t. Several new independent coking coal indexes were first published in March 2010, reflecting the transition of this industry to shorter-term pricing mechanisms. The higher prices were driven by growth in global steel production in traditional coking coal importing countries during the first half of FY2010, as well as continued strong import demand from China, which has traditionally been self-sufficient. Spot prices remained ahead of quarterly reference pricing throughout the fourth quarter of FY2010 as coal producers were unable to meet stronger demand requirements, incentivising US marginal cost producers to swing more tonnage to Asia.

*Manganese alloy and ore:* Manganese alloy prices correlated well with the global economic recovery over the course of the year, increasing by 41 per cent for silico-manganese (SiMn) alloy in Europe and 84 per cent for SiMn alloy in the US over FY2009 prices. July 2009 coincided with a renewed level of confidence in the recovery and an end to de-stocking. Prices increased through November 2009 when demand diminished as consumers looked to minimise their year-end inventories. January 2010 saw increased demand as re-stocking resumed and prices generally increased and peaked in May 2010. FY2010 ended with a slight downturn in prices as buyer confidence waned in advance of the seasonally weaker northern summer. Manganese ore markets registered strong performance in FY2010 driven by growing steel and alloy production. Prices for manganese ore delivered to China recorded a marked increase from US\$3.50/dmtu at the start of FY2010 to US\$8.70/dmtu at the year-end.

### 3. Operating and financial review and prospects *continued*

*Gas:* US gas markets recovered during FY2010 with Henry Hub prices rising from monthly average lows of US\$2.90/MMBtu in September 2009 to peak at US\$5.83/MMBtu in January 2010. The FY2010 starting price was US\$3.885/MMBtu and the closing price on 30 June 2010 was US\$4.680/MMBtu. Despite this positive price trajectory over the year, the average FY2010 Henry Hub price was still 29 per cent below the average price in FY2009 due to the high gas prices observed before the global economic slowdown. National Balancing Point for UK Natural Gas (NBP) prices recovered from a six-month low of US\$3.18/MMBtu in September 2009 to rise to a peak of US\$6.30/MMBtu in June 2010, supported by higher gas demand from the industrial sector coupled with unplanned supply outages. NBP prices increased 58 per cent year-on-year. Asian LNG demand rose over the second half of FY2010, mainly due to colder than normal temperatures and faster than expected economic recovery in Korea and Taiwan.

The following table indicates the estimated impact on FY2010 profit after taxation of changes in the prices of our most significant commodities. With the exception of price-linked costs, the sensitivities below assume that all other variables, such as exchange rate, costs, volumes and taxation, remain constant. There is an inter-relationship between changes in commodity prices and changes in currencies that is not reflected in the sensitivities below. Volumes are based on FY2010 actual results and sales prices of our commodities under a mix of short-, medium- and long-term contracts. Movements in commodity prices can cause movements in exchange rates and vice versa. These sensitivities should therefore be used with care.

Estimated impact on FY2010 profit after taxation of changes of:	US\$M
US\$1/bbl on oil price	46
US¢1/lb on aluminium price	22
US¢1/lb on copper price	16
US¢1/lb on nickel price	1
US\$1/t on iron ore price	77
US\$1/t on energy coal price	21
US\$1/t on metallurgical coal price	25
US\$1/t on manganese alloy price	0.4
US\$1/dmtu on manganese ore price	137

The impact of the commodity price movements in FY2010 is discussed in section 3.6 'Operating results'.

#### 3.4.2 Freight markets

There was a two-paced freight market in FY2010. The Capesize market showed substantially more volatility than the more stable markets of the smaller vessels. Capesize charter prices fell 70 per cent during the year, whilst the Panamax market was neutral. Year-on-year the Supramax market reported a gain. For the Capesize market, the year started with rates of US\$80,000/day and peaked at US\$88,560/day in November 2009 on record congestion and increased iron ore volumes to China. However, Capesize freight rates then proceeded to decline again from January 2010. Iron ore volumes ex-Brazil to China fell substantially in the second half of FY2010 when compared with the first half of FY2010, and the impact of accelerating new building deliveries took their toll – pushing the market into over supply and Capesize rates to a low of US\$24,000/day at 30 June 2010. Capesize rates fell to such an extent that for a time the daily hire for a Capesize vessel cost less than a Supramax (one third the size). In comparison, both the Panamax and Supramax markets have been firm throughout FY2010. These markets have been supported by fewer new building deliveries combined with a record grain season in both the US and South America, in addition to energy coal, metallurgical coal and iron ore cargoes from India, which all use smaller vessels.

The bulk freight market is typically categorised by the size of the vessel. Capesize vessels have a deadweight capacity of between 150kdwt and 200kdwt compared with Panamax and Supramax vessels which are 60 to 100kdwt and 50 to 60kdwt respectively.

#### 3.4.3 Exchange rates

We are exposed to exchange rate transaction risk on foreign currency sales and purchases as we believe that active currency hedging does not provide long-term benefits to our shareholders. Because a majority of our sales are denominated in US dollars, and the US dollar plays a dominant role in our business, we borrow and hold surplus cash predominantly in US dollars to provide a natural hedge. Operating costs and costs of local equipment are influenced by fluctuations in the Australian dollar, South African rand, Chilean peso and Brazilian real. Foreign exchange gains and losses reflected in operating costs owing to fluctuations in the abovementioned currencies relative to the US dollar may potentially offset one another. The Australian dollar, Brazilian real and South African rand strengthened against the US dollar during FY2010, while the Chilean peso weakened.

### **3. Operating and financial review and prospects *continued***

We are also exposed to exchange rate translation risk in relation to net monetary liabilities, being our foreign currency denominated monetary assets and liabilities, including debt and other long-term liabilities (other than closure and rehabilitation provisions at operating sites where foreign currency gains and losses are capitalised in property, plant and equipment).

Details of our exposure to foreign currency fluctuations are contained within note 28 'Financial risk management' to the financial statements.

#### **3.4.4 *Interest rates***

We are exposed to interest rate risk on our outstanding borrowings and investments. Our policy on interest rate exposure is for interest on our borrowings to be on a US dollar floating interest rate basis. Deviation from our policy requires the prior approval of our Financial Risk Management Committee, and is managed within our Cash Flow at Risk (CFaR) limit, which is described in note 28 'Financial risk management' in the financial statements. When required under this strategy, we use interest rate swaps, including cross currency interest rate swaps, to convert a fixed rate exposure to a floating rate exposure. As at 30 June 2010, we had US\$2.6 billion of fixed interest borrowings that had not been swapped to floating rates, arising principally from debt raised during FY2009 that has not been swapped to floating rates and legacy positions that were in existence prior to the merger that created the DLC structure. Our strategy has not changed and the remainder of the fixed interest rate debt raised during FY2009 has been swapped to floating rates since 30 June 2010.

#### **3.4.5 *Changes in product demand***

We remain cautious on the short-term outlook for the global economy. After a period of rapid recovery in the developing world, economies such as Brazil and India have returned to full output and the focus has now shifted away from supporting growth, towards controlling inflation. In China, the government has implemented meaningful measures aimed at controlling rapid economic expansion and asset inflation. Fiscal policy has been adjusted with renewed focus on the economy's inevitable transition away from a dependence on investment, towards more balanced, consumption led growth. With this recent policy tightening, property sales volumes and prices have started to decline in tier one cities over the last quarter. While we see these measures as the normal continuation of China's economic management, we do expect Chinese Gross Domestic Product (GDP) growth to slow towards the more sustainable level of circa eight per cent in the first half of FY2011.

Uncertainty continues to surround the developed world as governments adjust fiscal policies following a period of significant stimulus and subsequent increase in sovereign debt levels. Significant public spending cuts and higher taxes have been announced in Europe; however, they are yet to be fully implemented, implying the inevitable negative impact on growth from fiscal consolidation remains ahead. Industrial output, a core measure of economic activity, remains well below previous peaks despite the positive impact attributable to re-stocking that now appears largely complete. In the absence of any additional inventory adjustment, improvement in end demand is essential to drive overall economic growth. Some positive signs have emerged, with strong private investment in equipment and software seen in some parts of the US economy, although ongoing de-leveraging and weak confidence are hampering efforts to revive demand.

Despite our short-term caution, we remain positive on the longer-term prospects for the global economy, driven by the continuing urbanisation and industrialisation of emerging economies. This path, however, will not be without volatility, reflecting normal business cycles.

#### **3.4.6 *Operating costs and capital expenditure***

During FY2010, raw materials and logistics costs reduced significantly, with the lagged impact of falling inputs providing non-structural reductions to the cost base. However, a number of non-recurring costs have had an opposing impact in the period. Our relentless focus on our cost base continues to be a high priority, with a drive to achieve further cost efficiencies in controllable cash costs.

Our commitment to long-term growth and shareholder value remains unchanged, and we continued to invest strongly in capital expenditure and growth projects. Details of our growth projects can be found in section 3.7.2.

### **3. Operating and financial review and prospects *continued***

#### **3.4.7 Exploration and development of resources**

Because most of our revenues and profits are related to our oil and gas and minerals operations, our results and financial condition are directly related to the success of our exploration efforts and our ability to replace existing reserves. However, there are no guarantees that our exploration program will be successful. When we identify an economic deposit, there are often significant challenges and hurdles entailed in its development, such as negotiating rights to extract ore with governments and landowners, design and construction of required infrastructure, utilisation of new technologies in processing and building customer support.

#### **3.4.8 Health, safety, environment and community**

As the world's largest diversified natural resources company, our operations touch every corner of the globe. We embrace our responsibility to work towards making a contribution to the long-term sustainability of the communities in which we operate. We remain committed to ensuring the safety of our people and respecting the environment and communities where we work.

We are subject to extensive regulation surrounding the health and safety of our people and the environment. We make every effort to comply with the regulations and, where less stringent than our standards, exceed applicable legal and other requirements. However, regulatory standards and community expectations are constantly evolving, and as a result, we may be exposed to increased litigation, compliance costs and unforeseen environmental rehabilitation expenses, despite our best efforts to work with governments, community groups and scientists to keep pace with regulations, law and public expectations.

#### **3.4.9 Insurance**

During FY2010, we maintained an insurance program with policies encompassing property damage, business interruption, public and certain other liabilities and directors and officers' exposures. The program includes a combination of self-insurance via subsidiary captive insurance companies, industry mutuals and external market re-insurance. Mandates are established as to risk retention levels, policy cover and, where applicable, re-insurance counter parties. As part of our portfolio risk management policy, we regularly conduct an assessment of maximum foreseeable loss potential, cash flow at risk, loss experience, claims received and insurance premiums paid and will make adjustments to the balance of self-insurance and reinsurance as required.

The Group continues to be largely self-insured for losses arising from property damage and business interruption, sabotage and terrorism, marine cargo and construction. For these risks we internally insure our operations (for wholly owned assets and for our share of joint venture assets) via our captive insurance companies. Any losses incurred will consequently impact the financial statements as they arise.

### **3.5 Application of critical accounting policies**

The preparation of our consolidated financial statements requires management to make estimates and judgements that affect the reported amounts of assets and liabilities, the disclosure of contingent liabilities at the date of the financial statements and the reported revenue and costs during the periods presented therein. On an ongoing basis, management evaluates its estimates and judgements in relation to assets, liabilities, contingent liabilities, revenue and costs. Management bases its estimates and judgements on historical experience and on various other factors it believes to be reasonable under the circumstances, the results of which form the basis of making judgements about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions and conditions.

We have identified the following critical accounting policies under which significant judgements, estimates and assumptions are made and where actual results may differ from these estimates under different assumptions and conditions and may materially affect financial results or the financial position reported in future periods:

- reserve estimates;
- exploration and evaluation expenditure;
- development expenditure;
- property, plant and equipment – recoverable amount;
- defined benefit pension schemes;

### 3. Operating and financial review and prospects *continued*

- provision for closure and rehabilitation;
- taxation.

In accordance with IFRS, we are required to include information regarding the nature of the estimates and judgements and potential impacts on our financial results or financial position in the financial statements. This information can be found in note 1 'Accounting policies' in the financial statements.

#### 3.6 Operating results

##### 3.6.1 Consolidated results

*Year ended 30 June 2010 compared with year ended 30 June 2009*

We delivered another strong set of results in FY2010 despite significant volatility in the macroeconomic environment with growth in Underlying EBIT of eight per cent. Record sales volumes were achieved in three of our major commodities as our focus on efficiency and productivity at all points in the cycle ensured we were well positioned to capitalise on the recovery in demand and prices. Local currency costs were well controlled across the Group; however, the weaker US dollar had a negative exchange rate impact of US\$2,150 million.

The combination of these factors underpinned strong margins and returns. For the sixth consecutive year, we recorded an Underlying EBIT margin of around 40 per cent, while Underlying return on capital was 26 per cent. Excluding capital investment associated with projects not yet in production, Underlying return on capital was 30 per cent.

Operating cash flow for the year remained strong at US\$17,920 million and resulted in net debt declining further to US\$3,308 million, with net gearing falling to six per cent. These results continue to demonstrate the strength of our uniquely diversified business model and world-class, low-cost asset portfolio.

We invested heavily in our business and successfully delivered another five growth projects including those in petroleum and iron ore. We approved two major growth projects (with a combined budget of US\$695 million) and made pre-commitments totalling US\$2,237 million (our share) to accelerate early works for another four. To underline the depth of our project pipeline, we have 20 projects in various stages of execution and definition with an estimated budget in excess of US\$25 billion.

In the Pilbara (Australia), we continued to progress the proposed iron ore production joint venture with Rio Tinto, with a key focus on gaining regulatory approval. We also bolstered our upstream resource base with the acquisition of Athabasca Potash Inc. (Canada) and United Minerals Corporation NL (Australia, Iron Ore). On 20 August 2010, we launched an all-cash offer to acquire all of the issued and outstanding common shares of Potash Corporation of Saskatchewan Inc. (PotashCorp) at a price of US\$130 in cash per PotashCorp common share.

Our profit attributable to members of BHP Billiton of US\$12.7 billion represents an increase of 116.5 per cent from the corresponding period. Attributable profit excluding exceptional items of US\$12.5 billion represents an increase of 16.3 per cent from the corresponding period.

Revenue was US\$52.8 billion, an increase of 5.2 per cent from US\$50.2 billion in the corresponding period.

On 25 August 2010, the Board declared a final dividend of 45 US cents per share, thus bringing the total dividends declared for FY2010 to 87 US cents per share, an increase of 6.1 per cent over the corresponding period. Capital management initiatives are discussed in section 3.7.6 of this Report.

*Year ended 30 June 2009 compared with year ended 30 June 2008*

Our profit attributable to members of BHP Billiton of US\$5.9 billion represented a decrease of 61.8 per cent from FY2008. Attributable profit excluding exceptional items of US\$10.7 billion represented a decrease of 30.2 per cent from FY2008.

Revenue was US\$50.2 billion, a decrease of 15.6 per cent from US\$59.5 billion in FY2008.



### 3. Operating and financial review and prospects *continued*

On 12 August 2009, the Board declared a final dividend of 41 US cents per share, thus bringing the total dividends declared for FY2009 to 82 US cents per share. Capital management initiatives are discussed in section 3.7.6 of this Report.

#### ***Underlying EBIT***

In discussing the operating results of our business, we focus on a financial measure we refer to as ‘Underlying EBIT’. Underlying EBIT is the key measure that management uses internally to assess the performance of our business, make decisions on the allocation of resources and assess operational management. Management uses this measure because financing structures and tax regimes differ across our assets, and substantial components of our tax and interest charges are levied at a Group, rather than an operational, level. Underlying EBIT is calculated as earnings before interest and taxation (EBIT), which is referred to as ‘profit from operations’ in the income statement, excluding the effects of exceptional items.

We exclude exceptional items from Underlying EBIT in order to enhance the comparability of the measure from period to period and provide clarity into the underlying performance of our operations. Our management monitors exceptional items separately.

The following table reconciles Underlying EBIT to profit from operations for the years ended 30 June 2010, 2009 and 2008. Further details of exceptional items for each year can be found in section 3.6.2.

<b>Year ended 30 June</b>	<b>2010 US\$M</b>	<b>2009 US\$M</b>	<b>2008 US\$M</b>
Underlying EBIT	<b>19,719</b>	18,214	24,282
Exceptional items (before taxation)	<b>312</b>	(6,054)	(137)
Profit from operations (EBIT)	<b>20,031</b>	12,160	24,145

The following tables and commentary describe the approximate impact of the principal factors that affected Underlying EBIT for FY2010 and FY2009.

<b>Year ended 30 June</b>	<b>2010 US\$M</b>	<b>2009 US\$M</b>
<b>Underlying EBIT as reported in the prior year</b>	<b>18,214</b>	24,282
Change in volumes:		
Increase in volumes	<b>2,142</b>	158
Decrease in volumes	<b>(206)</b>	(2,523)
	<b>1,936</b>	(2,365)
Net price impact:		
Change in sales prices	<b>778</b>	(3,994)
Price-linked costs	<b>241</b>	12
	<b>1,019</b>	(3,982)
Change in costs:		
Costs (rate and usage)	<b>(2)</b>	(2,528)
Exchange rates	<b>(2,150)</b>	2,456
Inflation on costs	<b>(400)</b>	(601)
	<b>(2,552)</b>	(673)
Asset sales	<b>82</b>	(81)
Ceased and sold operations	<b>526</b>	15
New and acquired operations	<b>966</b>	(158)
Exploration and business development	<b>239</b>	(104)
Other	<b>(711)</b>	1,280
<b>Underlying EBIT</b>	<b>19,719</b>	18,214

### **3. Operating and financial review and prospects *continued***

*Year ended 30 June 2010 compared with year ended 30 June 2009*

Underlying EBIT for FY2010 was US\$19.7 billion, compared with US\$18.2 billion in the corresponding period, an increase of 8.3 per cent.

#### ***Volumes***

Strong performance from steelmaking raw materials was the major contributor to the volume related increase in Underlying EBIT of US\$1,936 million. In that context, our strategy to maximise production from our low cost assets at all points in the cycle ideally positioned our Metallurgical Coal and Manganese businesses to capitalise on the improvement in market demand. In Western Australia's Pilbara region, ongoing commitment to growth delivered the tenth consecutive record in iron ore sales while a recovery in pellet demand enabled Samarco (Brazil) to return to full capacity.

Solid operating performance was recorded across the remaining Customer Sector Groups (CSGs). In Base Metals, Escondida (Chile) and Cannington (Australia) both benefited from higher throughput and grade whilst Olympic Dam (Australia) and Spence (Chile) were impacted by unplanned interruptions.

Escondida production is expected to decline by five to 10 per cent in FY2011, mainly due to lower grade.

#### ***Prices***

Prices (including the impact of linked costs) increased Underlying EBIT by US\$1,019 million with iron ore and the base and precious metals complex contributing US\$5,265 million of the benefit. Lower prices for coal (both forms) and manganese were the offsetting factors and reduced Underlying EBIT by US\$4,401 million.

Price-linked costs were US\$241 million lower than the corresponding period.

During the second half of the financial year, the old benchmark pricing system for iron ore and metallurgical coal was substantially replaced by shorter-term market based pricing. The transformation ensures the majority of BHP Billiton's bulk commodities (iron ore, manganese, metallurgical coal and energy coal) are now linked to market based prices.

Additional detail on the effect of price changes appears in section 3.4.1.

#### ***Costs***

Excluding the significant impact of a weaker US dollar and an increase in non-cash items (US\$219 million), costs were well controlled across the Group, adding US\$217 million to Underlying EBIT in the period.

Raw materials, including fuel and energy, generated the greatest benefit and increased Underlying EBIT by US\$576 million although the majority of the benefit was non-structural in nature.

In contrast, higher labour and contractor rates continued to negatively impact the cost base, particularly in South America and Australia. At Spence, Escondida and Cerro Colorado (Chile) one-off wage negotiations, bonuses and contractor payments reduced Underlying EBIT by US\$145 million. Similarly, Western Australia's higher labour costs associated with the tight labour market reduced Western Australia Iron Ore Underlying EBIT by US\$45 million.

Non-cash and other items reduced Underlying EBIT by a combined US\$537 million. The major negative factors were higher depreciation in Western Australia Iron Ore and a provision for a payment to the Western Australian Government that is expected to follow the recently announced amendments to the State Agreements.

#### ***Exchange rates***

A weaker US dollar against all producer currencies reduced Underlying EBIT by US\$2,150 million. The Australian operations were the most impacted with the strong Australian dollar decreasing Underlying EBIT by US\$1,779 million.

### **3. Operating and financial review and prospects *continued***

Average and closing exchange rates for FY2010 and FY2009 are detailed in note 1 to the financial statements.

#### ***Inflation on costs***

Inflationary pressure on input costs across all businesses had an unfavourable impact on Underlying EBIT of US\$400 million. The effect was most evident in Australia and South Africa.

#### ***Asset sales***

The profit on the sale of assets increased Underlying EBIT by US\$82 million. This was mainly due to the profit that followed dissolution of the Douglas Tavistock Joint Venture arrangement (South Africa).

#### ***Ceased and sold operations***

Lower operational losses for Yabulu and Ravensthorpe (both Australia) and the Suriname alumina refinery, which were sold during FY2010, resulted in a favourable impact on Underlying EBIT of US\$526 million.

#### ***New and acquired operations***

New greenfield assets are reported in new and acquired operations variance until there is a full year comparison. BHP Billiton operated oil and gas facilities, Shenzi (US) and Pyrenees (Australia), contributed an additional US\$966 million to Underlying EBIT in the period.

#### ***Exploration and business development***

Exploration expense was broadly flat for the year at US\$1,030 million. Within minerals (US\$467 million expense) the focus centred upon copper in Chile and Zambia, nickel in Australia, manganese in Gabon, and diamonds in Canada. Exploration for iron ore, coal, bauxite, potash and manganese was also undertaken in a number of regions including Australia, Canada, South America, Russia and Africa.

The Petroleum CSG's exploration expense increased to US\$563 million as the business commenced a multi-year drilling campaign.

Expenditure on business development was US\$195 million lower than the corresponding period. This was mainly due to reduced activity in the Base Metals and Stainless Steel Materials CSGs.

#### ***Other***

Other items decreased Underlying EBIT by US\$711 million, predominantly due to the influence of third party product sales and the fair value adjustment of derivative contracts.

#### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Underlying EBIT for FY2009 was US\$18.2 billion, compared with US\$24.3 billion, a decrease of 25.0 per cent.

#### ***Volumes***

Lower sales volumes, predominantly in Base Metals and Manganese, reduced Underlying EBIT by US\$2,523 million. Copper sales volumes were impacted by lower ore grade and reduced output from milling operations at Escondida (Chile). Manganese sales volumes decreased significantly due to weaker demand.

This was partially offset by stronger volumes, predominantly in Iron Ore, which increased Underlying EBIT by US\$158 million.

### **3. Operating and financial review and prospects *continued***

#### ***Prices***

Underlying EBIT decreased by US\$3,994 million (excluding the impact of newly commissioned projects) due to changes in commodity prices. Lower average realised prices for commodities such as crude oil, copper, nickel, aluminium, alumina and diamonds reduced Underlying EBIT by US\$10,193 million. Despite the prices rallying in the second half of the financial year, spot commodity prices as at 30 June 2009 were generally 20 to 60 per cent lower than at the start of the financial year. This was partially offset by higher average realised prices for metallurgical coal, iron ore, manganese and thermal coal, which increased Underlying EBIT by US\$6,199 million.

Price-linked costs were largely in line with the corresponding period. Decreased charges for third party nickel ore and more favourable rates for copper treatment and refining charges (TCRCs) were offset by higher royalty costs.

#### ***Costs***

Costs increased by US\$2,528 million compared with FY2008. This included the impact of higher non-cash costs of US\$153 million. Approximately US\$601 million of the increase was due to higher costs for fuel and energy, and raw materials such as coke, sulphuric acid, pitch and explosives. In addition, labour and contractor costs have increased by US\$578 million. Costs associated with the FY2008 severe weather interruptions in Queensland and the furnace rebuild at the Kalgoorlie Nickel Smelter (Australia) had an adverse impact of US\$561 million.

The bulk of the cost increases took place in the first half of the financial year. Discretionary costs previously incurred to maximise production to realise high prices in the first half of the financial year were successfully reduced. We also successfully negotiated lower contract prices for some of our key supply contracts.

While we continue to focus on cost containment, the benefits of falling input prices will have a lagged effect on reducing costs.

#### ***Exchange rates***

Despite the recent strength in the Australian dollar and South African rand versus the US dollar, exchange rate movements positively impacted Underlying EBIT by US\$2,456 million. The Australian operations' Underlying EBIT increased by US\$2,085 million due to a generally weaker Australian dollar. The depreciation of the South African rand also positively impacted Underlying EBIT by US\$225 million.

Average and closing exchange rates for FY2009 and FY2008 are detailed in note 1 to the financial statements.

#### ***Inflation on costs***

Inflationary pressures on input costs across all our businesses had an unfavourable impact on Underlying EBIT of US\$601 million. The inflationary pressures were most evident in Australia, South Africa and South America.

#### ***Asset sales***

The sale of assets reduced Underlying EBIT by US\$81 million. This was mainly due to the sale of the Elouera mine (Illawarra Coal, Australia) and other Queensland Coal mining leases in FY2008. However, this was in part offset by the profit on sale of petroleum leases located offshore of Western Australia.

#### ***Ceased and sold operations***

The favourable impact of US\$15 million was mainly due to higher insurance recoveries for closed operations.

#### ***New and acquired operations***

New and acquired operations represented the effect on Underlying EBIT of acquisitions and new greenfield operations during FY2009 between acquisition or commissioning and the end of the fiscal year at which a full year of comparative financial information is available. Atlantis (US) and Stybarrow (Australia) operations, which were commissioned in FY2008, contributed to a negative variance of US\$258 million. This was due to lower realised prices, partially offset by higher sales volumes. The Shenzi and Neptune (both US) operations, which were commissioned during FY2009, generated US\$100 million Underlying EBIT during FY2009.

### **3. Operating and financial review and prospects *continued***

#### ***Exploration and business development***

Exploration expense for the year was US\$1,074 million, an increase of US\$168 million. The main expenditure for Petroleum was on targets in the Gulf of Mexico (US), Malaysia and Australia. We also progressed with minerals exploration activities in Western Australia Iron Ore and potash in Saskatchewan, Canada. During FY2009, we incurred US\$94 million of exploration expense for potash.

Expenditure on business development was US\$64 million lower than FY2008. This was mainly due to lower spending on the pre-feasibility study for the Olympic Dam expansion project and business development activities for diamonds projects. The draft Environmental Impact Statement (EIS) for the Olympic Dam expansion was submitted to the federal, South Australian and Northern Territory governments for review. Project activities were modified to that necessary to support the approvals process and the study of a number of mining and processing technology options.

#### ***Other***

Other items increased Underlying EBIT by US\$1,280 million, US\$887 million of which was due to the contribution of third party product sales and the reversal of unrealised losses on derivative contracts.

#### **Net finance costs**

*Year ended 30 June 2010 compared with year ended 30 June 2009*

Net finance costs decreased to US\$459 million from US\$543 million in the corresponding period. This was primarily driven by higher levels of capitalised interest.

*Year ended 30 June 2009 compared with year ended 30 June 2008*

Net finance costs decreased to US\$543 million, from US\$662 million in FY2008. This was driven predominantly by lower interest rates and foreign exchange impacts, partly offset by lower capitalised interest.

#### ***Taxation expense***

*Year ended 30 June 2010 compared with year ended 30 June 2009*

The taxation expense including royalty-related taxation and tax on exceptional items was US\$6,563 million. This represented an effective rate of 34 per cent on profit before tax of US\$19,572. Excluding the impacts of exceptional items, the taxation expense was US\$6,504 million.

Exchange rate movements increased the taxation expense by US\$106 million predominantly due to the revaluation of local currency tax liabilities and other monetary items, which amounted to US\$502 million. This was offset by the increase in the US dollar value of future tax depreciation of US\$396 million.

Royalty-related taxation represents an effective rate of two per cent for the current period. Excluding the impacts of royalty-related taxation, the impact of exchange rate movements included in taxation expense and tax on exceptional items, the underlying effective rate was 31 per cent.

Government imposed royalty arrangements which are calculated by reference to profits (revenue net of allowable deductions) after the adjustment for items comprising temporary differences, is reported as royalty-related taxation. Other royalty and excise arrangements that do not have these characteristics are recognised as operating costs (US\$1,653 million).

*Year ended 30 June 2009 compared with year ended 30 June 2008*

The taxation expense including royalty-related taxation and tax on exceptional items was US\$5,279 million. This represented an effective rate of 45.4 per cent on profit before tax of US\$11,617 million. Excluding the impacts of exceptional items the taxation expense was US\$6,488 million.

### 3. Operating and financial review and prospects *continued*

Exchange rate movements increased the taxation expense by US\$444 million. The weaker Australian dollar against the US dollar has significantly reduced the Australian deferred tax assets for future tax depreciation since FY2008. This was partly offset by the devaluation of local currency tax liabilities due to the stronger US dollar. Royalty-related taxation represented an effective rate of 4.3 per cent for FY2009. Excluding the impacts of royalty-related taxation, the impact of exchange rate movements included in taxation expense and tax on exceptional items, the underlying effective rate was 31.4 per cent.

#### 3.6.2 *Exceptional items*

*Year ended 30 June 2010*

On 22 February 2010, a settlement was reached in relation to the Pinal Creek (US) groundwater contamination, which resulted in other parties taking on full responsibility for groundwater rehabilitation and partly funding the Group for past and future rehabilitation costs incurred. As a result, a gain of US\$186 million (US\$53 million tax expense) has been recognised reflecting the release of rehabilitation provisions and cash received.

On 9 December 2009, the Group announced it had signed an agreement to sell the Ravensthorpe nickel operations (Australia). The sale was completed on 10 February 2010. As a result of the sale, impairment charges recognised as exceptional items in FY2009 have been partially reversed totalling US\$611 million (US\$183 million tax expense). In addition, certain obligations that remained with the Group were mitigated and related provisions released; together with minor net operating costs this resulted in a gain of US\$42 million (US\$13 million tax expense).

Continuing power supply constraints impacting the Group's three Aluminium smelters in southern Africa, and temporary delays with the Guinea Alumina project, have given rise to charges for the impairment of property, plant and equipment and restructuring provisions. A total charge of US\$298 million (US\$12 million tax benefit) was recognised by the Group in the FY2010.

Renegotiation of long-term power supply arrangements in southern Africa have impacted the value of embedded derivatives contained within those arrangements. A total charge of US\$229 million (US\$50 million tax benefit) was recognised by the Group in FY2010.

The Australian Taxation Office (ATO) issued amended assessments in prior years denying bad debt deductions arising from the investments in Hartley (Zimbabwe), Beenup and Boodarie Iron (both Australia) and the denial of capital allowance claims made on the Boodarie Iron project. BHP Billiton lodged objections and has been successful on all counts in the Federal Court and the Full Federal Court. The ATO has not sought to appeal the Boodarie Iron bad debt disallowance to the High Court which resulted in a release of US\$128 million from the Group's income tax provisions. The ATO sought special leave to appeal to the High Court in relation to the Beenup bad debt disallowance and the denial of the capital allowance claims on the Boodarie Iron project and has been granted special leave only in relation to the denial of the capital allowance claims on the Boodarie Iron project.

Refer to note 3 'Exceptional items' in the financial statements for more information.

<u>Year ended 30 June 2010</u>	<u>Gross US\$M</u>	<u>Tax US\$M</u>	<u>Net US\$M</u>
<b>Exceptional items by category</b>			
Pinal Creek rehabilitation	186	(53)	133
Disposal of the Ravensthorpe nickel operation	653	(196)	457
Restructuring of operations and deferral of projects	(298)	12	(286)
Renegotiation of power supply agreements	(229)	50	(179)
Release of income tax provisions	—	128	128
	312	(59)	253

*Year ended 30 June 2009*

On 21 January 2009, we announced the suspension of operations at the Ravensthorpe nickel operations (Australia) and as a consequence stopped the processing of the mixed nickel cobalt hydroxide product at Yabulu (Australia). As a result, charges relating to impairment, increased provisions for contract cancellation, redundancy and other closure costs of US\$3,615 million (US\$1,076 million tax benefit) were recognised. This exceptional item did not include the loss from operations of Ravensthorpe nickel operations of US\$173 million.

### 3. Operating and financial review and prospects *continued*

On 3 July 2009, we announced the sale of the Yabulu nickel operations. As a result, impairment charges of US\$510 million (US\$ nil tax benefit) were recognised in addition to those recognised on suspension of the Ravensthorpe nickel operations. As a result of the sale, deferred tax assets of US\$175 million that were no longer expected to be realised by the Group were recognised as a charge to income tax expense. The remaining assets and liabilities of the Yabulu operations were classified as held for sale as at 30 June 2009.

As part of our regular review of the long-term viability of operations, a total charge of US\$665 million (US\$23 million tax expense) was recognised primarily in relation to the decisions to cease development of the Maruwai Haju trial mine (Indonesia), sell the Suriname operations, suspend copper sulphide mining operations at Pinto Valley (US) and cease the pre-feasibility study at Corridor Sands (Mozambique). The remaining assets and liabilities of the Suriname operations were classified as held for sale as at 30 June 2009.

A further charge of US\$306 million (US\$86 million tax benefit) was recognised primarily in relation to the deferral of expansions at the Nickel West operations (Australia), deferral of the Guinea Alumina project (Guinea) and the restructuring of the Bayside Aluminium Casthouse operations (South Africa).

We recognised a charge of US\$508 million (US\$152 million tax benefit) for additional rehabilitation obligations in respect of former operations at the Newcastle steelworks (Australia). The increase in obligations related to changes in the estimated volume of sediment in the Hunter River requiring rehabilitation and treatment, and increases in estimated treatment costs.

Our offers for Rio Tinto lapsed on 27 November 2008 following the Board's decision that it believed that completion of the offers was no longer in the best interests of BHP Billiton shareholders. We incurred fees associated with the US\$55 billion debt facility (US\$156 million cost, US\$31 million tax benefit), investment bankers', lawyers' and accountants' fees, printing expenses and other charges (US\$294 million cost, US\$62 million tax benefit) up to the lapsing of the offers, which were expensed in FY2009.

Refer to note 3 'Exceptional items' in the financial statements for more information.

<u>Year ended 30 June 2009</u>	<u>Gross US\$M</u>	<u>Tax US\$M</u>	<u>Net US\$M</u>
<b>Exceptional items by category</b>			
Suspension of Ravensthorpe nickel operations	(3,615)	1,076	(2,539)
Announced sale of Yabulu refinery	(510)	(175)	(685)
Withdrawal or sale of other operations	(665)	(23)	(688)
Deferral of projects and restructuring of operations	(306)	86	(220)
Newcastle steelworks rehabilitation	(508)	152	(356)
Lapsed offers for Rio Tinto	(450)	93	(357)
	<u>(6,054)</u>	<u>1,209</u>	<u>(4,845)</u>

#### *Year ended 30 June 2008*

Tax losses incurred by WMC Resources Ltd (WMC), acquired by BHP Billiton in June 2005, were not recognised as a deferred tax asset at acquisition pending a ruling application to the ATO. A ruling was issued during FY2008 confirming the availability of those losses. This resulted in the recognition of a deferred tax asset (US\$197 million) and a consequential adjustment to deferred tax liabilities (US\$38 million) through income tax expense at current Australian dollar/US dollar exchange rates. As a further consequence, the Group recognised an expense of US\$137 million for a corresponding reduction in goodwill measured at the Australian dollar/US dollar exchange rate at the date of acquisition.

### 3. Operating and financial review and prospects *continued*

#### 3.6.3 Customer Sector Group summary

The following table provides a summary of the Customer Sector Group revenues and results for FY2010 and the two prior corresponding periods.

Year ended 30 June US\$M	2010	2009	2008
<b>Revenues: <sup>(1)</sup></b>			
Petroleum	8,782	7,211	8,382
Aluminium	4,353	4,151	5,746
Base Metals	10,409	7,105	14,774
Diamonds and Specialty Products	1,272	896	969
Stainless Steel Materials	3,617	2,355	5,088
Iron Ore	11,139	10,048	9,455
Manganese	2,150	2,536	2,912
Metallurgical Coal	6,059	8,087	3,941
Energy Coal	4,265	6,524	6,560
Group and unallocated items <sup>(2)(3)</sup>	752	1,298	1,646
<b>BHP Billiton Group</b>	<b>52,798</b>	<b>50,211</b>	<b>59,473</b>

Year ended 30 June US\$M	2010	2009	2008
<b>Underlying EBIT: <sup>(1)</sup></b>			
Petroleum	4,573	4,085	5,485
Aluminium	406	192	1,465
Base Metals	4,632	1,292	7,989
Diamonds and Specialty Products	485	145	189
Stainless Steel Materials	668	(854)	1,275
Iron Ore	6,001	6,229	4,631
Manganese	712	1,349	1,644
Metallurgical Coal	2,053	4,711	937
Energy Coal	730	1,460	1,057
Group and unallocated items <sup>(2)(3)</sup>	(541)	(395)	(390)
<b>BHP Billiton Group</b>	<b>19,719</b>	<b>18,214</b>	<b>24,282</b>

<sup>(1)</sup> Includes the sale of third party product.

<sup>(2)</sup> Revenue that is not reported in business segments principally includes sales of freight and fuel to third parties.

<sup>(3)</sup> Includes consolidation adjustments, unallocated items and external sales for the Group's freight, transport and logistics operations and certain closed operations.

The changes in revenue and Underlying EBIT for each CSG are discussed below. We adopted IFRS 8/AASB 8 'Operating Segments' in FY2010, the impact of which is that CSG financial information now excludes exceptional items.

#### *Petroleum*

##### *Year ended 30 June 2010 compared with year ended 30 June 2009*

Revenue was US\$8,782 million for FY2010, an increase of US\$1,571 million, or 21.8 per cent, over the corresponding period. This was primarily due to increased production of high margin liquids from new project developments.

Total production for the year of 159 million barrels of oil equivalent was a full year production record and an increase of 21 million barrels of oil equivalent. The 15 per cent increase in production reflected strong performance from BHP Billiton operated Shenzi (US) and Pyrenees (Australia), the latter being delivered on schedule during the period. In addition, improved reservoir performance from Atlantis (US) and an absence of weather related interruptions supported such strong production. In addition, for the fourth consecutive year, Petroleum achieved greater than 100 per cent reserve replacement.



### **3. Operating and financial review and prospects *continued***

Underlying EBIT was US\$4,573 million, an increase of US\$488 million, or 11.9 per cent, compared with the prior year. The increase was primarily due to higher production as noted and higher realised oil prices, which averaged US\$73.05 per barrel for the year (compared with US\$66.18 per barrel). The major offsets were a lower average realised natural gas price of US\$3.43 per thousand standard cubic feet (compared with US\$3.57 per thousand standard cubic feet) and a lower average realised liquefied natural gas price of US\$9.07 per thousand standard cubic feet (compared with \$12.07 per thousand standard cubic feet).

Gross exploration expenditure was US\$817 million, an increase of US\$269 million compared with last year (US\$548 million), primarily from increased drilling activity in the Gulf of Mexico (US), Canada, Malaysia, the Falklands and the Philippines. Several exploration wells were not commercial and resulted in the increase in exploration expense of US\$163 million (US\$563 million compared with US\$400 million in the prior year).

Drilling activities at Atlantis and Shenzi ceased during the June 2010 quarter based on the drilling moratorium currently in place in the deepwater Gulf of Mexico. We continue to monitor and assess the impact of the suspension of certain permitting and drilling activities. All other drilling operations outside of the Gulf of Mexico progressed as planned. Underlying EBIT was impacted by a \$59 million charge related to idle rig time in the Gulf of Mexico for BHP Billiton controlled rigs. This is part of BHP Billiton's ongoing management of rig contracts which included negotiating revised terms for the rigs during the moratorium and will provide BHP Billiton with continued access to the rigs and experienced crews when the moratorium ceases.

#### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Revenue was US\$7,211 million for FY2009, a decrease of US\$1,171 million, or 14.0 per cent, from FY2008. This was mainly due to lower average realised prices for petroleum products.

Total production for FY2009 was 137.2 million barrels of oil equivalent (boe) compared with total production in FY2008 of 129.5 million boe. The strong annual production growth was due to the delivery of new projects and an ongoing focus on driving base performance. First production was achieved for five projects – Neptune, Shenzi and Atlantis North (all US), North West Shelf Train 5 and Angel (both Australia). This strong growth was achieved despite the impact of hurricanes and natural field declines.

Underlying EBIT was US\$4,085 million, a decrease of US\$1,400 million, or 25.5 per cent, from FY2008. The decrease was due mainly to lower average realised prices for petroleum products, with lower average realised oil prices per barrel of US\$66.18 (compared with US\$96.27), lower average realised natural gas prices of US\$3.57 per thousand standard cubic feet (compared with US\$3.75), partially offset by higher average realised prices for liquefied natural gas of US\$12.07 per thousand standard cubic feet (compared with US\$8.95) and increased production.

Gross expenditure on exploration was US\$548 million, US\$144 million lower than FY2008. Exploration expenditure charged to profit was US\$400 million. We continued to replenish our exploration inventory and acquired exploration rights to seven deepwater blocks offshore Western India and were awarded an additional 28 leases in the Gulf of Mexico lease sale process. Evaluation work commenced, or continued, on the significant acreage position we have acquired over recent years.

In addition, for the third consecutive year we achieved greater than 100 per cent reserve replacement.

#### ***Aluminium***

#### ***Year ended 30 June 2010 compared with year ended 30 June 2009***

Revenue was US\$4,353 million for FY2010, an increase of US\$202 million, or 4.9 per cent, over the corresponding period.

Total alumina production of 3,841,000 tonnes in FY2010 decreased from 4,396,000 tonnes in FY2009 mainly attributable to lower production as a result of the sale of Suriname on 31 July 2009. Aluminium smelter production increased from 1,233,000 tonnes in FY2009 to 1,241,000 tonnes in FY2010 as a result of the amperage increases at the Aluminium operations in southern Africa.

Underlying EBIT was US\$406 million, an increase of US\$214 million or 111.5 per cent over the corresponding period. Higher prices and premiums for aluminium had a favourable impact of US\$253 million that was partially offset by a US\$19 million unfavourable impact of price-linked costs. The average LME aluminium price increased to US\$2,018 per tonne compared with last year's price of US\$1,862 per tonne. The average realised alumina price was US\$291 per tonne.

### **3. Operating and financial review and prospects *continued***

Underlying EBIT excludes exceptional charges of US\$527 million relating to impairments (US\$298 million) and the renegotiation of long-term power contracts (US\$229 million). Refer section 3.6.2 for details.

Overall, operating costs were lower mainly due to reduced raw materials and energy costs. This was partially offset by a weaker US dollar against the Australian dollar and South African rand, and inflationary pressures in Australia, South Africa and Brazil.

Underlying EBIT was favourably impacted by US\$68 million as a result of the divestment of Suriname on 31 July 2009.

#### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Revenue was US\$4,151 million for FY2009, a decrease of US\$1,595 million, or 27.8 per cent, from FY2008.

Total alumina production of 4,396,000 tonnes in FY2009 decreased from 4,554,000 tonnes in FY2008 mainly due to lower production at Worsley as a result of gas curtailments impacting calcination. Aluminium smelter production decreased from 1,298,000 tonnes in FY2008 to 1,233,000 tonnes in FY2009 mainly due to the closure of potlines B and C at Bayside.

Underlying EBIT was US\$192 million, a decrease of US\$1,273 million, or 86.9 per cent, from FY2008. Lower LME prices and premiums for aluminium had an unfavourable impact of US\$1,293 million. This was partially offset by a US\$131 million positive impact of price-linked costs. The average LME aluminium price decreased to US\$1,862 per tonne compared with FY2008's price of US\$2,668 per tonne. The average realised alumina prices were US\$281 per tonne.

Underlying EBIT excluded exceptional charges of US\$313 million relating to the sale and restructuring of operations, recognised as part of the total charge of US\$665 million. Refer section 3.6.2 for details.

Higher operating costs also had an adverse impact. This was due to higher charges for raw materials, mainly as a result of increased coke and caustic prices and higher energy costs. Underlying EBIT was also adversely impacted by the closure of the B and C potlines at Bayside in FY2008. However, the benefit of a stronger US dollar and a strong focus on business improvement initiatives reduced the full impact of cost increases.

Favourable embedded derivatives revaluation increased Underlying EBIT by US\$170 million. This related primarily to electricity contracts where the price is linked to the LME aluminium price.

#### ***Base Metals***

#### ***Year ended 30 June 2010 compared with year ended 30 June 2009***

Revenue was US\$10,409 million for FY2010, an increase of US\$3,304 million, or 46.5 per cent, over the corresponding period. This revenue increase was mainly attributable to higher LME prices for copper, zinc, lead and silver.

Payable copper production decreased by 10.9 per cent to 1.075 million tonnes compared with 1.207 million tonnes in the corresponding period. Zinc production was 198.3 kilotonnes, an increase of 21.5 per cent compared with the corresponding period due to higher plant throughput and utilisation and higher grades at Antamina (Peru) and Cannington (Australia). Attributable uranium production at Olympic Dam (Australia) was 2,279 tonnes for the period compared with 4,007 tonnes for the corresponding period due to the Clark Shaft outage. Silver production was 45.4 million ounces compared with 41.3 million ounces in the corresponding period. Lead production was 248.4 kilotonnes for the period compared with 230.1 kilotonnes in the corresponding period.

Payable copper production was primarily impacted by the Olympic Dam Clark shaft outage and industrial action at Spence (Chile). During the second quarter of FY2010, the haulage system in the Clark Shaft at Olympic Dam was damaged. Ore hoisting operated at approximately 25 per cent of capacity until the fourth quarter of FY2010. The incident impacted earnings by US\$455 million, but was partially offset by insurance recoveries of US\$297 million. The recommissioning of Olympic Dam's Clark Shaft occurred during the final quarter of the year and has returned to full production. Payable copper production was also impacted by the cessation of sulphide mining at Pinto Valley (US), following the decision to place the Pinto Valley operation in a state of care and maintenance in FY2009. This was partly offset by higher grade and recovery at Escondida and the earlier than planned completion of the SAG mill repairs in the Laguna Seca Concentrator plant.

### **3. Operating and financial review and prospects *continued***

Underlying EBIT was US\$4,632 million, an increase of US\$3,340 million, or 258.5 per cent, over the corresponding period. This increase was predominantly attributable to higher prices for all key commodities in Base Metals, except uranium. The LME price for copper averaged US\$3.04/lb compared with US\$2.23/lb in the corresponding period, or an increase of 36.3 per cent. The impact of higher prices for copper, zinc, lead and silver in FY2010 contributed \$3,977 million to the Underlying EBIT increase. Lower sales volumes reduced Underlying EBIT by US\$117 million.

Underlying EBIT excludes exceptional gains of US\$186 million in relation to Pinal Creek. Refer section 3.6.2 for details.

Higher costs were incurred during the period, mostly due to the Clark Shaft incident at Olympic Dam (Australia) and higher labour costs, including one-off bonus payments from collective labour negotiations completed during the year in the South American operations. The effect of inflation and the weaker US dollar against the Australian dollar and the Chilean peso also impacted negatively. Higher costs were partially mitigated by lower business development costs resulting from the decision to scale back Olympic Dam Expansion project activity in line with completion of feasibility studies and required approvals.

At 30 June 2010 we had 236,584 tonnes of outstanding copper sales that were revalued at a weighted average price of US\$2.96/lb. The final price of these sales will be determined in FY2011. In addition, 234,871 tonnes of copper sales from FY2009 were subject to a finalisation adjustment in 2010. The finalisation adjustment and provisional pricing impact as at 30 June 2010 increased earnings by US\$303 million for the year (compared with a loss of US\$936 million).

#### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Revenue was US\$7,105 million for FY2009, a decrease of US\$7,669 million, or 51.9 per cent, from FY2008. This revenue decrease was mainly attributable to lower LME prices for copper, zinc, lead and silver, and lower sales volumes.

Payable copper production decreased by 12.2 per cent to 1.207 million tonnes compared with 1.375 million tonnes in FY2008. Zinc production was 163.2 kilotonnes, an increase of 12.9 per cent compared with FY2008 due to better grades and an increased proportion of ore containing zinc at Antamina (Peru). Attributable uranium production at Olympic Dam (Australia) was 4,007 tonnes for FY2009 compared with 4,144 tonnes for FY2008 due to a drop in grade. Silver production was 41.3 million ounces compared with 43.5 million ounces in FY2008. Lead production was 230.1 kilotonnes for the period compared with 253.1 kilotonnes in FY2008.

While payable copper production was lower, record copper cathode production was achieved as a result of the continued ramp-up of Escondida Sulphide Leach and Spence (Chile). Payable copper production was also impacted by the decision to place the Pinto Valley sulphide mining and milling operations (US) in a state of care and maintenance. This occurred in response to the global economic slowdown. Volume was further impacted by declining head grades at Escondida (Chile) and an electrical motor failure at the Laguna Seca SAG Mill. A correction to the SAG Mill problem was completed in the first quarter of FY2010.

Underlying EBIT was US\$1,292 million, a decrease of US\$6,697 million, or 83.8 per cent, from FY2008. This decrease was predominantly attributable to the decline of prices across commodities, especially copper. The LME price for copper averaged US\$2.23/lb compared with US\$3.53/lb in FY2008, or a decline of 36.8 per cent. The impact of lower prices for copper, zinc, lead and silver in FY2009 reduced Underlying EBIT by US\$5,532 million. Lower sales volumes further reduced Underlying EBIT by US\$1,211 million.

Underlying EBIT excluded exceptional charges of US\$295 million in relation to Pinto Valley and Olympic Dam, recognised as part of the total charge of US\$665 million. Refer to section 3.6.2 for details.

Higher costs were incurred during the period, mostly due to higher energy, acid and labour. The effect of inflation also impacted negatively. However, the rate of cost increase declined in the second half of FY2009 as the Company initiated cost saving initiatives in all operations. In addition, costs were partly offset by the exchange rate change and the strengthening of the US dollar against the Australian dollar and Chilean peso. Underlying EBIT was favourably impacted by lower purchases of third party uranium from the spot market.

Provisional pricing of copper shipments, including the impact of finalisations and revaluations of the outstanding shipments, resulted in the calculated average realised price being US\$1.92/lb versus an average LME price of US\$2.23/lb. The average realised price was US\$3.62/lb in FY2008. The negative impact of provisional pricing for the period was US\$936 million. Outstanding copper volumes subject to the fair value measurement amounted to 234,871 tonnes at 30 June 2009. These were revalued at a weighted average price of US\$4,946 per tonne, or US\$2.24/lb.

### **3. Operating and financial review and prospects *continued***

#### *Diamonds and Specialty Products*

##### ***Year ended 30 June 2010 compared with year ended 30 June 2009***

Revenue was US\$1,272 million for FY2010, an increase of US\$376 million, or 42.0 per cent, over the corresponding period, predominantly due to higher realised diamond prices and higher volumes.

EKATI diamond production was 3,050,000 carats, a decrease of 5.3 per cent compared with the corresponding period, mainly reflecting a higher proportion of ore sourced from Fox pit as mining of the higher grade Panda underground was completed during the year.

Underlying EBIT was US\$485 million, an increase of US\$340 million over the corresponding period. Strong operating earnings at EKATI (Canada) resulted from higher volumes and realised diamond prices and lower unit costs due to the continued emphasis on cost control. There was also a decrease in exploration expense of US\$43 million, mainly due to reduced diamonds exploration activity. Potash exploration expenditure of US\$73 million in Saskatchewan, Canada, was US\$21 million lower for the year as the exploration work program for Jansen was completed in the corresponding period. Higher diamond earnings were partially offset by a reduction in operating earnings in Titanium Minerals due to lower realised prices and higher energy costs.

##### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Revenue was US\$896 million for FY2009, a decrease of US\$73 million, or 7.5 per cent, from FY2008, predominantly due to lower realised diamond prices.

EKATI diamond production was 3,221,000 carats, a decrease of 3.8 per cent compared with FY2008 mainly reflecting the increasing underground production and variations in the mix of ore processed.

Underlying EBIT was US\$145 million, a decrease of \$44 million, or 23.3 per cent, from FY2008. Underlying EBIT at EKATI (Canada) was impacted by lower diamonds sales volumes and a reduction in average realised prices. This was partially offset by a stronger US dollar, higher value per carat of production and improved plant recoveries. There was also an increase in exploration costs due to increased spend on potash in Canada, which was partially offset by lower diamonds exploration in Angola.

Underlying EBIT excluded exceptional charges of US\$70 million in relation to Corridor Sands. Refer section 3.6.2 for details.

#### *Stainless Steel Materials*

##### ***Year ended 30 June 2010 compared with year ended 30 June 2009***

Revenue was US\$3,617 million in FY2010, an increase of US\$1,262 million, or 53.6 per cent, from the corresponding period.

Nickel production was 176,200 tonnes in FY2010, a 1.8 per cent increase above 173,100 tonnes in the corresponding period. Production for FY2010 was a record performance at Nickel West (Australia) and attributable to the completion of the furnace rebuild at the Kalgoorlie Nickel Smelter (Australia) in FY2009 and the drawdown in FY2010 of the concentrate stocks that were built up during that period. Total nickel production includes one month's operation of Yabulu (Australia) prior to its divestment at the end of July 2009. Production from Cerro Matoso (Colombia) was in line with the corresponding period.

Underlying EBIT was US\$668 million, an increase of US\$1,522 million compared with the corresponding period. This was mainly due to higher average LME prices for nickel of US\$8.81/lb compared with US\$6.03/lb in the prior year. Higher prices (net of price-linked costs) increased Underlying EBIT by US\$866 million.

Underlying EBIT excludes exceptional gains of US\$653 million relating to the disposal of the Ravensthorpe nickel operations. Refer section 3.6.2 for details.

Proactive portfolio restructuring and ongoing improvement at the operating level also contributed to the strong result. Lower operational losses from Yabulu and Ravensthorpe in FY2010 increased Underlying EBIT by US\$458 million.

### **3. Operating and financial review and prospects *continued***

The Kalgoorlie nickel smelter furnace rebuild and concurrent maintenance at the Kwinana nickel refinery (both Australia) in the prior year set the platform for record total production at Nickel West in FY2010. Ongoing cost saving initiatives and lower labour costs were offset by the devaluation in the US dollar and inflation. Underlying EBIT also benefited from lower exploration and business development expenditure.

#### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Revenue was US\$2,355 million in FY2009, a decrease of US\$2,733 million, or 53.7 per cent, from FY2008.

Nickel production was 173,100 tonnes in FY2009, a 3.1 per cent increase above 167,900 tonnes in FY2008. Production for FY2009 was adversely impacted by the rebuild of the furnace at the Kalgoorlie nickel smelter and wet weather interruptions at Yabulu (Australia). Production was higher at Cerro Matoso (Colombia) following an industrial stoppage in FY2008. In January 2009, operations at the Ravensthorpe nickel operation (Australia) were indefinitely suspended with the consequential effect of suspending the production of nickel from mixed hydroxide precipitate at Yabulu.

Underlying EBIT was a loss of US\$854 million, a decrease of US\$2,129 million, or 167.0 per cent, compared with FY2008. This was mainly due to the lower average LME price for nickel of US\$6.03/lb compared with US\$12.93/lb in the prior year. Lower prices (net of price-linked costs) reduced Underlying EBIT by US\$1,995 million.

Underlying EBIT excluded exceptional charges totalling US\$4,332 million relating to impairment of the Ravensthorpe (US\$3,615 million) and Yabulu (US\$510 million) operations, and the deferral of Nickel West operations (US\$207 million, reported as part of the total charge of US\$306 million). Refer section 3.6.2 for details.

The furnace rebuild at the Kalgoorlie nickel smelter and concurrent maintenance at the Kwinana nickel refinery (both Australia) adversely impacted Underlying EBIT by US\$338 million. Operational costs in total were broadly unchanged compared with FY2008, as increased mining costs and inflationary pressures in Australia were largely offset by a favourable impact of the weaker Australian dollar against the US dollar and cost saving initiatives. Underlying EBIT for FY2009 was also higher due to increased production at Cerro Matoso (Colombia) as aforementioned. Underlying EBIT was also positively impacted by US\$46 million following the indefinite suspension of operations at Ravensthorpe and the Yabulu Extension Project in January 2009, with the total operating loss for the year from these operations being US\$267 million.

#### ***Iron Ore***

#### ***Year ended 30 June 2010 compared with year ended 30 June 2009***

Revenue was US\$11,139 million for FY2010, an increase of US\$1,091 million over the corresponding period.

For FY2010, 39 per cent of Western Australia Iron Ore shipments on a wet metric tonne basis were priced on annually agreed terms, with the remainder sold on a shorter-term basis.

During the second half of the financial year, the annual benchmark pricing system was substantially replaced by shorter-term market based, landed pricing. Our expectation is that future Western Australia Iron Ore shipments will be priced on this basis.

Underlying EBIT was US\$6,001 million, a decrease of US\$228 million, or 3.6 per cent, compared with the corresponding period. Record sales volumes was the major positive contributor with Western Australia Iron Ore increasing by six per cent to 113.4 wet million tonnes and Samarco increasing 42 per cent to 11.1 million tonnes, adding US\$546 million to Underlying EBIT.

Costs were unfavourably impacted by a weaker US dollar, general inflationary pressure and the ongoing ramp-up of Western Australia RGP4, reducing Underlying EBIT by US\$759 million. In addition, a provision that relates to proposed amendments to the Western Australian State Agreements reduced Underlying EBIT by US\$126 million.

#### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Revenue was US\$10,048 million for FY2009, an increase of US\$593 million over FY2008.

### **3. Operating and financial review and prospects *continued***

Western Australia Iron Ore achieved record production of 106.1 wet million tonnes, an increase of 2.3 million tonnes, or 2.2 per cent, over FY2008, and record sales due to the full ramp-up of Rapid Growth Project 3. However, our operations were interrupted by safety incidents, maintenance and tie-in activities associated with Rapid Growth Project 4. During the period, 68 per cent of Western Australia Iron Ore shipments on a wet metric tonne basis were based on annually agreed pricing.

Samarco (Brazil) production and sales were adversely impacted by weaker pellet demand.

Underlying EBIT of US\$6,229 million increased by US\$1,598 million, or 34.5 per cent. This was mainly driven by higher average realised prices, which increased Underlying EBIT by US\$939 million.

Overall operating costs were lower than last year and increased Underlying EBIT by US\$73 million. The favourable impact of the stronger US dollar was offset by higher costs associated with the uncommissioned projects and safety initiatives.

#### *Manganese*

##### ***Year ended 30 June 2010 compared with year ended 30 June 2009***

Revenue was US\$2,150 million for FY2010, a decrease of US\$386 million, or 15.2 per cent, from the corresponding period. This decrease was mainly as a result of lower average realised prices attributable to manganese ore, which fell by 46.4 per cent and manganese alloy, which fell by 42.7 per cent compared with the corresponding period.

Production was increased in line with the higher demand. Manganese alloy production at 583,000 tonnes was 13.6 per cent higher and manganese ore production at 6.1 million tonnes was 36.8 per cent higher when compared with the corresponding period.

Underlying EBIT was US\$712 million, a decrease of US\$637 million, or 47.2 per cent, from the corresponding period. The decrease is directly attributable to lower realised prices which reduced Underlying EBIT by US\$1,680 million. In comparison to the corresponding period, average realised prices for ore fell by 46 per cent and alloy prices fell by 43 per cent. Offsetting this was the positive impact of price-linked costs of US\$261 million.

The decrease in realised prices was partially offset by a demand driven rise in sales volumes that increased Underlying EBIT by US\$799 million. Local operating costs were well controlled throughout the year, although the impacts of inflation and a weaker US dollar mitigated any benefit.

All Manganese assets were running at full supply chain capacity at the end of the June 2010 quarter.

##### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Revenue was US\$2,536 million for FY2009, a decrease of US\$376 million, or 12.9 per cent, from FY2008. This decrease was mainly as a result of lower sales volumes that were attributable to the global economic slowdown, with steel demand, the driver of manganese usage, reducing drastically.

Production was reduced in line with the lower demand. Manganese alloy production at 513,000 tonnes was 33.8 per cent lower and manganese ore production at 4.5 million tonnes was 31.8 per cent lower when compared with FY2008.

Underlying EBIT was US\$1,349 million, a decrease of US\$295 million, or 17.9 per cent, from FY2008. The decrease is directly attributable to lower turnover impacted by lower sales volumes achieved for both ore and alloy products. Production costs were well controlled despite the reduced volumes. The lower sales volume reduced Underlying EBIT by US\$1,266 million partly offset by gains of US\$223 million as a result of higher prices.

#### *Metallurgical Coal*

##### ***Year ended 30 June 2010 compared with year ended 30 June 2009***

Revenue was US\$6,059 million for FY2010, a decrease of US\$2,028 million, or 25.1 per cent, from the corresponding period.

### **3. Operating and financial review and prospects *continued***

Record annual sales volumes were delivered despite wet weather disruptions in Queensland in March 2010 quarter. Production was 37.4 million tonnes in FY2010, an increase of 2.6 per cent compared with 36.4 million tonnes in the corresponding period. This increase was due to improved operational and supply chain performance, supported by strong demand.

Underlying EBIT was US\$2,053 million, a decrease of US\$2,658 million, or 56.4 per cent, from the corresponding period. The decrease was mainly due to lower realised prices for hard coking coal (34 per cent lower), weak coking coal (33 per cent lower), and thermal coal (11 per cent lower), partly offset by a reduction in price-linked costs.

Operating costs were well controlled. However, a weaker US dollar and inflationary pressure had an unfavourable impact of US\$632 million on Underlying EBIT.

As with iron ore, the old benchmark system was substantially replaced by shorter-term market based pricing. For FY2010, 34 per cent of metallurgical coal shipments were priced on a shorter-term basis. The majority of product sold in the June 2010 quarter was priced in this manner.

#### ***Year ended 30 June 2009 compared with year ended 30 June 2008***

Revenue was US\$8,087 million for FY2009, an increase of US\$4,146 million, or 105.2 per cent, over FY2008.

Production was 36.4 million tonnes in FY2009, an increase of 3.5 per cent compared with 35.2 million tonnes in the previous corresponding period. The increase largely reflects the impact of the rainfall events in FY2008, partially offset by production cuts as a result of lower demand in the second half of FY2009.

Underlying EBIT was US\$4,711 million, an increase of US\$3,774 million, or 402.8 per cent, over FY2008. The increase was mainly due to the higher realised prices for hard coking coal (125 per cent higher), weak coking coal (121 per cent higher) and thermal coal (17 per cent higher), which together contributed US\$4,213 million of the increase. This was partly offset by a negative impact on price-linked royalty costs associated with the higher realised prices and the introduction of a new royalty structure in Queensland and New South Wales of US\$434 million and the impact of the recovery from the FY2008 rainfall events at Queensland Coal of US\$122 million.

Underlying EBIT excluded exceptional charges totalling US\$86 million relating to the decision to cease development of the Maruwai Haji trial mine (Indonesia). Refer section 3.6.2 for details.

Other operating costs were higher due to inflationary pressures, increased labour and contractor charges. This was offset by a favourable impact of the weaker Australian dollar against the US dollar.

In addition, profits on the sales of Elouera mine (Australia) and Queensland Coal mining leases were realised in FY2008.

#### ***Energy Coal***

#### ***Year ended 30 June 2010 compared with year ended 30 June 2009***

Revenue was US\$4,265 million for FY2010, a decrease of US\$2,259 million, or 34.6 per cent, from the corresponding period.

Production was 66.1 million tonnes in FY2010, in line with the corresponding period, with the continued ramp-up of the Klipspruit (South Africa) expansion and record production at Mt Arthur (Australia). Weaker production at New Mexico Coal (US) reflected a downturn in demand from the power generators.

Underlying EBIT was US\$730 million, a decrease of US\$730 million, or 50.0 per cent, from the corresponding period. This decrease was mainly attributed to lower average export prices (net price impact US\$459 million) and reduced earnings from trading activities (US\$309 million). Export sales from BECSA and Mt Arthur increased due to higher demand from China and India, offsetting the effects of reduced demand from the Atlantic market. Dissolution of the Douglas Tavistock Joint Venture arrangement favourably impacted Underlying EBIT in the period. Costs were well controlled other than the adverse impacts of the weakening US dollar (US\$133 million) and inflation (US\$70 million).

### 3. Operating and financial review and prospects *continued*

#### *Year ended 30 June 2009 compared with year ended 30 June 2008*

Revenue was US\$6,524 million for FY2009, a decrease of US\$36 million, or 0.5 per cent, from FY2008.

Production was 68.2 million tonnes in FY2009, a decrease of 15.7 per cent compared with 80.9 million tonnes in FY2008, following completion of the Optimum sale in June 2008 and closure of the Douglas underground mine in November 2008 at our South African operations (BECSA).

Underlying EBIT was US\$1,460 million, an increase of US\$403 million, or 38.1 per cent, over FY2008. The increase was mainly attributable to higher prices (US\$224 million), predominately in the first half of the financial year, and earnings from trading activities (US\$357 million). Lower production at BECSA was offset by record production at Cerrejón Coal (Colombia) and record sales from Hunter Valley Coal (Australia) (combined decrease of US\$152 million). Depreciation of the Australian dollar, South African rand and Colombian peso was offset in part by higher costs due to inflationary pressures, increase in raw materials and labour and contractor costs.

#### *Group and unallocated items*

This category represents corporate activities, including Group Treasury, Freight, Transport and Logistics operations.

#### *Year ended 30 June 2010 compared with year ended 30 June 2009*

Underlying EBIT was a loss of US\$541 million compared with US\$395 million in the corresponding period, an increase of US\$146 million. Self insurance claims related to the Clark shaft incident at Olympic Dam decreased Underlying EBIT by US\$297 million. A weaker US dollar had an unfavourable impact on Underlying EBIT of US\$140 million.

#### *Year ended 30 June 2009 compared with year ended 30 June 2008*

Underlying EBIT was a loss of US\$395 million in FY2009 compared with US\$390 in FY2008, an increase of US\$5 million. This was due to higher insurance costs, offset by favourable exchange rate movements.

#### *Third party sales*

We differentiate sales of our production from sales of third party products due to the significant difference in profit margin earned on these sales. The table below shows the breakdown between our production and third party products.

<u>Year ended 30 June <sup>(1)</sup></u>	<u>2010 US\$M</u>	<u>2009 US\$M</u>	<u>2008 US\$M</u>
<b>Group production</b>			
Revenue	<b>48,193</b>	44,113	51,918
Related operating costs	<b>(28,585)</b>	(26,402)	(27,252)
Operating profit	<b>19,608</b>	17,711	24,666
Margin <sup>(2)</sup>	<b>40.7%</b>	40.1%	47.5%
<b>Third party products</b>			
Revenue	<b>4,605</b>	6,098	7,555
Related operating costs	<b>(4,494)</b>	(5,595)	(7,939)
Operating profit/(loss)	<b>111</b>	503	(384)
Margin <sup>(2)</sup>	<b>2.4%</b>	8.2%	(5.1)%

<sup>(1)</sup> Excluding exceptional items.

<sup>(2)</sup> Operating profit divided by revenue.



### 3. Operating and financial review and prospects *continued*

We engage in third party trading for three reasons:

- In providing solutions for our customers, sometimes we provide products that we do not produce, such as a particular grade of coal. To meet customer needs and contractual commitments, we may buy physical product from third parties and manage risk through both the physical and financial markets.
- Production variability and occasional shortfalls from our own assets means that we sometimes source third party materials to ensure a steady supply of product to our customers.
- The active presence in the commodity markets provides us with physical market insight and commercial knowledge. From time to time, we actively engage in these markets in order to take commercial advantage of business opportunities. These trading activities provide not only a source of revenue, but also a further insight into planning, and can, in some cases, give rise to business development opportunities.

#### 3.7 Liquidity and capital resources

As a result of our record production volumes and record prices in many of our key commodities over the past several years, we have generated very strong cash flows throughout our operations. Despite the changing market conditions, our net operating cash flow remained strong and resulted in net debt declining to US\$3,308 million. These cash flows have been fundamental to our ability to internally fund our existing operations, maintain a pipeline of growth projects and return capital to shareholders through dividends. Our priority for cash is to reinvest in the business. In line with our strategy, we have grown our business rapidly and consistently through project developments and acquisitions. Through a combination of borrowings and payments to shareholders, we manage our balance sheet with the goal of maintaining levels of gearing that we believe optimise our costs of capital and return on capital employed.

Net operating cash flows are our principal source of cash. We also raise cash from debt financing to manage temporary fluctuations in liquidity arrangements and to refinance existing debt. Our liquidity position is supported by our strong and stable credit rating and committed debt facilities.

##### 3.7.1 Cash flow analysis

A full consolidated cash flow statement is contained in the financial statements. The explanatory notes appear in note 23 'Notes to the consolidated cash flow statement' in the financial statements. A summary table has been presented below to show the key sources and uses of cash.

	2010 US\$M	2009 US\$M	2008 US\$M
Net operating cash flows	<b>17,920</b>	18,863	17,817
Cash outflows from investing activities	<b>(11,557)</b>	(11,328)	(9,244)
Net proceeds from investing activities	<b>542</b>	277	180
Net investing cash flows	<b>(11,015)</b>	(11,051)	(9,064)
Net proceeds from/(repayment of) interest bearing liabilities	<b>(485)</b>	3,929	(408)
Share buy-back	–	–	(3,115)
Dividends paid	<b>(4,895)</b>	(4,969)	(3,250)
Other financing activities	<b>73</b>	(140)	(226)
Net financing activities	<b>(5,307)</b>	(1,180)	(6,999)
<b>Net increase in cash and cash equivalents</b>	<b>1,598</b>	6,632	1,754

*Year ended 30 June 2010 compared with year ended 30 June 2009*

Net operating cash flow after interest and tax decreased by five per cent to US\$17,920 million. This was primarily driven by changes in working capital balances having a negative year-on-year impact on operating cash flow of US\$4,780 million, offset by higher levels of cash generated from operations (before changes in working capital balances) of US\$2,874 million and lower net tax and royalty-related tax payments of US\$528 million and a tax refund of US\$552 million.

### 3. Operating and financial review and prospects *continued*

Capital and exploration expenditure totalled US\$10,656 million for the period. Expenditure on major growth projects was US\$7,655 million, including US\$1,902 million on Petroleum projects and US\$5,753 million on Minerals projects. Capital expenditure on sustaining and other items was US\$1,668 million. Exploration expenditure was US\$1,333 million, including US\$303 million, which has been capitalised.

Cash flows from investing activities included acquisitions of US\$508 million relating to Athabasca Potash Inc. of US\$323 million and United Minerals Corporation NL of US\$185 million.

Financing cash flows include net debt repayments of US\$485 million and dividend payments of US\$4,618 million, excluding dividends paid to non-controlling interests.

*Year ended 30 June 2009 compared with year ended 30 June 2008*

Net operating cash flow after interest and tax increased by 5.9 per cent to US\$18,863 million. This was primarily attributable to a decrease in receivables, partly offset by increases in other working capital items.

Capital and exploration expenditure totalled US\$10,735 million for FY2009. Expenditure on major growth projects was US\$7,464 million, including US\$1,851 million on Petroleum projects and US\$5,613 million on Minerals projects. Capital expenditure on sustaining, minor capital and other items was US\$2,028 million. Exploration expenditure was US\$1,243 million, including US\$234 million which was capitalised.

Financing cash flows included net debt proceeds of US\$3,929 million and increased dividend payments of US\$4,563 million, excluding dividends paid to non-controlling interests.

#### 3.7.2 Growth projects

During the period, we completed five major growth projects (oil and gas, iron ore, alumina and energy coal). Highlighting our commitment to reinvest through the cycle, we approved two major growth projects (base metals and energy coal) and made pre-commitments of US\$2,237 million for another four (iron ore, metallurgical coal and potash).

##### *Completed projects*

Customer Sector Group	Project	Capacity <sup>(1)</sup>	Capital expenditure (US\$M) <sup>(1)</sup>		Date of initial production <sup>(2)</sup>	
			Budget	Actual	Target	Actual
Petroleum	Pyrenees (Australia) BHP Billiton – 71.43%	96,000 barrels of oil and 60 million cubic feet gas per day	1,200	1,247	H1 2010	H1 2010
Aluminium	Alumar Refinery Expansion (Brazil) BHP Billiton – 36%	2 million tonnes per annum of additional alumina capacity	900 <sup>(4)</sup>	851	Q2 2009 <sup>(4)</sup>	Q3 2009
Iron Ore	WA Iron Ore Rapid Growth Project 4 (Australia) BHP Billiton – 86.2%	26 million tonnes per annum of additional iron ore system capacity	1,850	1,850 <sup>(3)</sup>	H1 2010	H2 2009
Energy Coal	Klipspruit (South Africa) BHP Billiton – 100%	1.8 million tonnes per annum export and 2.1 million tonnes per annum domestic thermal coal	450	400 <sup>(3)</sup>	H2 2009	H2 2009
	Newcastle Third Port Project (Australia) BHP Billiton – 35.5%	30 million tonnes per annum export coal loading facility	390	390 <sup>(3)</sup>	2010	H1 2010
			<b>4,790</b>	<b>4,738</b>		

### 3. Operating and financial review and prospects *continued*

- (1) All references to capital expenditure are BHP Billiton's share unless noted otherwise. All references to capacity are 100 per cent unless noted otherwise.
- (2) References are based on calendar years.
- (3) Number subject to finalisation.
- (4) As per revised budget and schedule.

*Projects currently under development (approved in prior years)*

<u>Customer Sector Group</u>	<u>Project</u>	<u>Capacity<sup>(1)</sup></u>	<u>Budgeted capital expenditure (US\$M)<sup>(1)</sup></u>	<u>Target date of initial production<sup>(2)</sup></u>
Petroleum	Angostura Gas Phase II (Trinidad and Tobago) BHP Billiton – 45%	280 million cubic feet of gas per day	180	H1 2011
	Bass Strait Kipper <sup>(3)</sup> (Australia) BHP Billiton – 32.5 - 50%	10,000 barrels of condensate per day and processing capacity of 80 million cubic feet gas per day	500	2011
	Bass Strait Turrum <sup>(3)</sup> (Australia) BHP Billiton – 50%	11,000 barrels of condensate per day and processing capacity of 200 million cubic feet of gas per day	625	2011
	North West Shelf CWLH Extension (Australia) BHP Billiton – 16.67%	Replacement vessel with capacity of 60,000 barrels of oil per day	245	2011
	North West Shelf North Rankin B Gas Compression (Australia) BHP Billiton – 16.67%	2,500 million cubic feet of gas per day	850	2012
Aluminium	Worsley Efficiency and Growth (Australia) BHP Billiton – 86%	1.1 million tonnes per annum of additional alumina capacity	1,900	H1 2011
Iron Ore	WA Iron Ore Rapid Growth Project 5 (Australia) BHP Billiton – 85%	50 million tonnes per annum additional iron ore system capacity	4,800	H2 2011
Energy Coal	Douglas-Middelburg Optimisation (South Africa) BHP Billiton – 100%	10 million tonnes per annum export thermal coal and 8.5 million tonnes per annum domestic thermal coal (sustains current output)	975	Mid 2010
			<b>10,075</b>	

- (1) All references to capital expenditure are BHP Billiton's share unless noted otherwise. All references to capacity are 100 per cent unless noted otherwise.
- (2) References are based on calendar years.
- (3) Schedule and budget under review following advice from operator.

### 3. Operating and financial review and prospects *continued*

*Projects approved during FY2010*

<u>Customer Sector Group</u>	<u>Project</u>	<u>Capacity <sup>(1)</sup></u>	<u>Budgeted capital expenditure (US\$M) <sup>(1)</sup></u>	<u>Target date of initial production <sup>(2)</sup></u>
Base Metals	Antamina Expansion (Peru) BHP Billiton – 33.75%	Increases ore processing capacity to 130,000 tonnes per day	435	Q4 2011
Energy Coal	MAC20 Project (Australia) BHP Billiton – 100%	Increases saleable thermal coal production by approximately 3.5 million tonnes per annum	260	H1 2011
			<b>695</b>	

<sup>(1)</sup> All references to capital expenditure are BHP Billiton's share unless noted otherwise. All references to capacity are 100 per cent unless noted otherwise.

<sup>(2)</sup> References are based on calendar years.

#### **3.7.3 Net debt and sources of liquidity**

Our policies on debt and treasury management are as follows:

- a commitment to a solid 'A' credit rating;
- to be cash flow positive before dividends, debt service and capital management;
- to target a minimum interest cover ratio of eight times over the commodity cycle;
- to maintain gearing (net debt/net debt + net assets) of 35 per cent to 40 per cent;
- diversification of funding sources;
- generally to maintain borrowings and excess cash in US dollars.

#### *Solid 'A' credit ratings*

The Group's credit ratings are currently A1/P-1 (Moody's) and A+/A-1 (Standard & Poor's). The ratings outlook from both agencies has not changed during FY2010.

#### *Interest rate risk*

Interest rate risk on our outstanding borrowings and investments is managed as part of the Portfolio Risk Management Strategy. Refer to note 28 'Financial risk management' in the financial statements for a detailed discussion on the strategy. When required under this strategy, we use interest rate swaps, including cross currency interest rate swaps, to convert a fixed rate exposure to a floating rate exposure. All interest swaps have been designated and are effective as hedging instruments under IFRS.

#### *Gearing and net debt*

##### **30 June 2010 compared with 30 June 2009**

Net debt, comprising cash and interest-bearing liabilities, was US\$3,308 million, a decrease of US\$2,278 million, or 41 per cent, compared with 30 June 2009. Net gearing, which is the ratio of net debt to net debt plus net assets, was 6.3 per cent at 30 June 2010, compared with 12.1 per cent at 30 June 2009.

Cash at bank and in hand less overdrafts at 30 June 2010 was US\$12,455 million compared with US\$10,831 million at 30 June 2009. Included within this are short-term deposits at 30 June 2010 of US\$11,087 million compared with US\$9,677 million at 30 June 2009.

### **3. Operating and financial review and prospects *continued***

#### ***30 June 2009 compared with 30 June 2008***

Net debt, comprising cash and interest bearing liabilities, was US\$5,586 million, a decrease of US\$2,872 million, or 34.0 per cent, compared with 30 June 2008. Gearing, which is the ratio of net debt to net debt plus net assets, was 12.1 per cent at 30 June 2009, compared with 17.8 per cent at 30 June 2008.

Cash at bank and in hand less overdrafts at 30 June 2009 was US\$10,831 million compared with US\$4,173 million at 30 June 2008. Included within this are short-term deposits at 30 June 2009 of US\$9,677 million compared with US\$2,503 million at 30 June 2008.

#### ***Funding sources***

The maturity profile of our debt obligations and details of our undrawn committed facilities are set forth in note 28 'Financial risk management' in the financial statements.

During FY2010, no debt was issued or matured.

None of our general borrowing facilities are subject to financial covenants. Certain specific financing facilities in relation to specific businesses are the subject of financial covenants that vary from facility to facility, but which would be considered normal for such facilities.

#### ***3.7.4 Quantitative and qualitative disclosures about market risk***

We identified our primary market risks in section 3.4 'External factors and trends affecting our results'. A description of how we manage our market risks, including both quantitative and qualitative information about our market risk sensitive instruments outstanding at 30 June 2010, is contained in note 28 'Financial risk management' to the financial statements.

#### ***3.7.5 Portfolio management***

Our strategy is focused on long-life, low-cost, expandable assets and we continually review our portfolio to identify assets that do not fit this strategy. These activities continued during the year, with proceeds amounting to US\$542 million being realised from divestments of property, plant and equipment, financial assets and operations, including Ravensthorpe nickel operations and Manganese Metal Company (Pty) Ltd.

We will purchase interests in assets where they fit our strategy. On 18 February 2010, the Group acquired all the issued shares of United Minerals Corporation NL for a total cash consideration of US\$185 million. Similarly, on 23 March 2010, the Group acquired all the issued and outstanding common shares of Athabasca Potash Inc for a total cash consideration of US\$323 million.

#### ***3.7.6 Dividend and capital management***

On 25 August 2010, the Board declared a final dividend for the year of 45 US cents per share. Together with the interim dividend of 42 US cents per share paid to shareholders on 23 March 2010, this brings the total dividend declared for the year to 87 US cents per share, a 6.1 per cent increase over last year's full year dividend of 82 US cents per share.

At the Annual General Meetings held during 2009, shareholders authorised BHP Billiton Plc to make on-market purchases of up to 223,112,120 of its ordinary shares, representing approximately 10 per cent of BHP Billiton Plc's issued share capital at that time. Shareholders will be asked at the 2010 Annual General Meetings to renew this authority.

During FY2010, we did not make any on-market or off-market purchases of BHP Billiton Limited or BHP Billiton Plc shares under any share buy-back program of the Group.

### **3.8 Off-balance sheet arrangements and contractual commitments**

Information in relation to our material off-balance sheet arrangements, principally contingent liabilities, commitments for capital expenditure and other expenditure and commitments under leases at 30 June 2010 is provided in note 21 'Contingent liabilities' and note 22 'Commitments' to the financial statements.

### **3. Operating and financial review and prospects *continued***

We expect that these contractual commitments for expenditure, together with other expenditure and liquidity requirements will be met from internal cash flow and, to the extent necessary, from the existing facilities described in section 3.7.3 'Net debt and sources of liquidity'.

#### **3.9 Subsidiaries and related party transactions**

##### ***Subsidiary information***

Information about our significant subsidiaries is included in note 25 'Subsidiaries' to the financial statements.

##### ***Related party transactions***

Related party transactions are outlined in note 31 'Related party transactions' in the financial statements.

#### **3.10 Significant changes**

Other than the matters disclosed elsewhere in this Report, no matters or circumstances have arisen since the end of the year that have significantly affected, or may significantly affect, the operations, results of operations or state of affairs of the BHP Billiton Group in subsequent accounting periods.

## 4 Board of Directors and Group Management Committee

### 4.1 Board of Directors

**Jacques Nasser** AO, BBus, Hon DT, 62

**Term of office:** Director of BHP Billiton Limited and BHP Billiton Plc since 6 June 2006. Appointed Chairman of BHP Billiton Limited and BHP Billiton Plc from 31 March 2010. Mr Nasser is retiring and standing for re-election in 2010.

**Independent:** Yes

**Skills and experience:** Following a 33-year career with Ford in various leadership positions in Europe, Australia, Asia, South America and the USA, Jacques Nasser served as a member of the Board of Directors and as President and Chief Executive Officer of Ford Motor Company from 1998 to 2001. He has more than 30 years' experience in large-scale global businesses.

**Other directorships and offices (current and recent):**

- Director of British Sky Broadcasting Group plc (since November 2002).
- Non-executive advisory partner (since March 2010) of One Equity Partners 'JPMorgan Chase & Co's Private Equity Business' (Partner from November 2002 until March 2010).
- Member of the International Advisory Council of Allianz Aktiengesellschaft (since February 2001).
- Former Director of Brambles Limited (from March 2004 to January 2008).

**Board Committee membership:**

- Chairman of the Nomination Committee.

**Marius Kloppers** BE (Chem), MBA, PhD (Materials Science), 48

**Term of office:** Director of BHP Billiton Limited and BHP Billiton Plc since January 2006. Mr Kloppers was appointed Chief Executive Officer on 1 October 2007. He was appointed Group President Non-Ferrous Materials and executive Director in January 2006 and was previously Chief Commercial Officer. Mr Kloppers was elected in 2006 and last re-elected in 2009.

**Independent:** No

**Skills and experience:** Marius Kloppers has extensive knowledge of the mining industry and of BHP Billiton's operations. Active in the mining and resources industry since 1993, he was appointed Chief Commercial Officer in December 2003. He was previously Chief Marketing Officer, Group Executive of Billiton Plc, Chief Executive of Samancor Manganese and held various positions at Billiton Aluminium, including Chief Operating Officer and General Manager of Hillside Aluminium.

**Other directorships and offices (current and recent):**

None.

**Board Committee membership:**

None.

**Alan Boeckmann** BE (Electrical Eng), 62

**Term of office:** Appointed a Director of BHP Billiton Limited and BHP Billiton Plc in September 2008. Mr Boeckmann was elected at the 2008 Annual General Meetings.

**Independent:** Yes

**Skills and experience:** Alan Boeckmann is currently Chairman and Chief Executive Officer of Fluor Corporation, USA, having originally joined Fluor in 1974. Mr Boeckmann has extensive experience in running large-scale international industrial companies and experience in the oil and gas industry. He has global experience in engineering, procurement, construction, maintenance and project management across a range of industries, including resources and petroleum.

***Other directorships and offices (current and recent):***

- Chairman and Chief Executive Officer of Fluor Corporation (since February 2002).
- Former Director of Burlington Northern Santa Fe Corporation (from September 2001 until February 2010).
- Former Director of Archer Daniels Midland Company (from November 2007 to November 2008).

***Board Committee membership:***

- Member of the Remuneration Committee.

**Malcolm Broomhead** MBA, BE, FIE(Aus), FAusIMM, FAIM, MICE (UK), FAICD, 58

***Term of office:*** Appointed a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 31 March 2010 and will stand for election at the 2010 Annual General Meetings.

***Independent:*** Yes

***Skills and experience:*** Malcolm Broomhead was Managing Director and Chief Executive Officer of Orica Limited from 2001 until September 2005, where he oversaw a strongly performing global business that controlled interests in more than 45 countries. Prior to joining Orica, Mr Broomhead held a number of senior positions at North Limited, including Managing Director and Chief Executive Officer and prior to that, held senior management positions with Halcrow (UK), MIM Holdings, Peko Wallsend and Industrial Equity. Mr Broomhead has extensive experience in running industrial and mining companies with a global footprint and broad global experience in project development in many of the countries in which BHP Billiton operates. Mr Broomhead is currently non-executive Chairman of Asciano Limited and a non-executive Director of Coates Group Holdings Pty Ltd.

***Other directorships and offices (current and recent):***

- Chairman of Asciano Limited (since October 2009).
- Director of Coates Group Holdings Pty Ltd (since January 2008).

***Board Committee membership:***

- Member of the Sustainability Committee.

**John Buchanan** BSc, MSc (Hons 1), PhD, 67

***Term of office:*** Director of BHP Billiton Limited and BHP Billiton Plc since February 2003. Dr Buchanan has been designated as the Senior Independent Director of BHP Billiton Plc since his appointment. He was last re-elected in 2008 and is retiring and standing for re-election in 2010.

***Independent:*** Yes

***Skills and experience:*** Educated at Auckland, Oxford and Harvard, John Buchanan has broad international business experience gained in large and complex international businesses. He has substantial experience in the petroleum industry and knowledge of the international investor community. He has held various leadership roles in strategic, financial, operational and marketing positions, including executive experience in different countries. He is a former executive Director and Group Chief Financial Officer of BP, serving on the BP Board for six years.

***Other directorships and offices (current and recent):***

- Chairman of Smith & Nephew Plc (since April 2006) and former Deputy Chairman (from February 2005 to April 2006).
- Chairman of the International Chamber of Commerce (UK) (since May 2008).
- Senior Independent Director and Deputy Chairman of Vodafone Group Plc (since July 2006) and Director (since April 2003).
- Member of Advisory Board of Ondra Bank (since June 2009).
- Former Director of AstraZeneca Plc (from April 2002 to April 2010).



***Board Committee membership:***

- Chairman of the Remuneration Committee.
- Member of the Nomination Committee.

**Carlos Cordeiro** AB, MBA, 54

***Term of office:*** Director of BHP Billiton Limited and BHP Billiton Plc since February 2005. Mr Cordeiro was last re-elected in 2009.

***Independent:*** Yes

***Skills and experience:*** Carlos Cordeiro brings to the Board more than 30 years' experience in providing strategic and financial advice to corporations, financial institutions and governments around the world. He was previously Partner and Managing Director of Goldman Sachs Group Inc.

***Other directorships and offices (current and recent):***

- Non-executive Advisory Director of The Goldman Sachs Group Inc (since December 2001).
- Non-executive Vice Chairman of Goldman Sachs (Asia) (since December 2001).

***Board Committee membership:***

- Member of the Remuneration Committee.

**David Crawford** AO, BComm, LLB, FCA, FCPA, FAICD, 66

***Term of office:*** Director of BHP Limited since May 1994. Director of BHP Billiton Limited and BHP Billiton Plc since June 2001. Mr Crawford was last re-elected in 2009 and, in accordance with the Group's policy described under 'Tenure' in section 5.3.5 of this Annual Report, is retiring and standing for re-election in 2010.

***Independent:*** Yes

***Skills and experience:*** David Crawford has extensive experience in risk management and business reorganisation. He has acted as a consultant, scheme manager, receiver and manager and liquidator to very large and complex groups of companies. He was previously Australian National Chairman of KPMG, Chartered Accountants. The Board has nominated Mr Crawford as the 'audit committee financial expert' for the purposes of the US Securities and Exchange Commission Rules and is satisfied that he has recent and relevant financial experience for the purposes of the UK Financial Services Authority's Disclosure and Transparency Rules and the UK Corporate Governance Code.

***Other directorships and offices (current and recent):***

- Chairman of Lend Lease Corporation Limited (since May 2003) and Director (since July 2001).
- Chairman of Foster's Group Limited (since November 2007) and Director of Foster's Group Limited (since August 2001).
- Former Director of Westpac Banking Corporation (from May 2002 to December 2007).
- Former Chairman of National Foods Limited (Director from November 2001 to June 2005).

***Board Committee membership:***

- Chairman of the Risk and Audit Committee.

**Carolyn Hewson** AO, BEc (Hons), MA (Econ), FAICD, 55

***Term of office:*** Appointed a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 31 March 2010 and will stand for election at the 2010 Annual General Meetings.

***Independent:*** Yes

**Skills and experience:** Carolyn Hewson is a former investment banker and has over 25 years' experience in the finance sector. Ms Hewson was previously an Executive Director of Schroders Australia Limited and has extensive financial markets, risk management and investment management expertise. Ms Hewson is a non-executive director of Stockland Corporation Limited, Westpac Banking Corporation, BT Investment Management Limited and previously served as a director on the boards of AMP Limited, CSR Limited, AGL Energy Limited, the Australian Gas Light Company, South Australia Water and the Economic Development Board of South Australia. She has current board or advisory roles with Nanosonics Limited, the Australian Charities Fund and the Neurosurgical Research Foundation.

**Other directorships and offices (current and recent):**

- Director of Stockland Corporation Limited (since March 2009).
- Director of BT Investment Management Limited (since December 2007).
- Director of Westpac Banking Corporation (since February 2003).
- Member of the Advisory Board of Nanosonics Limited (since June 2007).
- Director of Australian Charities Fund (since March 2001).
- Member and Patron of the Neurosurgical Research Foundation Council (since April 1993).
- Former Director of AGL Energy Limited (from February 2006 to February 2009).

**Board Committee membership:**

- Member of the Risk and Audit Committee.

**Wayne Murdy** BSc (Business Administration), CPA, 66

**Term of office:** Director of BHP Billiton Limited and BHP Billiton Plc since 18 June 2009. Mr Murdy was elected in 2009.

**Independent:** Yes

**Skills and experience:** Wayne Murdy served as the Chief Executive Officer of Newmont Mining Corporation from January 2001 to June 2007 and Chairman of Newmont from January 2002 to December 2007. His background is in finance and accounting where he gained comprehensive experience in the financial management of mining, oil and gas companies during his career with Getty Oil, Apache Corporation and Newmont. Mr Murdy is also a former Chairman of the International Council on Mining and Metals, a former director of the US National Mining Association and a former member of the Manufacturing Council of the US Department of Commerce.

**Other directorships and offices (current and recent):**

- Director of Weyerhaeuser Company (since January 2009).
- Director of Qwest Communications International Inc (since September 2005).
- Former Chief Executive Officer (from January 2001 to June 2007) and Chairman (from January 2002 to December 2007) of Newmont Mining Corporation.
- Former Chairman of the International Council of Mining and Metals (from January 2004 to December 2006).
- Former Director of the US National Mining Association (from January 2002 to December 2007).

**Board Committee membership:**

- Member of the Risk and Audit Committee.

**Keith Rumble** BSc, MSc (Geology), 56

**Term of office:** Appointed a Director of BHP Billiton Limited and BHP Billiton Plc in September 2008. Mr Rumble was elected at the 2008 Annual General Meetings and will retire and stand for re-election in 2010.

**Independent:** Yes

**Skills and experience:** Keith Rumble was previously Chief Executive Officer of SUN Mining, a wholly owned entity of the SUN Group, a principal investor and private equity fund manager in Russia, India and other emerging and transforming markets. He has over 30 years' experience in the resources industry, specifically in titanium and platinum mining, and is a former Chief Executive Officer of Impala Platinum (Pty) Ltd and former Chief Executive Officer of Rio Tinto Iron and Titanium Inc. He began his career at Richards Bay Minerals in 1980 and held various management positions before becoming Chief Executive Officer in 1996.

**Other directorships and offices (current and recent):**

- Director of The Aveng Group (since September 2009).
- Board of Governors of Rhodes University (since April 2005).
- Trustee of the World Wildlife Fund, South Africa (since October 2006).

**Board Committee membership:**

- Member of the Sustainability Committee.

**John Schubert** BCh Eng, PhD (Chem Eng), FIEAust, FTSE, 67

**Term of office:** Director of BHP Limited since June 2000 and a Director of BHP Billiton Limited and BHP Billiton Plc since June 2001. Dr Schubert was last re-elected in 2008 and in accordance with the Group's policy described under 'Tenure' in section 5.3.5 of this Annual Report, is retiring and standing for re-election in 2010.

**Independent:** Yes

**Skills and experience:** John Schubert has considerable experience in the international oil industry, including at Chief Executive Officer level. He has had executive mining and financial responsibilities and was Chief Executive Officer of Pioneer International Limited for six years, where he operated in the building materials industry in 16 countries. He has experience in mergers, acquisitions and divestments, project analysis and management. He was previously Chairman and Managing Director of Esso Australia Limited and President of the Business Council of Australia.

**Other directorships and offices (current and recent):**

- Director of Qantas Airways Limited (since October 2000).
- Chairman of G2 Therapies Pty Limited (since November 2000).
- Former Chairman (from November 2004 to February 2010) and Director (from October 1991 to February 2010) of Commonwealth Bank of Australia.
- Former Chairman and Director of Worley Parsons Limited (from November 2002 until February 2005).

**Board Committee membership:**

- Chairman of the Sustainability Committee.
- Member of the Remuneration Committee.
- Member of the Nomination Committee.

**Group Company Secretary**

**Jane McAloon** BEc (Hons), LLB, GDipGov, FCIS, 46

**Term of office:** Jane McAloon was appointed Group Company Secretary in July 2007 and joined the BHP Billiton Group in September 2006 as Company Secretary for BHP Billiton Limited.

**Skills and experience:** Prior to joining BHP Billiton, Jane McAloon held the position of Company Secretary and Group Manager External and Regulatory Services in the Australian Gas Light Company. She previously held various Australian State and Commonwealth government positions, including Director General of the NSW Ministry of Energy and Utilities and Deputy Director General for the NSW Cabinet Office, as well as working in private legal practice. She is a Fellow of the Institute of Chartered Secretaries.

## **4.2 Group Management Committee**

**Marius Kloppers** BE (Chem), MBA, PhD (Materials Science), 48

### ***Chief Executive Officer and executive Director***

#### *Chairman of the Group Management Committee*

Marius Kloppers has been active in the mining and resources industry since 1993 and was appointed Chief Executive Officer in October 2007. He was previously Chief Commercial Officer, Chief Marketing Officer, Group Executive of Billiton Plc, Chief Executive of Samancor Manganese and held various positions at Billiton Aluminium, among them Chief Operating Officer and General Manager of Hillside Aluminium.

**Alberto Calderon** PhD Econ, M Phil Econ, JD Law, BA Econ, 50

### ***Group Executive and Chief Commercial Officer***

#### *Member of the Group Management Committee*

Alberto Calderon joined the Group as President Diamonds and Specialty Products in February 2006 and was appointed to his current position as Chief Commercial Officer in July 2007. Prior to this, he was Chief Executive Officer of Cerrejón Coal Company and President of the oil company Ecopetrol. In the early 1990s he was President of the Power Company of Bogotá and held various senior roles in investment banking and in the Colombian Government.

**Andrew Mackenzie** BSc (Geology), PhD (Chemistry), 53

### ***Group Executive and Chief Executive Non-Ferrous***

#### *Member of the Group Management Committee*

Andrew Mackenzie joined BHP Billiton in November 2008 in his current position as Chief Executive Non-Ferrous. His prior career included time with Rio Tinto, where he was Chief Executive of Diamonds and Minerals, and with BP, where he held a number of senior roles, including Group Vice President for Technology and Engineering and Group Vice President for Chemicals. He is a non-executive Director of Centrica plc.

**Marcus Randolph** BSc, MBA, 54

### ***Group Executive and Chief Executive Ferrous and Coal***

#### *Member of the Group Management Committee*

Marcus Randolph was previously Chief Organisation Development Officer, President Diamonds and Specialty Products, Chief Development Officer Minerals and Chief Strategic Officer Minerals for BHP Billiton. His prior career includes Chief Executive Officer, First Dynasty Mines, Mining and Minerals Executive, Rio Tinto Plc, Director of Acquisitions and Strategy, Kennecott Inc, General Manager Corporación Minera Nor Peru, Asarco Inc, and various mine operating positions in the US with Asarco Inc. He has been in his current position as Chief Executive Ferrous and Coal since July 2007.

**Alex Vanselow** BComm, Wharton AMP, 48

### ***Group Executive and Chief Financial Officer***

#### *Member of the Group Management Committee and Chairman of the Investment Committee and Financial Risk Management Committee*

Alex Vanselow joined the Group in 1989 and was appointed Chief Financial Officer in March 2006. He was previously President Aluminium, Chief Financial Officer of Aluminium, Vice President Finance and Chief Financial Officer of Orinoco Iron CA, and Manager Accounting and Control BHP Iron Ore. His prior career was with Arthur Andersen.

**Karen Wood** BEd, LLB (Hons), 54

***Group Executive and Chief People Officer***

*Member of the Group Management Committee and Chairman of the Global Ethics Advisory Panel*

Karen Wood's previous positions with BHP Billiton were Chief Governance Officer, Group Company Secretary and Special Adviser and Head of Group Secretariat. She is a member of the Takeovers Panel (Australia), a Fellow of the Institute of Chartered Secretaries and a member of the Law Council of Australia and the Law Institute of Victoria. Before joining BHP Billiton, she was General Counsel and Company Secretary for Bonlac Foods Limited. She has been in her current position as Chief People Officer since July 2007.

**J Michael Yeager** BSc, MSc, 57

***Group Executive and Chief Executive Petroleum***

*Member of the Group Management Committee*

Mike Yeager joined the Group in April 2006 as Chief Executive Petroleum after 25 years with Mobil and later ExxonMobil. He was previously Vice President, ExxonMobil Development Company, and held the roles of Senior Vice President, Imperial Oil Ltd and Chief Executive Officer, Imperial Oil Resources, Vice President Africa, ExxonMobil Production Company, Vice President Europe, ExxonMobil Production Company and President, Mobil Exploration and Production in the US.

## 5 Corporate Governance Statement

### 5.1 Governance at BHP Billiton

BHP Billiton's corporate objective is to create long-term value for shareholders through the discovery, development and conversion of natural resources and the provision of innovative customer and market-focused solutions. We have unique assets that are critical to the growth of the world's developing economies, and a geographic and commodity spread that reduces risk and optimises opportunity.

In pursuing the corporate objective, we have committed to the highest level of governance and strive to foster a culture that values and rewards exemplary ethical standards, personal and corporate integrity and respect for others. The Board governs the Group consistent with our long-stated business strategy and commitment to a transparent and high-quality governance system.

Our approach to governance is firmly based on the belief that there is a link between high-quality governance and the creation of long-term shareholder value. Our expectations of our employees and those to whom we contract business are set out in the *BHP Billiton Code of Business Conduct*.

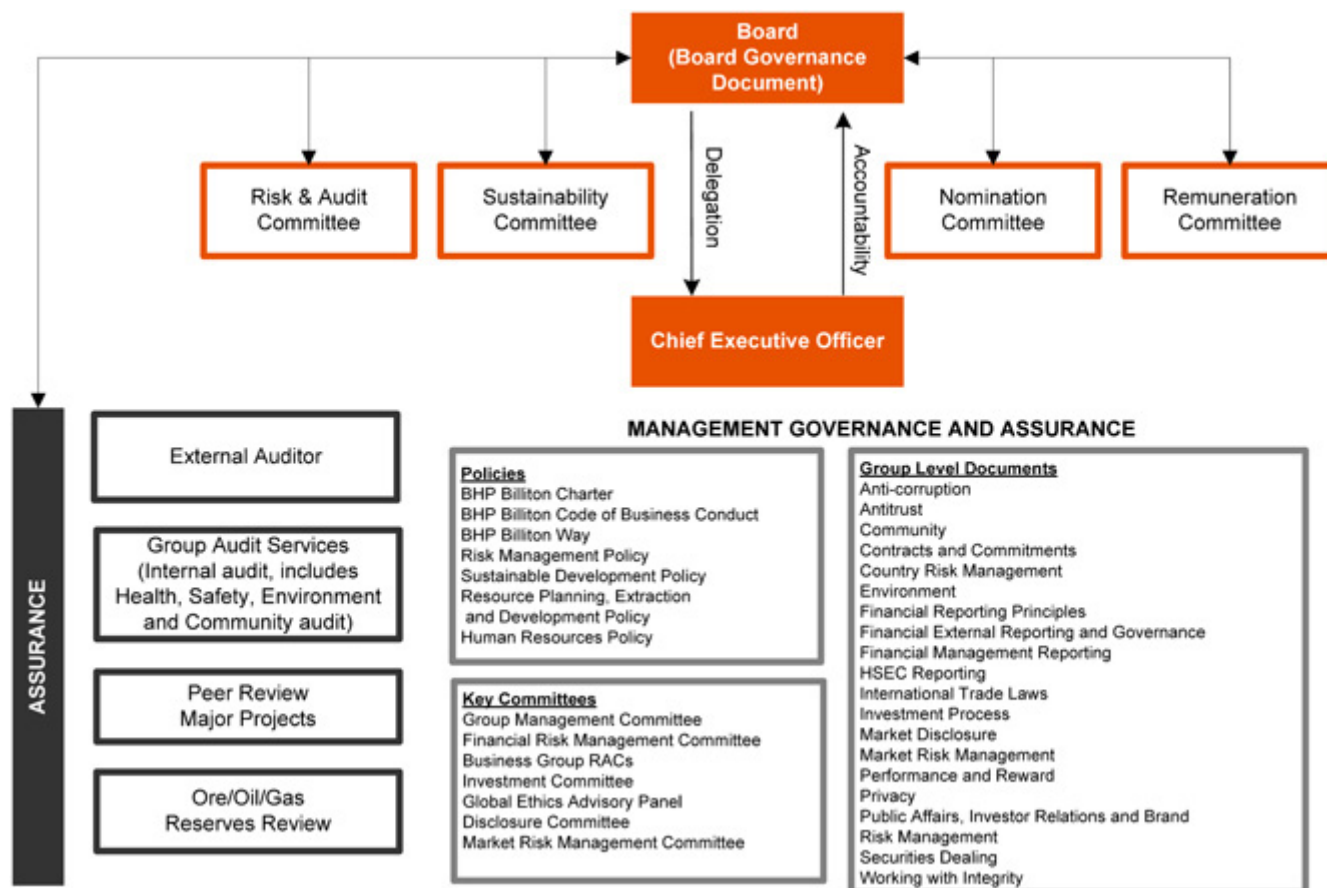
This statement outlines our system of governance. BHP Billiton operates as a single economic entity under a Dual Listed Company (DLC) structure with a unified Board and management. We have a primary listing in Australia and a premium listing in the UK and are registered with the US Securities and Exchange Commission and listed on the New York Stock Exchange (NYSE), as well as maintaining a secondary listing on the Johannesburg Stock Exchange. In formulating our governance framework, the regulatory requirements in Australia, the UK and the US have been taken into account, together with prevailing standards of best practice. Where governance principles vary across these jurisdictions, the Board has resolved to adopt what we consider to be the higher of the prevailing standards.

Our view remains that governance is not just a matter for the Board and a good governance culture must be fostered throughout the organisation.

The past year saw significant commentary on governance practices, through the United Kingdom's Financial Reporting Council's review of the Combined Code on Corporate Governance (which has now been renamed the UK Corporate Governance Code), the Australian Productivity Commission's Inquiry into Executive Remuneration, as well as proposals for change to the Australian Securities Exchange's Corporate Governance Council's Corporate Governance Principles and Recommendations. Key recommendations emerged, such as the effective composition of the Board (including ensuring an appropriate blend of skills and experience), the role of the Chairman and the non-executive Directors, the time commitment expected of non-executive Directors, the alignment of executive remuneration with shareholder interests and the role of the Board in reviewing risk management governance. We have the benefit of robust governance practices that already address many of the key recommendations; for example, the Board has, for many years, focused on ensuring it has the right mix of skills and experience to effectively carry out its duties. Significant Board renewal activities were undertaken during the year with the appointment of two Directors, Malcolm Broomhead and Carolyn Hewson and with five Directors retiring, including the former Chairman Don Argus. Governance is an ongoing process and we aim to maintain our focus on continuous improvement by building a multi-skilled and diversified Board supported by a first-class management team.

We have, over the years, adopted leading corporate governance practices, including implementing an active approach to institutional and retail shareholder engagement. The Board represents shareholders and is ultimately accountable to them for the Group's performance in creating and delivering shareholder value through the effective governance of BHP Billiton.

## BHP Billiton Governance Structure



### 5.2 Shareholder engagement

The Board represents the Group's shareholders and is accountable to them for creating and delivering value through the effective governance of the business.

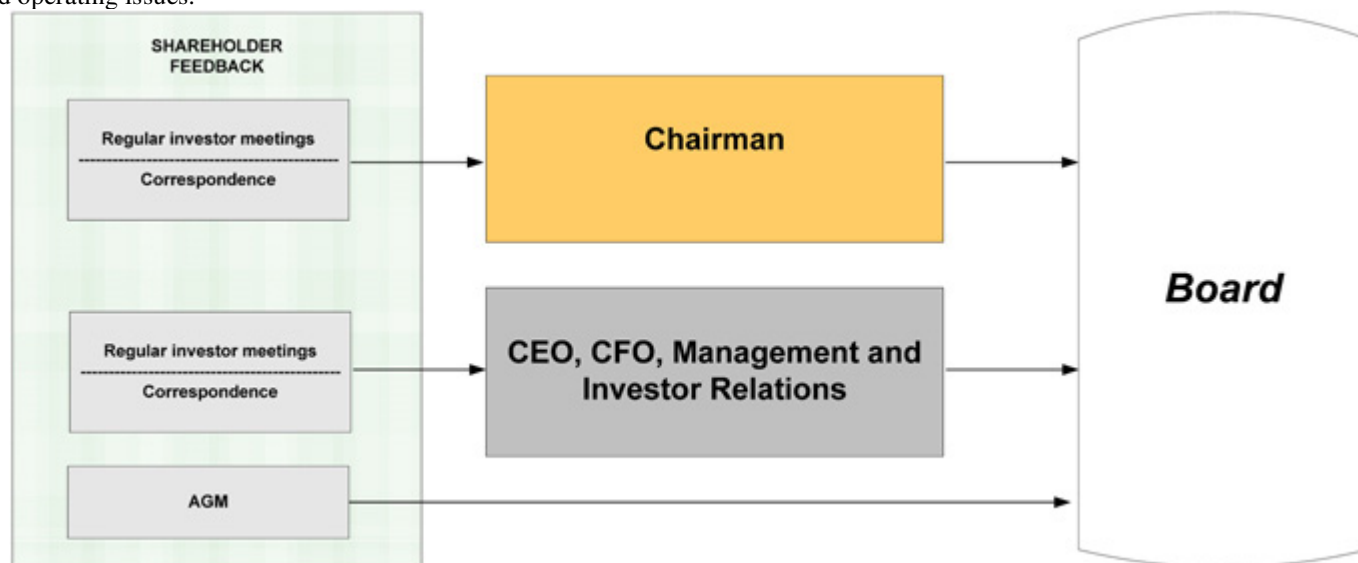
The Board has developed a strategy for engaging and communicating with shareholders, key aspects of which are outlined below.

Shareholders vote on important matters affecting the business, including the election of Directors, changes to our constitutional documents, the receipt of annual financial statements and incentive arrangements for executive Directors.

Shareholders are encouraged to make their views known to us and to raise directly any matters of concern. The Board uses a range of formal and informal measures to ensure that it understands and effectively responds to shareholder questions and concerns relating to the management and governance of the Group:

- The **Chairman**, with support from the company secretariat team, has regular meetings with institutional shareholders and investor representatives to discuss governance matters.
- The **Remuneration Committee Chairman** and Senior Independent Director also meets with institutional shareholders and investor representatives to discuss executive remuneration and other governance issues.
- The **Chief Executive Officer** (CEO), **Chief Financial Officer** (CFO) and investor relations team meet regularly with major shareholders to discuss our strategy, financial and operating performance.
- The **investor relations team** provides quarterly reports in relation to shareholder feedback generally, which the Board uses to assess how the Group is responding to shareholder views and issues.
- Finally, shareholders are encouraged to attend BHP Billiton's **Annual General Meetings** and to use these opportunities to ask questions (discussed further below).

In each case, the views and concerns that have been raised are reported to the Board, which ensures Directors are aware of the issues raised and assists Directors in developing an understanding of the views of shareholders, in particular in relation to strategic, financial and operating issues.



The Dual Listed Company structure means that Annual General Meetings of BHP Billiton Plc and BHP Billiton Limited are held in the United Kingdom and Australia in October and November, respectively, each year. Questions can be registered prior to the meeting by completing the relevant form accompanying the Notice of Meeting or by emailing the Group at [investor.relations@bhpbilliton.com](mailto:investor.relations@bhpbilliton.com). Questions that have been lodged ahead of the meeting, and the answers to them, are posted to our website. The External Auditor attends the Annual General Meetings and is available to answer questions. Shareholders may appoint proxies electronically through our website. The Notice of Meeting describes how this can be done.

Proceedings at shareholder meetings and important briefings are broadcast live from our website. Copies of the speeches delivered by the Chairman and CEO to the Annual General Meetings are released to the stock exchanges and posted to our website. A summary of proceedings and the outcome of voting on the items of business are released to the relevant stock exchanges and posted to our website as soon as they are available following the completion of the BHP Billiton Limited meeting.

## 5.3 Board of Directors

### 5.3.1 Role and responsibilities

The Board's role is to represent the shareholders and it is accountable to them for creating and delivering value through the effective governance of the business. The performance of the Board and the corresponding contributions of Directors to the Board's collective decision-making processes are essential to fulfil this role.

The Board has published a *Board Governance Document*, which is a statement of the practices and processes the Board has adopted to discharge its responsibilities. It includes the processes the Board has implemented to undertake its own tasks and activities; the matters it has reserved for its own consideration and decision-making; the authority it has delegated to the CEO, including the limits on the way in which the CEO can execute that authority; and provides guidance on the relationship between the Board and the CEO.

The Board Governance Document also specifies the role of the Chairman, the membership of the Board and the role and conduct of non-executive Directors. Further information is at sections 5.3.2 to 5.3.4.

*The Board Governance Document can be found at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).*

The matters that the Board has specifically reserved for its decision are:

- the appointment of the CEO and approval of the appointments of direct reports to the CEO;
- approval of the overall strategy and annual budgets of the business;
- determination of matters in accordance with the approved delegations of authority;
- formal determinations that are required by the Group's constitutional documents, by statute or by other external regulation.



The Board is free to alter the matters reserved for its decision, subject to the limitations imposed by the constitutional documents and the law.

Beyond those matters, the Board has delegated all authority to achieve the corporate objective to the CEO, who is free to take all decisions and actions which, in the CEO's judgement, are reasonable having regard to the limits imposed by the Board. The CEO remains accountable to the Board for the authority that is delegated and for the performance of the business. The Board monitors the decisions and actions of the CEO and the performance of the business to gain assurance that progress is being made towards the corporate objective, within the limits it has imposed through the Group's governance assurance framework. The Board also monitors the performance of the Group and assesses its risk profile through its Committees. Reports from each of the Committees are set out in section 5.5.

The CEO is required to report regularly in a spirit of openness and trust on the progress being made by the business. The Board and its Committees determine the information required from the CEO and any employee or external party, including the External Auditor. Open dialogue between individual members of the Board and the CEO and other employees is encouraged to enable Directors to gain a better understanding of our business.

#### *Key activities during the year*

A key activity during the year was Board succession planning and renewal. The Board believes that orderly succession and renewal is in the best interests of the Group. In August 2009, after an 18-month succession process, the Board announced that Jacques Nasser would succeed Don Argus as Chairman. Mr Nasser subsequently assumed the role of Chairman on 31 March 2010. Two new non-executive Directors, Malcolm Broomhead and Carolyn Hewson, were appointed to the Board from 31 March 2010. Four non-executive Directors retired during the year, David Morgan, David Jenkins, Paul Anderson and Gail de Planque.

Another significant activity during the year for the Board has been governing the Group in the context of the challenging global economic environment. We remain cautious on the short-term outlook for the global economy. Despite our short-term caution, we remain positive on longer-term prospects, driven by the continuing urbanisation and industrialisation of emerging economies. This path, however, will not be without volatility, reflecting normal business cycles. Accordingly, another key activity for the Board during the year was the consideration of investment and other major business decisions, including the consideration of capital projects and capital management strategies. Examples of business decisions and issues considered by the Board are:

- the sale of the Ravensthorpe Nickel Operation;
- the entry into binding agreements with Rio Tinto to establish an iron ore production joint venture covering both entities' Western Australia Iron Ore Assets (subject to regulatory approval);
- an investment of US\$1.73 billion of capital expenditure to underpin accelerated growth of the Western Australia Iron Ore business, representing early expenditure for Rapid Growth Project 6;
- the impact of the proposed Australian mining tax; and
- the Group's all-cash offer to acquire all of the issued and outstanding common shares of Potash Corporation of Saskatchewan Inc.

The Board is satisfied that it has discharged its obligations as set out in the *Board Governance Document*.

#### **5.3.2 Membership**

The Board currently has 11 members. Of these, 10, including the Chairman, are independent non-executive Directors. The non-executive Directors are considered by the Board to be independent of management and free from any business relationship or other circumstance that could materially interfere with the exercise of objective, unfettered or independent judgement. Further information on the process for assessing independence is in section 5.3.5.

In March 2010, Jacques Nasser assumed the role of Chairman following the retirement of Don Argus as Chairman and non-executive Director. Mr Nasser was confirmed by the Board as Chairman following a comprehensive 18-month selection process undertaken by the Board as a whole, according to best practice governance requirements. The process followed is discussed in more detail in section 5.4.3.

There were also other changes to the composition of the Board during the year. David Morgan and David Jenkins retired from the Board in November 2009. Malcolm Broomhead and Carolyn Hewson joined the Board in March 2010 following the earlier retirement of Paul Anderson and Gail de Planque in January 2010.

The Board previously determined that it considered that the Group's best interests were served by conducting the succession process for the Board Chairman and the Risk and Audit Committee (RAC) Chairman sequentially. Following completion of the succession planning process for the Board Chairman, the Board has continued the succession planning process for the Chairman of the RAC. This process for the role of Chairman of the RAC is well progressed and the Board expects to make an announcement later in FY2011. Mr Crawford is standing for election at the 2010 Annual General Meetings with a view to retiring as RAC Chairman in 2011, when succession planning and transition is complete. Given the complexity and size of the Group, and, taking into account that other RAC members are recent appointments, this approach is designed to facilitate orderly succession and transition for this key role. The Board strongly believes this approach is in the best interests of the Group and its shareholders.

The Board considers that there is an appropriate balance between executive and non-executive Directors, with a view to promoting shareholder interests and governing the business effectively. While the Board includes a smaller number of executive Directors than is common for UK listed companies, its composition is appropriate for the Dual Listed Company structure and is in line with Australian listed company practice. In addition, the Board has extensive access to members of senior management. Members of the Group Management Committee (the most senior executives in the Group) attend all the regularly scheduled Board meetings, by invitation, where they make presentations and engage in discussions with Directors, answer questions, and provide input and perspective on their areas of responsibility. The Board also deliberates in the absence of management for part of each meeting which is chaired by the Group Chairman.

The Directors of the Group are:

Mr Jacques Nasser (Chairman)

Mr Marius Kloppers

Mr Alan Boeckmann

Mr Malcolm Broomhead

Dr John Buchanan

Mr Carlos Cordeiro

Mr David Crawford

Ms Carolyn Hewson

Mr Wayne Murdy

Mr Keith Rumble

Dr John Schubert

The biographical details of the Directors are set out in section 4.1 of this Annual Report.

### ***5.3.3 Skills, knowledge, experience and attributes of Directors***

The Board considers that a diverse range of skills, backgrounds, knowledge and experience is required in order to effectively govern the business. The Board and its Committees actively work to ensure that the executive and non-executive Directors continue to have the right balance of skills, experience, independence and Group knowledge necessary to discharge their responsibilities in accordance with the highest standards of governance.

The non-executive Directors contribute international and operational experience; understanding of the sectors in which we operate; knowledge of world capital markets; and an understanding of the health, safety, environmental and community challenges that we face. The executive Director brings additional perspectives to the Board's work through a deep understanding of the Group's business. The Board works together as a whole to oversee strategy for the Group and monitor pursuit of the corporate objective.

Directors must demonstrate unquestioned honesty and integrity, preparedness to question, challenge and critique, and a willingness to understand and commit to the highest standards of governance. Each Director must ensure that no decision or action is taken that places his or her interests in front of the interests of the business.

It is made clear in the Terms of Appointment that Directors must be prepared to commit sufficient time and resources to perform the role effectively. (Section 5.3.7 provides further information on the Director Terms of Appointment.) The Nomination Committee takes account of the other positions held by each potential Director candidate and assesses whether they will have adequate time to devote to the Board prior to making a recommendation to the Board on whether to appoint them as a Director.

Directors commit to the collective decision-making processes of the Board. Individual Directors debate issues openly and constructively and are free to question or challenge the opinions of others. Directors also commit to active involvement in Board decisions, the application of strategic thought to matters in issue and are prepared to question, challenge and critique. Directors are clear communicators and good listeners who actively contribute to the Board in a collegial manner.

The Nomination Committee assists the Board in ensuring that the Board is comprised of high-calibre individuals whose background, skills, experience and personal characteristics will augment the present Board and meet its future needs.

#### *Diversity on the Board*

Corporate governance reviews have highlighted that there is a continuing lack of diversity amongst experienced Director candidates in Australia, the UK and the US. The Board is reviewing its current practices, including assessing how the Board and the Nomination Committee presently take into account diversity criteria, including geographic location, race and gender, as part of a Director candidate's general background and experience. This review will include an assessment of the Board Committees' Terms of Reference to consider whether amendments are required to formalise diversity considerations. Further information in relation to how diversity is being addressed within the broader Group is contained in section 5.8.

#### *Group and industry knowledge*

In order to govern the Group effectively, non-executive Directors must have a clear understanding of the Group's overall strategy, together with knowledge about the Group and the industries in which it operates. Non-executive Directors must be sufficiently familiar with the Group's core business to be effective contributors to the development of strategy and to monitor performance.

Structured opportunities are provided to build Director knowledge through initiatives such as periodic visits to BHP Billiton sites. Non-executive Directors also build their Group and industry knowledge through the involvement of the Group Management Committee (GMC) and other senior employees in Board meetings and specific business briefings. In addition, while the Business Group Risk and Audit Committees (Business Group RACs) are management committees, and therefore do not entail any delegation of responsibility from the Board's RAC, the Board believes that the link back to the Board RAC facilitates a deeper understanding of risk management and assurance issues throughout the Group. Further information on the Business Group RACs is at section 5.5.1 and further information on induction and training is at section 5.3.8.

#### *Director skills and experience*

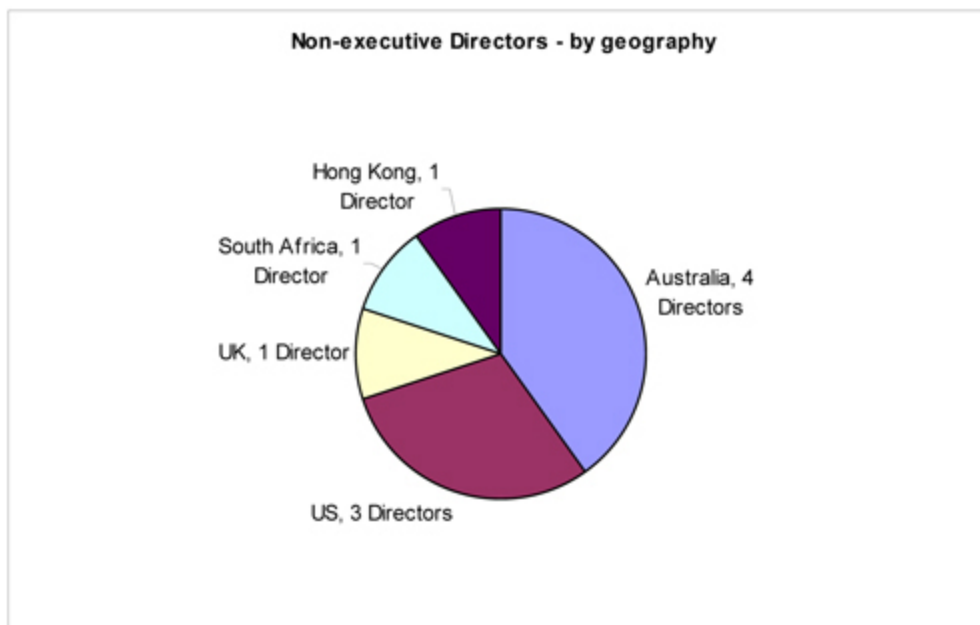
The Board believes that a mix of skills and a breadth of experience is important to ensure that the Board and its Committees function cohesively as a whole and effectively lead the Group. The Nomination Committee has a formal process by which it assesses the overall skills and experience required on the Board and works with the Board to ensure that it has the appropriate mix of skills and experience to meet the future needs of the business. Further information on the Nomination Committee's process is at 5.5.3.

In addition, Directors have an individual development plan to provide a personalised approach to updating industry knowledge in particular (discussed further in sections 5.3.8 and 5.4.1).

The following table sets out some of the key skills of the Directors and the extent to which they are represented on the Board and its Committees. In addition to the skills and experience indicators set out in the table, the *Board Governance Document* provides that each Director must have the following skills, attributes and experience: unquestioned honesty and integrity; a proven track record of creating value for shareholders; time available to undertake the responsibilities; an ability to apply strategic thought to matters in issue; a preparedness to question, challenge and critique; and a willingness to understand and commit to the highest levels of governance. The Board considers that each Director has the skills, attributes and experience required by the *Board Governance Document*.

<u>Skills and experience</u>	<u>Board</u>	<u>Risk and Audit</u>	<u>Nomination</u>	<u>Remuneration</u>	<u>Sustainability</u>
<b>Managing and leading</b> Sustainable success in business at a very senior level in a successful career.	10 Directors	2 Directors	3 Directors	4 Directors	3 Directors
<b>Global experience</b> Senior management or equivalent experience in multiple global locations, exposed to a range of political, cultural, regulatory and business environments.	11 Directors	3 Directors	3 Directors	4 Directors	3 Directors
<b>Governance</b> Commitment to the highest standards of governance, including experience with a major organisation, which is subject to rigorous governance standards and an ability to assess the effectiveness of senior management.	11 Directors	3 Directors	3 Directors	3 Directors	3 Directors
<b>Strategy</b> Track record of developing and implementing a successful strategy, including appropriately probing and challenging management on the delivery of agreed strategic planning objectives.	11 Directors	3 Directors	3 Directors	4 Directors	3 Directors
<b>Financial acumen</b> Senior executive or equivalent experience in financial accounting and reporting, corporate finance and internal financial controls including an ability to probe the adequacies of financial and risk controls.	11 Directors	3 Directors	3 Directors	4 Directors	3 Directors
<b>Capital projects</b> Experience working in an industry with projects involving large-scale capital outlays and long-term investment horizons.	9 Directors	2 Directors	3 Directors	3 Directors	3 Directors
<b>Health, safety and environment</b> Experience related to workplace health and safety and environmental and social responsibility within a major corporation.	10 Directors	3 Directors	3 Directors	3 Directors	3 Directors
<b>Remuneration</b> Board remuneration committee membership or management experience in relation to remuneration, including incentive programs and pensions/ superannuation and the legislation and contractual framework governing remuneration.	11 Directors	3 Directors	3 Directors	4 Directors	3 Directors

<b>Mining</b> Senior executive experience in a large mining organisation combined with an understanding of the Group's corporate objective to create long term value for shareholders through the discovery, development and conversion of natural resources.	5 Directors	1 Director	0 Directors	1 Director	2 Directors
<b>Oil and gas</b> Senior executive experience in the oil and gas industry including in depth knowledge of the Group's strategy, markets, competitors, operational issues, technology and regulatory concerns.	5 Directors	1 Director	2 Directors	3 Directors	1 Director
<b>Marketing</b> Senior executive experience in marketing and a detailed understanding of the Group's corporate objective to create long-term value for shareholders through the provision of innovative customer and market-focused solutions.	9 Directors	1 Director	3 Directors	4 Directors	3 Directors
<b>Public policy</b> Experience in public and regulatory policy including how it affects corporations	10 Directors	2 Directors	3 Directors	4 Directors	3 Directors
<b>TOTAL DIRECTORS</b>	11 Directors	3 Directors	3 Directors	4 Directors	3 Directors



#### 5.3.4 Chairman

The Chairman of the Group is responsible for leading the Board and ensuring that it is operating to the highest governance standards. The Chairman is charged with building an effective, high performing and collegial team of Directors and ensuring that they operate effectively as a Board.

The Chairman, Jacques Nasser, is considered by the Board to be independent. He was appointed Chairman of the Group from 31 March 2010 and has been a non-executive Director of the Group since 6 June 2006. Mr Nasser was last re-elected at the 2008 Annual General Meetings and will stand for re-election in 2010.

The Chairman's role includes:

- ensuring that the principles and processes of the Board are maintained, including the provision of accurate, timely and clear information;
- encouraging debate and constructive criticism;
- setting agendas for meetings of the Board, in conjunction with the CEO and Group Company Secretary, that focus on the strategic direction and performance of our business;
- ensuring that adequate time is available for discussion on strategic issues;
- leading the Board and individual Director performance assessments;

- speaking and acting for the Board and representing the Board to shareholders;
- presenting shareholders' views to the Board;
- facilitating the relationship between the Board and the CEO.

The Board considers that none of Mr Nasser's other commitments (set out in section 4.1 of this Annual Report) interfere with the discharge of his responsibilities to the Group. The Board is satisfied that he makes sufficient time available to serve the Group effectively.

The Group does not have a Deputy Chairman, but has identified John Schubert to act as Chairman should the need arise at short notice. John Buchanan is the Senior Independent Director for BHP Billiton Plc.

### **5.3.5 Independence**

The Board is committed to ensuring a majority of Directors are independent.

#### *Process to determine independence*

The Board has a policy that it uses to determine the independence of its Directors. This determination is carried out upon appointment, annually and at any other time where the circumstances of a Director change such as to warrant reconsideration.

A copy of the Policy on Independence of Directors is available at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

The policy provides that the test of independence is whether the Director is: 'independent of management and any business or other relationship that could materially interfere with the exercise of objective, unfettered or independent judgement by the Director or the Director's ability to act in the best interests of the BHP Billiton Group'.

Where a Director is considered by the Board to be independent, but is affected by circumstances that may give rise to a perception that the Director is not independent, the Board has undertaken to explain the reasons why it reached its conclusion. In applying the independence test, the Board considers relationships with management, major shareholders, subsidiary and associated companies and other parties with whom the Group transacts business against predetermined materiality thresholds, all of which are set out in the policy. A summary of the factors that may be perceived to impact the independence of Directors is set out below.

#### **Tenure**

The Board has a policy requiring non-executive Directors who have served on the Board for nine years or more from the date of their first election to stand for annual re-election after the conclusion of their current term.

Two Directors, David Crawford and John Schubert, have each served on the Board for more than nine years from the date of their first election. Both Mr Crawford and Dr Schubert are standing for re-election at the 2010 Annual General Meetings, having undergone a formal performance assessment. Although Mr Crawford was first appointed to the BHP Limited Board in 1994, the Board considers that he makes a significant contribution to the work of the Board, in particular in his role as Risk and Audit Committee (RAC) Chairman. The Board does not believe that either Mr Crawford's or Dr Schubert's tenure materially interferes with their ability to act in the best interests of the Group. The Board also believes that each of them has retained independence of character and judgement and has not formed associations with management (or others) that might compromise their ability to exercise independent judgement or act in the best interests of the Group.

The Board previously determined that it considered that it was in the Group's best interests for the succession planning process for the Board Chairman and the RAC Chairman to be conducted sequentially. Following completion of the succession planning process for Board Chairman, during the year, the Board continued the succession planning process for the RAC Chairman. Given the complexity and size of the Group, the succession planning process involves careful consideration of the skills, knowledge and experience required on the Board, in particular the skills and experience required to properly fulfil the duties of the RAC Chairman. In addition, the Board strongly believes an orderly succession and transition for this key role is in the best interests of the Group and its shareholders. For these reasons, Mr Crawford is standing for re-election at the 2010 Annual General Meetings with a view to retiring as RAC Chairman in 2011, when succession planning and transition is complete. The succession planning process for the role of Chairman of the RAC is well progressed and the Board expects to make an announcement in relation to this matter later in FY2011.

#### **Retirement plan**

As former Directors of BHP Limited, David Crawford and John Schubert participated in a retirement plan approved by shareholders in 1989. The plan was closed on 24 October 2003 and benefits accrued to that date, together with interest earned on the benefits, have been preserved and will be paid on retirement. The Board does not believe that the independence of any participating Director is compromised as a result of this plan.

### ***Relationships and associations***

David Crawford was the National Chairman of KPMG in Australia. He retired in June 2001 and has no ongoing relationship with KPMG. KPMG was a joint auditor of Billiton Plc prior to the merger with BHP Limited and of BHP Billiton up to 2003 and the sole auditor of BHP Billiton from December 2003. The Board considers this matter on an annual basis and does not consider Mr Crawford's independence to be compromised. The Board considers Mr Crawford's financial acumen to be important in the discharge of the Board's responsibilities. Accordingly, his membership of the Board and Chairmanship of the Risk and Audit Committee is considered by the Board to be appropriate and desirable. As discussed in sections 5.3.2 and 5.4.3, a succession planning process is underway for the Risk and Audit Committee Chairman.

Some of the Directors hold or previously held positions in companies with which we have commercial relationships. Those positions and companies are set out in section 4.1 of this Annual Report. The Board has assessed all of the relationships between the Group and companies in which Directors hold or held positions and has concluded that in all cases, the relationships do not interfere with the Directors' exercise of objective, unfettered or independent judgement or their ability to act in the best interests of our business. A specific instance is Alan Boeckmann, who is the Chairman and CEO of Fluor Corporation, a company with which BHP Billiton has commercial dealings. Fluor Corporation operates in the engineering, procurement, construction and project management sectors, and it is Mr Boeckmann's breadth of current management experience across these sectors that brings significant value to the Board. Prior to and since the appointment of Mr Boeckmann as a Director, the Board has assessed the relationships between BHP Billiton and Fluor Corporation and remains satisfied that Mr Boeckmann is able to apply objective, unfettered and independent judgement and act in the best interests of the BHP Billiton Group notwithstanding his role with Fluor Corporation. In addition, no commercial dealings with Fluor Corporation were discussed at Board or Board Committee level, and to the extent they are in the future, Mr Boeckmann will absent himself fully from those deliberations.

Transactions during the year that amounted to related-party transactions with Directors or Director-related entities under International Financial Reporting Standards (IFRS) are outlined in note 30 'Key Management Personnel' to the financial statements.

### ***Executive Director***

The executive Director, Marius Kloppers, is not considered independent because of his executive responsibilities. Mr Kloppers does not hold directorships in any other company included in the ASX 100 or FTSE 100.

### ***Conflicts of interest***

The UK Companies Act requires that BHP Billiton Directors avoid a situation where they have, or can have, an unauthorised direct or indirect interest that conflicts, or possibly may conflict, with the company's interests. In accordance with the UK Companies Act, BHP Billiton Plc's Articles of Association were amended at the 2008 Annual General Meetings to allow the Directors to authorise conflicts and potential conflicts where appropriate. A procedure operates to ensure the disclosure of conflicts and for the consideration and, if appropriate, the authorisation of them by non-conflicted Directors. The Nomination Committee supports the Board in this process, both by reviewing requests from Directors for authorisation of situations of actual or potential conflict and making recommendations to the Board and by regularly reviewing any situations of actual or potential conflict that have previously been authorised by the Board, and making recommendations regarding whether the authorisation remains appropriate. In addition, in accordance with Australian law, if a situation arises for consideration in which a Director has a material personal interest, the affected Director takes no part in decision-making.

#### ***5.3.6 Senior Independent Director***

The Board has appointed John Buchanan as the Senior Independent Director of BHP Billiton Plc in accordance with the UK Corporate Governance Code. Dr Buchanan is available to shareholders who have concerns that cannot be addressed through the Chairman, CEO or CFO. Dr Buchanan, as Senior Independent Director, also provides a sounding board for the Chairman and serves as an intermediary for other Directors if necessary. Dr Buchanan, as Senior Independent Director, oversaw the Chairman succession process.

#### ***5.3.7 Terms of appointment***

The Board has adopted a letter of appointment that contains the terms on which non-executive Directors will be appointed, including the basis upon which they will be indemnified. The letter of appointment clearly defines the role of Directors, including the expectations in terms of independence, participation, time commitment and continuous improvement. In summary, Directors are expected to constructively challenge; set values and standards of the Group; monitor the performance of management; monitor the adequacy and integrity of financial statements; and satisfy themselves that the systems for the identification and management of risk are robust and appropriate. Directors are also expected to commit sufficient time to carry out their role and to participate in continuous improvement programs and internal review to support ongoing development. The letter of appointment also makes it clear that Directors are required to disclose circumstances that may affect, or be perceived to affect, their ability to exercise independent judgement so that the Board can assess independence on a regular basis.



A copy of the letter of appointment is available at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

#### **5.3.8 Induction and training**

The Board considers that the development of Group and industry knowledge is a continuous and ongoing process.

Upon appointment, each new non-executive Director undertakes an induction program specifically tailored to their needs.

A copy of an indicative induction program is available at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

Non-executive Directors undertake to participate in continuous improvement programs, as required by their terms of appointment.

Structured opportunities for improvement are provided to continuously build a Director's knowledge. During the year, non-executive Directors participated in development activities including:

- business briefings intended to provide each Director with a deeper understanding of the activities, environment and key issues and direction of Customer Sector Groups (CSGs);
- development sessions on specific topics of relevance, such as climate change, commodity markets and changes in corporate governance standards;
- visits to key sites;
- addresses by external speakers, who are generally experts in their field.

In addition, each non-executive Director has an individual development plan in order to provide a personalised approach to updating the Director's skills and knowledge. The program is designed to maximise the effectiveness of the Directors throughout their tenure and links in with their individual performance reviews (discussed further in section 5.4.1). The training and development program covers not only matters of a business nature, but also matters falling into the environmental, social and governance (ESG) area.

The Nomination Committee has oversight of the Directors' Training and Development Program. The benefit of this approach is that induction and learning opportunities can be tailored to Directors' Committee memberships and that the process in relation to Committee composition, succession and training and development is coordinated to ensure a link with the Nomination Committee's role in securing the supply of talent to the Board.

#### **5.3.9 Independent advice**

The Board and its Committees may seek advice from independent experts whenever it is considered appropriate. Individual Directors, with the consent of the Chairman, may seek independent professional advice on any matter connected with the discharge of their responsibilities, at the Group's expense.

#### **5.3.10 Remuneration**

Details of our remuneration policies and practices and the remuneration paid to the Directors (executive and non-executive) are set out in the Remuneration Report in section 6 of this Annual Report. Shareholders will be invited to consider and to approve the Remuneration Report at the 2010 Annual General Meetings.

#### **5.3.11 Share ownership**

Non-executive Directors have agreed to apply at least 25 per cent of their remuneration to the purchase of BHP Billiton shares until they achieve a shareholding equivalent in value to one year's remuneration. Thereafter, they must maintain at least that level of shareholding throughout their tenure. All dealings by Directors are subject to the Group's Securities Dealing procedure and are reported to the Board and to the stock exchanges.

Information on our policy governing the use of hedge arrangements over shares in BHP Billiton by both Directors and members of the Group Management Committee is set out in section 6.5 of this Annual Report.

Details of the shares held by Directors are set out in section 7.20 of this Annual Report.

### 5.3.12 Meetings

The Board meets as often as necessary to fulfil its role. Directors are required to allocate sufficient time to the Group to perform their responsibilities effectively, including adequate time to prepare for Board meetings. During the reporting year the Board met nine times, with six of those meetings being held in Australia and three in the UK. Generally, meetings run for two days. The non-executive Directors meet during each Board meeting in the absence of the executive Director and management and the session is chaired by the Group Chairman. Attendance by Directors at Board and Board Committee meetings is set out in the table in section 5.4.1.

Members of the Group Management Committee and other members of senior management attended meetings of the Board by invitation. Senior managers delivered presentations on the status and performance of our businesses and matters reserved for the Board, including the approval of budgets, annual financial statements and business strategy.

### 5.3.13 Company Secretaries

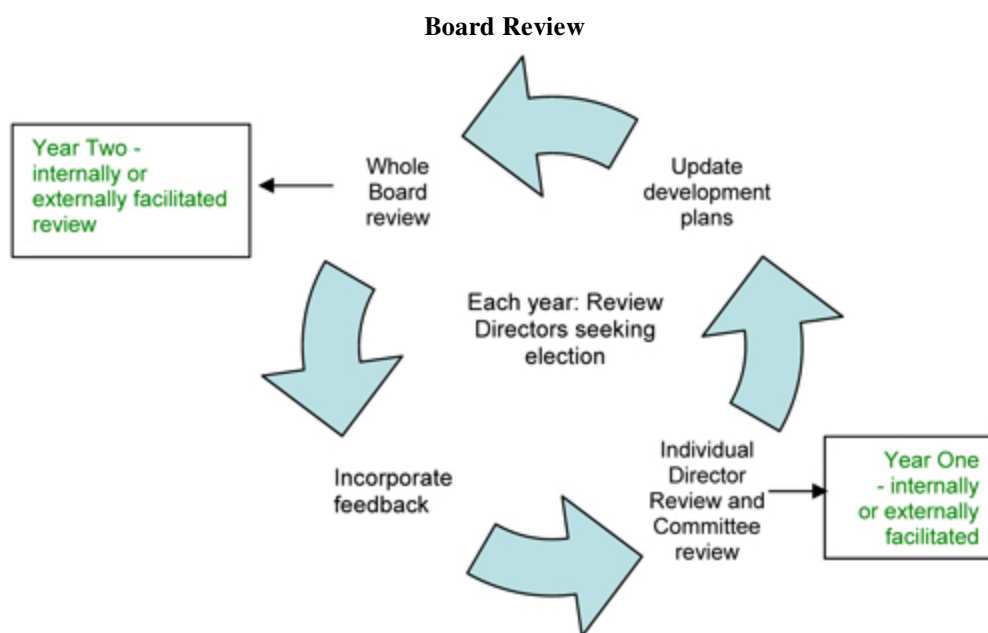
Jane McAloon is the Group Company Secretary. The Group Company Secretary is responsible for developing and maintaining the information systems and processes that enable the Board to fulfil its role. The Group Company Secretary is also responsible to the Board for ensuring that Board procedures are complied with and advising the Board on governance matters. All Directors have access to the Group Company Secretary for advice and services. Independent advisory services are retained by the Group Company Secretary at the request of the Board or Board Committees. Ms McAloon is supported by Fiona Smith, who is Deputy Company Secretary of BHP Billiton Limited, and Elizabeth Hobley and Geof Stapledon, who are Deputy Company Secretaries of BHP Billiton Plc. The Board appoints and removes the Company Secretaries.

## 5.4 Board of Directors – Review, re-election and renewal

### 5.4.1 Review

The Board is committed to transparency in determining Board membership and in assessing the performance of Directors. The Board assesses its performance through a combination of internal peer review and externally facilitated evaluation. Contemporary performance measures are considered an important part of this process. Directors' performance is also measured against their individual development plans (see section 5.3.8).

The Board conducts regular evaluations of its performance, the performance of its Committees, the Chairman, individual Directors and the governance processes that support the Board's work. This includes analysis of how the Board and its Directors are functioning, the time spent by the Board considering matters and whether the Terms of Reference of the Board Committees have been met, as well as compliance with the *Board Governance Document*. The evaluation of the Board's performance is conducted by focusing on individual Directors and Board Committees in one year and the Board as a whole in the following year. In addition, the Board conducts evaluations of the performance of Directors retiring and seeking re-election and uses the results of the evaluation when considering whether to recommend the re-election of particular Directors.



During internally facilitated individual Director reviews, each of the Directors give anonymous feedback on their peers' performance and individual contributions to the Board via the Chairman. In respect of the Chairman's performance, Directors provide feedback directly to John Schubert to be passed on anonymously to the Chairman. External independent advisers are engaged to assist these processes as necessary and an externally facilitated review of the Board, Directors or Committees takes place at least every two years. It is thought that the involvement of an independent third party has assisted the evaluation processes to be both rigorous and fair.

There was a review of the Board to assess its performance and progress in preparation for the transition of the Chairmanship from Don Argus to Jacques Nasser. This followed an externally assisted evaluation of individual Directors undertaken in the previous financial year. The review of the Board as a whole indicated that the Board is continuing to function effectively and in accordance with the terms of the Board Governance Document. An externally facilitated evaluation of the Board is currently being undertaken.

The evaluation of individual Directors focuses on the contribution of the Director to the work of the Board and the expectations of Directors as specified in the Group's governance framework. The performance of individual Directors is assessed against a range of criteria, including the ability of the Director to:

- consistently take the perspective of creating shareholder value;
- contribute to the development of strategy;
- understand the major risks affecting the business;
- provide clear direction to management;
- contribute to Board cohesion;
- commit the time required to fulfil the role and perform their responsibilities effectively;
- listen to and respect the ideas of fellow Directors and members of management.

The effectiveness of the Board as a whole and of its Committees is assessed against the accountabilities set down in the *Board Governance Document* and each of the Committees' Terms of Reference. Matters considered in the assessment include:

- the effectiveness of discussion and debate at Board and Committee meetings;
- the effectiveness of the Board's and Committees' processes and relationship with management;
- the quality and timeliness of meeting agendas, Board and Committee papers and secretariat support;
- the composition of the Board and each Committee, focusing on the blend of skills and experience.

The process is managed by the Chairman, but feedback on the Chairman's performance is provided to him by John Schubert.

Information about the performance review process for executives is set out in section 5.7.

*Attendance at Board and Board Committee meetings during the year ended 30 June 2010*

	<b>Board</b>		<b>Risk and Audit</b>		<b>Nomination</b>		<b>Remuneration</b>		<b>Sustainability</b>	
	<b>A</b>	<b>B</b>	<b>A</b>	<b>B</b>	<b>A</b>	<b>B</b>	<b>A</b>	<b>B</b>	<b>A</b>	<b>B</b>
Paul Anderson <sup>(1)</sup>	6	6	—	—	—	—	—	—	4	4
Don Argus <sup>(2)</sup>	7	7	—	—	4	4	—	—	—	—
Alan Boeckmann	9	7	—	—	—	—	7	6	—	—
Malcolm Broomhead <sup>(3)</sup>	2	2	—	—	—	—	—	—	2	2
John Buchanan	9	8	—	—	6	6	7	7	—	—
Carlos Cordeiro	9	9	—	—	—	—	7	7	—	—
David Crawford	9	9	9	9	—	—	—	—	—	—
E Gail de Planque <sup>(4)</sup>	6	6	—	—	—	—	4	4	4	4
Carolyn Hewson <sup>(5)</sup>	2	2	2	2	—	—	—	—	—	—
David Jenkins <sup>(6)</sup>	4	3	4	3	—	—	3	2	—	—
Marius Kloppers	9	9	—	—	—	—	—	—	—	—
David Morgan <sup>(7)</sup>	3	3	3	2	—	—	—	—	—	—
Wayne Murdy	9	9	9	9	—	—	—	—	—	—
Jacques Nasser <sup>(8)</sup>	9	9	7	7	2	2	—	—	—	—
Keith Rumble	9	8	—	—	—	—	—	—	7	7
John Schubert <sup>(9)</sup>	9	9	—	—	6	6	3	3	7	7

Column A – indicates the number of meetings held during the period the Director was a member of the Board and/or Committee.

Column B – indicates the number of meetings attended during the period the Director was a member of the Board and/or Committee.

- (1) Paul Anderson retired from the Board and the Sustainability Committee on 31 January 2010.
- (2) Don Argus retired from the Board and the Nomination Committee on 30 March 2010.
- (3) Malcolm Broomhead was appointed to the Board and the Sustainability Committee on 31 March 2010.
- (4) E Gail de Planque retired from the Board, the Sustainability Committee and the Remuneration Committee on 31 January 2010.
- (5) Carolyn Hewson was appointed to the Board and the Risk and Audit Committee on 31 March 2010.
- (6) David Jenkins retired from the Board and the Risk and Audit Committee on 26 November 2009.
- (7) David Morgan retired from the Board and the Risk and Audit Committee on 24 November 2009.
- (8) Jacques Nasser joined the Nomination Committee and retired from the Risk and Audit Committee on 31 March 2010.
- (9) John Schubert joined the Remuneration Committee on 23 March 2010.

#### **5.4.2 Re-election**

At least one-third of Directors retire at each Annual General Meeting. Directors are not appointed for a fixed term and must submit themselves to shareholders for re-election at least every three years. The period that Directors have served on the Board and the years in which they were first appointed and last elected are set out in section 4.1 of this Annual Report.

In addition, the Board has a policy that non-executive Directors who have served on the Board for more than nine years from the date of their first election must stand for re-election annually from the first Annual General Meeting after the expiration of their current term.

Board support for reappointment is not automatic. Retiring Directors who are seeking re-election are subject to a performance appraisal overseen by the Nomination Committee. Following that appraisal, the Board, on the recommendation of the Nomination Committee, makes a determination as to whether it will endorse a retiring Director for re-election. The Board will not endorse a Director for re-election if his or her performance is not considered satisfactory. The Board will advise shareholders in the Notice of Meeting whether or not re-election is supported.

BHP Billiton does not apply or implement a 'no vacancy' rule in relation to Board appointments. Accordingly, Director candidates can be elected to the Board by ordinary resolution and are not required to out-poll an incumbent Director in order to be elected.

The Board notes the recommendation in the new UK Corporate Governance Code that Directors of FTSE 350 companies be subject to annual election by shareholders. The Board strongly believes in accountability to shareholders. BHP Billiton's approach to governance necessarily takes into account the standards in all the jurisdictions in which we have securities listed, and, in particular, BHP Billiton's Dual Listed Company structure means that standards in both the UK and Australia must be carefully monitored. The Board intends to carefully consider the implementation of annual election, including monitoring investor views, and expects to be able to form a concluded view during the course of FY2011 on whether annual election is appropriate for the Group.

#### **5.4.3 Renewal**

The Board plans for its own succession with the assistance of the Nomination Committee. In doing this, the Board:

- considers the skills, knowledge and experience necessary to allow it to meet the strategic vision for the business;
- assesses the skills, knowledge and experience currently represented;
- identifies any skills, knowledge and experience not adequately represented and agrees the process necessary to ensure a candidate is selected that brings those traits;
- reviews how Board performance might be enhanced, both at an individual Director level and for the Board as a whole.

The Board believes that an orderly succession and renewal process is in the best interests of the Group. The Board believes that orderly succession and renewal is achieved as a result of careful planning, where the appropriate composition of the Board is continually under review.

When considering new appointments to the Board, the Nomination Committee oversees the preparation of a position specification that is provided to an independent recruitment organisation retained to conduct a global search. Independent search firms retained are instructed to consider a wide range of candidates, including taking into account geographic location, race and gender. In addition to the specific skills, knowledge and experience deemed necessary, the specification contains criteria such as:

- a proven track record of creating shareholder value;

- unquestioned integrity;
- a commitment to the highest standards of governance;
- having the required time available to devote to the job;
- strategic mind set, an awareness of market leadership, outstanding monitoring skills;
- a preparedness to question, challenge and critique;
- an independent point of view.

Newly appointed Directors must submit themselves to shareholders for election at the first Annual General Meeting following their appointment.

#### *Chairman succession*

As announced in early August 2009, Jacques Nasser succeeded Don Argus as Chairman when Mr Argus retired as Chairman and a non-executive Director on 30 March 2010. The decision to appoint Mr Nasser was agreed by the Board following a comprehensive 18-month selection process. The Board oversaw the entire succession process and was assisted in its deliberations by the Nomination Committee. Senior Independent Director for BHP Billiton Plc, John Buchanan, chaired the Board and the Nomination Committee during consideration of all matters relating to succession and internal candidates were not involved in any deliberations. In addition, the global recruitment firm, Heidrick & Struggles, was engaged as independent adviser by the Board to assist in deliberations and consideration of both internal and external candidates. KPMG supported the final process as scrutineer of a secret ballot. The Director renewal process in place for the past seven years ensured high-quality internal candidates. The process adopted by the Board complied with best practice governance requirements, including the UK Corporate Governance Code's recommendation that the incumbent Chairman not chair the Board or the Nomination Committee when chairman succession is being considered.

#### *Risk and Audit Committee Chairman succession*

The Board has previously determined that it is in the Group's best interests for the succession process for the Board Chairman and the Risk and Audit Committee (RAC) Chairman to be conducted sequentially. Board renewal activities during the year included changes to the membership of the RAC therefore an orderly transition is a key consideration. Following completion of the succession planning process for Board Chairman, the Board continued the succession planning process for the Chairman of the RAC. The succession planning process involves careful consideration of the skills, knowledge and experience required on the Board, in particular the skills and experience required to properly fulfil the duties of the RAC Chairman, given the size and complexity of the Group. The succession planning process for the role of Chairman of the RAC is well developed and the Board expects to make an announcement later in FY2011. As part of the succession plan and transition process, Mr Crawford is standing for election at the 2010 Annual General Meetings with a view to retiring as RAC Chairman in 2011, when succession planning and transition is complete. This approach is designed to facilitate an orderly succession and transition for the role of Chairman of the RAC, which the Board strongly believes is in the best interests of the Group and its shareholders.

### **5.5 Board Committees**

The Board has established Committees to assist it in exercising its authority, including monitoring the performance of the business to gain assurance that progress is being made towards the corporate objective within the limits imposed by the Board. The permanent Committees of the Board are the Risk and Audit Committee, the Sustainability Committee, the Nomination Committee and the Remuneration Committee. Other Committees are formed from time to time to deal with specific matters.

Each of the permanent Committees has Terms of Reference under which authority is delegated by the Board.

The Terms of Reference for each Committee can be found at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

The office of the Company Secretary provides secretariat services for each of the Committees. Committee meeting agendas, papers and minutes are made available to all members of the Board. Subject to appropriate controls and the overriding scrutiny of the Board, Committee Chairmen are free to use whatever resources they consider necessary to discharge their responsibilities.

Reports from each of the Committees appear below.

#### **5.5.1 Risk and Audit Committee Report**

The Risk and Audit Committee (RAC) met nine times during the year. Information on meeting attendance by Committee members is included in the table in section 5.4.1.

*Risk and Audit Committee members during the year*

<u>Name</u>	<u>Status</u>
David Crawford (Chairman) <sup>(1)</sup>	Member for whole period
David Jenkins	Member to 26 November 2009
David Morgan	Member to 24 November 2009
Wayne Murdy	Member for the whole period
Jacques Nasser	Member until 30 March 2010
Carolyn Hewson	Member from 31 March 2010

(1) The Board has nominated David Crawford as the Committee's financial expert.

*Role and focus*

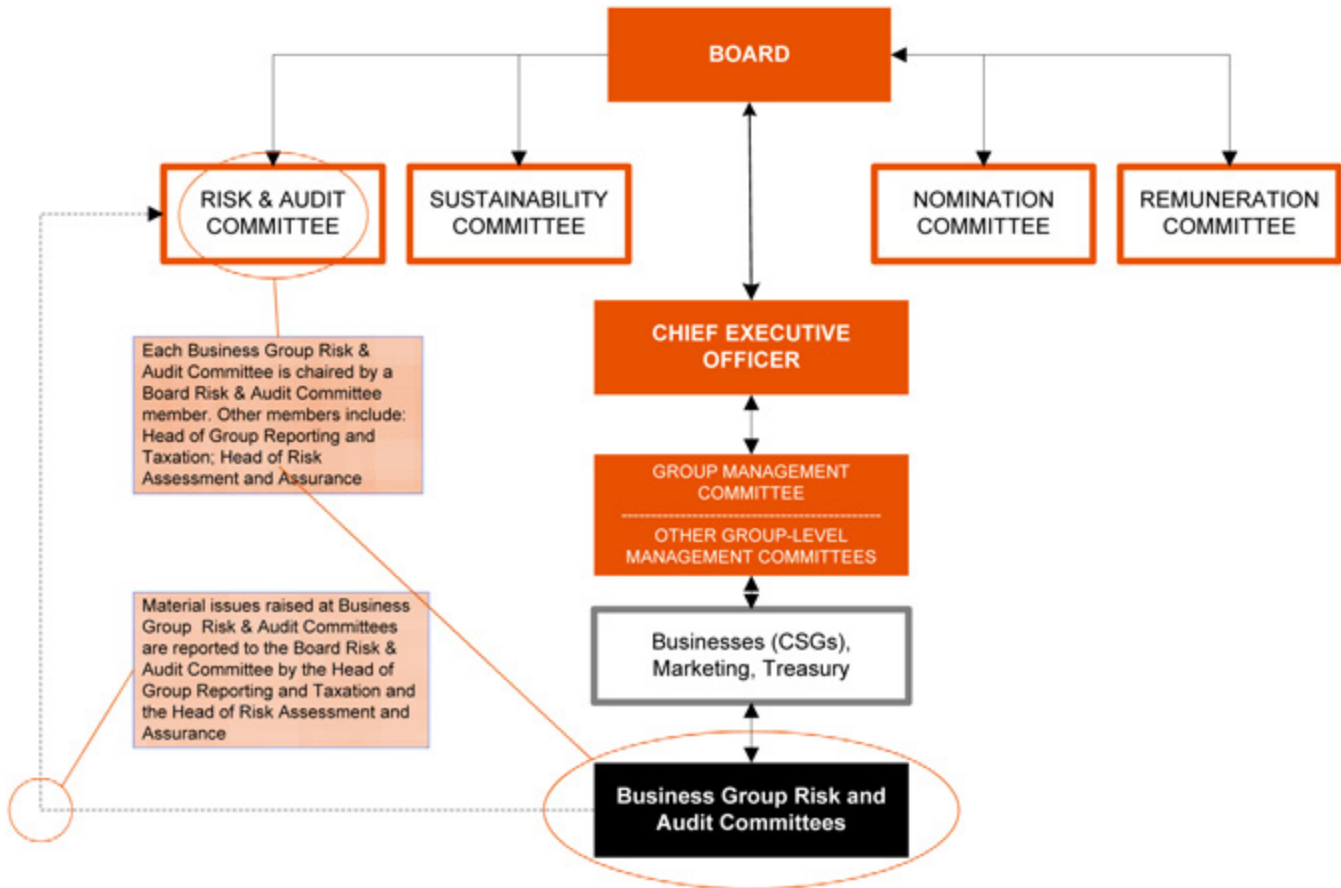
The role of the RAC is to assist the Board in monitoring the decisions and actions of the CEO and the Group and to gain assurance that progress is being made towards the corporate objective within the CEO limits. The RAC undertakes this by overseeing:

- the integrity of the financial statements;
- the appointment, remuneration, qualifications, independence and performance of the External Auditor and the integrity of the audit process as a whole;
- the performance and leadership of the internal audit function;
- the effectiveness of the system of internal controls and risk management;
- compliance with applicable legal and regulatory requirements;
- compliance by management with constraints imposed by the Board.

***Business Group Risk and Audit Committees***

To assist management in providing the information necessary to allow the RAC to discharge its responsibilities, Risk and Audit Committees have been established for each of our Business Groups, incorporating each Customer Sector Group (CSG) and for key functional areas such as Marketing and Treasury. As illustrated in the diagram below, these Committees, known as Business Group RACs, have been established and operate as committees of management, but are chaired by members of the RAC. They perform an important monitoring function in the overall governance of the Group.

Significant financial and risk matters raised at Business Group RAC meetings are reported to the RAC by the Head of Group Reporting and Taxation and the Head of Risk Assessment and Assurance.



## *Activities undertaken during the year*

### ***Integrity of financial statements***

The RAC assists the Board in assuring the integrity of the financial statements. The RAC evaluates and makes recommendations to the Board about the appropriateness of accounting policies and practices, areas of judgement, compliance with Accounting Standards, stock exchange and legal requirements and the results of the external audit. It reviews the half yearly and annual financial statements and makes recommendations on specific actions or decisions (including formal adoption of the financial statements and reports) the Board should consider in order to maintain the integrity of the financial statements. From time to time, the Board may delegate authority to the RAC to approve the release of the statements to the stock exchanges, shareholders and the financial community.

The CEO and CFO have certified that the 2010 financial statements fairly presents, in all material respects, of our financial condition and operating results and are in accordance with applicable regulatory requirements.

### ***External Auditor***

The RAC manages the relationship with the External Auditor on behalf of the Board. It considers the reappointment of the External Auditor each year, as well as remuneration and other terms of engagement, and makes a recommendation to the Board. The last competitive audit review was in 2003, when KPMG was appointed by the Board on the recommendation of the RAC. There are no contractual obligations that restrict the RAC's capacity to recommend a particular firm for appointment as auditor. Shareholders are asked to approve the reappointment of the auditor each year in the UK.

The RAC evaluates the performance of the External Auditor during its term of appointment against specified criteria, including delivering value to shareholders and ourselves. The RAC reviews the integrity, independence and objectivity of the External Auditor. This review includes:

- confirming that the External Auditor is, in its judgement, independent of the Group;
- obtaining from the External Auditor an account of all relationships between the External Auditor and the Group;
- monitoring the number of former employees of the External Auditor currently employed in senior positions and assessing whether those appointments impair, or appear to impair, the External Auditor's judgement or independence;
- considering whether the various relationships between the Group and the External Auditor collectively impair, or appear to impair, the External Auditor's judgement or independence;
- determining whether the compensation of individuals employed by the External Auditor who conduct the audit is tied to the provision of non-audit services and, if so, whether this impairs, or appears to impair, the External Auditor's judgement or independence;
- reviewing the economic importance of our business to the External Auditor and assessing whether that importance impairs, or appears to impair, the External Auditor's judgement or independence.

The External Auditor also certifies its independence to the RAC.

The audit engagement partner rotates every five years.

Although the External Auditor does provide some non-audit services, the objectivity and independence of the External Auditor is safeguarded through restrictions on the provision of these services. For example, certain types of non-audit service may only be undertaken by the External Auditor with the prior approval of the RAC, while other services may not be undertaken at all, including services where the External Auditor:

- may be required to audit its own work;
- participates in activities that would normally be undertaken by management;
- is remunerated through a 'success fee' structure;
- acts in an advocacy role for our business.

Our Policy on Provision of Audit and Other Services by the External Auditor can be viewed at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

Fees paid to the Group's External Auditor during the year for audit and other services were US\$22.2 million, of which 60 per cent comprised audit fees, 24 per cent related to legislative requirements (including Sarbanes-Oxley) and 16 per cent for other services. Details of the fees paid are set out in note 34 'Auditor's remuneration' to the financial statements.

Based on the review by the RAC, the Board is satisfied that the External Auditor is independent.



### ***Internal Audit***

The Internal Audit function is carried out internally by Group Audit Services (GAS). The role of GAS is to determine whether risk management, control and governance processes are adequate and functioning. The Internal Audit function is independent of the External Auditor. The RAC reviews the mission and charter of GAS, the staffing levels and its scope of work to ensure that it is appropriate in light of the key risks we face. It also reviews and approves the annual internal audit plan.

The RAC also approves the appointment and dismissal of the Head of Risk Assessment and Assurance and assesses his or her performance, independence and objectivity. The role of the Head of Risk Assessment and Assurance includes achievement of the internal audit objectives, risk management policies and insurance strategy. The position is held by Stefano Giorgini. Mr Giorgini reports to management and has all necessary access to management and the right to see information and explanations, and has unfettered access to the RAC. During the year, HSEC audit activities were transferred to the Risk Assessment and Assurance Function.

### ***Effectiveness of systems of internal control and risk management***

In delegating authority to the CEO, the Board has established CEO limits set out in the Board Governance Document. Limits on the CEO's authority require the CEO to ensure that there is a system of control in place for identifying and managing risk. The Directors, through the RAC, review the systems that have been established for this purpose and regularly review their effectiveness. These reviews include assessing that processes continue to meet evolving external governance requirements.

The RAC is responsible for the oversight of risk management and reviews the internal controls and risk management systems. In undertaking this role the RAC reviews the following:

- procedures for identifying business risks and controlling their financial impact on the Group and the operational effectiveness of the policies and procedures related to risk and control;
- budgeting and forecasting systems, financial reporting systems and controls;
- policies and practices put in place by the CEO for detecting, reporting and preventing fraud and serious breaches of business conduct and whistle-blowing procedures;
- procedures for ensuring compliance with relevant regulatory and legal requirements;
- arrangements for protecting intellectual property and other non-physical assets;
- operational effectiveness of the Business Group RAC structures;
- overseeing the adequacy of the internal controls and allocation of responsibilities for monitoring internal financial controls;
- policies, information systems and procedures for preparation and dissemination of information to shareholders, stock exchanges and the financial community.

For further discussion on our approach to risk management, refer to section 5.6.

During the year, the Board conducted reviews of the effectiveness of the Group's system of internal controls for the financial year and up to the date of this Annual Report in accordance with the UK Corporate Governance Code (Turnbull Guidance) and the Principles and Recommendations published by the ASX Corporate Governance Council. These reviews covered financial, operational and compliance controls and risk assessment. During the year, management presented an assessment of the material business risks facing the Group and the level of effectiveness of risk management over the material business risks. The reviews were overseen by the RAC, with findings and recommendations reported to the Board. In addition to considering key risks facing the Group, the Board received an assessment of the effectiveness of internal controls over key risks identified through the work of the Board Committees. The Board is satisfied that the effectiveness of the internal controls has been properly reviewed.

### ***CEO and CFO certification***

The CEO and CFO have certified to the Board that the financial statements are founded on a sound system of risk management and internal compliance and that the system is operating efficiently and effectively in all material respects.

During the year, the RAC reviewed our compliance with the obligations imposed by the US Sarbanes-Oxley Act, including evaluating and documenting internal controls as required by section 404 of the Act.

Our management, with the participation of our CEO and CFO, has performed an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of 30 June 2010. Disclosure controls and procedures are designed to provide reasonable assurance that the material financial and non-financial information required to be disclosed by BHP Billiton, including in the reports that it files or submits under the US Securities Exchange Act of 1934, is recorded, processed, summarised and reported on a timely basis and that such information is accumulated and communicated to BHP Billiton's management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure. Based on the foregoing, our management, including the CEO and CFO, has concluded that our disclosure controls and procedures are effective in providing that reasonable assurance.

There are inherent limitations to the effectiveness of any system of disclosure controls and procedures, including the possibility of human error and the circumvention or overriding of the controls and procedures. Accordingly, even effective disclosure controls and procedures can only provide reasonable assurance of achieving their control objectives.

Further, in the design and evaluation of our disclosure controls and procedures, our management was necessarily required to apply its judgement in evaluating the cost-benefit relationship of possible controls and procedures.

There have been no changes in our internal control over financial reporting (as that term is defined by the US Securities Exchange Act of 1934) during FY2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Further information on our controls and procedures, including our internal control over financial reporting can be found in Section 5.13.

#### *Assessment of RAC performance*

During the year, the RAC assessed its performance in accordance with its Terms of Reference. As a result of that assessment, the Committee is satisfied it has met its Terms of Reference.

#### **5.5.2 Remuneration Committee Report**

The Remuneration Committee met seven times during the year. Information on meeting attendance by Committee members is included in the table in section 5.4.1.

#### ***Remuneration Committee members during the year***

<u>Name</u>	<u>Status</u>
John Buchanan (Chairman)	Member for whole period
Alan Boeckmann	Member for whole period
Carlos Cordeiro	Member for whole period
E Gail de Planque	Member to 31 January 2010
David Jenkins	Member to 26 November 2009
John Schubert	Member from 23 March 2010

#### *Role and focus*

The role of the Committee is to assist the Board in its oversight of:

- the remuneration policy and its specific application to the CEO and the CEO's direct reports, and its general application to all employees;
- the determination of levels of reward for the CEO and approval of reward to the CEO's direct reports;
- the annual evaluation of the performance of the CEO, by giving guidance to the Chairman;
- communication to shareholders regarding remuneration policy and the Committee's work on behalf of the Board, including the preparation of the Remuneration Report for inclusion in the Annual Report;
- compliance with applicable legal and regulatory requirements associated with remuneration matters.

#### *Activities undertaken during the year*

Full details of the Committee's work on behalf of the Board are set out in the Remuneration Report in section 6.

During the year, the Committee assessed its performance in accordance with its Terms of Reference. As a result of that assessment, the Committee is satisfied it has met its Terms of Reference.

### 5.5.3 Nomination Committee Report

The Nomination Committee met six times during the year. Information on meeting attendance by Committee members is included in the table in section 5.4.1.

#### *Nomination Committee members during the year*

<u>Name</u>	<u>Status</u>
Don Argus (Chairman) <sup>(1)</sup>	Member and Chairman to 30 March 2010
Jacques Nasser (Chairman)	Member and Chairman from 31 March 2010
John Buchanan	Member for whole period
John Schubert	Member for whole period

(1) The Committee was chaired by John Buchanan while the succession of the Board Chairman was being considered.

#### *Role and focus*

The role of the Committee is to assist in ensuring that the Board comprises individuals who are best able to discharge the responsibilities of a Director, having regard to the highest standards of governance. It does so by focusing on:

- reviewing the skills represented on the Board and identifying skills that may be required;
- retaining the services of independent search firms and identifying suitable candidates (possessing the skills identified by the skills analysis referred to above) for the Board;
- overseeing the review of the assessment of the performance of individual Directors and making recommendations to the Board on the endorsement of retiring Directors seeking re-election (see section 5.4.2);
- the plan for succession of the Chairman and the CEO and the periodic evaluation of it;
- the provision of appropriate training and development opportunities for Directors;
- supporting the Board in its review and, where appropriate, authorisation of actual and potential conflicts (see section 5.3.5);
- communicating to shareholders regarding the work of the Committee on behalf of the Board.

The Nomination Committee also has oversight of training and development activity for all Directors. The Board considers this enhances the Committee's ongoing consideration and review in relation to the appropriate skills mix for the Board.

#### *Activities undertaken during the year*

There were changes to the composition of the Board during the year. Malcolm Broomhead and Carolyn Hewson joined the Board on 31 March 2010 following the retirement of Paul Anderson and Gail de Planque on 31 January 2010. David Morgan and David Jenkins retired from the Board in November 2009 and Don Argus retired as Chairman and non-executive Director on 30 March 2010. As discussed in section 5.4.3, the Nomination Committee played a significant role supporting the Board during the Chairman succession process at which time John Buchanan, as Senior Independent Director, chaired the meeting. Jacques Nasser assumed the role of Chairman on 31 March 2010, bringing the Chairman succession process to a conclusion. The Committee retained the services of Heidrick & Struggles and Egon Zehnder to assist in the identification of potential candidates for the Board. The Committee also oversaw the Director training and development program and the induction of new Directors (see section 5.3.8 for further information on Director induction and training).

During the year, the Committee assessed its performance. As a result of that assessment, the Committee is satisfied that it is functioning effectively and it has met its Terms of Reference.

### 5.5.4 Sustainability Committee Report

The Sustainability Committee met seven times during the year. Information on meeting attendance by Committee members is included in the table in section 5.4.1.

### *Sustainability Committee members during the year*

<u>Name</u>	<u>Status</u>
John Schubert (Chairman)	Member for whole period
Paul Anderson	Member to 31 January 2010
E Gail de Planque	Member to 31 January 2010
Keith Rumble	Member for whole period
Malcolm Broomhead	Member from 31 March 2010

### *Role and focus*

The role of the Sustainability Committee is to assist the Board in its oversight of:

- the effectiveness of the Group's strategies, policies and systems associated with health, safety, environment and community (HSEC) matters;
- our compliance with applicable legal and regulatory requirements associated with HSEC matters;
- our performance in relation to HSEC matters;
- the performance and leadership of the HSEC and the Sustainable Development functions;
- HSEC risks;
- our Annual Sustainability Report;
- communication to shareholders regarding the work of the Committee on behalf of the Board.

### *Sustainable development governance*

Our approach to HSEC and sustainable development governance is characterised by:

- the Sustainability Committee overseeing the HSEC matters across the Group;
- business line management having primary responsibility and accountability for HSEC performance;
- the HSEC function providing advice and guidance directly, as well as through a series of networks across the business;
- seeking input and insight from external experts such as our Forum for Corporate Responsibility;
- clear links between remuneration and HSEC performance.

### *Activities undertaken during the year*

During the year, the Sustainability Committee considered reports on environmental strategic issues, HSEC audits and trends, review of health and hygiene standards, learnings from fatal accidents and other incidents, and the potential impact of climate change regulation on the Group's portfolios and actions being taken to manage the implications of this regulation. It also reviewed the Group's performance against the HSEC public targets and the Key Performance Indicators for the HSEC and Sustainable Development functions. The Committee also reviewed the performance of the Head, Group HSEC and Sustainable Development. The Committee reviewed and recommended to the Board the approval of the annual Sustainability Report for publication. The Sustainability Report identifies our targets for HSEC matters and its performance against those targets.

A copy of the Sustainability Report and further information can be found at [www.bhpbilliton.com/sustainabledevelopment](http://www.bhpbilliton.com/sustainabledevelopment).

The Committee also assessed its performance in accordance with its Terms of Reference. As a result of that assessment, the Committee is satisfied it has met its Terms of Reference.

## **5.6 Risk management**

### **5.6.1 Approach to risk management**

We believe that the identification and management of risk is central to achieving the corporate objective of delivering long-term value to shareholders. Each year, the Board reviews and considers the risk profile for the whole business. This risk profile covers both operational and strategic risks. The risk profile is assessed to ensure it supports the achievement of the Group's strategy while maintaining a strong 'A' credit rating.

The Board has delegated the oversight of risk management to the RAC. In addition, the Board specifically requires the CEO to implement a system of control for identifying and managing risk. The Directors, through the RAC, review the systems that have been established for this purpose and regularly review their effectiveness.

The Group has established a Risk Management Policy with supporting processes and performance requirements that provide an overarching and consistent framework for the identification, assessment and management of risks. Risks are ranked using a common methodology. Where a risk is assessed as material it is reported and reviewed by senior management. During the year, updated Risk Management Group Level Documents were approved and implemented across the Group.

Our Risk Management Policy can be found at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

### **5.6.2 Business risks**

The scope of our operations and the number of industries in which we operate and engage mean that a range of factors may impact our results. Material risks that could negatively affect our results and performance include:

- impacts arising from the global financial crisis;
- fluctuations in commodity prices;
- fluctuations in currency exchange rates;
- failure or non-performance of counterparties;
- influence of demand from China as well as related investments aimed at achieving resource security;
- failure to discover new reserves, maintain or enhance existing reserves or develop new operations;
- actions by governments, including additional taxation, infrastructure development and political events in the countries in which we operate;
- inability to successfully integrate acquired businesses;
- inability to recover investments in mining and oil and gas projects;
- non-compliance with the Group's standards by non-controlled assets;
- operating cost pressures and shortages could negatively impact our operating margins and expansion plans;
- impact of increased costs or schedule delays on development projects;
- impact of health, safety, environmental and community exposures and related regulations on operations and reputation;
- unexpected natural and operational catastrophes;
- climate change and greenhouse effects;
- inadequate human resource talent pool;
- breaches in information technology security;
- breaches in governance processes.

These risks are described in more detail in section 1.5.

### **5.6.3 Risk management governance structure**

The principal aim of the Group's risk management governance structure and internal control systems is to identify, evaluate and manage business risks, with a view to enhancing the value of shareholders' investments and safeguarding assets.

Management has put in place a number of key policies, processes, performance requirements and independent controls to provide assurance to the Board and the RAC as to the integrity of our reporting and effectiveness of our systems of internal control and risk management. The BHP Billiton Governance structure diagram in section 5.1 highlights the relationship between the Board and the various controls in the assurance process. Some of the more significant internal control systems include Board and management committees, Business Group RACs, the Risk Management Policy and internal audit.

#### *Business Group Risk and Audit Committees*

The Business Group RACs illustrated in the diagram in section 5.5.1 assist the RAC to monitor the Group's obligations in relation to financial reporting, internal control structure, risk management processes and the internal and external audit functions.

### Board Committees

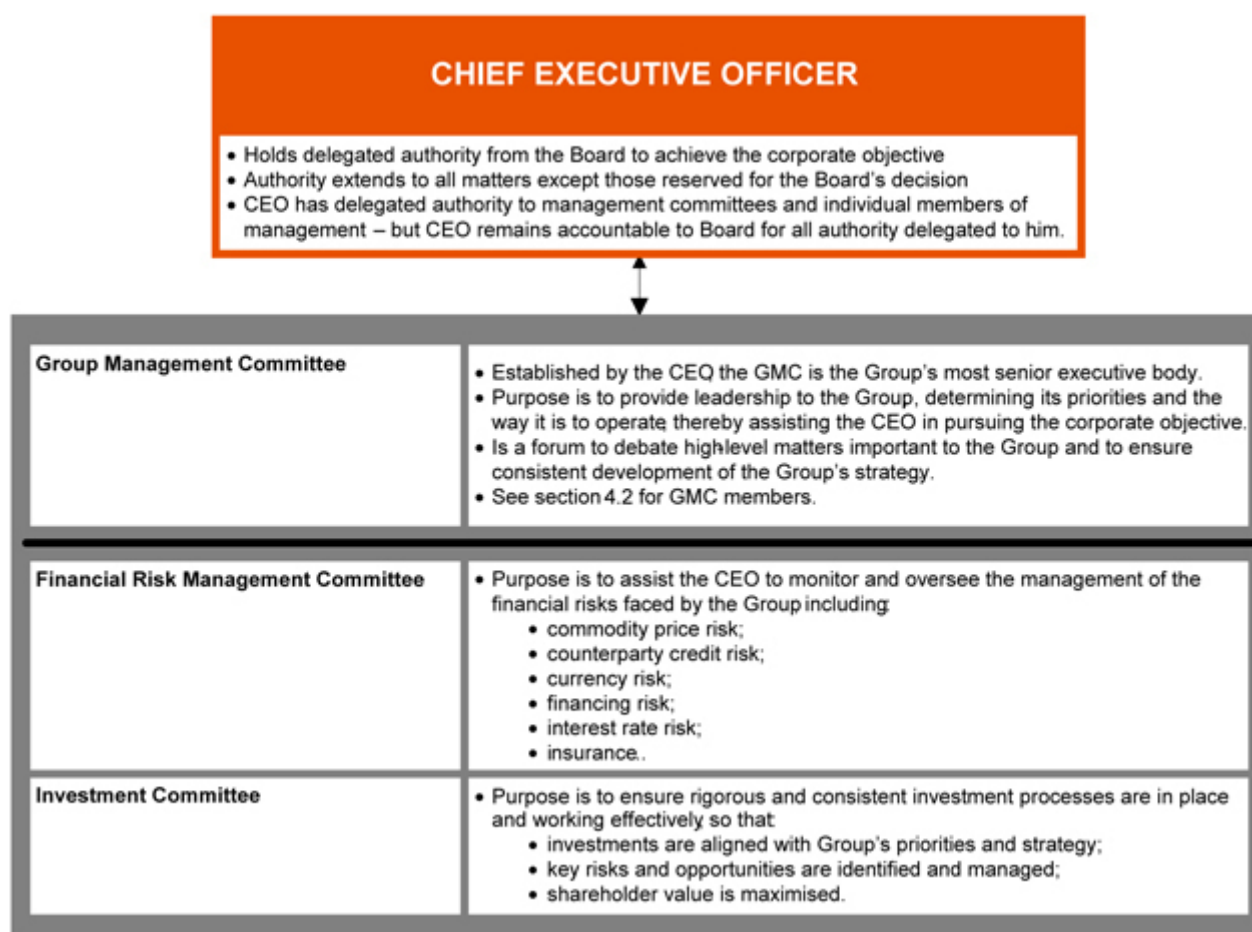
Directors also monitor risks and controls through the RAC, the Remuneration Committee and the Sustainability Committee.

### Management Committees

Management committees also perform roles in relation to risk and control. Strategic risks and opportunities arising from changes in our business environment are regularly reviewed by the GMC and discussed by the Board. The Financial Risk Management Committee (FRMC) reviews the effectiveness of internal controls relating to commodity price risk, counterparty credit risk, currency risk, financing risk, interest rate risk and insurance. Minutes of the GMC and the FRMC meetings are provided to the Board. The Investment Committee provides oversight for investment processes across the business and coordinates the investment toll-gating process for major investments. Reports are made to the Board on findings by the Investment Committee in relation to major capital projects.

## 5.7 Management

Below the level of the Board, key management decisions are made by the CEO, the GMC, other management committees and individual members of management to whom authority has been delegated. The diagram below describes the position of the CEO and three key management committees.



### *Performance evaluation for executives*

The performance of executives and other senior employees is reviewed on an annual basis. For the most senior executives (members of the GMC), this review includes their contribution, engagement and interaction at Board level. The annual performance review process that we employ considers the performance of executives against criteria designed to capture both 'what' is achieved and 'how' it is achieved. All performance assessments of executives consider how effective they have been in undertaking their role; what they have achieved against their specified key performance indicators; how they match up to the behaviours prescribed in our leadership model and how those behaviours align with the *BHP Billiton Charter* values. The assessment is therefore holistic and balances absolute achievement with the way performance has been delivered. Progression within the Group is driven equally by personal leadership behaviours and capability to produce excellent results.

A performance evaluation as outlined above was conducted for all members of the GMC in FY2010. For the Chief Executive Officer, the performance evaluation was led by the Chairman of the Board on behalf of all the non-executive Directors, drawing on guidance from the Remuneration Committee.

### **5.8 Diversity at BHP Billiton**

Corporate governance reviews have highlighted that there is a continuing lack of diversity among experienced Director candidates in Australia and the UK. The Board is reviewing its current practices, including assessing how the Board and the Nomination Committee presently take into account diversity criteria, including geographic location, race and gender, as part of a Director candidate's general background and experience. This review will include an assessment of the Board Committees' Terms of Reference to consider whether amendments are required to formalise diversity considerations. The BHP Billiton Human Resources Policy guides the Board and management in developing diversity objectives for the Group. The Human Resources Policy is supported by internal processes that will set out measurable objectives to support the achievement of diversity across the Group.

A summary of our Human Resources Policy and the measurable objectives adopted to support diversity can be found on our website at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

Our approach to diversity is underpinned by key principles, including:

- a diverse workforce is necessary to the delivery of our strategy that is predicated on diversification by commodity, geography and market;
- our aspiration is to have a workforce that best represents the communities in which our assets are located and our employees live;
- actions that support our diversity aspirations should be consistent with our established approach to talent, performance and reward;
- achieving an appropriate level of diversity will require structured programs at an early career stage that ensure the development of necessary skills and experience for leadership roles;
- measurable objectives in support of diversity will be transparent, achievable over a period of time and fit for purpose;
- the set of measurable objectives will focus on (i) enabling a diverse workforce by way of removing barriers to diversity and (ii) establishing appropriate workforce representation targets.

The key measurable objective for FY2011 will be the development and implementation of diversity plans by each CSG, Group Function, Minerals Exploration and Marketing as mandated under Group Level Documents. Each will be required to develop a diversity plan that takes into account the Human Resources Policy and the principles set out above. Each plan must be implemented before the end of the financial year. The requirement to formulate and implement a diversity plan will be audited as part of the Group's internal compliance requirements. Outcomes from the audits will be linked to the performance scorecards and consequential bonus outcomes. Going forward, progress against each year's measurable objectives will be disclosed in the Annual Report, along with the proportion of women in our workforce, in senior management and on the Board. There is currently one woman on the Board and the proportion of women in our workforce and in senior management is set out in section 2.10, where you can also find further information on diversity and our employee profile more generally.

## 5.9 Business conduct

### *Code of Business Conduct*

We have published the *BHP Billiton Code of Business Conduct*, which is available in four languages. The Code reflects our Charter values of integrity, respect, trust and openness. It provides clear direction and advice on conducting business internationally, interacting with communities, governments and business partners and general workplace behaviour. The Code applies to Directors and to all employees, regardless of their position or location. Consultants, contractors and business partners are also expected to act in accordance with the Code.

The *BHP Billiton Code of Business Conduct* can be found at our website at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

### *Insider trading*

We have a Securities Dealing document that covers dealings by Directors and identified employees, and is consistent with the Model Code contained in the Financial Services Authority Listing Rules in the UK. The Securities Dealing document restricts dealings by Directors and identified employees in shares and other securities during designated prohibited periods and at any time that they are in possession of unpublished price-sensitive information.

A copy of the Securities Dealing Document can be found at our website at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

### *Global Ethics Advisory Panel*

The CEO has formed a Global Ethics Advisory Panel to:

- advise on matters affecting the values and behaviours of the Group;
- assist business leaders in assessing acceptable outcomes on issues of business ethics;
- review the rationale, structure and content of the *BHP Billiton Code of Business Conduct* and propose changes;
- promote awareness and effective implementation of the *BHP Billiton Code of Business Conduct*.

Panel members have been selected on the basis of their knowledge of and experience in contemporary aspects of ethics and culture that are relevant to the Group. The panel consists of both employees and external members and is chaired by the Group Executive and Chief People Officer.



### ***Business Conduct Advisory Service***

We have established a Business Conduct Advisory Service so that employees can seek guidance or express concerns on business-related issues and report cases of suspected misappropriations, fraud, bribery or corruption. Reports can be made anonymously and without fear of retaliation. Arrangements are in place to investigate such matters. Where appropriate, investigations are conducted independently. Levels of activity and support processes for the Business Conduct Advisory Service are monitored with activity reports presented to the Board. Further information on the Business Conduct Advisory Service can be found in the *BHP Billiton Code of Business Conduct*.

### ***Political donations***

We maintain a position of impartiality with respect to party politics and do not contribute funds to any political party, politician or candidate for public office. We do, however, contribute to the public debate of policy issues that may affect our business in the countries in which we operate.

### ***SEC investigation***

In FY2010, an internal investigation was commenced into allegations of possible misconduct involving interactions with government officials. Following requests from the US Securities and Exchange Commission, the Group has disclosed to relevant authorities evidence that it has uncovered regarding possible violations of applicable anti-corruption laws involving interactions with government officials. The Group is cooperating with the relevant authorities and the internal investigation is continuing. It is not possible at this time to predict the scope or duration of the investigation or its likely outcomes.

## **5.10 Market disclosure**

We are committed to maintaining the highest standards of disclosure ensuring that all investors and potential investors have the same access to high-quality, relevant information in an accessible and timely manner to assist them in making informed decisions. A Disclosure Committee manages our compliance with the market disclosure obligations and is responsible for implementing reporting processes and controls and setting guidelines for the release of information.

Disclosure Officers have been appointed in the Group's CSGs and Group Functions. These officers are responsible for identifying and providing the Disclosure Committee with material information about the activities of the CSG or functional areas using disclosure guidelines developed by the Committee.

To safeguard the effective dissemination of information we have developed a Market Disclosure and Communications document, which outlines how we identify and distribute information to shareholders and market participants.

A copy of the Market Disclosure and Communications document is available at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

Copies of announcements to the stock exchanges on which we are listed, investor briefings, half-yearly financial statements, the Annual Report and other relevant information are posted to the Group's website at [www.bhpbilliton.com](http://www.bhpbilliton.com). Any person wishing to receive advice by email of news releases can subscribe at [www.bhpbilliton.com](http://www.bhpbilliton.com).

## **5.11 Conformance with corporate governance standards**

Our compliance with the governance standards in our home jurisdictions of Australia and the UK, and with the governance requirements that apply to us as a result of our New York Stock Exchange (NYSE) listing, is summarised in this Corporate Governance Statement, the Remuneration Report, the Directors' Report and the financial statements.

The Listing Rules and the Disclosure and Transparency Rules of the UK Financial Services Authority require UK-listed companies to report on the extent to which they comply with the Principles of Good Governance and Code of Best Practice, which are contained in Section 1 of the Combined Code (recently renamed the UK Corporate Governance Code), and explain the reasons for any non-compliance. The UK Corporate Governance Code is available at [www.frc.org.uk/corporate/ukcgcode.cfm](http://www.frc.org.uk/corporate/ukcgcode.cfm).

The Listing Rules of the ASX require Australian-listed companies to report on the extent to which they meet the Corporate Governance Principles and Recommendations published by the ASX Corporate Governance Council (ASX Principles and Recommendations) and explain the reasons for any non-compliance. The ASX Principles and Recommendations are available at [www.asx.com.au/about/corporate\\_governance/index.htm](http://www.asx.com.au/about/corporate_governance/index.htm).

Both the Combined Code and the ASX Principles and Recommendations require the Board to consider the application of the relevant corporate governance principles, while recognising that departures from those principles are appropriate in some circumstances. We have complied with the provisions set out in Section 1 of the Combined Code and with the ASX Principles and Recommendations throughout the financial period and have continued to comply up to the date of this Annual Report.

A checklist summarising our compliance with the UK Combined Code and the ASX Principles and Recommendations has been posted to the website at [www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).

BHP Billiton Limited and BHP Billiton Plc are registrants with the Securities and Exchange Commission in the US. Both companies are classified as foreign private issuers and both have American Depositary Receipts listed on the NYSE.

We have reviewed the governance requirements currently applicable to foreign private issuers under the Sarbanes-Oxley Act (US) including the rules promulgated by the Securities and Exchange Commission and the rules of the NYSE and are satisfied that we comply with those requirements.

Section 303A of the NYSE Listed Company Manual has instituted a broad regime of corporate governance requirements for NYSE-listed companies. Under the NYSE rules, foreign private issuers, such as ourselves, are permitted to follow home country practice in lieu of the requirements of Section 303A, except for the rule relating to compliance with Rule 10A-3 of the Securities Exchange Act of 1934 and certain notification provisions contained in Section 303A of the Listed Company Manual. Section 303A.11 of the Listed Company Manual, however, requires us to disclose any significant ways in which our corporate governance practices differ from those followed by US listed companies under the NYSE corporate governance standards. Following a comparison of our corporate governance practices with the requirements of Section 303A of the NYSE Listed Company Manual followed by domestic issuers, the following significant differences were identified:

- The NYSE rules require domestic listed companies to have a Compensation (Remuneration) Committee composed entirely of independent directors. The Board considers that all members of our Remuneration Committee are independent, however notes that the test of independence set out in the Board's Policy on Independence differs in some respects from that prescribed by the NYSE. The NYSE rules permit the Group as a foreign private issuer to follow home practice rules, both in considering the independence of Directors and in the composition of its Remuneration Committee.
- Our Nomination Committee's Terms of Reference (charter) do not include the purpose of developing and recommending to the Board a set of corporate governance principles applicable to the corporation. While we have a Nomination Committee, it is not specifically charged with this responsibility. We believe that this task is integral to the governance of the Group and is therefore best dealt with by the Board as a whole.
- Rule 10A-3 of the Securities Exchange Act of 1934 requires NYSE-listed companies to ensure that their audit committees are directly responsible for the appointment, compensation, retention and oversight of the work of the external auditor unless the company's governing law or documents or other home country legal requirements require or permit shareholders to ultimately vote on or approve these matters. While the RAC is directly responsible for remuneration and oversight of the External Auditor, the ultimate responsibility for appointment and retention of External Auditors rests with our shareholders, in accordance with UK law and our constitutional documents. The RAC does, however, make recommendations to the Board on these matters, which are in turn reported to shareholders.

While the Board is satisfied with its level of compliance with the governance requirements in Australia, the UK and the US, it recognises that practices and procedures can always be improved, and there is merit in continuously reviewing its own standards against those in a variety of jurisdictions. The Board's program of review will continue throughout the year ahead.

## **5.12 Additional UK disclosure**

The information specified in the UK Financial Services Authority Disclosure and Transparency Rules, DTR 7.2.6, is located elsewhere in this Annual Report. The Directors' Report, at section 7.23, provides cross-references to where the information is located.

## 5.13 Controls and procedures

### 5.13.1 Management's assessment of our internal control over financial reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we have evaluated the effectiveness of the Group's internal control over financial reporting based on the framework and criteria established in Internal Controls – Integrated Framework, issued by the Sponsoring Organisation of the Treadway Commission (COSO). Based on this evaluation, management has concluded that internal control over financial reporting was effective as at 30 June 2010. There were no material weaknesses in the Group's internal controls over financial reporting identified by management

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements and even when determined to be effective, can only provide reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our independent registered public accounting firms, KPMG and KPMG Audit Plc, have issued an audit report on our internal control over financial reporting which is contained on page F-1 of this Annual Report.

There have been no changes in our internal control over financial reporting during the year ended 30 June 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### 5.13.2 Principal Accountant fees and services

#### *Fees billed*

Refer to note 34 'Auditor's remuneration' in the financial statements for a description of the fees paid to, and the services provided by, our independent accountants.

#### *Policies and procedures*

We have adopted a policy entitled 'Provision of Audit and Other Services by the External Auditor' covering the Risk and Audit Committee's pre-approval policies and procedures to maintain the independence of the External Auditor.

*The full policy can be accessed in the BHP Billiton internet site at:*

*[www.bhpbilliton.com/aboutus/governance](http://www.bhpbilliton.com/aboutus/governance).*

In addition to audit services, the External Auditor will be permitted to provide other (non-audit) services that are not, and are not perceived to be, in conflict with the role of the External Auditor. In accordance with the requirements of the Securities Exchange Act and guidance contained in PCAOB Release 2004-001, certain specific activities are listed in our detailed policy which have been 'pre-approved' by our Risk and Audit Committee.

The categories of 'pre-approved' services are as follows:

- Audit services – This is the work that constitutes the agreed scope of the statutory audit and includes the statutory audits of the Group and its entities (including interim reviews). Our Risk and Audit Committee will monitor the Audit services engagements and approve, if necessary, any changes in terms and conditions resulting from changes in audit scope, Group structure or other relevant events.
- Audit-related/assurance services – This is work that is outside the required scope of the statutory audit, but is consistent with the role of the external statutory auditor. This category includes work that is reasonably related to the performance of an audit or review and is a logical extension of the audit or review scope, is of an assurance or compliance nature and is work that the External Auditor must or is best placed to undertake.
- Tax services – This work is of a tax nature that does not compromise the independence of the External Auditor.

- Other advisory services – This work is of an advisory nature that does not compromise the independence of the External Auditor.

Activities not listed specifically are therefore not ‘pre-approved’ and must be approved by our Risk and Audit Committee prior to engagement, regardless of the dollar value involved. Additionally, any engagement for other services with a value over US\$100,000, even if listed as a ‘pre-approved’ service, can only be approved by our Risk and Audit Committee, and all engagements for other services, whether ‘pre-approved’ or not, and regardless of the dollar value involved, are reported quarterly to our Risk and Audit Committee.

While not specifically prohibited by our policy, any proposed non-audit engagement of the External Auditor relating to internal control (such as a review of internal controls or assistance with implementing the regulatory requirements including the Securities Exchange Act) must obtain specific prior approval by our Risk and Audit Committee. With the exception of the external audit of the Group financial report, any engagement identified that contains an internal control-related element is not considered to be pre-approved. In addition, whilst the categories shown above include a list of certain pre-approved services, the use of the External Auditor to perform such services shall always be subject to our overriding governance practices as articulated in the policy.

An exception can be made to the above policy where such an exception is in our interests and appropriate arrangements are put in place to ensure the integrity and independence of the External Auditor. Any such exception requires the specific prior approval of our Risk and Audit Committee and must be reported to our Board. No exceptions were approved during the year ended 30 June 2010.

In addition, our Risk and Audit Committee approved no services during the year ended 30 June 2010 pursuant to paragraph (c)(7)(i) (C) of Rule 2-01 of Regulation S-X.

## 6 Remuneration Report

### Using this Remuneration Report

The following guide is intended to help the reader to understand and navigate through this Remuneration Report, and to understand the linkages between BHP Billiton's remuneration strategy and the remuneration outcomes for Directors and senior executives. All acronyms used in the Remuneration Report are defined on this contents page, or in the Glossary to the Annual Report.

Section	Subsection	What it covers	Page number
<b>6.1</b>	<b>Message from the Remuneration Committee Chairman</b>		168
<b>6.2</b>	<b>Remuneration strategy</b>		168
	Remuneration principles	The key principles that underpin the Group's remuneration strategy.	168
	Strategic alignment	Shows how BHP Billiton's remuneration policy is linked to our strategic objectives, and how remuneration is structured to reinforce these linkages.	169
	Risk alignment	Explains how the structure of <i>at risk</i> remuneration encourages effective risk management and long-term decision-making by management.	171
	Performance alignment	Demonstrates the linkages between the Group's earnings and Total Shareholder Return (TSR) performance and remuneration outcomes for members of the GMC.	171
<b>6.3</b>	<b>Executive remuneration outcomes</b>		174
	Determining Total Remuneration	Describes how the Remuneration Committee determines remuneration outcomes for members of the GMC.	174
	Remuneration mix	Describes the core components of Total Remuneration and their different roles.	174
	<i>Fixed</i> remuneration	Details the components of GMC remuneration that are not <i>at risk</i> .	176
	Short-term incentives (STI)	Outlines the key features of the Group Incentive Scheme (GIS), and Key Performance Indicators (KPIs) and STI rewards for GMC members.	177
	Long-term incentives (LTI)	Outlines the key features of the Long Term Incentive Plan (LTIP), LTI rewards for GMC members, and proposed changes to the LTIP terms for FY2011.	182
	Share ownership guidelines	Describes the Group's minimum shareholding requirements for the Chief Executive Officer (CEO) and other members of the GMC.	185
<b>6.4</b>	<b>Executive remuneration</b>		186
	Senior management in FY2010	Shows details of the individuals comprising the Key Management Personnel (KMP), which are the GMC, with a summary of key service contract terms (including termination entitlements).	186
	Total remuneration: statutory disclosures	Provides total remuneration for GMC members calculated pursuant to legislative and accounting requirements.	190
	Equity awards	Sets out the interests of GMC members resulting from BHP Billiton's remuneration programs (including those granted and vested during FY2010).	196
<b>6.5</b>	<b>Remuneration Governance</b>	Explains how the Board and Remuneration Committee make remuneration decisions, including the use of external remuneration consultants.	197
<b>6.6</b>	<b>Aggregate Directors' remuneration</b>	The total remuneration provided to executive and non-executive Directors compared with the aggregate cap amount as approved by shareholders.	198
<b>6.7</b>	<b>Non-executive Director arrangements</b>		198
	Non-executive Directors in FY2010	Shows details of the individual non-executive Directors in FY2010.	198
	Remuneration structure	Explains the basis on which non-executive Director remuneration is set and outlines the components.	199
	Retirement benefits	Details the retirement benefits payable to participating Directors under the now-closed Retirement Plan.	200
	Total remuneration: statutory disclosures	Provides total remuneration for non-executive Directors (calculated pursuant to legislative and accounting standards).	

## 6.1 Message from the Remuneration Committee Chairman

Over the course of the year, executive remuneration has been a prominent topic with shareholders and policy makers, resulting in significant changes to corporate governance requirements. Against this background, the Committee continued to assess the effectiveness of our remuneration policy. We believe that it remains fundamentally sound.

Our remuneration policy is designed to deliver strong alignment of interests between the executives and the shareholder. Our policy reflects effective management of business risk and is consistent with the implementation of our business strategy. The assessment of performance is concluded through a balanced scorecard of measures encompassing financial performance, Health, Safety, Environment and Community (HSEC) together with effective capital deployment and individual performance. The total remuneration policy reflects the drivers of sustainable shareholder return, with the Long Term Incentive Plan (LTIP) providing direct alignment to the generation of superior shareholder returns.

For FY2011, we are proposing a small number of changes to the executive LTIP. The LTIP has been in place since 2004 with minimal alteration during a period of considerable industry change. The Committee completed a thorough review of the LTIP in FY2010. We concluded that the core structure of the plan is robust and remains appropriate. In particular, we concluded that performance assessed against relative TSR primarily based on our industry sector and that the challenging five-year performance measurement period should be retained.

The proposed enhancements to the LTIP reflect BHP Billiton's portfolio and strategy today and strengthen the alignment of participants with the creation of sustainable shareholder value. Our review identified the need to address the inherent counter cyclicity and excess leverage in the plan. This is achieved by introducing some modest vesting at median and a second relative TSR benchmark measured against a general market index. The effect of the proposals will not weaken the performance requirements. Targets remain stretching, requiring material outperformance of both the sector and market index. The proposals will reduce the volatility of reward outcomes and reduce the maximum outcome in exchange for a higher possibility of some vesting.

As in prior years, we have strived to produce a Remuneration Report that is clear and concise, meeting regulatory requirements, providing you with the information required to assess the linkage between executive remuneration and company performance.

## 6.2 Remuneration strategy

This section outlines the overarching approach and framework that guides remuneration arrangements for senior executives, including the GMC members. Details of GMC membership are included in section 6.4.1.

### 6.2.1 Remuneration principles

The key principles of our remuneration policy are to:

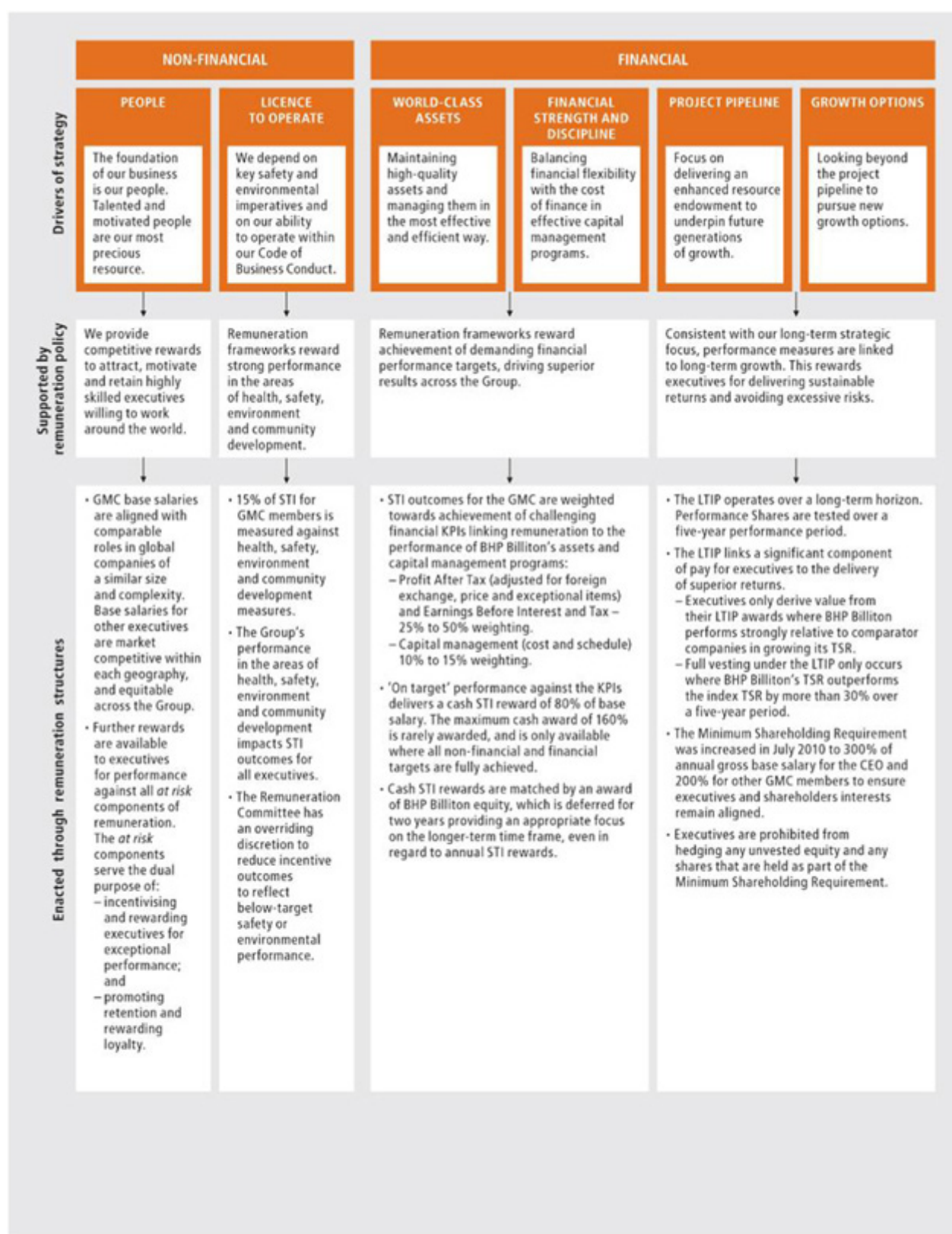
- support the execution of the Group's business strategy in accordance with a risk-appetite that is appropriate for the organisation;
- provide competitive rewards to attract, motivate and retain highly-skilled executives willing to work around the world;
- apply demanding key performance measures, including financial and non-financial measures of performance;
- link a large component of pay to our performance and the creation of value for our shareholders;
- ensure remuneration arrangements are equitable and facilitate the deployment of people around our businesses;
- limit severance payments on termination to pre-established contractual arrangements (which do not commit us to making any unjustified payments).

The Remuneration Committee is confident that these principles, which were applied in the year under review and are expected to be applied in FY2011 and beyond, continue to meet the Group's objectives.

#### ***6.2.2 Strategic alignment***

The Remuneration Committee recognises that we operate in a global environment and that our performance depends on the quality of our people. Remuneration is used to reinforce the Group's strategic objectives, and the committee keeps the remuneration policy under regular review to ensure it is appropriate for the needs of the Group.

The diagram below illustrates how BHP Billiton's remuneration policy is linked to the six key drivers of our strategy and how the remuneration structures for executives (including the members of the GMC) serve to support and reinforce these linkages.





### **6.2.3 Risk alignment**

The global financial crisis has heightened the focus on risk management within organisations, and in particular on remuneration frameworks that work to ensure executives take a long-term approach to decision-making - minimising activities that focus only on short-term results at the expense of longer term business growth and success.

The Remuneration Committee has considered the ways in which risk management is reflected throughout BHP Billiton's reward structure for all executives, and is satisfied that it reinforces the desired behaviours. This is largely achieved through the Group's approach to STI and LTI rewards, which comprise a significant portion of remuneration for the GMC.

The equity component of STI rewards is deferred for a two-year period, and performance under the LTIP is measured over a five-year period. The actual rewards received by members of the GMC therefore reflect the Group's performance and share price over an extended period.

In addition, STI and LTI outcomes are not driven by a formulaic approach. The Remuneration Committee applies a qualitative judgement to determining STI rewards and to vesting under the LTIP, and may determine that rewards not be provided in circumstances where the committee determines it to be inappropriate or would provide unintended outcomes. The Remuneration Committee does not apply any discretion to allow vesting when performance hurdles have not been satisfied.

### **6.2.4 Performance alignment**

While the Board recognises that market forces necessarily influence remuneration practices, it strongly believes that the fundamental driver behind our remuneration structure is business performance. Accordingly, while target remuneration is structured to attract and retain executives, the amount of remuneration actually received is dependent on the achievement of superior business and individual performance and on generating sustained shareholder value.

#### *Short-term performance indicators and outcomes*

An individual scorecard of measures is set for each executive at the commencement of each financial year. These scorecards include the key financial and non-financial measures that the Board believes will drive BHP Billiton's performance. At the conclusion of the financial year, each individual's achievement against their measures is assessed by the Remuneration Committee and Board and their cash STI reward is determined. This is matched with an allocation of Deferred Shares or Options (or a combination of the two), to which the individual will not have access for two years (unless they leave the Group under specific circumstances).

The relationship between STI rewards and the performance of the Group over the past five years indicates the success of our remuneration strategy in aligning executive rewards with shareholder interests (as shown in the graphs below). Further details of the Group's Attributable Profit and Basic Earnings per Share over the past five years can be found in section 3 of this Annual Report (including descriptions of these terms).

### *Long-term performance indicators and outcomes*

Under the LTIP, vesting outcomes are directly linked to BHP Billiton's relative TSR performance, which is a measure of share price and dividend performance as described in the table in section 6.3.5. As detailed in that section, the LTIP runs over a performance period of five years. The performance hurdle requires BHP Billiton's TSR to exceed the weighted median TSR of a group of peer companies by 5.5 per cent per annum (on average over the five years) which is 30.7 per cent over five years. Details of the comparator group companies are set out in section 6.4.3.

The performance period is an important design feature for the Group, as the Remuneration Committee believes it reflects not only the long-term nature of our business, but gives sufficient time to ensure that there is real alignment with shareholders.

#### **2004 allocations under the LTIP – vested in FY2010**

The current LTIP was introduced in 2004, with the first five-year performance period finishing on 30 June 2009 and vesting occurring in August 2009. The vested amounts for each GMC member are shown in section 6.4.3.

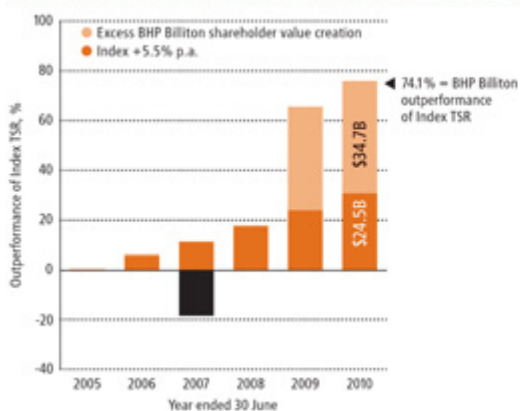
Over the performance period, BHP Billiton's TSR was 220 per cent. In contrast, the average TSR for the peer group against which the Group's performance was measured was 71.8 per cent. The impact of our performance was to add US\$80.6 billion of shareholder value from 1 July 2004 to 30 June 2009 over and above performance in line with the average of the peer group.

#### **2005 allocations under the LTIP – tested to the end of FY2010**

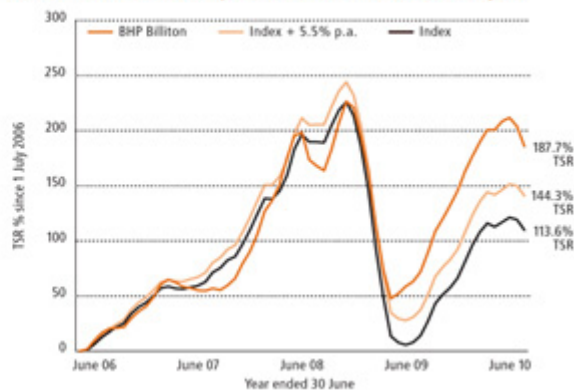
BHP Billiton's TSR performance from 1 July 2005 to 30 June 2010 was assessed by the independent adviser to the Remuneration Committee as 187.7 per cent compared with an average TSR performance for the comparator group companies of 113.6 per cent. This outperformance of 74.1 per cent based on BHP Billiton's 1 July 2005 market capitalisation of US\$80 billion represents outperformance of US\$59.2 billion (over and above performance in line with the average of the peer group).

The Remuneration Committee has considered the TSR outcome in the context of Group financial performance over the five-year performance period and determined that the recorded TSR outperformance is a genuine reflection of BHP Billiton's underlying financial outperformance. This qualitative judgement, which is applied before vesting is confirmed, is an important risk management aspect to ensure that vesting is not simply driven by a formula which may give unexpected or unintended remuneration outcomes.

**BHP Billiton outperformance of Index over the 2005 LTIP cycle (% , US\$B)**

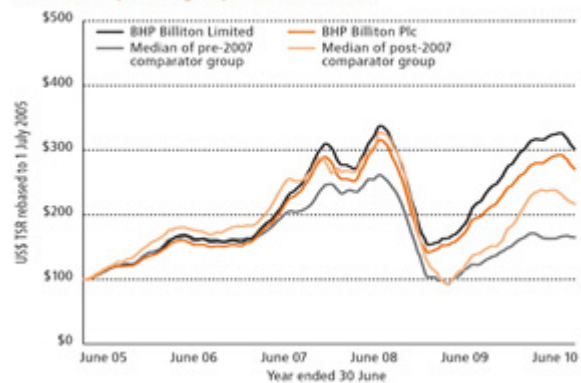


**BHP Billiton vs. Index TSR performance over the 2005 LTIP cycle**

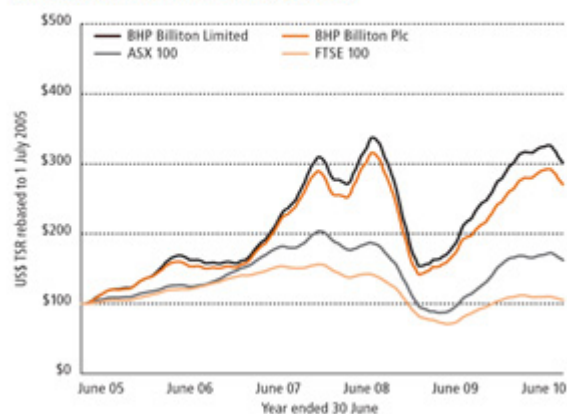


The graphs below highlight BHP Billiton's strong comparative performance against the LTIP comparator group companies and the ASX 100 and FTSE 100. Further details of the Group's share price and dividends performance over the past five years can be found in sections 1.4.1 and 11.4 of this Annual Report.

5-year TSR performance of BHP Billiton measured against the LTIP comparator group – Rebased in US\$



5-year TSR performance of BHP Billiton measured against the ASX 100 and FTSE 100 – Rebased in US\$



### 6.3 Executive remuneration outcomes

This section describes how executive remuneration is determined annually by the Remuneration Committee and Board. This information is designed to provide a complementary ‘shareholder-friendly’ view of remuneration, in addition to the statutory and accounting view of remuneration as set out in section 6.4.2.

The information in this section demonstrates how the remuneration strategy (as described in section 6.2) translates into practice for the members of the GMC (as listed in section 6.4.1), and the basis for change (if any) in each remuneration component.

#### 6.3.1 Determining Total Remuneration

The Remuneration Committee considers the appropriate level of Total Remuneration for each member of the GMC by examining the total reward provided to comparable roles in organisations of similar global complexity, size and reach. Total Remuneration comprises the components set out in the table in section 6.3.2 below.

Each year, the committee’s independent adviser, Kepler Associates, sources and consolidates relevant remuneration data for appropriate roles, based on their analysis of relevant organisations and markets. The adviser prepares a comparison to current GMC remuneration, but does not make specific recommendations regarding individual executives’ remuneration. From this market comparison, the Remuneration Committee determines the appropriate Total Remuneration level for each individual, taking into account their location, skills, experience and performance within the Group.

For more information on the services provided to the Remuneration Committee by Kepler Associates, please refer to section 6.5.

#### 6.3.2 Remuneration mix

The committee then considers the appropriate mix and weighting of different remuneration components which make up each individual’s Total Remuneration package. The remuneration package for each GMC member includes *fixed* and *at risk* components, which are designed to deliver appropriate ‘pay’ over a one to five year time horizon. *At risk* components are subject to performance conditions and to ongoing service.

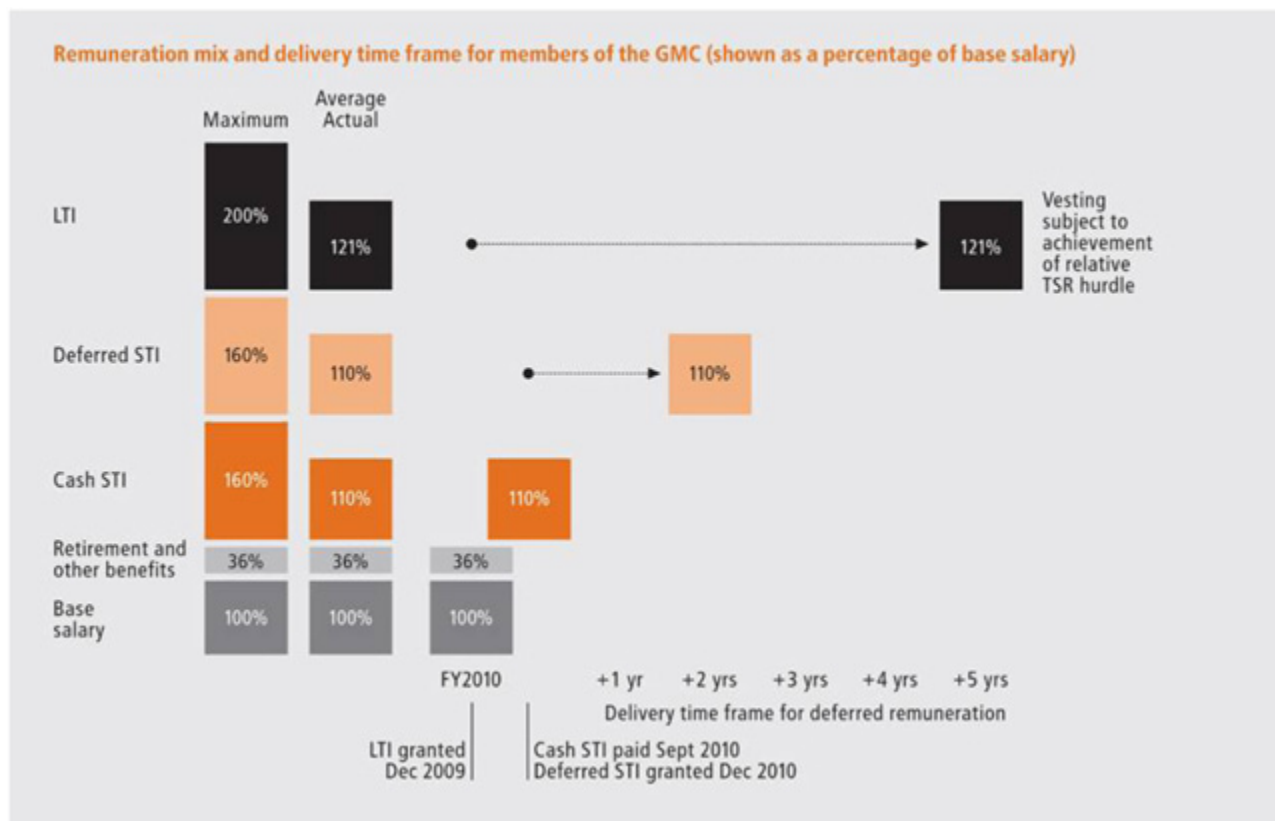
The components of Total Remuneration which are considered by the committee are shown in the table below. More detail in regard to each component is included in the following sections.

Component	Principles and Policy
<b><i>Fixed remuneration</i></b>	
Base salary	<ul style="list-style-type: none"><li>Reviewed annually relative to comparable roles in global companies of similar complexity, size and reach.</li></ul>
Pension/retirement benefits	<ul style="list-style-type: none"><li>Stated as a percentage of base salary.</li><li>Provided to new entrants under defined contribution plans. Employees in legacy defined benefit plans continue to accrue benefits in those plans for past and future service unless they have elected to transfer to a defined contribution plan.</li></ul>
Other benefits	<ul style="list-style-type: none"><li>Non-pensionable benefits such as medical and life insurances.</li></ul>
<b><i>At risk remuneration</i></b>	
Short-term incentive (STI)	<ul style="list-style-type: none"><li>The committee determines a target STI as a percentage of base salary, which is intended to support a high-performance culture.</li><li>An actual award will only be provided to the extent that pre-determined performance conditions are satisfied as described in section 6.3.4. These performance conditions motivate short-term performance linked to business strategy. Any cash STI is paid following the end of the financial year.</li><li>The value of any cash award is matched with an allocation of Deferred Shares or Options (or a combination), which generally vest two years after the end of the financial year (subject to a service condition). This deferral in shares is intended to strengthen alignment with shareholders’ interests and ensure that business results are sound.</li></ul>
Long-term incentive (LTI)	<ul style="list-style-type: none"><li>An annual LTI award is determined which is appropriate to the long-term nature of business decision-making.</li><li>LTI is provided as Performance Shares which vest five years after the end of the financial year only if the relative TSR performance hurdle has been satisfied and service conditions are met (as described in section 6.3.5).</li></ul>

The Remuneration Committee assesses Total Remuneration target opportunities on an aggregate basis before determining the level of each remuneration component. The delivery time frame of each component varies, so the Total Remuneration determined by the Remuneration Committee in August 2009 consisted of:

- A review of base salary and other *fixed* remuneration effective from 1 September 2009 as described in section 6.3.3;
- A target STI for the 2010 financial year, with performance assessed in August 2010 as described in section 6.3.4. Cash awards will be provided in September 2010, and Deferred Shares and/or Options are expected to be allocated in December 2010 following the Group's 2010 Annual General Meetings;
- An LTI award of Performance Shares was allocated in December 2009, as described in section 6.3.5, following the Group's 2009 Annual General Meetings.

The following diagram illustrates the relative proportion of these components for the members of the GMC. The average mix for the GMC members is shown below, comparing **actual** Total Remuneration received, to the mix that would have applied if the **maximum at risk** rewards had been earned.



### 6.3.3 Fixed remuneration

*Fixed* remuneration at BHP Billiton comprises base salary together with retirement and other benefits. *Fixed* remuneration is not *at risk*. It is determined relative to comparable roles in global companies of similar complexity, size and reach, but set within the Total Remuneration mix with reference to an individual's responsibilities, location, performance, qualifications and experience within the Group.

#### Base salary

Base salary is generally reviewed annually and effective from 1 September each year. The following table shows the base salary provided to each GMC member in the currency in which they were determined by the Remuneration Committee at the time of each review (salaries are shown in US dollars unless otherwise noted). The Remuneration Committee determined that from 1 September 2009 all GMC salaries would be expressed in US dollars.

**Non-statutory table:** Base salary amounts in the table below are effective 1 September and are not linked to any specific financial year. They therefore do not match with the 1 July 2009 to 30 June 2010 salaries shown in section 6.4.2

Name	1 September 2008 base salary	1 September 2009 base salary
Marius Kloppers <sup>(1)</sup>	1,979,500	2,038,885
Alberto Calderon	1,056,602	1,057,000
Andrew Mackenzie	£ 550,000	1,057,000
Marcus Randolph	1,182,751	1,182,751
Alex Vanselow	A\$1,337,500	1,057,000
Karen Wood	A\$1,043,250	930,000
J Michael Yeager	1,148,549	1,190,000

#### Note

- (1) Base salary for Marius Kloppers was increased by three per cent in October 2008, to US\$2,038,885. This increase was an amount that the Board held back in relation to Mr Kloppers' appointment as CEO in October 2007. The Board decided to review the application of that amount after he had served one year in office, subject to performance, and it was subsequently provided from October 2008. Mr Kloppers did not receive an increase in base salary in September 2009.

#### Retirement benefits

As part of *fixed* remuneration, all GMC members are entitled to retirement benefits under defined contribution plans (for all new entrants) and legacy defined benefit plans. The table below sets out the retirement benefits payable to each individual.

Name	Pension entitlement <sup>(1)</sup>	% of base salary
Marius Kloppers <sup>(2)</sup>	Defined Contribution	40.0
Alberto Calderon	Defined Contribution	35.0
Andrew Mackenzie	Defined Contribution	36.0
Marcus Randolph	Defined Contribution	34.0
Alex Vanselow	Defined Benefit	38.0
Karen Wood	Defined Contribution	34.4
J Michael Yeager	Defined Contribution	35.8

#### Notes

- (1) Individuals are given a choice of funding vehicles: a defined contribution plan, an unfunded Retirement Savings Plan, an International Retirement Plan or a cash payment in lieu.

- (2) Prior to his appointment as CEO and under the terms of a pre-existing contract, Marius Kloppers had the choice of a (1) 'defined benefit', (2) 'defined contribution' underpinned by a defined benefit promise, or (3) 'cash in lieu' pension entitlement for each year since 1 July 2001. He elected to take cash in lieu for each year except for FY2004 when he elected to take a defined contribution entitlement with a defined benefit underpin. Mr Kloppers retains the option to convert the entitlement accrued in the defined contribution fund to a defined benefit entitlement. In the past, since the value of his defined contribution entitlement has exceeded the transfer value of the defined benefit underpin that he would be entitled to should he revert to the defined benefit promise, the entitlement was treated on a defined contribution basis. However, as measured at 30 June 2010, the transfer value of the underpin (US\$531,108) was greater than the defined contribution fund (US\$428,292). BHP Billiton expects that over the long term the value of the defined contribution element will revert to being in excess of the transfer value of the underpin and therefore continues to treat the entitlement on a defined contribution basis. Upon his succession as CEO on 1 October 2007, Mr Kloppers relinquished all future defined benefit entitlements.

#### *Shareplus all-employee share purchase plan*

Like all permanent employees, members of the GMC are eligible to participate in Shareplus, an all-employee share purchase plan. Participants in Shareplus contribute from their post-tax base salary (capped at US\$5,000 per year) to acquire shares in BHP Billiton. Each of the GMC members chose to contribute the maximum allowable amount to the plan from their post-tax salary in FY2010.

Provided the participant remains employed by BHP Billiton on the third anniversary of the shares being acquired, the plan provides for a matching grant of shares on a 1:1 basis ('Matching Shares'). The accounting value of the rights acquired is included in remuneration over the share purchase period (as per the table in section 6.4.2).

The first grant of Matching Shares was made to participants (including the members of the GMC) on 1 April 2010, and details of the resulting share holdings for GMC members are shown in section 6.4.3. Further details regarding Shareplus are set out in note 32 of this Annual Report.

#### **6.3.4 Short-term incentives**

STI targets are set at the beginning of each financial year, with actual STI rewards determined at the end of each year under the Group Incentive Scheme (GIS).

The GIS rewards the executives for achieving annual goals in regard to critical KPIs of the Group. Each individual has a scorecard of measures that are linked to achievement of the business strategy and financial outcomes and also individual non-financial objectives reflecting their contribution to the business and the management team. The Board believes this method of assessment is transparent, rigorous and balanced, and provides an appropriate and objective assessment of performance.

Cash awards are paid in September following the release of the Group's annual results. The rules of the GIS outline the circumstances in which participants may be entitled to a cash award for the financial year in which they cease employment. Such circumstances depend on the reason for leaving. The only circumstances in which the Remuneration Committee has considered using its discretion to allow members of the GMC to receive a cash award in event of departure is for those individuals who have retired or are retiring.

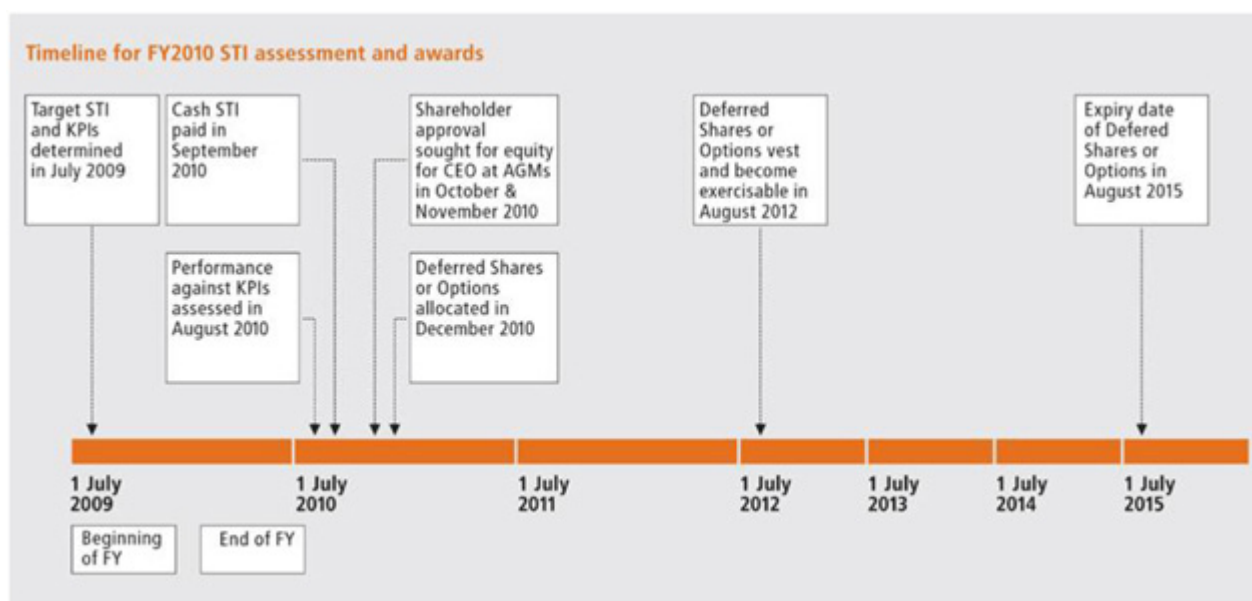
The value of any cash award is matched by an equivalent face value of Deferred Shares (or an approximately equivalent value of Options, or a combination of the two, at the election of the participant). Deferred Shares and Options are allocated in December after the Annual General Meetings. Allocations to the CEO are subject to shareholder approval.

### *Deferral of short-term incentives*

Each Deferred Share and each Option is a conditional right to acquire one ordinary BHP Billiton share upon satisfaction of the vesting conditions. It will not deliver any value to the holder for at least two years from the end of the financial year (unless the executive's employment with the Group ends earlier in specific circumstances such as on death, serious injury, disability or illness, retirement and redundancy/redeployment). The Remuneration Committee regards it as an important principle that Deferred Shares and Options will be forfeited by the individual in specific circumstances, including if they resign from the Group without the committee's consent (or are terminated for cause) within the two-year vesting period. Deferred Shares are not ordinary shares, and do not carry entitlements to ordinary dividends or other shareholder rights. Dividends are not received by the executives during the vesting period. A Dividend Equivalent Payment (as described in section 6.4.2) will be provided when the vesting period is over and the executive exercises their Deferred Shares and/or Options. This payment is not made in relation to any securities that are forfeited during the vesting period.

Deferred Shares that vest may be exercised at no cost to the participant. Options have an exercise price which reflects the market price of BHP Billiton shares at the time of allocation, and a greater number of Options are therefore allocated if an executive chooses this alternative. The terms of the GIS prohibit participants from entering into hedge arrangements in respect of unvested Deferred Shares and Options. Upon vesting, Deferred Shares and Options may be exercised subject to the Securities Dealing Procedure (as described in section 6.5).

The following diagram illustrates the operation and timeline of the GIS in relation to STI rewards determined as part of Total Remuneration in August 2009 (as described in section 6.3.2). Two years will elapse between the assessment of performance against KPIs in August 2010 and the vesting of any deferred portion of STI rewards in August 2012.





### Determining STI outcomes

The key measures for the GMC in FY2010, and the level of achievement against Group measures are set out below. The Remuneration Committee believes that the KPIs set, and the relative weightings given to the different categories of KPI, effectively incentivise short-term performance.

For the Group CEO and the other Group Executives, all measures are assessed on a Group basis. For the Business CEOs, the weighting of assessment for the non-financial measures is equally split between the Group and the businesses for which they are responsible.

<u>FY2010 key performance indicators</u>	<u>Weighting for Group CEO</u>	<u>Weighting for Business CEOs<sup>(1)</sup></u>	<u>Weighting for other Group Executives<sup>(2)</sup></u>	<u>FY2010 assessment for Group-based measures<sup>(3)</sup></u>
Health, Safety, Environment and Community (HSEC) - Total Recordable Injury Frequency (TRIF)	15%	15%	15%	Overall performance in HSEC was considered to be between Threshold and Target reflecting the disappointing safety performance in 2010. The Sustainability and Remuneration Committees reviewed performance including the existence and cause of the five fatalities that occurred during the year. <sup>(4)</sup> Positive progress was made on key Health and Environment initiatives.
Profit After Tax (adjusted for foreign exchange, price and exceptional items)	50%	25%	25%	Performance was considered to be between Target and Stretch, reflecting positive outcomes against targets, primarily in respect of product volumes and cost management.
Adjusted EBIT for the businesses for which the Business CEO is responsible	—	25%	—	Performance was considered to be between Target and Stretch, reflecting positive outcomes against targets, primarily in respect of product volumes and cost management.
Capital management - cost and schedule	15%	15%	10%	Overall performance was between Target and Stretch for a portfolio of 11 major projects. This reflected all projects essentially working to schedule. One project experienced cost overruns while all others delivered to capital target or under.
Individual measures based on contribution to management team, key project deliverables of each role, business and industry leading initiatives, etc	20%	20%	50%	Personal performance of the CEO and other members of the GMC was strong across the range of personal measures.

#### Notes

- 1) Applicable weightings for Andrew Mackenzie, Marcus Randolph and Michael Yeager.
- 2) Applicable weightings for Alberto Calderon, Alex Vanselow and Karen Wood.
- 3) A performance range is set for each measure with the level of performance against each KPI determined as:
  - **Threshold:** the minimum necessary to qualify for any reward.
  - **Target:** where the performance requirements are met.
  - **Stretch:** where the performance requirements are exceeded.
  - **Exceptional:** where the performance requirements are significantly exceeded.
- 4) In light of the five fatalities during the year, the CEO proposed to the Remuneration Committee that his outcome in relation to HSEC be reduced to zero. This proposal was accepted by the committee.

For FY2011, GMC scorecards will continue to be based on health and safety, financial measures, capital management and individual performance as shown below.

<u>FY2011 key performance indicators</u>	<u>Weighting for Group CEO</u>	<u>Weighting for Business CEOs</u>	<u>Weighting for other Group Executives</u>
HSEC <sup>(1)</sup> - The HSEC measures will reflect a holistic approach towards sustainable performance. The measures shall include a continued focus on safety and the risk management of fatalities and significant environmental events. All operations shall complete Human Rights impact assessments under the Articles of the United Nations Universal Declaration of Human Rights	15%	15%	15%
Profit After Tax (adjusted for foreign exchange, price and exceptional items)	50%	25%	35%
Adjusted EBIT for the businesses for which the Business CEO is responsible	—	25%	—
Capital management - cost and schedule	15%	15%	10%
Individual measures based on contribution to management team, key project deliverables of each role, business and industry leading initiatives, etc	20%	20%	40%

**Note**

- (1) The Sustainability Committee will evaluate GMC overall and individual GMC Member HSEC performance on a holistic basis taking reports from HSEC, Group Audit Services and other parties as appropriate. Such information will include assessment of performance relative to appropriate competitive organisations where such data is available.

*Actual STI provided for FY2010 performance*

STI targets for FY2010 were set by the Remuneration Committee in August 2009 as part of Total Remuneration as described in section 6.3.2. The target cash award was 80 per cent of base salary for all members of the GMC, with a maximum cash award of 160 per cent of base salary for exceptional performance against all scorecard measures.

The following table shows the amount of *at risk* remuneration provided by the Board as STI in cash (in September 2010) and in Deferred Shares and/or Options (to be allocated in December 2010) as a result of Group, business and individual performance against scorecard objectives during FY2010 (with FY2009 comparative data shown in the currency in which each STI was determined).

As described above, the amount shown below in Deferred Shares and/or Options has not yet provided any value to the executives, as they can generally not be exercised for at least two years from the end of the relevant financial year (i.e. the FY2010 awards are expected to vest in August 2012). The number and value of Deferred Shares and/or Options which **vested** with executives during FY2010 is shown in section 6.4.3.

Average STI rewards for GMC members over the last five years are graphed against the Group's earnings in section 6.2.4.

**Non-statutory table:** Cash STI rewards shown below are the same as those reported in section 6.4.2, but this table shows the market value of the Deferred Shares and/or Options at the time of allocation. STI rewards are shown in the currency in which they were determined, which is in US dollars unless otherwise noted (rather than amortising the US dollar accounting value of each award over the relevant performance and service periods as per accounting standards).

Name	FY 2009 Cash	FY 2009 Deferred Shares and Options <sup>(1)</sup>	FY 2009 Total	% of max FY 2009	FY 2010 Cash	FY 2010 Deferred Shares and Options <sup>(1)</sup>	FY 2010 Total	% of max FY 2010
Marius Kloppers	1,732,726	1,732,726	3,465,452	53.1	2,330,527	2,330,527	4,661,054	71.4
Alberto Calderon	1,014,338	1,014,338	2,028,676	60.0	1,129,066	1,129,066	2,258,132	66.8
Andrew Mackenzie <sup>(2)</sup>	£ 310,750	£ 310,750	£ 621,500	56.5	1,120,620	1,120,620	2,241,240	66.3
Marcus Randolph	927,277	927,277	1,854,554	49.0	1,309,945	1,309,945	2,619,890	69.2
Alex Vanselow	A\$1,123,500	A\$1,123,500	A\$2,247,000	52.5	1,120,610	1,120,610	2,241,220	66.3
Karen Wood	A\$ 959,790	A\$ 959,790	A\$1,919,580	57.5	985,967	985,967	1,971,934	66.3
J Michael Yeager	1,102,607	1,102,607	2,205,214	60.0	1,336,407	1,336,407	2,672,814	70.2
<b>Total</b>			<b>n/a</b>				<b>18,666,284</b>	
<b>Average <sup>(3)</sup></b>				<b>55.5</b>				<b>68.1</b>

Notes

- (1) The Deferred Shares and/or Options are of a matching value to the corresponding cash award. The actual number of Deferred Shares allocated is determined by dividing the relevant value by the share price at the time of allocation. The number of Options required to provide an approximately equivalent value will also be determined (should any members of the GMC nominate this alternative, or a combination of Deferred Shares and Options) based on a valuation calculated by Kepler Associates.

- (2) Andrew Mackenzie joined BHP Billiton in November 2008 and his FY2009 STI outcome therefore reflects a partial year only.
- (3) The average percentage of maximum is graphed against Group earnings in section 6.2.4.

Details of the interests held in BHP Billiton by members of the GMC as a result of participation in the GIS are provided in section 6.4.3.

### 6.3.5 Long-term incentives (LTI)

An allocation of Performance Shares is determined within Total Remuneration and provided to each member of the GMC under the Group's Long Term Incentive Plan (LTIP). The Remuneration Committee determines LTIP awards by assessing the quantum required to provide market competitive Total Remuneration once base salary and STI targets have been determined. The number of Performance Shares provided is then based on the Expected Value of a Performance Share (being a multiple of the share price).

The purpose of the LTIP is to focus management's efforts on the achievement of sustainable long-term growth and success of the Group (including appropriate management of business risks) and to align senior executive rewards with sustained shareholder wealth creation through the relative TSR performance hurdle. TSR is defined in the table below.

Each Performance Share is a conditional right to acquire one ordinary BHP Billiton share upon satisfaction of the vesting conditions. It will therefore not provide any value to the holder for at least five years from the end of the financial year. The Remuneration Committee regards it as an important principle that Performance Shares will be forfeited by the individual in specific circumstances, including if they resign from the Group without the committee's consent (or are terminated for cause) within the five-year vesting period. Performance Shares are not ordinary shares, and do not carry entitlements to ordinary dividends or other shareholder rights. Dividends are not received by the executives during the vesting period. A Dividend Equivalent Payment (as described in section 6.4.2) will be provided when the vesting period is over and the executive exercises their Performance Shares. This payment is not made in relation to any securities that are forfeited during the vesting period.

Upon vesting, Performance Shares become exercisable (at no cost to the participant) in accordance with the terms of grant and BHP Billiton's Securities Dealing Procedure (as described in section 6.5). The terms of the LTIP prohibit participants from entering into hedge arrangements in respect of unvested Performance Shares. The following table provides details of the terms for LTI awards granted in FY2010, and those proposed for FY2011 under a revised LTIP, which is subject to shareholder approval at the 2010 Annual General Meetings.

#### Current and Proposed LTIP Terms

Terms	LTI granted in FY2010 (granted in December 2009)	Proposed LTI terms for FY2011 (December 2010)
Duration of performance period	<ul style="list-style-type: none"> <li>Five years.</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> </ul>
Performance measure	<ul style="list-style-type: none"> <li>BHP Billiton's TSR relative to TSR of comparator companies. TSR measures the return delivered to shareholders over a certain period through the change in share price and any dividends provided (which are assumed to be reinvested in BHP Billiton shares for the purposes of the calculation).</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> </ul>
Averaging period for measuring TSR performance	<ul style="list-style-type: none"> <li>TSR for BHP Billiton and for each of the peer companies is averaged over a three-month period to help ensure that short-term fluctuations in the market do not affect the vesting results.</li> </ul>	<ul style="list-style-type: none"> <li>The averaging period will be doubled to six months as added security against short-term price fluctuations. This extended period will not come into effect until FY2012.</li> </ul>
Comparator companies (Index)	<ul style="list-style-type: none"> <li>Sector peer group.</li> </ul>	<ul style="list-style-type: none"> <li>Sector peer group (determines vesting of 67% of the Performance Shares).</li> <li>Broad stock market group (determines vesting of 33% of the Performance Shares), being the Morgan Stanley Capital Index World – a market capitalisation index that monitors performance of 1,500 stocks from around the world.</li> </ul>

<b>Terms</b>	<b>LTI granted in FY2010 (granted in December 2009)</b>	<b>Proposed LTI terms for FY2011 (December 2010)</b>
Sector peer group composition	<ul style="list-style-type: none"> <li>Weighted 75% to mining and 25% to oil and gas.</li> </ul>	<ul style="list-style-type: none"> <li>No change to weightings. Current oil and gas component expanded to include major companies, with a cap and collar mechanism to reduce sensitivity to any single constituent company.</li> </ul>
Vesting scale	<ul style="list-style-type: none"> <li>For all Performance Shares to vest, BHP Billiton's TSR must exceed the Index TSR by an average of 5.5% per annum, which equates to exceeding the average TSR over the five-year performance period by more than 30%.</li> <li>No Performance Shares vest if BHP Billiton's TSR is at or below the Index TSR.</li> <li>Vesting occurs on a sliding scale between the two points described above.</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> <li>25% of the Performance Shares vest if BHP Billiton's TSR is at the Index TSR.</li> <li>No Performance Shares vest if BHP Billiton's TSR is below the Index TSR.</li> <li>No change.</li> </ul>
Other vesting conditions	<ul style="list-style-type: none"> <li>In the event that the Remuneration Committee does not consider the level of vesting that would otherwise apply based on the Group's achievement of the TSR hurdle to be a true reflection of the long-term financial performance of the Group, it retains the discretion to lapse some or all of a participant's Performance Shares. This is an important mitigator against the risk of unintended vesting outcomes.</li> <li>For grants from FY2010, the Remuneration Committee also has the capacity to determine that vesting not be applied for any particular participant(s), should they consider that individual performance or other circumstances makes this an appropriate outcome. It is anticipated that this power would only be exercised in exceptional circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> <li>No change</li> </ul>
Retesting if performance hurdle not met	<ul style="list-style-type: none"> <li>Not permitted.</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> </ul>
Maximum award each financial year	<ul style="list-style-type: none"> <li>An award not exceeding 200% of base salary at Expected Value. The Board determines an appropriate allocation for each individual each year.</li> <li>Expected Value is the outcome weighted by probability, and takes into account the difficulty of achieving performance conditions and the correlation between these and share price appreciation (through a Monte Carlo simulation model). The valuation methodology also takes into account other factors, including volatility and forfeiture risk (including through failure to meet the service conditions).</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> <li>No change</li> </ul>

<u>Terms</u>	<u>LTI granted in FY2010 (granted in December 2009)</u>	<u>Proposed LTI terms for FY2011 (December 2010)</u>
	<ul style="list-style-type: none"> <li>Expected Value has been used because it enables the Remuneration Committee to determine LTI awards within target Total Remuneration, ensuring that awards are externally competitive (as described in section 6.3.1).</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> </ul>
Exercise period and Expiry Date	<ul style="list-style-type: none"> <li>The Expected Value of each Performance Share (as calculated by Kepler Associates) is 31% of the market value of one ordinary BHP Billiton Limited or BHP Billiton Plc share at the allocation date.</li> <li>Vested Performance Shares are able to be exercised for five years from the date that vesting is determined, with an Expiry Date at the date prior to the fifth anniversary of vesting.</li> </ul>	<ul style="list-style-type: none"> <li>The Expected Value of each Performance Share under the proposed LTIP has been calculated by Kepler Associates as 41% of the market value of one ordinary BHP Billiton Limited or BHP Billiton Plc share at the relevant time.</li> <li>No change</li> </ul>
Treatment on departure	<ul style="list-style-type: none"> <li>The Remuneration Committee regards it as an important principle that where a participant resigns without the committee's consent or their employment is terminated for cause, they forfeit the entitlement to their unvested Performance Shares.</li> <li>The rules of the LTIP provide that should a participant cease employment in specific circumstances, such as retirement, and with the consent of the committee, they would retain entitlements to a portion of the Performance Shares that have been granted, but that are not yet exercisable. The number of such Performance Shares would be pro-rated to reflect the period of service from the start of the relevant performance period to the date of departure and, after the employee's departure, would only vest and become exercisable to the extent that the performance hurdles are met. This ensures that any benefit received by the individual remains linked to their contribution to ongoing Group performance.</li> <li>If a participant's employment ends due to death or disability, the Remuneration Committee may choose to allow retention and immediate vesting of all of the participant's Performance Shares.</li> </ul>	<ul style="list-style-type: none"> <li>No change</li> <li>No change</li> <li>No change</li> </ul>

Details of the interests held in BHP Billiton by members of the GMC as a result of participation in the LTIP are provided in section 6.4.3.

#### *FY 2010 LTI granted in December 2009*

The following table shows the LTI awards determined by the Remuneration Committee as part of Total Remuneration for FY2010 and provided as an award of Performance Shares in December 2009 to drive long-term performance of the Group over a five-year period (with comparative data showing December 2008 LTI awards).

FY2011 awards are yet to be determined. Approval for an allocation of Performance Shares for the CEO will be sought from shareholders at the 2010 Annual General Meetings and all FY2011 LTIP awards for members of the GMC will be notified to shareholders when provided in December 2010.

The Expected Value of the LTI awards as calculated by Kepler Associates, takes the performance hurdle into account along with other factors as described in the table above. The Expected Value is used to represent the forecast remuneration outcomes from the LTIP for the GMC members. The number and value of Performance Shares which vested with executives during FY2010 is shown in section 6.4.3.

The December 2009 LTI grants will not provide any value to the executives until at least August 2014. In order for any benefit to be obtained by the executives from the Performance Shares, the relative five-year TSR performance hurdle must be achieved over the period from 1 July 2009 to 30 June 2014, and the individual must remain employed by the Group (unless they leave the Group in specific circumstances as described in the table above).

**Non-statutory table:** LTI awards shown below are included in the table in section 6.4.2, but this table shows the Expected Value of the awards as described above in the currency in which they were determined, which is in US dollars unless otherwise noted (rather than amortising the US dollar accounting value of each award over the relevant performance and service periods as per accounting standards).

Name	Number of Performance Shares allocated in December 2008	December 2008 Expected Value <sup>(1)</sup>	% of max December 2008 <sup>(3)</sup>	Number of Performance Shares allocated in December 2009	December 2009 Expected Value <sup>(2)</sup>	% of max December 2009 <sup>(3)</sup>
Marius Kloppers	500,000	2,756,985	67.6	250,000	2,864,636	70.3
Alberto Calderon	225,000	1,090,165	51.6	120,000	1,150,279	54.4
Andrew Mackenzie <sup>(4)</sup>	225,000	£ 739,350	67.2	120,000	1,150,279	54.4
Marcus Randolph	225,000	1,240,643	52.4	120,000	1,375,025	58.1
Alex Vanselow	225,000	A\$1,918,125	71.7	120,000	1,375,025	65.0
Karen Wood	175,000	A\$1,491,875	71.5	90,000	1,031,269	55.4
J Michael Yeager	225,000	1,240,643	54.0	120,000	1,375,025	57.8
<b>Total</b>	<b>1,800,000</b>	<b>n/a</b>		<b>940,000</b>	<b>10,321,538</b>	
<b>Average</b>			<b>62.3</b>			<b>59.4</b>

#### Notes

- (1) December 2008 Expected Values are calculated by multiplying the closing share price on the grant date (being A\$27.50 for BHP Billiton Limited shares and £10.60 for BHP Billiton Plc shares) by the Expected Value multiple of 31% (as determined by Kepler Associates), converted to US dollars on the allocation date where the executive's salary is expressed in US dollars. The Expected Value for each executive therefore reflects the number of Performance Shares allocated, the entity over which they apply and the relevant exchange rates (where applicable).
- (2) December 2009 Expected Values are calculated by multiplying the closing share price on the grant date (being A\$40.65 for BHP Billiton Limited shares and £19.06 for BHP Billiton Plc shares) by the Expected Value multiple of 31% (as determined by Kepler Associates), converted to US dollars on the allocation date. The Expected Value for each executive therefore reflects the number of Performance Shares allocated, the entity over which they apply and the relevant exchange rates (where applicable).
- (3) The maximum award is an Expected Value of 200% of base salary for the relevant year (as set out in the previous section).
- (4) As the purpose of this table is to show allocations which are part of annual Total Remuneration, the December 2008 amounts shown for Andrew Mackenzie do not include an additional 100,839 Performance Shares provided to him in relation to the commencement of his employment with BHP Billiton, reflecting securities from his previous employer which he relinquished on resignation. Details of those Performance Shares, and other awards provided on commencement are provided in section 6.4.2.

#### 6.3.6 Share ownership guidelines

The CEO is required to hold 300 per cent of (i.e. 3 times) one year's after-tax base salary in BHP Billiton securities under the Group's Minimum Shareholding Requirements policy. For other members of the GMC, the minimum requirement is 200 per cent of (i.e. 2 times) after-tax base salary. The value of the securities for the purposes of the policy is the face value of the underlying shares. All of the members of the GMC currently hold sufficient securities to meet the requirements.

Under the policy, employees are not required to meet the holding requirement before awards are allocated to them, but if they are not holding the required number of shares at the time of exercise of an award, then they will be prohibited from selling all of the underlying shares on exercise. GMC members are also not allowed to hedge or otherwise protect the value of unvested securities and must receive consent from BHP Billiton to hedge any vested securities (as set out in more detail in section 6.5).

During FY2010, the Remuneration Committee determined a change to the policy for GMC members to strengthen their alignment with shareholders interests. Effective from 1 July 2010, the holding requirements will instead be calculated on the basis of pre-tax (gross) salary.

## 6.4 Executive remuneration

This section provides full details of service contract terms, total remuneration and equity holdings for members of the GMC.

### 6.4.1 Senior management in FY2010

Australian Accounting Standards and International Financial Reporting Standards require BHP Billiton to make certain disclosures for Key Management Personnel (KMP). KMP is defined as those persons having authority and responsibility for planning, directing and controlling the activities of the Group, directly or indirectly.

For the purposes of this Remuneration Report, it has been determined that the KMP are the Directors and the members of the GMC who served during FY2010. In addition, the *Australian Corporations Act 2001* requires BHP Billiton to make certain disclosures in respect of the top five highest-paid executives below Board level. In FY2010, the five highest paid executives below Board level were all members of the GMC and are, therefore, already included as KMP.

Details of the members of the GMC during FY2010 are set out below. Each individual was a member of the GMC for the whole of FY2010. Dates of appointment of all GMC members appear in section 4.2 of this Annual Report, and the dates of their current service contracts appear below.

Name	Title	Date of contract
Marius Kloppers	Chief Executive Officer (CEO) and Executive Director	12 February 2008
Alberto Calderon	Group Executive and Chief Commercial Officer	16 January 2008
Andrew Mackenzie	Group Executive and Chief Executive Non-Ferrous Materials	14 November 2007
Marcus Randolph	Group Executive and Chief Executive Ferrous and Coal	13 December 2005
Alex Vanselow	Group Executive and Chief Financial Officer	14 June 2006
Karen Wood	Group Executive and Chief People Officer	21 February 2006
J Michael Yeager	Group Executive and Chief Executive Petroleum	21 March 2006

The service contracts for all members of the GMC have no fixed term. They typically outline the components of remuneration paid to the individual, but do not prescribe how remuneration levels are to be modified from year to year. The contracts are all capable of termination by BHP Billiton on 12 months' notice. The GMC member must give six months' notice. In addition, the Group retains the right to terminate a contract immediately by making a payment equal to 12 months' base salary plus retirement benefits for that period.

### 6.4.2 Total remuneration: statutory disclosures

The table overleaf has been prepared in accordance with the requirements of the UK Companies Act 2006 (and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 made thereunder) and the *Australian Corporations Act 2001* and relevant accounting standards.

#### *Explanation of share-based payment terms used in the table*

**Value of accrued Dividend Equivalent Payment:** Participants who are provided with awards under the GIS and the LTIP are entitled to a payment (upon exercise) in lieu of the dividends that would have been payable on ordinary BHP Billiton shares over the period from the allocation date to the time they exercise their awards. This is called the Dividend Equivalent Payment. No Dividend Equivalent Payment is payable in respect of awards that are not exercised (whether because they do not vest, or for any other reason). More information on the Dividend Equivalent Payment and on awards under the GIS and LTIP is provided in sections 6.3.4 and 6.3.5.

The Dividend Equivalent Payment is treated as a cash-settled share-based payment, and the value is therefore included in remuneration over the financial periods prior to awards being exercised. The value included in each period will depend on the number of awards unexercised (including those still unvested), BHP Billiton's declared dividends, and, in the case of LTIP awards, on the estimated probability of the TSR performance hurdles being met (as described in section 6.3.5). The latter factor may vary considerably from one reporting period to the next depending on BHP Billiton's relative TSR performance, and this may significantly impact the remuneration value ascribed to the Dividend Equivalent Payment from year to year. The payment of the Dividend Equivalent Payment will never eventuate in the case of equity that fails to vest and be exercised for any reason.



**Value of STI and Shareplus awards:** The amounts shown in the table include:

- the estimated fair value of Deferred Shares and Options provided under the GIS as described in section 6.3.4, subsequent to meeting KPIs. The fair value of the Deferred Shares and Options is estimated at grant date by discounting the total value of the shares that will be issued in the future using the risk-free interest rate for the period to the date of award. The value of the Deferred Shares and Options is also discounted to reflect the dividends that will not be received until exercise of the awards. Deferred Shares and Options are equity-settled share-based payments. The actual Deferred Shares and Options will be awarded to participants following the 2010 Annual General Meetings (subject to shareholder approval for the CEO). Once awarded, the only vesting condition is for participants to remain in employment for two further years. Accordingly, the number of securities (if any) that will ultimately vest cannot be determined until the service period has been completed. The estimated fair value of the Deferred Shares and Options forms part of the STI *at risk* remuneration appearing throughout this Remuneration Report. The fair value of Deferred Shares and Options is apportioned to annual remuneration based on the expected future service period, which is normally three years. The vesting of Deferred Shares and Options may be accelerated in the event of leaving the Group, in which case the expected future service period is amended;
- the estimated fair value of rights to Matching Shares acquired during each share purchase period under the Shareplus program, as described in section 6.3.3. These rights are acquired on each of the quarterly share-purchase dates under the program (grant dates), and the fair value is apportioned to annual remuneration based on the future service period required for the Matching Shares to be allocated (i.e. the vesting date of the rights). Where entitlements to the Matching Shares are accelerated on leaving the Group, the expected future service period is amended.

**Value of LTI awards:** Performance Shares allocated under the LTIP as described in section 6.3.5 are defined as equity-settled share-based payments. The amount included in this column in respect of each LTI award is the estimated fair value of the Performance Shares as determined by Kepler Associates using a Monte Carlo simulation methodology taking account of the performance hurdle, the term of the award, the share price at grant date, the expected price volatility of the underlying share, and the risk-free interest rate for the term of the award. The fair value of each award is apportioned to annual remuneration in equal amounts to each of the years in the expected future service period, which is normally five years. Where entitlements to Performance Shares are preserved on leaving the Group, the expected future service period is amended.

The figures provided in the shaded columns of the statutory table below for share-based payments were not actually provided to the KMP during FY2010. These amounts are calculated in accordance with accounting standards and are the amortised accounting fair values of equity and equity-related instruments that have been granted to the executives, either in relation to FY2010 performance, or that of prior financial years. Please refer to sections 6.3 and 6.4.3 for information on awards allocated during FY2010.

US dollars		Short-term benefits				Subtotal: UK requirements	Post-employment benefits	Share-based payments			Total: Australian requirements
		Base Salary <sup>(1)</sup>	Annual cash bonus <sup>(2)</sup>	Non-monetary benefits <sup>(3)</sup>	Other benefits <sup>(4)</sup>		Retirement benefits <sup>(5)</sup>	Value of accrued Dividend Equivalent Payment	Value of STI and Shareplus awards <sup>(6)</sup>	Value of LTI awards <sup>(7)</sup>	
Executive Director											
Marius Kloppers	2010	2,038,885	2,330,527	67,067	—	4,436,479	815,554	1,154,015	1,735,143	3,187,539	11,328,730
	2009	2,002,455	1,732,726	40,598	—	3,775,779	800,982	1,396,914	1,455,869	2,970,045	10,399,589
Other GMC members											
Alberto Calderon <sup>(8)</sup>	2010	1,056,934	1,129,066	13,776	175,000	2,374,776	369,927	573,610	930,157	1,358,139	5,606,609
	2009	1,015,615	1,014,338	11,361	—	2,041,314	355,465	529,135	795,372	1,158,393	4,879,679
Andrew Mackenzie <sup>(9)</sup>	2010	1,025,603	1,120,620	3,067	—	2,149,290	369,217	222,821	498,054	3,119,035	6,358,417
	2009	549,106	496,392	10,529	1,597,400	2,653,427	197,678	145,579	153,378	1,814,547	4,964,609 <sup>(9)</sup>
Marcus Randolph	2010	1,182,751	1,309,945	46,561	—	2,539,257	402,135	650,745	1,013,818	1,682,863	6,288,818
	2009	1,141,543	927,277	47,377	—	2,116,197	388,124	755,775	963,869	1,584,583	5,808,548
Alex Vanselow <sup>(8)</sup>	2010	1,077,468	1,120,610	34,908	—	2,232,986	409,438	785,651	889,649	1,747,163	6,064,887
	2009	990,071	840,827	31,321	—	1,862,219	376,227	923,294	909,399	1,648,883	5,720,022
Karen Wood	2010	928,375	985,967	4,852	—	1,919,194	319,361	535,302	747,454	1,349,237	4,870,548
	2009	772,255	718,307	—	—	1,490,562	265,656	644,972	731,190	1,272,589	4,404,969
J Michael Yeager	2010	1,183,092	1,336,407	20,119	—	2,539,618	423,547	907,256	1,037,957	1,891,982	6,800,360
	2009	1,130,752	1,102,607	18,727	44,174	2,296,260	404,809	983,457	1,029,097	1,664,342	6,377,965

#### Notes

- (1) Base salaries are generally reviewed on 1 September each year. Amounts shown in this table reflect the amounts paid over the 12-month period from 1 July to 30 June each year. Until 1 September 2009, base salary for Andrew Mackenzie, Alex Vanselow and Karen Wood was expressed in a currency other than US dollars, and has been converted for the purposes of this table at the average exchange rate over the relevant period. From 1 September 2009, all GMC base salaries are expressed in US dollars. More detail is provided in section 6.3.3.
- (2) Annual cash bonus is the cash portion of STI reward earned in respect of performance during each financial year as described in section 6.3.4. Section 6.3.4 shows the STI reward earned as a percentage of the maximum award, where the maximum possible award is 100%. The remaining portion of the 100% maximum has not been earned (i.e. it has been 'forfeited'). Actual payments are made in September, once performance has been assessed, e.g. in September 2010 for FY2010 awards. The equity portion of STI rewards are described in Note 6 below.
- (3) Non-monetary benefits are non-pensionable and include such items as medical and other insurances, and fees for professional services such as for tax advice.

- (4) Other benefits are non-pensionable and include:
- A relocation allowance of US\$175,000 for Alberto Calderon in FY2010 in relation to a change in his place of employment from London to Melbourne.
  - A payment of £1,000,000 (US\$1,597,400) to Andrew Mackenzie in FY2009 on commencement of employment as compensation for part of the value forgone of his awards under plans operated by his previous employer in addition to share-based payments described in Note 7 below.
  - Payment of US\$44,174 in lieu for leave accrued but not taken by J Michael Yeager in FY2009, as Group policy does not allow GMC members to roll forward annual leave entitlements from one financial year to the next.
- (5) Retirement benefits are calculated as a percentage of base salary for each GMC member, as set out in the table in section 6.3.3.
- (6) Please refer to the previous page for an explanation of this column. Section 6.3.4 shows the STI reward earned as a percentage of the maximum award, where the maximum possible award is 100%. The remaining portion of the 100% maximum has not been earned (i.e. it has been 'forfeited'). These share-based payments may also be forfeited after allocation in specific circumstances as described in section 6.3.4 and therefore, the minimum possible value of the awards is nil. The maximum possible value cannot be determined as it depends on future share price movements, but is estimated by the fair value used for accounting purposes in this table. At the date of this Annual Report, GMC members had not made their elections for Deferred Shares and/or Options in regard to FY2010 STI rewards. In respect of FY2009 awards, Andrew Mackenzie elected to receive Options. The percentage of his remuneration in 2010 that was represented by these Options was 0.6 per cent. The actual number of Deferred Shares and Options allocated in respect of FY2009 awards is shown in section 6.4.3. Section 6.3.3 describes the Shareplus program and the contributions made during FY2010 by members of the GMC in relation to the rights to acquire Matching Shares, which are included as share-based remuneration in the table.
- (7) Please refer to the previous page for an explanation of this column. Section 6.3.5 shows the LTI provided as a percentage of the maximum award, where the maximum possible award is 100%. The remaining portion of the 100% maximum has not been earned (i.e. it has been 'forfeited'). These share-based payments may also be forfeited after allocation in specific circumstances as described in section 6.3.5 and therefore, the minimum possible value of the awards is nil. The maximum possible value cannot be determined as it depends on future share price movements, but is estimated by the fair value used for accounting purposes in this table. Details of individual awards are set out in the tables in section 6.4.3. This column also includes the amount allocated to remuneration for each year in respect of awards received by Andrew Mackenzie on commencement of employment with BHP Billiton (in addition to the cash payment shown in Note 4 above). These awards are in the form of Performance Shares allocated on 4 December 2008 as shown in the first table in section 6.4.3, and conditional rights to receive cash sums under two phantom awards which are treated as cash-settled share-based payments and are included in this column for the purposes of remuneration. The awards were approved by the Remuneration Committee for the purposes of compensating Mr Mackenzie for awards forgone by him as a result of leaving his former employer. The value and nature of the awards were determined by the committee as being an equivalent fair value as that forgone by Mr Mackenzie under the at risk remuneration arrangements operated by his former employer. In valuing the awards, the committee sought the advice of its independent adviser, Kepler Associates. Full details of the awards were disclosed in last year's Annual Report.
- (8) Alberto Calderon and Alex Vanselow are also reimbursed for certain living costs incurred while on international assignment.
- (9) FY2009 remuneration for Andrew Mackenzie reflects the period 15 November 2008 to 30 June 2009.

### 6.4.3 Equity awards

The following tables set out the interests held by members of the GMC in the Group's equity schemes. Each vested security can be exercised for one ordinary share in BHP Billiton Limited or in BHP Billiton Plc. The value of securities over BHP Billiton Limited shares is shown in Australian dollars, and of securities over BHP Billiton Plc shares in Sterling.

#### Awards of Performance Shares under the LTIP

Name	Date of grant	At 1 July 2009	Granted	Vested	Lapsed	Exercised	At 30 June 2010	Date award may vest and become exercisable (1)	Market price on date of grant (2)	Market price on date of vesting (3)	Market price on date of exercise (4)	Aggregate gain of shares exercised (4)
<b>Executive Director</b>												
Marius Kloppers	14 Dec 2009	—	250,000	—	—	—	250,000	Aug 2014	A\$40.65	—	—	—
	4 Dec 2008	500,000	—	—	—	—	500,000	Aug 2013	A\$27.50	—	—	—
	14 Dec 2007	333,327	—	—	—	—	333,327	Aug 2012	A\$42.05	—	—	—
	7 Dec 2006	225,000	—	—	—	—	225,000	Aug 2011	£ 9.72	—	—	—
	5 Dec 2005	225,000	—	—	—	—	225,000	Aug 2010	£ 8.90	—	—	—
	3 Dec 2004	225,000	—	225,000	—	225,000	—	12 Aug 2009	£ 5.91	£ 15.55	£ 15.55	£ 3,498,750
<b>Total</b>		<b>1,508,327</b>	<b>250,000</b>	<b>225,000</b>	<b>—</b>	<b>225,000</b>	<b>1,533,327</b>					
<b>Other members of the GMC</b>												
Alberto Calderon	14 Dec 2009	—	120,000	—	—	—	120,000	Aug 2014	£ 19.06	—	—	—
	4 Dec 2008	225,000	—	—	—	—	225,000	Aug 2013	£ 10.60	—	—	—
	14 Dec 2007	211,993	—	—	—	—	211,993	Aug 2012	£ 15.45	—	—	—
	7 Dec 2006	80,000	—	—	—	—	80,000	Aug 2011	£ 9.72	—	—	—
	5 Dec 2005	40,000	—	—	—	—	40,000	Aug 2010	£ 8.90	—	—	—
<b>Total</b>		<b>556,993</b>	<b>120,000</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>676,993</b>					
Andrew Mackenzie <sup>(5)</sup>	14 Dec 2009	—	120,000	—	—	—	120,000	Aug 2014	£ 19.06	—	—	—
	4 Dec 2008	325,839	—	—	—	—	325,839	Aug 2013	£ 10.60	—	—	—
<b>Total</b>		<b>325,839</b>	<b>120,000</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>445,839</b>					
Marcus Randolph	14 Dec 2009	—	120,000	—	—	—	120,000	Aug 2014	A\$40.65	—	—	—
	4 Dec 2008	225,000	—	—	—	—	225,000	Aug 2013	A\$27.50	—	—	—
	14 Dec 2007	197,676	—	—	—	—	197,676	Aug 2012	A\$42.05	—	—	—
	7 Dec 2006	175,000	—	—	—	—	175,000	Aug 2011	A\$26.40	—	—	—
	5 Dec 2005	110,000	—	—	—	—	110,000	Aug 2010	A\$22.03	—	—	—
	3 Dec 2004	110,000	—	110,000	—	110,000	—	12 Aug 2009	A\$ 15.28	A\$ 37.99	A\$ 38.26	A\$4,208,600
<b>Total</b>		<b>817,676</b>	<b>120,000</b>	<b>110,000</b>	<b>—</b>	<b>110,000</b>	<b>827,676</b>					
Alex Vanselow	14 Dec 2009	—	120,000	—	—	—	120,000	Aug 2014	A\$40.65	—	—	—
	4 Dec 2008	225,000	—	—	—	—	225,000	Aug 2013	A\$27.50	—	—	—
	14 Dec 2007	197,676	—	—	—	—	197,676	Aug 2012	A\$42.05	—	—	—
	7 Dec 2006	225,000	—	—	—	—	225,000	Aug 2011	A\$26.40	—	—	—
	5 Dec 2005	110,000	—	—	—	—	110,000	Aug 2010	A\$22.03	—	—	—
	3 Dec 2004	110,000	—	110,000	—	110,000	—	12 Aug 2009	A\$ 15.28	A\$ 37.99	A\$ 38.26	A\$4,208,600
<b>Total</b>		<b>867,676</b>	<b>120,000</b>	<b>110,000</b>	<b>—</b>	<b>110,000</b>	<b>877,676</b>					
Karen Wood	1 Feb 2010	—	90,000	—	—	—	90,000	Aug 2014	A\$40.65	—	—	—
	4 Dec 2008	175,000	—	—	—	—	175,000	Aug 2013	A\$27.50	—	—	—
	14 Dec 2007	154,187	—	—	—	—	154,187	Aug 2012	A\$42.05	—	—	—
	7 Dec 2006	175,000	—	—	—	—	175,000	Aug 2011	A\$26.40	—	—	—
	5 Dec 2005	80,000	—	—	—	—	80,000	Aug 2010	A\$22.03	—	—	—
	3 Dec 2004	80,000	—	80,000	—	80,000	—	12 Aug 2009	A\$ 15.28	A\$ 37.99	A\$ 38.26	A\$3,060,800
<b>Total</b>		<b>664,187</b>	<b>90,000</b>	<b>80,000</b>	<b>—</b>	<b>80,000</b>	<b>674,187</b>					
J Michael Yeager	14 Dec 2009	—	120,000	—	—	—	120,000	Aug 2014	A\$40.65	—	—	—
	4 Dec 2008	225,000	—	—	—	—	225,000	Aug 2013	A\$27.50	—	—	—
	14 Dec 2007	187,702	—	—	—	—	187,702	Aug 2012	A\$42.05	—	—	—
	7 Dec 2006	225,000	—	—	—	—	225,000	Aug 2011	A\$26.40	—	—	—
	26 Apr 2006	325,000	—	—	—	—	325,000	Aug 2010	A\$31.06	—	—	—
<b>Total</b>		<b>962,702</b>	<b>120,000</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>1,082,702</b>					

Notes

- (1) The performance period for each award ends on 30 June in the year the award 'may vest and become exercisable' if the conditions for vesting are met (including if the relevant performance hurdle is achieved). Under the LTIP rules, awards will vest and become exercisable on, or as soon as practicable after, the first non-prohibited period date occurring after 30 June. The expiry date of awards is the day prior to the fifth anniversary of that vesting date.
- (2) The market price shown for the December 2009 grant is the closing price of BHP Billiton shares on 14 December 2009. No price is payable by the individual for acquiring the Performance Shares at the time of grant. The accounting grant-date fair values of the awards are estimated as at the start of the vesting period, being 1 July 2009, using a Monte Carlo simulation, and were A\$14.41 and £6.06.
- (3) All (100 per cent) of the Performance Shares granted under the LTIP in December 2004 became fully vested on 12 August 2009 following the performance hurdle being fully achieved as described in section 6.2.4. The price shown is the closing price of BHP Billiton shares on that date.
- (4) The market price shown (and used for calculating the aggregate gain) is the closing price of BHP Billiton shares on the date that the individual exercised their Performance Shares. No price is payable by the individual for exercising the Performance Shares. One ordinary BHP Billiton share is acquired for each Performance Share exercised.
- (5) The awards allocated to Andrew Mackenzie on 4 December 2008 included 225,000 Performance Shares allocated to him as part of FY2009 Total Remuneration, and a further 100,839 Performance Shares allocated to him on commencement with BHP Billiton, in relation to *at risk* rewards forfeited when he left his former employer. More information on Mr Mackenzie's commencement arrangements is included in Note 7 to the table in section 6.4.2.

### Awards of Deferred Shares under the GIS

Each employee may nominate to receive GIS awards in the form of Deferred Shares (as shown in this table) or in the form of Options (as shown in the next table) or a combination thereof.

Name	Date of grant	At 1 July 2009	Granted	Vested	Lapsed	Exercised	At 30 June 2010	Date award may vest and becomes exercisable <sup>(1)</sup>	Market price on date of grant <sup>(2)</sup>	Market price on date of vesting <sup>(3)</sup>	Market price on date of exercise <sup>(4)</sup>	Aggregate gain of shares exercised <sup>(4)</sup>
<b>Executive Director</b>												
Marius Kloppers	14 Dec 2009	—	46,951	—	—	—	46,951	Aug 2011	A\$40.65	—	—	—
	4 Dec 2008	95,847	—	—	—	—	95,847	Aug 2010	A\$27.50	—	—	—
	14 Dec 2007	27,582	—	27,582	—	27,582	—	12 Aug 2009	A\$42.05	A\$37.99	A\$38.26	A\$1,055,287
<b>Total</b>		<b>123,429</b>	<b>46,951</b>	<b>27,582</b>	<b>—</b>	<b>27,582</b>	<b>142,798</b>					
<b>Other members of the GMC</b>												
Alberto Calderon	14 Dec 2009	—	33,343	—	—	—	33,343	Aug 2011	£ 19.06	—	—	—
	4 Dec 2008	—	—	—	—	—	—	—	—	—	—	—
	14 Dec 2007	17,207	—	17,207	—	17,207	—	12 Aug 2009	£ 15.45	£ 15.55	£ 15.55	£ 267,569
	7 Dec 2006	11,926	—	—	—	11,926	—	27 Nov 2008	£ 9.72	£ 11.81	£ 15.55	£ 185,449
<b>Total</b>		<b>29,133</b>	<b>33,343</b>	<b>17,207</b>	<b>—</b>	<b>29,133</b>	<b>33,343</b>					
Andrew Mackenzie	14 Dec 2009	—	12,476	—	—	—	12,476	Aug 2011	£ 19.06	—	—	—
<b>Total</b>		<b>—</b>	<b>12,476</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>12,476</b>					
Marcus Randolph	14 Dec 2009	—	25,126	—	—	—	25,126	Aug 2011	A\$40.65	—	—	—
	4 Dec 2008	45,027	—	—	—	—	45,027	Aug 2010	A\$27.50	—	—	—
	14 Dec 2007	23,648	—	23,648	—	23,648	—	12 Aug 2009	A\$42.05	A\$37.99	A\$38.26	A\$ 904,772
<b>Total</b>		<b>68,675</b>	<b>25,126</b>	<b>23,648</b>	<b>—</b>	<b>23,648</b>	<b>70,153</b>					
Alex Vanselow	14 Dec 2009	—	27,727	—	—	—	27,727	Aug 2011	A\$40.65	—	—	—
	4 Dec 2008	—	—	—	—	—	—	Aug 2010	—	—	—	—
	14 Dec 2007	24,847	—	24,847	—	24,847	—	12 Aug 2009	A\$42.05	A\$37.99	A\$38.26	A\$ 950,646
<b>Total</b>		<b>24,847</b>	<b>27,727</b>	<b>24,847</b>	<b>—</b>	<b>24,847</b>	<b>27,727</b>					
Karen Wood	14 Dec 2009	—	23,686	—	—	—	23,686	Aug 2011	A\$40.65	—	—	—
	4 Dec 2008	30,778	—	—	—	—	30,778	Aug 2010	A\$27.50	—	—	—
	14 Dec 2007	19,643	—	19,643	—	19,643	—	12 Aug 2009	A\$42.05	A\$37.99	A\$38.26	A\$ 751,541
	7 Dec 2006	18,267	—	—	—	18,267	—	27 Nov 2008	A\$26.40	A\$28.80	A\$38.26	A\$ 698,895
	5 Dec 2005	20,462	—	—	—	20,462	—	Vested prior to Nov 2008	A\$22.03	A\$35.40	A\$38.26	A\$ 782,876
<b>Total</b>		<b>89,150</b>	<b>23,686</b>	<b>19,643</b>	<b>—</b>	<b>58,372</b>	<b>54,464</b>					
J Michael Yeager	14 Dec 2009	—	29,877	—	—	—	29,877	Aug 2011	A\$40.65	—	—	—
	4 Dec 2008	56,373	—	—	—	—	56,373	Aug 2010	A\$27.50	—	—	—
	14 Dec 2007	26,460	—	26,460	—	26,460	—	12 Aug 2009	A\$42.05	A\$37.99	A\$38.26	A\$1,012,360
<b>Total</b>		<b>82,833</b>	<b>29,877</b>	<b>26,460</b>	<b>—</b>	<b>26,460</b>	<b>86,250</b>					

### Notes

- (1) The holding period for each award ends on 30 June in the year the award 'may vest and become exercisable' if the conditions for vesting are met (including the relevant service conditions). Under the GIS rules, awards will vest and become exercisable on, or as soon as practicable after, the first non-prohibited period date occurring after 30 June. The expiry date of awards is the day prior to the third anniversary of that vesting date.

- (2) The market price shown for the December 2009 grant is the closing price of BHP Billiton shares on 14 December 2009. No price is payable by the individual for acquiring the Deferred Shares at the time of grant. The grant-date fair values of the awards are estimated as at the start of the vesting period, being 1 July 2009, using a Net Present Value model, and were A\$31.26 and £13.25.
- (3) All (100%) of the Deferred Shares granted under the GIS in December 2007 became fully vested on 12 August 2009 as the service conditions were met as described in section 6.2.4. The price shown is the closing price of BHP Billiton shares on that date.
- (4) The market price shown (and used for calculating the aggregate gain) is the closing price of BHP Billiton shares on the date that the individual exercised their Deferred Shares. No price is payable by the individual for exercising the Deferred Shares. One ordinary BHP Billiton share is acquired for each Deferred Share exercised.

#### *Awards of Options under the GIS*

Each employee may nominate to receive GIS awards in the form of Options (as shown in this table) or in the form of Deferred Shares (as shown in the table above) or a combination thereof.

Name	Date of grant	Exercise price payable <sup>(1)</sup>	At 1 July 2009	Granted	Vested	Lapsed	Exercised	At 30 June 2010	Date award may vest and becomes exercisable <sup>(2)</sup>	Market price on date of grant <sup>(3)</sup>	Market price on date of vesting	Market price on date of exercise	Aggregate gain of shares exercised
Alberto Calderon	4 Dec 2008	£ 10.89	143,227	—	—	—	—	143,227	Aug 2010	£ 10.60	—	—	—
Andrew Mackenzie	14 Dec 2009	£ 18.68	—	16,119	—	—	—	16,119	Aug 2011	£ 19.06	—	—	—
Alex Vanselow	4 Dec 2008	A\$29.15	153,768	—	—	—	—	153,768	Aug 2010	A\$27.50	—	—	—

#### Notes

- (1) The exercise price is determined by the weighted average price at which BHP Billiton shares were traded over the one week up to and including the date of grant. This is the amount payable by the individual to exercise each Option and to receive one ordinary BHP Billiton share for each Option exercised.
- (2) The holding period for each award ends on 30 June in the year the award 'may vest and become exercisable' if the conditions for vesting are met (including the relevant service conditions). Under the GIS rules, awards will vest and become exercisable on, or as soon as practicable after, the first non-prohibited period date occurring after 30 June. The expiry date of awards is the day prior to the third anniversary of that vesting date.
- (3) The market price shown for the December 2009 grant is the closing price of BHP Billiton shares on 14 December 2009. No price is payable by the individual for acquiring the Options at the time of grant. The grant-date fair value of the options is estimated as at the start of the vesting period, being 1 July 2009, using a Black-Scholes model, was £4.00.

### *Awards of Performance Rights under the Performance Share Plan*

Awards are no longer made under the Performance Share Plan. Further details of the Performance Share Plan are set out in note 32 of this Annual Report.

Name	Date of grant	At	Granted	Vested	Lapsed	Exercised	At	Date award may vest and becomes exercisable <sup>(1)</sup>	Market price on date of exercise <sup>(2)</sup>	Aggregate gain of shares exercised <sup>(2)</sup>
		1 July 2009					30 June 2010			
Karen Wood	8 Nov 2001	25,846	—	—	—	25,846	—	Vested prior to 1 July 2008	A\$38.26	A\$988,868

#### Notes

- (1) The expiry date for the Performance Shares was 30 September 2011.
- (2) The market price shown (and used for calculating the aggregate gain) is the closing price of BHP Billiton shares on the date that the Performance Rights were exercised. No price is payable by the individual for exercising the Performance Rights. One ordinary BHP Billiton share is acquired for each Performance Right exercised.

### *Awards of Matched Shares under the Shareplus all-employee share plan*

Each member of the GMC may choose to participate in the Shareplus all-employee share plan on the same basis as other employees. Matched shares were allocated under the plan for the first time on 1 April 2010 in relation to contributions made from base salary during the 2007 Plan Year. Differences in exchange rates in relation to the base salaries of the GMC members and the currencies of each securities exchange result in minor differences in the numbers of shares allocated. GMC interests in BHP Billiton as a result of the plan are shown below. Further detail on Shareplus is provided in section 6.3.3.

Name	Allocation Date	At	Number of shares <sup>(1)</sup>	Transferred from trust or sold	At	Market price on date of allocation/ vesting <sup>(2)</sup>
		1 July 2009			30 June 2010	
Marius Kloppers	1 Apr 2010	—	160	—	160	A\$ 43.95
Alberto Calderon	1 Apr 2010	—	156	—	156	£ 23.01
Marcus Randolph	1 Apr 2010	—	157	—	157	A\$ 43.95
Alex Vanselow	1 Apr 2010	—	157	—	157	A\$ 43.95
Karen Wood	1 Apr 2010	—	157	—	157	A\$ 43.95
J Michael Yeager <sup>(3)</sup>	1 Apr 2010	—	134	134	—	US\$45.46

#### Note

- (1) Matched Shares allocated upon the vesting of rights to these shares (acquired during the 2007 Plan Year).
- (2) The market price shown is the closing price of BHP Billiton shares on 1 April 2010.
- (3) J Michael Yeager was allocated 67 American Depositary Receipts (listed on the New York Securities Exchange), which are each equivalent to two ordinary BHP Billiton Limited shares.



*Estimated value range of awards*

The current face value of STI and LTI awards allocated during FY2010 and yet to vest (to be disclosed under the *Australian Corporations Act 2001*) is the number of awards as set out in the previous tables multiplied by the current share price of BHP Billiton Limited or BHP Billiton Plc as applicable.

The actual value that may be received by participants in the future can not be determined as it is dependent on, and therefore fluctuates with, the share prices of BHP Billiton Limited and BHP Billiton Plc at the date that any particular award is exercised. The table below provides FY2010 share price details for BHP Billiton Limited and BHP Billiton Plc.

	30 June 2010	Highest	Lowest
BHP Billiton Limited	A\$37.65	A\$44.93 6 April 2010	A\$31.33 8 July 2009
BHP Billiton Plc	£17.55	£23.46 6 April 2010	£12.75 13 July 2009

*Comparator group for LTIP awards*

The index of peer group companies for the LTIP since its implementation in 2004 is shown below:

	<u>December 2004 to 2006</u>	<u>December 2007 to 2009</u>
Alcan	X	
Alcoa	X	X
Alumina	X	
Anglo American	X	X
Apache		X
BG Group	X	X
BP	X	
Cameco		X
ConocoPhillips	X	
Devon Energy		X
Exxon Mobil	X	
Falconbridge	X	
Freeport McMoRan	X	X
Impala	X	
Inco	X	
Marathon Oil	X	
Newmont Mining	X	
Norilsk	X	X
Peabody Energy		X
Phelps Dodge	X	
Rio Tinto	X	X
Shell	X	
Southern Copper		X
Teck Cominco		X
Total	X	
Vale	X	X
Woodside Petroleum	X	X
Xstrata	X	X

A description of the performance hurdle applying to the LTIP Performance Shares is set out in section 6.3.5.

## 6.5 Remuneration Governance

### *Board oversight*

The Board is responsible for ensuring that the Group's remuneration structures are equitable and aligned with the long-term interests of BHP Billiton and its shareholders. In performing this function, it is critical that the Board is independent of management when making decisions affecting employee remuneration.

Accordingly, the Board has established a Remuneration Committee to assist it in making decisions affecting employee remuneration. The Remuneration Committee is comprised solely of non-executive Directors, all of whom are independent. In order to ensure that it is fully informed when making remuneration decisions, the committee receives regular reports and updates from members of management (who the committee invites to attend meetings as and when appropriate) and can draw on services from a range of external sources, including remuneration consultants.

### *Remuneration Committee*

The activities of the Remuneration Committee are governed by Terms of Reference (approved by the Board in March 2008), which are available on our website. The committee focuses on:

- remuneration policy and its specific application to the CEO and other members of the GMC, as well as the general application to all employees;
- the determination of levels of reward to the CEO and other members of the GMC;
- providing guidance to the Chairman on evaluating the performance of the CEO;
- effective communication with shareholders on the remuneration policy and the Remuneration Committee's work on behalf of the Board.

Remuneration Committee Members

John Buchanan (Chairman)  
Alan Boeckmann  
Carlos Cordeiro  
E Gail de Planque (Member to 31 January 2010)  
David Jenkins (Member to 26 November 2009)  
John Schubert (Member from 23 March 2010)

Number of meetings in FY2010

Seven

Other individuals who regularly attended meetings<sup>(1)</sup>

Don Argus (Chairman to 30 March 2010)  
Jacques Nasser (Chairman from 31 March 2010)  
Marius Kloppers (CEO)  
Karen Wood (Group Executive and Chief People Officer)  
Derek Steptoe (Vice President Group Reward and Recognition to 4 July 2009)  
Richard Doody (Vice President Group Reward and Recognition from 1 November 2009)  
Jane McAloon (Group Company Secretary)

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Note:

- (1) Other individuals who regularly attended meetings were not present when matters associated with their own remuneration were considered.

### *Use of remuneration consultants*

The Board seeks and considers advice from independent remuneration consultants where appropriate. Remuneration consultants are engaged by and report directly to the Remuneration Committee. Potential conflicts of interest are taken into account when remuneration consultants are selected and their terms of engagement regulate their level of access to, and require their independence from, BHP Billiton's management. The advice and recommendations of external consultants are used as a guide, but do not serve as a substitute for thorough consideration of the issues by each director.

Kepler Associates, who were appointed by the Remuneration Committee to act as independent remuneration advisers, provide specialist remuneration advice and do not provide other services to the Group. During the year, Kepler Associates provided advice and assistance to the Remuneration Committee on a wide range of matters, including:

- benchmarking of pay of senior executives against comparable roles at a range of relevant comparator groups, including sector and size peers;
- provision of information and commentary on global trends in executive remuneration;
- performance analysis for LTI awards;
- review of and commentary on management proposals;
- analysis and support in the review of LTI arrangements;
- other ad hoc support and advice as requested by the Committee.

An up-to-date list of all consultants, together with the type of services supplied and whether services are provided elsewhere in the Group, is available on our website.

#### ***Hedging of BHP Billiton shares and equity instruments***

Specified employees (including the GMC) are not allowed to protect the value of any unvested equity instruments allocated to them under employee programs or the value of shares and equity instruments held as part of meeting BHP Billiton's minimum shareholding requirements (as described in section 6.3.6). Any securities that have vested and are no longer subject to restrictions or performance conditions may be subject to hedging arrangements, provided that consent is obtained from BHP Billiton in advance of the employee entering into the arrangement. Such arrangements need to be reported in the Remuneration Report, and no such arrangements were in place during FY2010 or at the date of this Annual Report.

BHP Billiton treats compliance with this policy as a serious issue, and takes appropriate measures to ensure that the policy is adhered to.

In addition, the Group has a policy that prohibits non-executive Directors and senior executives from using BHP Billiton securities as collateral in any financial transaction, including margin loan arrangements.

#### **6.6 Aggregate Directors' remuneration**

This table sets out the aggregate remuneration of executive and non-executive Directors in accordance with the requirements of the UK Companies Act 2006 (and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 made thereunder).

<u>US dollars million</u>	<u>2010</u>	<u>2009</u>
Emoluments	8	7
Termination payments	—	—
Awards vesting under LTI plans	7	2
Gains on exercise of Options	—	—
Pension contributions	3	1
<b>Total</b>	<b>18</b>	<b>10</b>

## 6.7 Non-executive Director arrangements

This section explains the remuneration policy, structure and outcomes for non-executive Directors as listed below.

### 6.7.1 Non-executive Directors in FY2010

Details of the non-executive Directors who held office during FY2010 are set out below. Except where otherwise indicated the Directors held office for the whole of FY2010. Dates of appointment of all Directors appear in section 4.1 of this Annual Report.

<u>Name</u>	<u>Title</u>	<u>Details if changed position during FY2010</u>
Paul Anderson	Non-executive Director	Retired 31 January 2010
Don Argus	Chairman (until 30 March 2010)	Retired 30 March 2010
Alan Boeckmann	Non-executive Director	—
Malcolm Broomhead	Non-executive Director	Appointed 31 March 2010
John Buchanan	Non-executive Director	—
Carlos Cordeiro	Non-executive Director	—
David Crawford	Non-executive Director	—
E Gail de Planque	Non-executive Director	Retired 31 January 2010
Carolyn Hewson	Non-executive Director	Appointed 31 March 2010
David Jenkins	Non-executive Director	Retired 26 November 2009
David Morgan	Non-executive Director	Retired 24 November 2009
Wayne Murdy	Non-executive Director	—
Jacques Nasser	Non-executive Director	—
	Chairman (from 31 March 2010)	—
Keith Rumble	Non-executive Director	—
John Schubert	Non-executive Director	—

### 6.7.2 Remuneration structure

Our non-executive Directors are paid in compliance with the UK Corporate Governance Code (formerly known as the Combined Code) (2008) and the ASX Corporate Governance Council Principles of Good Corporate Governance (2007).

The Board is conscious that, just as it must set remuneration levels to attract and retain talented executives, it must also ensure that remuneration rates for non-executive Directors are set at a level that will attract and retain the calibre of Director necessary to contribute effectively to a high-performing Board.

The remuneration rates reflect the size and complexity of the Group, the multi-jurisdictional environment arising from the Dual Listed Companies structure, the multiple stock exchange listings, the extent of the geographic regions in which the Group operates and the enhanced responsibilities associated with membership of Board Committees. They also reflect the considerable travel burden imposed on members of the Board. In setting the remuneration of the Directors, the Committee takes into account the economic environment and the financial performance of the Group, along with pay and employment conditions of employees elsewhere in the Group.

Fees for the Chairman were reviewed in March 2010 when Jacques Nasser commenced as Chairman. Fees for the non-executive Directors were reviewed in July/August 2010 and benchmarked against peer companies with the assistance of external advisers. The table below sets out the fees before and after the 2010 review.

The aggregate sum available to remunerate non-executive Directors was approved by shareholders at the 2008 Annual General Meetings at US\$3.8 million.

<u>Levels of fees and travel allowances for non-executive Directors (in US dollars)</u>	<u>From 1 July 2008 to 30 June 2010</u>	<u>From 1 July 2010</u>
<b>Base annual fee</b>	140,000	154,000
<b>Plus additional fees for:</b>		
<b>Senior Independent Director of BHP Billiton Plc</b>	30,000	35,000
<b>Committee Chair:</b>		
Risk and Audit	50,000	55,000
Remuneration	35,000	40,000
Sustainability	35,000	40,000
Nomination	No additional fees	No additional fees
<b>Committee membership:</b>		
Risk and Audit	25,000	30,000
Remuneration	20,000	25,000
Sustainability	20,000	25,000
Nomination	No additional fees	No additional fees
<b>Travel allowance:</b>		
Greater than 3 but less than 12 hours	7,000	7,000
Greater than 12 hours	15,000	15,000
<b>Chairman's remuneration</b>	1,000,000	1,000,000

Non-executive Directors are not eligible to participate in any of our incentive arrangements. A standard letter of appointment has been developed for non-executive Directors and is available on our website. Each non-executive Director is appointed subject to periodic re-election by shareholders (section 5 of this Annual Report includes an explanation of the process). There are no provisions in any of the non-executive Directors' appointment arrangements for compensation payable on early termination of their directorship.

### 6.7.3 Retirement benefits

The following table sets out the accrued retirement benefits under the now-closed Retirement Plan of BHP Billiton Limited. The Retirement Plan was closed on 24 October 2003 and entitlements that had accumulated in respect of each of the participants were frozen. These will be paid on retirement. An earnings rate equal to the October 2003 five-year Australian Government Bond Rate is being applied to the frozen entitlements from that date.

<u>US dollars</u>	<u>Completed service at 30 June 2010 (years)</u>	<u>Increase in lump sum entitlement during the year <sup>(1)</sup></u>	<u>Lump sum entitlement at <sup>(2)</sup></u>	
			<u>30 June 2010</u>	<u>30 June 2009</u>
Don Argus <sup>(3)</sup>	12.75	257,635	—	1,525,605
David Crawford	16	41,907	437,846	395,939
David Jenkins <sup>(4)</sup>	9.4	48,359	—	274,742
John Schubert	10	20,940	218,783	197,843

#### Notes

- (1) Since the closure of the Retirement Plan, no further entitlements have accrued. The movement reflects the application of the earnings rate and foreign exchange rate (the translation from Australian dollars to US dollars for the Remuneration Report) to the lump sum entitlement at the date of closure.
- (2) Lump sum entitlements disclosure in prior years included compulsory Group contributions to the BHP Billiton Superannuation Fund. Certain Directors have elected to transfer accumulated contributions to self-managed superannuation funds. Accordingly, the entitlement amounts disclosed relate to the benefits under the Retirement Plan.
- (3) Don Argus retired on 30 March 2010 after serving 12.75 years to that date, and received a gross benefit equivalent to US\$1,783,240 (A\$1,961,113).
- (4) David Jenkins retired on 26 November 2009 after serving 9.4 years to that date, and received a gross benefit equivalent to US\$323,101 (A\$346,732).

#### 6.7.4 Total remuneration: statutory disclosures

The table below has been prepared in accordance with the requirements of the UK Companies Act 2006 (and the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 made thereunder) and the *Australian Corporations Act 2001*, and relevant accounting standards.

US dollars		Short-term benefits					Post-employment benefits <sup>(2)</sup>			Total: Australian requirements
		Fees	Committee Chair fees	Committee membership fees	Travel allowances	Other benefits (non- monetary) <sup>(1)</sup>	Subtotal: UK Requirements	Superannuation benefits	Retirement benefits	
Paul Anderson <sup>(3)</sup>	2010	81,667	—	11,667	37,000	19,907	150,241	—	—	150,241
	2009	140,000	—	20,000	86,000	1,517	247,517	—	—	247,517
Don Argus <sup>(3)</sup>	2010	748,441	—	—	45,000	35,215	828,656	39,060	1,783,240	2,650,956
	2009	1,000,000	—	—	70,000	15,796	1,085,796	53,636	—	1,139,432
Alan Boeckmann <sup>(4)</sup>	2010	140,000	—	20,000	66,000	8,296	234,296	—	—	234,296
	2009	116,667	—	8,496	51,000	—	176,163	—	—	176,163
Malcolm Broomhead <sup>(3)</sup>	2010	35,376	—	5,054	—	—	40,430	2,131	—	42,561
	2009	—	—	—	—	—	—	—	—	—
John Buchanan	2010	170,000	35,000	—	68,000	1,327	274,327	—	—	274,327
	2009	170,000	35,000	—	51,000	—	256,000	—	—	256,000
Carlos Cordeiro	2010	140,000	—	20,000	89,000	—	249,000	—	—	249,000
	2009	140,000	—	20,000	86,000	4,473	250,473	—	—	250,473
David Crawford	2010	140,000	50,000	—	45,000	22,410	257,410	9,952	—	267,362
	2009	140,000	50,000	—	70,000	1,406	261,406	10,183	—	271,589
E Gail de Planque <sup>(3)</sup>	2010	81,667	—	23,333	59,000	—	164,000	—	—	164,000
	2009	140,000	—	40,000	86,000	2,891	268,891	—	—	268,891
Carolyn Hewson <sup>(3)</sup>	2010	35,376	—	6,317	—	—	41,693	2,198	—	43,891
	2009	—	—	—	—	—	—	—	—	—
David Jenkins <sup>(3)</sup>	2010	57,641	—	18,250	22,000	714	98,605	—	323,101	421,706
	2009	140,000	—	45,000	73,000	—	258,000	—	—	258,000
David Morgan <sup>(3)</sup>	2010	58,333	—	10,417	30,000	1,856	100,606	3,639	—	104,245
	2009	140,000	—	25,000	70,000	1,406	236,406	8,841	—	245,247
Wayne Murdy <sup>(4)</sup>	2010	140,000	—	25,000	81,000	24,932	270,932	—	—	270,932
	2009	5,056	—	555	—	—	5,611	—	—	5,611
Jacques Nasser <sup>(5)</sup>	2010	357,312	—	18,683	88,000	1,856	465,851	—	—	465,851
	2009	140,000	—	25,000	101,000	1,406	267,406	—	—	267,406
Keith Rumble <sup>(4)</sup>	2010	140,000	—	20,000	81,000	17,879	258,879	—	—	258,879
	2009	116,667	—	8,496	96,000	—	221,163	—	—	221,163
John Schubert	2010	140,000	35,000	5,430	45,000	—	225,430	9,430	—	234,860
	2009	140,000	35,000	—	70,000	—	245,000	9,381	—	254,381

#### Notes

- (1) Other benefits include professional fees and reimbursements of the cost of travel, accommodation and subsistence for the Director and, where applicable, their spouse. At the time that Don Argus retired from BHP Billiton he was provided with a painting with an approximate value of A\$18,000. This amount is not included in the table.
- (2) BHP Billiton makes superannuation contributions of nine per cent of fees paid in accordance with Australian superannuation legislation. Don Argus and David Jenkins retired during FY2010 and received retirement benefits in relation to the now-closed Retirement Plan as described in section 6.7.3.

- (3) FY2010 remuneration for Paul Anderson, Don Argus, Malcolm Broomhead, E Gail de Planque, Carolyn Hewson, David Jenkins, and David Morgan relates to part of that year only, as they retired from, or joined the BHP Billiton Ltd and BHP Billiton Plc during the year. Details of their dates of retirement or appointment are set out in section 6.7.1.
- (4) FY2009 remuneration for Alan Boeckmann, Wayne Murdy, and Keith Rumble relates to part of that year only, as they joined BHP Billiton Limited and BHP Billiton Plc during that year.
- (5) FY2010 remuneration for Jacques Nasser relates to part of the year as non-executive Director (to 30 March 2010), and part of the year as Chairman (from 31 March 2010). The current Chairman's remuneration is the same as that of the former Chairman.

## **6.8 Bonus amount for petroleum executives**

Oil and gas reserve targets are one of the specific performance measures by which the BHP Billiton Petroleum executive bonus awards are determined. The addition of reserves is a key indicator of the future success of the Petroleum business. However, executives are not impacted directly by the reserve target. This measure is one of several in the areas of HSEC, Production, Finance, Growth and Corporate Citizenship that are taken into account to determine the discretionary bonus pool available for Petroleum executives. The bonus pool is then allocated to executives based upon relative overall performance.

Our Petroleum Reserves Manager has ultimate responsibility for the calculation of recorded reserves, and reports to our Chief Financial Officer on all matters to do with oil and gas reserves. His specific performance measures for the purpose of bonus awards do not include any component relating to recorded reserves.

### **Reserve Target setting for fiscal 2011**

Target reserve levels are based on expected production for the year in millions of barrels of oil equivalent. Gas volumes are converted to equivalent liquid volumes. All reserves revisions are included, whether positive or negative, but sales or purchases of properties are excluded.



## 7 Directors' Report

The information presented by the Directors in this Directors' Report relates to BHP Billiton Limited and BHP Billiton Plc and their subsidiaries. The Chairman's Review in section 1.2, Chief Executive Officer's Report in section 1.3 and section 1 Key information, section 2 Information on the Company, section 3 Operating and financial review and prospects and section 11 Shareholder information of this Annual Report are each incorporated by reference into, and form part of, this Directors' Report.

### 7.1 Principal activities, state of affairs and business review

The UK Companies Act 2006 requires this Directors' Report to include a fair review of the business of the Group during FY2010 and of the position of the Group at the end of the financial year and a description of the principal risks and uncertainties facing the Group (known as the 'business review'). In addition to the information set out below, the information that fulfils the requirements of the business review can be found in the following sections of this Annual Report (which are each incorporated by reference into this Directors' Report):

<u>Section</u>	<u>Reference</u>
Key performance indicators	1.4 and 3.3
Risk factors	1.5
Business overview	2.2
Sustainable development	2.8
Employees	2.10
Financial review	3

A review of the operations of the Group during FY2010, and the expected results of those operations in future financial years, is set out in sections 1.2, 1.3, 2.2 and 3 and other material in this Annual Report. Information on the development of the Group and likely developments in future years also appear in those sections of this Annual Report. The Directors believe that to include further information on those matters and on the strategies and expected results of the operations of the Group in this Annual Report would be likely to result in unreasonable prejudice to the Group.

Our principal activities during FY2010 were minerals exploration, development, production and processing (in respect of bauxite, alumina, aluminium, copper, silver, lead, zinc, molybdenum, gold, iron ore, metallurgical coal, energy coal, nickel, manganese ore, manganese metal and alloys, diamonds, titanium minerals, potash and uranium), and oil and gas exploration, development and production.

Significant changes in the state of affairs of the Group that occurred during FY2010 and significant post-balance date events are set out below and in sections 2.2 and 3 of this Annual Report.

- There were changes to the composition of the Board during FY2010, including the appointment of a new Chairman. Jacques Nasser assumed the Chairmanship on 31 March 2010 upon the retirement of Don Argus as Chairman and non-executive Director. David Morgan and David Jenkins retired from the Board on 24 November 2009 and 26 November 2009 respectively and Paul Anderson and E Gail de Planque both retired from the Board on 31 January 2010. Malcolm Broomhead and Carolyn Hewson were each appointed to the Board with effect from 31 March 2010 and will seek election to the Board at the 2010 Annual General Meetings. Mr Broomhead is a member of the Sustainability Committee and Ms Hewson is a member of the Risk and Audit Committee.
- On 7 December 2009, we announced that Rio Tinto Limited and Rio Tinto plc (together 'Rio Tinto') and BHP Billiton signed binding agreements in relation to the production joint venture covering the entirety of both companies' Western Australian iron ore assets. The establishment of the joint venture remains subject to regulatory and shareholder approvals. The Framework Agreement and the binding agreements will terminate if the conditions precedent are not satisfied by 31 December 2010 unless extended by agreement of Rio Tinto and BHP Billiton. Earlier in FY2010 (15 October 2009), we announced that BHP Billiton and Rio Tinto would not proceed with any joint venture marketing activity, which is the only material change to the non-binding core principles agreement signed by the parties on 5 June 2009.
- On 9 December 2009, we announced the sale of the Ravensthorpe Nickel Operation for US\$340 million following the decision in FY2009 to ramp-down and indefinitely suspend operations at Ravensthorpe.
- On 5 January 2010, we announced approval of expenditure of US\$434.7 million (BHP Billiton's share) to expand mining and processing capacity at the Antamina copper and zinc mine in northern Peru. The expansion project will increase the site's ore processing capacity by 38 per cent to 130,000 tonnes per day with first production from the expansion anticipated in late 2011. Higher mineral ore reserves previously reported in combination with the expanded processing capacity will result in a mine life extension of six years from 2023 until 2029. Antamina is a joint venture between BHP Billiton (33.75 per cent), Xstrata (33.75 per cent), Teck Resources (22.5 per cent) and Mitsubishi Corporation (10 per cent).

- On 28 January 2010, we announced that BHP Billiton entered into a definitive agreement with Athabasca Potash Inc. ('API') to acquire all of the issued and outstanding common shares of API, representing a total equity value of approximately C\$341 million (US\$320 million) on a fully diluted basis. API is a Toronto Stock Exchange listed, junior potash company that owns the Burr Project and various potash exploration properties in Saskatchewan, Canada. API holds one of the largest exploration permit areas in the Saskatchewan basin, covering approximately 6,900 km<sup>2</sup>.
- On 29 January 2010, we announced Board approval for US\$1.93 billion (BHP Billiton share US\$1.73 billion) of capital expenditure to underpin the further accelerated growth of BHP Billiton's Western Australia Iron Ore business. This investment represents early expenditure for Rapid Growth Project 6 ('RGP6'). RGP6 is expected to increase installed capacity at BHP Billiton's Western Australia Iron Ore assets to 240 million tonnes per annum during calendar year 2013. The funding will allow early procurement of long lead time items and detailed engineering to continue the expansion of the inner harbour at Port Hedland, progress rail track duplication works and expansion of the Jimblebar mining operation. Under the binding production joint venture agreements between BHP Billiton and Rio Tinto, Rio Tinto will have the option to participate in RGP6 by paying its share of invested capital, with this decision being made after the joint venture transaction is completed.
- On 30 March 2010, we announced that we had reached agreement with a significant number of customers throughout Asia to move existing iron ore contracts that were previously priced annually onto a shorter-term landed price equivalent basis. The agreements reached represent the majority of BHP Billiton's iron ore sales volume. The structural change that these settlements represent is consistent with BHP Billiton achieving market clearing prices.
- On 30 June 2010, we welcomed the Australian Competition Tribunal's decision to reject the application for declaration of our Mt Newman rail line while expressing our disappointment at the Tribunal's decision to grant declaration of BHP Billiton's Goldsworthy rail line under Part IIIA of the Trade Practices Act. Neither of the determinations in relation to Mt Newman or Goldsworthy has been appealed. Following the Tribunal's decision, access seekers may now negotiate with BHP Billiton for access to the Goldsworthy railway.
- On 2 July 2010, we announced that BHP Billiton is encouraged by the Australian Government's decision to replace the proposed Resource Super Profits Tax with a proposed Minerals Resource Rent Tax on mined iron ore and coal from 1 July 2012, following constructive discussions with the mining industry. The Minerals Resource Rent Tax is subject to passing by the Australian Parliament and may differ (wholly or in part) in its final form. BHP Billiton will continue to work constructively with the Australian Government to ensure the detailed design of minerals taxation maintains the international competitiveness of the Australian resources industry into the future.
- On 18 August 2010, we announced our all-cash offer, and on 20 August 2010 we formally commenced the offer, to acquire all of the issued and outstanding common shares of Potash Corporation of Saskatchewan Inc. ('PotashCorp') at a price of US\$130 in cash per PotashCorp common share. The offer values the total equity of PotashCorp at approximately US\$40 billion on a fully diluted basis. The acquisition will accelerate BHP Billiton's entry into the fertiliser industry and is consistent with the company's strategy of becoming a leading global miner of potash. PotashCorp's potash mining operations are a natural fit with BHP Billiton's greenfield land holdings in Saskatchewan, Canada.

No other matter or circumstance has arisen since the end of FY2010 that has significantly affected or is expected to significantly affect the operations, the results of operations or state of affairs of the Group in future years.

## 7.2 Share capital and buy-back programs

The BHP Billiton Limited on-market share buy-back program and the BHP Billiton Plc on-market share buy-back program were each suspended in FY2008. The Directors do not presently intend to reactivate these buy-back programs.

At the Annual General Meetings held during 2009, shareholders authorised BHP Billiton Plc to make on-market purchases of up to 223,112,120 of its ordinary shares, representing approximately 10 per cent of BHP Billiton Plc's issued share capital at that time. Shareholders will be asked at the 2010 Annual General Meetings to renew this authority.

During FY2010, we did not make any on-market or off-market purchases of BHP Billiton Limited or BHP Billiton Plc shares under any share buy-back program of the Group.

Some of our executives are entitled to options as part of their remuneration arrangements. We can satisfy these entitlements either by the acquisition of shares on-market and, in respect of some entitlements, by the issue of new shares.

The shares in column 'A' below were purchased to satisfy awards made under the various BHP Billiton Limited and BHP Billiton Plc employee share schemes during FY2010.

Period	A Total number of shares purchased	B Average price paid per share <sup>(a)</sup>	C Total number of shares purchased as part of publicly announced plans or programs	D Maximum number of shares that may yet be purchased under the plans or program	
				BHP Billiton Limited	BHP Billiton Plc <sup>(b)</sup>
1 July 2009 to 31 July 2009	264,395	27.47	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Aug 2009 to 31 Aug 2009	3,543,461	29.86	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Sep 2009 to 30 Sep 2009	607,773	31.59	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Oct 2009 to 31 Oct 2009	569,599	31.20	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Nov 2009 to 30 Nov 2009	396,545	33.10	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Dec 2009 to 31 Dec 2009	418,657	37.38	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Jan 2010 to 31 Jan 2010	144,677	38.41	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Feb 2010 to 28 Feb 2010	247,606	32.85	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Mar 2010 to 31 Mar 2010	1,165,596	39.57	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 Apr 2010 to 30 Apr 2010	269,010	42.85	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 May 2010 to 31 May 2010	311,048	27.42	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
1 June 2010 to 30 June 2010	447,932	32.84	—	— <sup>(c)</sup>	223,112,120 <sup>(d)</sup>
<b>Total</b>	<b>8,386,299</b>	<b>32.60</b>	<b>—</b>	<b>—</b>	<b>—</b>

- (a) The shares were purchased in the currency of the stock exchange on which the purchase took place, and the sale price has been converted into US dollars at the exchange rate of the day of the purchase.
- (b) On 14 December 2007, the share buy-back program was suspended.
- (c) While BHP Billiton Limited is able to buy-back and cancel BHP Billiton Limited shares within the '10/12 limit' without shareholder approval in accordance with section 257B of the Australian Corporations Act 2001, BHP Billiton Limited has not made any announcement to the market extending the on-market share buy-back program beyond 30 September 2007. Any future on-market share buy-back program will be conducted in accordance with the Australian Corporations Act 2001 and will be announced to the market in accordance with the ASX Listing Rules.
- (d) At the Annual General Meetings held during 2009, shareholders authorised BHP Billiton Plc to make on-market purchases of up to 223,112,120 of its ordinary shares, representing approximately 10 per cent of BHP Billiton Plc's issued share capital at that time.

### 7.3 Results, financial instruments and going concern

Information about our financial position and financial results is included in the financial statements in this Annual Report. The income statement shows profit attributable to BHP Billiton members of US\$12,722 million compared with US\$5,877 million in 2009.

The Group's business activities, together with the factors likely to affect its future development, performance and position are discussed in section 3 of this Annual Report. In addition, section 5.6 and note 28 'Financial risk management' to the financial statements detail the Group's capital management objectives, its approach to financial risk management and exposure to financial risks, liquidity and borrowing facilities. Each of these sections is incorporated into, and forms part of, this Directors' Report.

The Directors, having made appropriate enquiries, have a reasonable expectation that the Group has adequate resources to continue in operational existence for the foreseeable future. Therefore they continue to adopt the going-concern basis of accounting in preparing the annual financial statements.

### 7.4 Directors

The Directors who served at any time during or since the end of the financial year were Don Argus, Marius Kloppers, Paul Anderson, Alan Boeckmann, Malcolm Broomhead, John Buchanan, Carlos Cordeiro, David Crawford, E Gail de Planque, Carolyn Hewson, David Jenkins, David Morgan, Wayne Murdy, Jacques Nasser, Keith Rumble and John Schubert. Further details of the Directors of BHP Billiton Limited and BHP Billiton Plc are set out in section 4.1 of this Annual Report. These details include the period for which each Director held office up to the date of this Directors' Report, their qualifications, experience and particular responsibilities, the directorships held in other listed companies since 1 July 2007, and the period for which each directorship has been held.

David Morgan retired as a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 24 November 2009, having been a Director since January 2008.

David Jenkins retired as a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 26 November 2009, having been a Director since March 2000.

Paul Anderson retired as a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 31 January 2010, having been a Director since June 2006.

E Gail de Planque retired as a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 31 January 2010, having been a Director since October 2005.

Don Argus retired as Chairman and a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 30 March 2010, having been a Director of BHP Limited since November 1996, Chairman of BHP Limited since March 1999 and a Director and Chairman of BHP Billiton Limited and BHP Billiton Plc since June 2001. Jacques Nasser assumed the Chairmanship of BHP Billiton Limited and BHP Billiton Plc on 31 March 2010.

Malcolm Broomhead and Carolyn Hewson were each appointed as a Director of BHP Billiton Limited and BHP Billiton Plc with effect from 31 March 2010.

The number of meetings of the Board and its Committees held during the year and each Director's attendance at those meetings are set out in sections 5.3.12 and 5.4.1 of this Annual Report.

## **7.5 Remuneration and share interests**

### ***7.5.1 Remuneration***

The policy for determining the nature and amount of emoluments of members of the Group Management Committee (GMC) (including the executive Director) and the non-executive Directors and information about the relationship between that policy and our performance are set out in sections 6.2, 6.3 and 6.7 of this Annual Report.

The remuneration tables contained in sections 6.4 and 6.7 of this Annual Report set out the remuneration of members of the GMC (including the executive Director) and the non-executive Directors.

### ***7.5.2 Directors***

The tables contained in section 7.20 of this Directors' Report set out the relevant interests in shares in BHP Billiton Limited and BHP Billiton Plc of the Directors who held office during FY2010, at the beginning and end of FY2010, and in relation to all Directors in office as at the date of this Directors' Report, their relevant interests in shares in BHP Billiton Limited and BHP Billiton Plc as at the date of this Directors' Report. No rights or options over shares in BHP Billiton Limited and BHP Billiton Plc are held by any of the non-executive Directors. Interests held by the executive Director under share and option plans are set out in the tables showing interests in incentive plans contained in section 6.4.3 of this Annual Report. Further details of all options and rights held as at the date of this Directors' Report (including those issued during or since the end of FY2010), and of shares issued during or since the end of FY2010 upon exercise of options and rights, are set out in note 30 'Key Management Personnel' in the financial statements of this Annual Report. Except as disclosed in these tables, there have been no other changes in the Directors' interests over shares or options in BHP Billiton Limited and BHP Billiton Plc between 30 June 2010 and the date of this Directors' Report.

We have not made available to any Director any interest in a registered scheme.

The former Directors of BHP Limited participated in a retirement plan under which they were entitled to receive a payment on retirement calculated by reference to years of service. This plan was closed on 24 October 2003, and benefits accrued to that date are held by BHP Billiton Limited and will be paid on retirement. Further information about this plan and its closure are set out in section 6.7.3 of this Annual Report.

### ***7.5.3 GMC members***

The table contained in section 7.21 of this Directors' Report sets out the relevant interests held by members of the GMC (other than Directors) in shares of BHP Billiton Limited and BHP Billiton Plc at the beginning and end of FY2010, and at the date of this Directors' Report. Interests held by members of the GMC under share and option plans are set out in the tables showing interests in incentive plans contained in section 6.4.3 of this Annual Report. Further details of all options and rights held as at the date of this Directors' Report (including those issued during or since the end of FY2010), and of shares issued during or since the end of FY2010 upon exercise of options and rights, are set out in note 30 'Key Management Personnel' in the financial statements of this Annual Report.

## 7.6 Secretaries

Jane McAloon is the Group Company Secretary. Details of her qualifications and experience are set out in section 4.1 of this Annual Report. The following people also act as the Company Secretaries of either BHP Billiton Limited or BHP Billiton Plc: Fiona Smith, BSc LLB, FCIS, Deputy Company Secretary BHP Billiton Limited, Elizabeth Hobley, BA (Hons), ACIS, Deputy Company Secretary BHP Billiton Plc and Geof Stapledon, BEc LLB (Hons), DPhil, FCIS, Deputy Company Secretary BHP Billiton Plc. Each such individual has experience in a company secretariat role arising from time spent in such roles within BHP Billiton, large listed companies or other relevant entities.

## 7.7 Indemnities and insurance

Rule 146 of the BHP Billiton Limited Constitution and Article 146 of the BHP Billiton Plc Articles of Association require each Company to indemnify to the extent permitted by law, each Director, Secretary or executive officer of BHP Billiton Limited and BHP Billiton Plc respectively against liability incurred in, or arising out of, the conduct of the business of the Company or the discharge of the duties of the Director, Secretary or executive officer. The Directors named in section 4.1 of this Annual Report, the executive officers and the Company Secretaries of BHP Billiton Limited and BHP Billiton Plc have the benefit of this requirement, as do individuals who formerly held one of those positions.

In accordance with this requirement, BHP Billiton Limited and BHP Billiton Plc have entered into Deeds of Indemnity, Access and Insurance (Deeds of Indemnity) with each of their respective Directors. The Deeds of Indemnity are qualifying third party indemnity provisions for the purposes of the UK Companies Act 2006.

We have a policy that we will, as a general rule, support and hold harmless an employee, including an employee appointed as a director of a subsidiary who, while acting in good faith, incurs personal liability to others as a result of working for us.

From time to time, we engage our External Auditor, KPMG, to conduct non-statutory audit work and provide other services in accordance with our policy on the provision of other services by the External Auditor. The terms of engagement include an indemnity in favour of KPMG:

- against all losses, claims, costs, expenses, actions, demands, damages, liabilities or any proceedings (liabilities) incurred by KPMG in respect of third party claims arising from a breach by the Group under the engagement terms;
- for all liabilities KPMG has to the Group or any third party as a result of reliance on information provided by the Group that is false, misleading or incomplete.

We have insured against amounts that we may be liable to pay to Directors, Company Secretaries or certain employees pursuant to Rule 146 of the Constitution of BHP Billiton Limited and Article 146 of the Articles of Association of BHP Billiton Plc or that we otherwise agree to pay by way of indemnity. The insurance policy also insures Directors, Company Secretaries and some employees against certain liabilities (including legal costs) they may incur in carrying out their duties for us.

We have paid premiums for this 'Directors and Officers' insurance of US\$2,594,990 net during FY2010. Some Directors, Company Secretaries and employees contribute to the premium for this insurance.

## 7.8 Employee policies and involvement

We are committed to open, honest and productive relationships with our employees. At BHP Billiton, we recognise the most important ingredient for success is our talented and motivated workforce, whose members demonstrate behaviours that are aligned to our Charter values.

We have an integrated people strategy to effectively attract, retain and develop talented people. Our approach is outlined in our Human Resources Policy, the *BHP Billiton Code of Business Conduct* and the Human Resources Standards and Procedures that prescribe what we will do and how we will do it. All of these documents are published and accessible to employees.

Effective communication and employee engagement is critical for maintaining open and productive relationships between leaders and employees. All employees receive communication on BHP Billiton goals and performance, as well as on important issues such as health and safety and the environment and the *BHP Billiton Code of Business Conduct*. Our Code is founded on our Charter values, which make an unqualified commitment to working with integrity. Communication is undertaken through a variety of channels, including the internet, intranet, email, newsletters and other means designed to cater for the local environment. These tools are also used to facilitate employee feedback, as are a variety of consultative processes. Dispute and grievance handling processes are also in place to assist in equitably addressing workplace issues in all businesses. A Business Conduct Advisory Service operates worldwide to allow concerns to be raised about conduct that is out of step with our Charter values, our policies and procedures or the law.

Our all-employee share purchase plan, Shareplus, is available to all employees, except where local regulations limit operation of the scheme. In these instances, alternative arrangements are in place. As at 30 June 2010, approximately 37 per cent of employees were participants in Shareplus. The Shareplus employee plan is described in section 6.3.3 of this Annual Report. Short-term and long-term incentive schemes also operate across the Group. Rewards for individuals are predicated on the need to meet targets relating to our Company's performance in areas such as health, safety and achievement of financial measures and on the personal performance of each employee.

All employees are entitled to balanced and realistic feedback coupled with the identification of development and training needs to help maximise their performance and realise their full potential. In FY2010, 63 per cent of employees participated in a formal performance review process. Due to industrial agreements, not all employees are able to participate in individual performance reviews. The importance we place on employee development and training is demonstrated by the significant amount of training our employees undertake. In FY2010, the average hours spent on training per annum per employee was 120 hours for full-time employees and 32 hours for part-time employees.

BHP Billiton is committed to developing and maintaining a diverse workforce and providing a work environment in which every employee is treated fairly and with respect. We work actively to avoid discrimination on any basis, including disability. Where an employee suffers some disability while they are employed, we work to identify roles that meet their skill, experience and capability, and in some cases offer retraining. We also work hard to offer flexible work practices, where this is possible, taking into account the needs of the employee and those of the particular workplace. Our remuneration policy and employment packages, which must comply with local regulations, are based on merit, aligned to our business requirements and sufficiently attractive to recruit and retain the best people.

Our employees can access our Annual Reports either via the intranet or hard copy.

## **7.9 Environmental performance**

Particulars in relation to environmental performance are referred to in sections 2.8, 3.3 and 7.22 of this Annual Report and in the Sustainability Report and the Sustainability Supplementary Information, available at [www.bhpbilliton.com](http://www.bhpbilliton.com).

## **7.10 Corporate Governance**

The UK Financial Services Authority's Disclosure and Transparency Rules (DTR 7.2) require that certain information be included in a corporate governance statement set out in the Directors' Report. BHP Billiton has an existing practice of issuing a separate corporate governance statement as part of its Annual Report. The information required by the Disclosure and Transparency Rules and the UK Financial Services Authority's Listing Rules (LR 9.8.6) is located in section 5 of this Annual Report, with the exception of the information referred to in DTR 7.2.6, which is located in section 7.23 of this Annual Report.

## **7.11 Dividends**

A final dividend of 45.0 US cents per share will be paid on 30 September 2010. Details of the dividends paid and the dividend policy are set out in sections 3.7.6 and 11.3 of this Annual Report.

## **7.12 Auditors**

A resolution to reappoint KPMG Audit Plc as the auditor of BHP Billiton Plc will be proposed at the 2010 Annual General Meetings in accordance with section 489 of the UK Companies Act 2006.

No person who was an officer of BHP Billiton during FY2010 was a director or partner of the Group's External Auditor at a time when the Group's External Auditor conducted an audit of the Group.

Each person who held the office of Director at the date the Board resolved to approve this Directors' Report makes the following statements:

- so far as the Director is aware, there is no relevant audit information of which the Group's External Auditor is unaware;
- the Director has taken all steps that he or she ought to have taken as a Director to make him or herself aware of any relevant audit information and to establish that the Group's External Auditor is aware of that information.

### 7.13 Non-audit services

Details of the non-audit services undertaken by our External Auditor, including the amounts paid for non-audit services, are set out in note 34 'Auditor's remuneration' in the financial statements of this Annual Report. Based on advice provided by the Risk and Audit Committee, the Directors have formed the view that the provision of non-audit services is compatible with the general standard of independence for auditors, and that the nature of non-audit services means that auditor independence was not compromised. Further information about our policy in relation to the provision of non-audit services by the auditor is set out in section 5.5.1 of this Annual Report.

### 7.14 Value of land

Much of our interest in land consists of leases and other rights that permit the working of such land and the erection of buildings and equipment thereon for the purpose of extracting and treating minerals. Such land is mainly carried in the accounts at cost and it is not possible to estimate the market value, as this depends on product prices over the long term, which will vary with market conditions.

### 7.15 Political and charitable donations

No political contributions or donations for political purposes were made during FY2010. We made charitable donations for the purposes of funding community programs in the United Kingdom of US\$250,946 (cash) (2009: US\$220,685) and worldwide, including in-kind support and administrative cost totalling US\$200,452,251 (2009: US\$197,838,573).

The total amount of charitable donations made worldwide in FY2010 includes US\$80 million contributed to a trust (registered with the UK Charities Commission) established for the purposes of funding community investment globally.

### 7.16 Exploration, research and development

Companies within the Group carry out exploration and research and development necessary to support their activities. Further details are provided in sections 2.5 and 2.6 of this Annual Report.

### 7.17 Creditor payment policy

When we enter into a contract with a supplier, payment terms will be agreed when the contract begins and the supplier will be made aware of these terms. We do not have a specific policy towards our suppliers and do not follow any code or standard practice. However, we settle terms of payment with suppliers when agreeing overall terms of business, and seek to abide by the terms of the contracts to which we are bound. As at 30 June 2010, BHP Billiton Plc (the unconsolidated parent entity) had US\$101,000 of trade creditors outstanding which represents 10 days purchases outstanding in respect of costs, based on the total invoiced by suppliers during FY2010.

### 7.18 Class order

BHP Billiton Limited is a company of a kind referred to in Australian Securities and Investments Commission Class Order No. 98/100, dated 10 July 1998. Amounts in this Directors' Report and the financial statements, except estimates of future expenditure or where otherwise indicated, have been rounded to the nearest million dollars in accordance with that Class Order.

### 7.19 Proceedings on behalf of BHP Billiton Limited

No proceedings have been brought on behalf of BHP Billiton Limited, nor any application made under section 237 of the Australian Corporations Act 2001.

### 7.20 Directors' shareholdings

The tables below set out information pertaining to the shares held by Directors in BHP Billiton Limited and BHP Billiton Plc.

<u>BHP Billiton Limited shares</u>	<u>As at date of Directors' Report</u>	<u>As at 30 June 2010</u>	<u>As at 30 June 2009</u>
Paul Anderson <sup>(1) (2)</sup>	Not applicable	106,000	106,000
Don Argus <sup>(2) (3)</sup>	Not applicable	329,190	321,890
Alan Boeckmann <sup>(4)</sup>	3,150	3,150	—
Malcolm Broomhead <sup>(3) (5)</sup>	9,000	9,000	—
John Buchanan	—	—	—

<b>BHP Billiton Limited shares</b>	<b>As at date of Directors' Report</b>	<b>As at 30 June 2010</b>	<b>As at 30 June 2009</b>
Carlos Cordeiro <sup>(4)</sup>	6,550	6,550	6,550
David Crawford <sup>(3)</sup>	33,127	33,127	33,127
E Gail de Planque <sup>(2) (3) (4)</sup>	Not applicable	5,180	5,180
Carolyn Hewson <sup>(5)</sup>	2,000	2,000	—
David Jenkins <sup>(2)</sup>	Not applicable	2,066	2,066
Marius Kloppers <sup>(3)</sup>	28,264	28,264	328
David Morgan <sup>(2) (3)</sup>	Not applicable	156,758	156,758
Wayne Murdy <sup>(3) (4)</sup>	4,030	4,030	4,030
Jacques Nasser <sup>(3) (4)</sup>	5,600	5,600	5,600
Keith Rumble	—	—	—
John Schubert	23,675	23,675	23,675

<b>BHP Billiton Plc shares</b>			
Paul Anderson <sup>(1) (2)</sup>	Not applicable	4,000	4,000
Don Argus <sup>(2) (3)</sup>	Not applicable	21,740	—
Alan Boeckmann <sup>(4)</sup>	3,680	3,680	—
Malcolm Broomhead	—	—	—
John Buchanan	20,000	20,000	20,000
Carlos Cordeiro	—	—	—
David Crawford <sup>(3)</sup>	6,000	6,000	—
E Gail de Planque	Not applicable	—	—
Carolyn Hewson	—	—	—
David Jenkins <sup>(2) (3)</sup>	Not applicable	10,000	10,000
Marius Kloppers <sup>(3)</sup>	548,678	548,678	443,520
David Morgan	Not applicable	—	—
Wayne Murdy <sup>(3) (4)</sup>	3,512	3,512	—
Jacques Nasser	—	—	—
Keith Rumble <sup>(3)</sup>	12,200	12,200	12,200
John Schubert	—	—	—

- (1) 66,000 BHP Billiton Limited shares are held in the form of 33,000 American Depositary Shares. 4,000 BHP Billiton Plc shares are held in the form of 2,000 American Depositary Shares.
- (2) The Director retired from the Board during FY2010: Paul Anderson (31 January 2010), Don Argus (30 March 2010), E Gail de Planque (31 January 2010), David Jenkins (26 November 2009) and David Morgan (24 November 2009). The disclosed holdings as at 30 June 2010 reflect their holdings as at the date of their respective retirement.
- (3) Includes shares held in the name of spouse, superannuation fund, nominee and/or other controlled entities.
- (4) All BHP Billiton Limited shares and BHP Billiton Plc shares are held in the form of American Depositary Shares: Alan Boeckmann (1,575 BHP Billiton Limited; 1,840 BHP Billiton Plc), Carlos Cordeiro (3,275 BHP Billiton Limited), E Gail de Planque (2,590 BHP Billiton Limited), Wayne Murdy (2,015 BHP Billiton Limited; 1,756 BHP Billiton Plc) and Jacques Nasser (2,800 BHP Billiton Limited).
- (5) Malcolm Broomhead and Carolyn Hewson were each appointed to the Board with effect from 31 March 2010.

## 7.21 GMC members' shareholdings (other than Directors)

The following tables sets out information pertaining to the shares in BHP Billiton Limited and BHP Billiton Plc held by those senior executives who were members of the GMC during FY2010 (other than the executive Director).

<b>BHP Billiton Limited shares</b>	<b>As at date of Directors' Report</b>	<b>As at 30 June 2010</b>	<b>As at 30 June 2009</b>
Alberto Calderon	—	—	—
Andrew Mackenzie	—	—	—
Marcus Randolph <sup>(1)</sup>	191,415	191,415	117,420
Alex Vanselow <sup>(1)</sup>	174,263	174,263	99,888
Karen Wood <sup>(1)</sup>	109,133	109,133	71,959
J Michael Yeager <sup>(1) (2)</sup>	23,980	23,980	6,958

- (1) Includes shares held in the name of spouse, superannuation fund and/or nominee.
- (2) 616 BHP Billiton Limited shares are held in the form of 308 American Depositary Shares.



<u>BHP Billiton Plc shares</u>	<u>As at date of Directors' Report</u>	<u>As at 30 June 2010</u>	<u>As at 30 June 2009</u>
Alberto Calderon <sup>(1)</sup>	17,827	17,827	344
Andrew Mackenzie <sup>(1)</sup>	55,175	55,175	55,000
Marcus Randolph	—	—	—
Alex Vanselow	—	—	—
Karen Wood	—	—	—
J Michael Yeager	—	—	—

(1) Includes shares held in the name of spouse, superannuation fund and/or nominee.

## 7.22 Performance in relation to environmental regulation

A significant environmental incident is one with a severity rating of four or above based on our internal severity rating scale (tiered from one to five by increasing severity). One significant incident occurred during FY2010 at our Pinto Valley Operations (US) involving a tailings release. The majority of the eroded tailings and cover material were recovered. Metal concentrations in surface water and sediments appear to be well below levels that could present a hazard.

### *Fines and prosecutions*

In FY2010, BHP Billiton received three fines with a total value of US\$35,057.

In particular, we received a fine of US\$34,672 in March 2010 for an archaeological incident in Chile that occurred in calendar year 2008. Monitoring by external archaeologists detected intervention of Panel No. 5 of Geoglyphs in Pampas Intermedias outside the property of our Cerro Colorado operation. We have informed the community and instituted corrective measures to prevent further incidents of this nature.

The remaining two fines were levied in Brazil and the US.

Further information about our performance, including in relation to environmental regulation can be found in sections 2.8 and 3.3 of this Annual Report and in the Sustainability Report and the Sustainability Supplementary Information, available at [www.bhpbilliton.com](http://www.bhpbilliton.com).

## 7.23 Share capital, restrictions on transfer of shares and other additional information

Information relating to BHP Billiton Plc's share capital structure, restrictions on the holding or transfer of its securities or on the exercise of voting rights attaching to such securities and certain agreements triggered on a change of control, is set out in the following sections of this Annual Report:

- Section 2.1 (BHP Billiton locations)
- Section 2.7 (Government regulations)
- Section 2.11 (Organisational structure)
- Section 2.12 (Material contracts)
- Section 2.13 (Constitution)
- Section 5.4 (Board of Directors — Review, re-election and renewal)
- Section 7.2 (Share capital and buy-back programs)
- Section 11.2 (Share ownership)
- Footnote (a) to note 19 'Share capital' and footnote (d) to note 32 'Employee share ownership plans' in the financial statements of this Annual Report.

Each of the above sections is incorporated by reference into, and forms part of, this Directors' Report.

## 8 Legal proceedings

We are involved from time to time in legal proceedings and governmental investigations of a character normally incidental to our business, including claims and pending actions against us seeking damages or clarification of legal rights and regulatory inquiries regarding business practices. In many cases, insurance or other indemnification protection afforded to us relates to such claims and may offset the financial impact on the Group of a successful claim.

This section summarises the significant legal proceedings and investigations in which we are currently involved.

### **Pinal Creek/Miami Wash area**

BHP Copper Inc (BHP Copper) was, until March 2010, involved in litigation concerning groundwater contamination resulting from historic mining operations near the Pinal Creek/Miami Wash area located in the State of Arizona. BHP Copper and the other members of the Pinal Creek Group (which consists of BHP Copper, Phelps Dodge Miami Inc (now known as Freeport McMoRan Miami Inc (FMMI) and Inspiration Consolidated Copper Co) filed a contribution action in November 1991 in the Federal District Court for the District of Arizona (District Court) against former owners and operators of the properties alleged to have caused the contamination. As part of this action, BHP Copper sought an equitable allocation of clean-up costs between BHP Copper, the other members of the Pinal Creek Group, and BHP Copper's predecessors. BHP Copper's predecessors had asserted a counterclaim in this action seeking indemnity from BHP Copper based upon their interpretation of the historical transaction documents relating to the succession in interest of the parties.

In February 2010, BHP Copper, FMMI and Inspiration Copper signed a settlement agreement under which FMMI paid US\$40 million to BHP Copper and assumed all responsibility for future groundwater remediation and any future obligations with respect to third party claims related to groundwater contamination. The obligations of FMMI are backed by a parent company guarantee and an indemnity in favour of BHP Copper.

BHP Copper also settled the proceedings with its predecessors in February 2010 with an agreement that US\$21.9 million will be held in trust and BHP Copper will be able to draw down on these funds as it completes specified source control projects on the BHP Copper properties over the next five to seven year period. This fund was partially funded by previously recovered insurance proceeds in the approximate amount of US\$11 million to which BHP Copper and its predecessors claimed joint rights. These proceeds were previously held in a joint trust account for the benefit of these entities.

The District Court approved the settlement of the proceedings in March 2010. A State consent decree (the Decree) which was approved by the Federal District Court for the District of Arizona in August 1998 remains in place. The Decree authorises and requires groundwater remediation and facility-specific source control activities. BHP Copper continues to retain its obligations under the Decree although FMMI has, through the settlement, agreed to be responsible as indicated above. As a result of the settlement BHP Copper has reversed the US\$130 million provision for the future planned remediation work.

BHP Copper has also settled the suits against a number of insurance carriers seeking to recover under various insurance policies for remediation, response, source control and other costs noted above incurred by BHP Copper.

In view of settlements referred to above, this matter is no longer considered material to the Group and we do not intend to include it in future reports.

### **Rio Algom Pension Plan**

In June 2003, Alexander E Lomas, a retired member of the Pension Plan for Salaried Employees of Rio Algom Mines Limited (Plan), filed a Notice of Application in a representative capacity in the Ontario Superior Court of Justice Commercial List against Rio Algom Limited (RAL) and the Plan Trustee alleging certain improprieties in their administration of the Pension Plan and use of Pension Plan funds from January 1966 onward.

Mr Lomas seeks relief both quantified and unquantified, for himself and those Plan members he purports to represent, in respect of a number of alleged breaches committed by RAL, including allegations of breach of employment contracts, breach of trust, breach of the Trust Agreement underlying the Pension Plan. In particular:

- Mr Lomas seeks US\$115.26 million (C\$121.6 million) on account of monies alleged to have been improperly paid out or withheld from the Pension Plan, together with compound interest calculated from the date of each alleged wrongdoing; and
- punitive, aggravated and exemplary damages in the sum of US\$1.84 million (C\$1.94 million).

Mr Lomas purports to represent members of the defined benefits portion of the Pension Plan. In 2005, the defined contribution members of the Pension Plan were included as parties to this action.

A motion to strike Mr Lomas' request for the winding up of the Plan was heard on 27 November 2006. The court struck out part of Mr Lomas' claim, but allowed the remainder. RAL's appeal from that decision was dismissed, but further leave to appeal to the Ontario Court of Appeal was granted. On 10 March 2010, the Ontario Court of Appeal ruled in favour of RAL's motion to strike out that part of the plaintiff's claim that sought a court order to wind-up the Plan.

RAL has notified its insurers of the application and has advised other third parties of possible claims against them in respect of matters alleged in the application.

### **Class actions concerning Cerrejón privatisation**

The non-government organisation, Corporación Colombia Transparente (CCT), brought three separate class actions (Popular Actions numbers 1,029, 1,032 and 1,048) against various defendants in connection with the privatisation of 50 per cent of the Cerrejón Zona Norte mining complex in Colombia in 2002. Actions 1,029 and 1,048 were dismissed and the only one of these three actions still on foot is popular action 1,032, against Cerrejón Zona Norte SA (CZN), which remains in discovery phase. The complex is currently owned by CZN and Carbones del Cerrejón Limited (CDC). Our subsidiary Billiton Investment 3 BV owns a 33 per cent share in CDC, and our subsidiaries Billiton Investment 3 BV and Billiton Investment 8 BV (BHP Billiton Shareholders) collectively own a 33.33 per cent share in CZN.

CCT alleges, in part, that the defendants failed to comply with the privatisation process, and that the offer price for shares in CZN between Stages 1 and 2 of the privatisation process was not correctly adjusted for inflation.

Our share of the alleged adjustment of the CZN share price would be approximately US\$4 million. In the alternative, CCT seeks declaration that the privatisation is null and void and forfeiture of the transfer price paid, of which our share would be approximately US\$148 million. In both instances, CCT also seeks unquantified sanctions, including payment of stamp taxes, an award of 15 per cent of all monies recovered by the defendants, together with interest on all amounts at the maximum rate authorised by law.

In addition, a separate class action (Popular Action no. 242) has been brought by an individual, Mr Martín Nicolás Barros Choles, against various defendants, including CDC, arising out of the privatisation of the Cerrejón Zona Norte mining complex in Colombia.

Mr Choles claims that the transferral of rights by CDC to CZN was ineffective because it only involved a transfer of shares and not the transfer of the underlying rights in the properties and assets used in the Cerrejón North Zone operation. Consequently, he is seeking orders that CDC pays for the use and lease of the properties and assets until November 2009, and that from that date the properties and assets of the Cerrejón project revert to the State.

### **Mt Newman and Goldsworthy railway lines**

In June 2004, Fortescue Metals Group Limited (FMG) applied to the National Competition Council (NCC) to have use of parts of the Mt Newman and Goldsworthy railway lines declared as a 'service' under Part IIIA of the Trade Practices Act 1974. Declaration under Part IIIA confers a statutory right to negotiate the terms of use of the service, on terms that are determined by arbitration if agreement cannot be reached by negotiation. The NCC found that the two railway lines each provide separate services, and that while the Mt Newman line could be declared, the Goldsworthy line could not because it is part of a 'production process'. The NCC then proceeded to consider the Mt Newman railway line aspect of the application.

In December 2004, BHP Billiton Iron Ore Pty Ltd (BHPBIO) lodged an application with the Federal Court, challenging the NCC's decision in relation to the application of the 'production process' definition to the Mt Newman railway. FMG similarly instituted proceedings in the Federal Court appealing NCC's decision in relation to the Goldsworthy railway. The Federal Court held in favour of FMG, and BHPBIO appealed this decision to the Full Court of the Federal Court. The majority of the Full Court decided in favour of FMG and successive appeals by BHPBIO to the Full Court of the Federal Court and the High Court were unsuccessful.

In the interim, the NCC proceeded to recommend to the Federal Treasurer that the Mt Newman railway line be declared. In May 2006, having not published a decision, the Federal Treasurer was deemed to have decided not to declare the Mt Newman railway. FMG sought a reconsideration of this decision by the Australian Competition Tribunal. In November 2007, FMG lodged a further Part IIIA application with the NCC for declaration of the whole of the Goldsworthy railway line. On 27 October 2008, the Federal Treasurer announced that he had declared access to the Goldsworthy line. An application by BHPBIO for reconsideration of this decision was lodged with the Australian Competition Tribunal.

On 30 June 2010, following a lengthy hearing, the Australian Competition Tribunal released its determination. The Tribunal affirmed the decision not to declare the Mt Newman line. The Tribunal also affirmed the Treasurer's decision to declare the Goldsworthy line service for a period of 20 years commencing on 19 November 2008. Neither of the determinations in relation to Mt Newman or Goldsworthy has been appealed.

Following the Tribunal's decision, access seekers may now negotiate with BHPBIO to determine terms of access to the Goldsworthy railway, and either the access seeker or BHPBIO could refer disputed matters to the ACCC for arbitration under the statutory framework established under Part IIIA of the Trade Practices Act. The outcome of this process would govern whether access would be provided and on what terms.

### **Australian Taxation Office assessments**

The Australian Taxation Office (ATO) has issued amended assessments during the period from 2005 to 2008 denying bad debt deductions arising from the investments in Hartley, Beenup and Boodarie Iron and the denial of capital allowance claims made on the Boodarie Iron project. BHP Billiton lodged objections against all the amended assessments. An amount of US\$686 million was paid to the ATO pursuant to ATO disputed assessment guidelines, which require that taxpayers generally must pay half of the tax in dispute to defer recovery proceedings.

The Boodarie Iron and Beenup bad debt disallowance matters and the Boodarie Iron capital allowance matter were heard concurrently in the Federal Court in January 2009. BHP Billiton was successful on all counts. The ATO appealed and the matter was heard in the Full Federal Court in November 2009. BHP Billiton was again successful on all counts. The ATO sought special leave to appeal to the High Court only in relation to the Beenup bad debt disallowance and the denial of the capital allowance claims on the Boodarie Iron project. The High Court has granted special leave only in relation to the denial of the capital allowance claims on the Boodarie Iron project. A date for the appeal has not yet been set. As a result of the ATO not seeking to challenge the Boodarie Iron bad debt disallowance, the ATO refunded US\$552 million to BHP Billiton including interest. BHP Billiton also expects that as a result of the High Court not granting special leave for the Beenup bad debt disallowance, the ATO will refund the amount paid in relation to this dispute of US\$62 million plus interest. BHP Billiton settled the Hartley matter with the ATO in September 2009.

The amount remaining in dispute following the decision of the High Court for the denial of capital allowance claims on the Boodarie Iron project is approximately US\$435 million, being primary tax of US\$328 million and US\$107 million of interest (after tax).

### **Petroleum Resource Rent Tax litigation**

BHP Billiton Petroleum (Bass Strait) Pty Ltd is involved in litigation in the Federal Court of Australia, disputing whether certain receipts related to capacity are subject to Petroleum Resource Rent Tax, as well as the ATO's assessment of the taxing point for Petroleum Resource Rent Tax purposes in relation to sales of gas and LPG produced from the Gippsland Joint Venture. The trial has commenced earlier this year and the relevant matters remain before the Court.

Petroleum Resource Rent Tax has been paid and expensed based on the ATO's assessment, and any success will result in an income tax benefit.

Given the complexity of the matters under dispute, it is not possible at this time to accurately quantify the anticipated benefit.

### **North West Shelf Excise on Condensate litigation**

BHP Billiton Petroleum (North West Shelf) Pty (NWS) has commenced litigation in the Federal Court of Australia and the Administrative Appeals Tribunal seeking orders that recently enacted excise by-laws prescribing a condensate production area for the purposes of the Excise Tariff Act incorrectly define the relevant fields. As at 30 June 2010, we have paid and expensed US\$150 million.

## **9 FINANCIAL STATEMENTS**

Refer to F-1 to F-96.

## 10 Glossary

### 10.1 Non-mining terms

In the context of American Depositary Shares (ADS) and listed investments, the term ‘quoted’ means ‘traded’ on the relevant exchange.

<b>Term</b>	<b>Definition</b>
A\$	Australian dollars being the currency of the Commonwealth of Australia.
American Depositary Share (ADS)	An American Depositary Share is a share issued under a deposit agreement that has been created to permit US-resident investors to hold shares in non-US companies and trade them on the stock exchanges in the US. One ADS is equal to two BHP Billiton Limited or BHP Billiton Plc ordinary shares. ADSs are evidenced by American Depositary Receipts, or ADRs, which are the instruments that trade on the NYSE.
BHP Billiton	Being both companies in the dual listed company structure, BHP Billiton Limited and BHP Billiton Plc.
BHP Billiton Limited share	A fully paid ordinary share in the capital of BHP Billiton Limited.
BHP Billiton Limited shareholders	The holders of BHP Billiton Limited shares.
BHP Billiton Limited special voting share	A single voting share issued to facilitate joint voting by shareholders of BHP Billiton Limited on Joint Electorate Actions.
BHP Billiton Plc equalisation share	A share that has been authorised to be issued to enable a distribution to be made by BHP Billiton Plc Group to the BHP Billiton Limited Group should this be required under the terms of the DLC merger.
BHP Billiton Plc 5.5 per cent preference share	Shares that have the right to repayment of the amount paid up on the nominal value and any unpaid dividends in priority of any other class of shares in BHP Billiton Plc on a return of capital or winding up.
BHP Billiton Plc share	A fully paid ordinary share in the capital of BHP Billiton Plc.
BHP Billiton Plc shareholders	The holders of BHP Billiton Plc shares.
BHP Billiton Plc special voting share	A single voting share issued to facilitate joint voting by shareholders of BHP Billiton Plc on Joint Electorate Actions.
Board	The Board of Directors of BHP Billiton.
CEO	Chief Executive Officer.
Cost and freight (CFR) ( named port of destination)	The seller must pay the costs and freight necessary to bring the goods to the named port of destination, but the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered onboard the vessel, is transferred from the seller to the buyer when the goods pass the ship’s rail in the port of shipment. The CFR term requires the seller to clear the goods for shipment.
Co-Investment Plan	Legacy employee share scheme. Abbreviates to CIP.
Community investment	Contributions made to support communities in which we operate. Our contributions to community programs comprise cash, in-kind support and administration costs. Our targeted level of contribution is one per cent of pre-tax profit calculated on the average of the previous three years’ pre-tax profit.
CSG	Customer Sector Group being the strategic business units of BHP Billiton.
CY20XX	Refers to the calendar year ending 31 December 20XX, where XX is the two-digit number of the year.
Deferred share	A nil-priced option or a conditional right to acquire a share issued under the rules of the GIS.
Dividend Record Date	The date, determined by a company’s board of directors, by when an investor must be recorded as an owner of shares in order to qualify for a forthcoming dividend.

<b><u>Term</u></b>	<b><u>Definition</u></b>
DLC merger	The Dual Listed Company merger between BHP Billiton Limited and BHP Billiton Plc on 29 June 2001.
DLC structure	The corporate structure resulting from the DLC merger.
Employee Share Plan (ESP)	A legacy employee share plan that commenced under the jurisdiction of BHP Limited prior to the formation of BHP Billiton. Abbreviates to ESP.
Expected value	Expected value of a share incentive – the average outcome weighted by probability. This measure takes into account the difficulty of achieving performance conditions and the correlation between these and share price appreciation. The valuation methodology also takes into account factors such as volatility, forfeiture risk, etc.
Free on board (FOB) (... named port of shipment)	The seller delivers when the goods pass the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport.
FY20XX	Refers to the financial year ending 30 June 20XX, where XX is the two-digit number for the year.
GAAP	Generally accepted accounting principles.
Gearing	Gearing is defined as the ratio of net debt to net debt plus net assets.
Group	BHP Billiton Limited, BHP Billiton Plc and their subsidiaries.
Group Incentive Scheme	Current employee share scheme. Abbreviates to GIS.
International Financial Reporting Standards	Accounting standards as issued by the International Accounting Standards Board. Abbreviates to IFRS.
Key Management Personnel	Persons having authority and responsibility for planning, directing and controlling the activities of the Group, directly or indirectly (including executive Directors), and non-executive Directors. Abbreviates to KMP.
Key Performance Indicator	Used to measure the performance of the Group, individual businesses and executives in any one year. Abbreviates to KPI.
LME	London Metal Exchange – A London exchange which trades metals (e.g. lead, zinc, aluminium and nickel) in forward and option markets.
Long Term Incentive Plan	Current employee share scheme. Abbreviates to LTIP.
Major capital projects	Capital projects in the Feasibility or Execution phase where our share of capital expenditure to project completion is greater than US\$250 million.
Market value	The market value based on closing prices, or, in instances when an executive exercises and sells shares, the actual sale price achieved.
Occupational exposure limit	The level of exposure to an agent to which it is believed that nearly all workers may be repeatedly exposed, throughout a working life, without adverse health effects. Occupational exposure limits are established for chemical and physical agents and may be expressed as time-weighted average, ceiling or short-term exposure limits. Abbreviates to OEL.
Occupational illness	An occupational illness is an illness that occurs as a consequence of work-related activities or exposure. It includes acute or chronic illnesses or diseases, which may be caused by inhalation, absorption, ingestion or direct contact.
Option	A right to acquire a share on payment of an exercise price issued under the rules of the GIS.
Performance share	A nil-priced option or a conditional right to acquire a share, subject to a Performance Hurdle, issued under the rules of the LTIP.

<u>Term</u>	<u>Definition</u>
Performance share plan	An employee share plan that commenced under the jurisdiction of BHP Limited or Billiton Plc and prior to the formation of BHP Billiton. Legacy share scheme. Abbreviates to PSP.
Restricted Share Scheme	Legacy employee share scheme. Abbreviates to RSS.
Shareplus	All employee share purchase plan.
Significant environmental incident	A significant environmental incident is an occurrence that has resulted in or had the potential to cause significant environmental harm. Our definition of 'significant' is conservative to ensure all learnings are captured from relevant HSEC incidents. Such an incident is rated at level 3 or above on the BHP Billiton HSEC Consequence Severity Table which may be viewed at our website, <a href="http://www.bhpbilliton.com">www.bhpbilliton.com</a> .
STRATE	Share Transactions Totally Electronic is a South African electronic settlement and depository system for dematerialised equities.
Total Recordable Injuries Frequency	Total Recordable Injury Frequency = (Fatalities + Lost Time Cases + Restricted Work Cases + Medical Treatment Cases)/1,000,000 work hours. Abbreviates to TRIF.
Total shareholder return	The change in share price plus dividends. Abbreviates to TSR.
US\$	The Group's reporting currency and the functional currency of the majority of its operations is the US dollar as this is assessed to be the principal currency of the economic environments in which they operate.

## 10.2 Mining and mining-related terms

<u>Term</u>	<u>Definition</u>
2D	Two dimensional
3D	Three dimensional
Alumina	Aluminium oxide (Al <sub>2</sub> O <sub>3</sub> ). Alumina is produced from bauxite in the refining process. Alumina is then converted (reduced) in an electrolysis cell to produce aluminium metal.
Bauxite	Chief ore of aluminium.
Bio-leaching	Use of naturally occurring bacteria, to leach a metal from ore; for example, copper, zinc, uranium, nickel and cobalt from a sulphide mineral.
Brownfield	An exploration or development project located within an existing mineral province which can share infrastructure and management with an existing operation.
Coal Reserves	The same meaning as Ore Reserves, but specifically concerning coal.
Coking coal	By virtue of its carbonisation properties, is used in the manufacture of coke, which is used in the steelmaking process. Coking coal may also be referred to as metallurgical coal.
Condensate	A mixture of hydrocarbons that exist in gaseous form in natural underground reservoirs, but which condense to form a liquid at atmospheric conditions.

<b><u>Term</u></b>	<b><u>Definition</u></b>
Copper cathode	Electrolytically refined copper that has been deposited on the cathode of an electrolytic bath of acidified copper sulphate solution. The refined copper may also be produced through leaching and electrowinning.
Crude oil	A mixture of hydrocarbons that exist in liquid form in natural underground reservoirs, and remain liquid at atmospheric pressure after being produced at the well head and passing through surface separating facilities.
Cut-off grade	A nominated grade above which is defined some mineral aspect of the reserve. For example, the lowest grade of mineralised material that qualifies as economic for estimating an Ore Reserves.
Electrowinning/electrowon	An electrochemical process in which metal is recovered by dissolving a metal within an electrolyte and plating it onto an electrode.
Energy coal	Used as a fuel source in electrical power generation, cement manufacture and various industrial applications. Energy coal may also be referred to as steaming or thermal coal.
Ethane	Where sold separately, is largely ethane gas that has been liquefied through pressurisation. One tonne of ethane is approximately equivalent to 26.8 thousand cubic feet of gas.
Flotation	A method of selectively recovering minerals from finely ground ore using a froth created in water by specific reagents. In the flotation process, certain mineral particles are induced to float by becoming attached to bubbles of froth and the unwanted mineral particles sink.
Grade	The relative quantity, or the percentage, of metal or mineral content in an orebody.
Greenfield	The development or exploration located outside the area of influence of existing mine operations/infrastructure.
Head grade	The average grade of ore delivered to a process for mineral extraction.
Heap leach(ing)	A process used for the recovery of metals such as copper, nickel, uranium and gold from low-grade ores. The crushed material is laid on a slightly sloping, impermeable pad and leached by uniformly trickling (gravity fed) a chemical solution through the beds to ponds. The metals are recovered from the solution.
Ilmenite	The principle ore of titanium composed of iron, titanium and oxygen ( $\text{FeTiO}_3$ ).
Leaching	The process by which a soluble metal can be economically recovered from minerals in ore by dissolution.
Liquefied natural gas (LNG)	Consists largely of methane that has been liquefied through chilling and pressurisation. One tonne of LNG is approximately equivalent to 45.9 thousand cubic feet of natural gas.
Liquefied petroleum gas (LPG)	Consists of propane and butane and a small amount (less than two per cent) of ethane that has been liquefied through pressurisation. One tonne of LPG is approximately equivalent to 11.6 barrels.
Marketable Coal Reserves	Represents beneficiated or otherwise enhanced coal product and should be read in conjunction with, but not instead of, reports of coal reserves.
Metallurgical coal	A broader term than coking coal, which includes all coals used in steelmaking, such as coal used for the pulverised coal injection process.
Open-cut/open-pit (OC/OP)	Surface working in which the working area is kept open to the sky. Abbreviated to OC/OP.



<u>Term</u>	<u>Definition</u>
Ore Reserves	That part of a mineral deposit that could be economically and legally extracted or produced at the time of the reserve determination.
Probable Ore Reserves	Reserves for which quantity and grade and/or quality are computed from information similar to that used for proven (measured) reserves, but the sites for inspection, sampling and measurement are farther apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for proven (measured) reserves, is high enough to assure continuity between points of observation.
Proved oil and gas reserves	The estimated quantities of crude oil, natural gas and natural gas liquids that geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions (i.e. prices and costs as of the date the estimate is made).
Proved Ore Reserves	Reserves for which (a) quantity is computed from dimensions revealed in outcrops, trenches and workings on drill holes and grade and/or quality are computed from the results of detailed samplings; and (b) the sites for inspection, sampling and measurement are spaced so closely and the geological character is so well defined that size, shape, depth and mineral content of reserves are well established.
Reserve life	Current stated ore reserves divided by the current approved nominal production rate.
Run of mine product	Product mined in the course of regular mining activities. Abbreviates to ROM.
Rutile	It is an ore of titanium composed of titanium and oxygen (TiO <sub>2</sub> ).
Solvent extraction	A method of separating one or more metals from a leach solution by treating with a solvent that will extract the required metal, leaving the others. The metal is recovered from the solvent by further treatment.
Spud	Commence drilling of an oil or gas well.
Stockpile (SP)	An accumulation of ore or mineral built up when demand slackens or when the treatment plant or beneficiation equipment is incomplete or temporarily unequal to handling the mine output; any heap of material formed to create a reserve for loading or other purposes or material dug and piled for future use. Abbreviates to SP.
Tailing	Those portions of washed or milled ore that are too poor to be treated further or remain after the required metals and minerals have been extracted.
Total Coal Reserves	Run of mine reserves as outputs from the mining activities.
Total Marketable Reserves	Product reserves as outputs from processing plant which includes sizing and beneficiation.
Total Ore Reserves	Represent Proved Ore Reserves plus Probable Ore Reserves.
Underground (UG)	Natural or man-made excavation under the surface of the Earth. Abbreviated to UG.
Zircon	It is the chief ore of zirconium composed of zirconium, silicon and oxygen (ZrSiO <sub>4</sub> ).

### 10.3 Units of measure

<u>Abbreviation</u>	<u>Description</u>
bbl/d	Barrels per day
boe	Barrel oil equivalent
dmt	Dry metric tonne
dmtu	Dry metric tonne unit
ha	Hectare
km	Kilometre
kV	Kilovolt
kt	Kilotonne
kdw	Thousand deadweight tonnes
m	Metre
MI	Megalitre
Mt	Millions of tonnes
MMboe	Million barrels oil equivalent
MMBtu	Million British Thermal Units
MMcf/d	Million cubic feet per day
Mbbl/d	Thousand barrels per day
MMbbl/d	Million barrels per day
MMcm/d	Million cubic metres per day
mtpa	Million tonnes per annum
MW	Megawatt
psi	Pounds per square inch
scf	Standard cubic feet
TJ	Terajoule
tpa	Tonnes per annum
tpd	Tonnes per day
tph	Tonnes per hour
wmt	Wet metric tonnes

## 11 Shareholder information

### 11.1 Markets

BHP Billiton Limited has a primary listing on the Australian Securities Exchange (ASX) in Australia and BHP Billiton Plc has a premium listing on the UK Listing Authority's Official List and its ordinary shares are admitted to trading on the London Stock Exchange (LSE). BHP Billiton Plc also has a secondary listing on the Johannesburg Stock Exchange (JSE).

In addition, BHP Billiton Limited and BHP Billiton Plc are listed on the New York Stock Exchange (NYSE). Trading on the NYSE is via American Depositary Shares (ADSs), each representing two ordinary shares evidenced by American Depositary Receipts (ADRs). Citibank N.A. is the Depositary for both ADR programs. BHP Billiton Limited's ADSs have been listed for trading on the NYSE (ticker BHP) since 28 May 1987 and BHP Billiton Plc's since 25 June 2003 (ticker BBL).

### 11.2 Share ownership

#### *Share capital*

The details of the share capital for both BHP Billiton Limited and BHP Billiton Plc are presented in note 19 'Share capital' in the financial statements.

#### *Major shareholders*

The tables in sections 7.20 and 7.21 of this Annual Report present information pertaining to the shares held by Directors and other members of the Group Management Committee in BHP Billiton Limited and BHP Billiton Plc.

Neither BHP Billiton Limited nor BHP Billiton Plc is directly or indirectly controlled by another corporation or by any government. Other than as described in section 2.11.2, no major shareholder possesses voting rights that differ from those attaching to all of BHP Billiton Limited's voting securities.

#### *BHP Billiton Limited*

The tables in sections 7.20 and 7.21 of this Annual Report show the holdings for Directors and other members of the Group Management Committee of BHP Billiton Limited, as a group, of BHP Billiton Limited's voting securities. No person beneficially owned more than five per cent of BHP Billiton Limited's voting securities. The following table shows holdings of five per cent or more of voting rights in BHP Billiton Limited's shares as notified to BHP Billiton Limited under the Corporations Act 2001, Section 671B.

Title of class	Identity of person or group	Date of notice received	Date of change	Number owned	Percentage of total voting rights		
					2010	2009	2008
Ordinary shares	BlackRock Investment Management (Australia) Limited <sup>(1)</sup>	4 January 2010	02 December 2009	183,990,864	5.48%	—	—

- (1) On 2 December 2009, the Barclays Global Investors business was acquired by BlackRock Investment Management (Australia) Limited. The combined holdings of BlackRock Investment Management (Australia) Limited following this acquisition triggered this disclosure.

### ***BHP Billiton Plc***

The following table shows holdings of three per cent or more of voting rights in BHP Billiton Plc's shares as notified to BHP Billiton Plc under the UK Disclosure and Transparency Rule 5. <sup>(1)</sup>

<b>Title of class</b>	<b>Identity of person or group</b>	<b>Date of notice received</b>	<b>Date of change</b>	<b>Number owned</b>	<b>Percentage of total voting rights <sup>(2)</sup></b>		
					<b>2010</b>	<b>2009</b>	<b>2008</b>
Ordinary shares	Legal & General Group Plc <sup>(3)</sup>	17 February 2010	16 February 2010	88,103,187	3.99%	4.54%	4.54%
Ordinary shares	BlackRock, Inc. <sup>(4)</sup>	3 December 2009	1 December 2009	213,014,043	9.65%	—	—

- (1) There has been no change in the holdings of three per cent or more of the voting rights in BHP Billiton Plc's shares notified to BHP Billiton Plc as at the date of this Report.
- (2) The percentages quoted are based on the total voting rights of BHP Billiton Plc as at the date of the Annual Report each year of 2,207,007,544 (2010), 2,207,007,544 (2009) and 2,207,007,544 (2008) respectively.
- (3) The notification received from Legal & General Group Plc was a group disclosure covering the interests of Legal & General Group Plc and its subsidiaries.
- (4) On 1 December 2009, the Barclays Global Investors business was acquired by BlackRock, Inc. The combined holdings of BlackRock, Inc following this acquisition triggered this disclosure.

The following table shows holdings of Directors and members of the Group Management Committee of BHP Billiton Plc who were in office as at 30 June 2010, as a group, of BHP Billiton Plc's voting securities as at that date. <sup>(1)</sup>

<b>Title of class</b>	<b>Identity of person or group</b>	<b>Number owned</b>	<b>Percentage of total voting rights at 30 June 2010 <sup>(2)</sup></b>
Ordinary shares	Directors and executives as a group	667,072	0.03%

- (1) There has been no change in the holdings of the Directors and members of the Group Management Committee who were in office at 30 June 2010 as at the date of this Report.
- (2) The percentages quoted are based on the total voting rights of BHP Billiton Plc of 2,207,007,544.

*Twenty largest shareholders as at 27 August 2010 (as named on the Register of Shareholders)*

	Number of fully paid shares	% of issued capital
<b>BHP Billiton Limited</b>		
1. HSBC Australia Nominees Pty Ltd	568,691,956	16.93
2. J P Morgan Nominees Australia Limited	380,666,706	11.33
3. National Nominees Ltd	354,067,806	10.54
4. Citicorp Nominees Pty Limited <BHP Billiton ADR Holders A/C>	248,542,952	7.40
5. Citicorp Nominees Pty Limited	155,173,867	4.62
6. Australian Mutual Provident Society	84,805,959	2.53
7. ANZ Nominees Limited <Cash Income A/C>	58,067,540	1.73
8. Potter Warburg Nominees Pty Ltd	16,074,127	0.48
9. Australian Foundation Investment Company Limited	14,276,934	0.43
10. Australian Reward Investment Alliance	10,276,036	0.31
11. Perpetual Trustee Australia Group	9,583,950	0.29
12. Queensland Investment Corporation	9,395,068	0.28
13. RBC Dexia Investor Services Australia Nominees Pty Limited <PIPOOLED A/C>	9,086,179	0.27
14. UBS Nominees Pty Ltd	8,496,188	0.25
15. Bond Street Custodians Limited	7,781,689	0.23
16. RBC Dexia Investor Services Australia Nominees Pty Limited <MLCI A/C>	7,369,807	0.22
17. ARGO Investments Limited	7,217,411	0.21
18. Tasman Asset Management Limited <Tyndall Australian Share Wholesale Portfolio A/C>	6,309,450	0.19
19. RBC Dexia Investor Services Australia Nominees Pty Limited <BKCUST A/C>	5,968,819	0.18
20. INVIA Custodian Pty Limited	5,590,817	0.17
	<u>1,967,443,261</u>	<u>58.59</u>

	Number of fully paid shares	% of issued capital
<b>BHP Billiton Plc</b>		
1. PLC Nominees (Proprietary) Limited	422,585,349	18.94
2. National City Nominees Limited	97,380,499	4.36
3. GEPI Equity	88,469,041	3.97
4. Chase Nominees Limited <LEND>	73,949,665	3.31
5. Chase Nominees Limited	69,100,938	3.10
6. State Street Nominees Limited <OM02>	68,856,840	3.09
7. HSBC Global Custody Nominee (UK) Ltd <357206>	59,716,462	2.68
8. The Bank of New York (Nominees) Ltd	40,528,445	1.82
9. Nortrust Nominees Limited	39,188,189	1.76
10. Nutracco Nominees Limited <781221>	39,000,000	1.75
11. State Street Nominees Limited <OD64>	36,722,978	1.65
12. Nortrust Nominees Limited <SLEND>	35,586,897	1.60
13. Vidacos Nominees Limited <CLRLUX2>	35,275,064	1.58
14. Industrial Development Corporation of South Africa	33,804,582	1.52
15. BNY Mellon Nominees Limited <BSDTGUSD>	31,325,276	1.40
16. Vidacos Nominees Limited <FGN>	27,497,115	1.23
17. Lynchwood Nominees Limited <2006420>	27,345,821	1.23
18. Chase Nominees Limited <BGILIFEL>	26,050,447	1.17
19. Chase Nominees Limited <USRESLD>	24,200,133	1.08
20. State Street Nominees Limited <OM04>	21,860,361	0.98
	<u>1,298,444,102</u>	<u>58.22</u>

*US share ownership as at 30 June 2010*

	BHP Billiton Limited				BHP Billiton Plc			
	Shareholders Numbers	%	Shares Numbers	% of issued capital	Shareholders Numbers	%	Shares Numbers	% of issued capital
<b>Classification of holder</b>								
Registered holders of voting securities	1,953	0.33	5,459,438	0.16	73	0.35	172,439	0.01
ADR holders	1,161	0.20	255,669,208 <sup>(a)</sup>	7.61	146	0.70	102,738,254 <sup>(b)</sup>	4.60

(a) These shares translate to 127,834,604 ADRs.

(b) These shares translate to 51,369,127 ADRs.

*Distribution of shareholders and shareholdings as at 27 August 2010*

	BHP Billiton Limited				BHP Billiton Plc			
	Shareholders Numbers	%	Shares Numbers	%	Shareholders Numbers	%	Shares Numbers	%
<b>Registered address</b>								
Australia	573,108	96.05	3,286,801,433	97.87	222	1.06	1,287,410	0.05
New Zealand	14,202	2.38	39,730,763	1.18	31	0.15	108,339	0.01
United Kingdom	3,531	0.59	11,252,701	0.34	18,233	87.27	1,778,165,001	79.70
United States	1,948	0.33	5,526,600	0.16	75	0.36	169,270	0.01
South Africa	121	0.02	227,794	0.01	1,405	6.73	437,474,644	19.61
Other	3,736	0.63	14,820,205	0.44	925	4.43	13,916,538	0.62
<b>Total</b>	<b>596,646</b>	<b>100.00</b>	<b>3,358,359,496</b>	<b>100.00</b>	<b>20,891</b>	<b>100.00</b>	<b>2,231,121,202</b>	<b>100.00</b>

	BHP Billiton Limited				BHP Billiton Plc			
	Shareholders Numbers	%	Shares Numbers <sup>(a)</sup>	%	Shareholders Numbers	%	Shares Numbers	%
<b>Size of holding</b>								
1 – 500 <sup>(b)</sup>	260,495	43.66	60,235,580	1.79	10,357	49.60	2,716,378	0.12
501 – 1,000	115,131	19.30	90,251,249	2.69	4,589	21.97	3,402,434	0.15
1,001 – 5,000	170,355	28.55	385,714,355	11.49	3,801	18.19	7,772,304	0.35
5,001 – 10,000	28,884	4.84	204,755,800	6.10	494	2.36	3,518,220	0.16
10,001 – 25,000	16,164	2.71	243,962,722	7.26	402	1.93	6,411,976	0.29
25,001 – 50,000	3,542	0.59	121,393,280	3.61	237	1.13	8,604,555	0.39
50,001 – 100,000	1,329	0.22	90,955,201	2.71	230	1.10	16,827,646	0.75
100,001 – 250,000	519	0.09	75,513,649	2.25	273	1.30	44,883,874	2.01
250,001 – 500,000	119	0.02	40,397,682	1.20	184	0.88	66,276,426	2.97
500,001 – 1,000,000	51	0.01	34,056,164	1.01	113	0.54	77,902,819	3.49
1,000,001 and over	57	0.01	2,011,123,814	59.89	211	1.00	1,992,804,570	89.32
<b>Total</b>	<b>596,646</b>	<b>100.00</b>	<b>3,358,359,496</b>	<b>100.00</b>	<b>20,891</b>	<b>100.00</b>	<b>2,231,121,202</b>	<b>100.00</b>

(a) One share entitles the holder to one vote.

(b) Number of BHP Billiton Limited shareholders holding less than a marketable parcel (A\$500) based on the market price of A\$37.30 as at 27 August 2010 was 4,300.

	BHP Billiton Limited				BHP Billiton Plc			
	Shareholders Numbers	%	Shares Numbers	%	Shareholders Numbers	%	Shares Numbers	%
<b>Classification of holder</b>								
Corporate	122,339	20.50	2,321,912,120	69.14	11,207	53.65	2,216,833,840	99.36
Private	474,307	79.50	1,036,447,375	30.86	9,684	46.35	14,287,362	0.64
<b>Total</b>	<b>596,646</b>	<b>100.00</b>	<b>3,358,359,497</b>	<b>100.00</b>	<b>20,891</b>	<b>100.00</b>	<b>2,231,121,202</b>	<b>100.00</b>

### 11.3 Dividends

#### *Policy*

We have a progressive dividend policy that seeks to steadily increase or at least to maintain the dividend in US dollars at each half yearly payment provided that we generate sufficient profit and cash flow to do so.

We declare our dividends and other distributions in US dollars as it is our main functional currency. BHP Billiton Limited pays its dividends in Australian dollars, UK pounds sterling, New Zealand dollars or US dollars, depending on the country of residence of the shareholder. BHP Billiton Plc pays its dividends in UK pounds sterling to shareholders registered on its principal register in the UK and in South African rand to shareholders registered on its branch register in South Africa. If shareholders on the UK register wish to receive dividends in US dollars they must complete an appropriate election form and return it to the BHP Billiton Share Registrar no later than close of business on the Dividend Record Date.

#### *Payments*

BHP Billiton Limited shareholders may have their cash dividends paid directly into a nominated bank, building society or credit union, depending on the shareholder's country of residence as shown below.

<u>Country where shareholder is resident</u>	<u>Financial institution</u>
Australia	Bank, building society, credit union
UK	Bank, building society
New Zealand	Bank
US	Bank

Shareholders from the abovementioned locations who do not provide their direct credit details and shareholders with registered addresses outside Australia, UK, New Zealand and US will receive dividend payments by way of a cheque in Australian dollars.

BHP Billiton Plc shareholders may have their cash dividends paid directly into a bank or building society by completing a dividend mandate form which is available from the BHP Billiton Share Registrar in the UK or South Africa.

### 11.4 Share price information

The following tables show the share prices for the period indicated for ordinary shares and ADSs for each of BHP Billiton Limited and BHP Billiton Plc. The share prices are the highest and lowest closing market quotations for ordinary shares reported on the Daily Official List of the Australian and London Stock Exchanges respectively, and the highest and lowest closing prices for ADSs quoted on the NYSE, adjusted to reflect stock dividends.

#### *BHP Billiton Limited*

		<u>Ordinary shares</u>		<u>American Depositary Shares <sup>(1)</sup></u>	
		<u>High A\$</u>	<u>Low A\$</u>	<u>High US\$</u>	<u>Low US\$</u>
<u>BHP Billiton Limited</u>					
FY2005		19.50	12.41	31.01	17.36
FY2006		32.00	18.09	49.21	27.35
FY2007		35.38	23.86	60.39	36.19
FY2008		49.55	31.00	95.00	52.27
FY2009	First quarter	44.40	31.00	82.86	50.50
	Second quarter	32.75	21.10	51.35	24.62
	Third quarter	34.01	27.11	48.45	33.56
	Fourth quarter	38.27	31.48	61.86	44.38
FY2010	First quarter	39.59	32.14	68.89	49.54
	Second quarter	43.12	36.20	77.90	62.63
	Third quarter	44.47	39.20	81.80	67.90
	Fourth quarter	44.63	36.28	82.86	58.44

	Ordinary shares		American Depositary Shares <sup>(1)</sup>	
	High A\$	Low A\$	High US\$	Low US\$
<b>BHP Billiton Limited</b>				
Month of January 2010	44.47	39.40	81.80	69.37
Month of February 2010	42.16	39.20	75.09	67.90
Month of March 2010	44.41	40.98	81.11	75.08
Month of April 2010	44.63	40.50	82.86	72.79
Month of May 2010	39.53	36.28	71.44	59.10
Month of June 2010	39.91	36.54	69.61	58.44
Month of July 2010	40.46	36.98	72.40	62.42
Month of August 2010	41.55	37.05	75.77	65.42

(1) Each ADS represents the right to receive two BHP Billiton Limited ordinary shares.

The total market capitalisation of BHP Billiton Limited at 30 June 2010 was A\$126.4 billion, which represented approximately 9.17 per cent of the total market capitalisation of all companies listed on the ASX. The closing price for BHP Billiton Limited ordinary shares on the ASX on that date was A\$37.65.

### ***BHP Billiton Plc***

		Ordinary shares		American Depositary Shares <sup>(1)</sup>	
		High UK pence	Low UK pence	High US\$	Low US\$
<b>BHP Billiton Plc</b>					
FY2005		776.50	474.75	30.23	17.49
FY2006		1,211.50	722.00	45.50	25.90
FY2007		1,390.00	853.00	56.40	33.20
FY2008		2,196.00	1,183.00	85.62	47.83
FY2009	First quarter	1,841.00	1,232.00	74.18	42.44
	Second quarter	1,298.00	752.50	44.00	21.16
	Third quarter	1,507.00	1,034.00	44.93	28.59
	Fourth quarter	1,557.00	1,333.00	51.71	39.01
FY2010	First quarter	1,766.00	1,287.50	58.69	41.88
	Second quarter	2,012.50	1,627.00	64.66	51.93
	Third quarter	2,268.50	1,824.50	68.88	57.26
	Fourth quarter	2,334.50	1,735.00	70.95	49.45

		Ordinary shares		American Depositary Shares <sup>(1)</sup>	
		High UK pence	Low UK pence	High US\$	Low US\$
<b>BHP Billiton Plc</b>					
Month of January 2010		2,115.50	1,842.50	68.73	58.58
Month of February 2010		2,029.00	1,824.50	63.22	57.26
Month of March 2010		2,268.50	2,072.00	68.88	63.20
Month of April 2010		2,334.50	2,025.50	70.95	61.00
Month of May 2010		2,025.50	1,763.50	59.38	50.32
Month of June 2010		2,031.50	1,735.00	58.95	49.45
Month of July 2010		1,991.50	1,684.50	61.63	51.61
Month of August 2010		2,038.50	1,767.00	64.83	55.27

(1) Each ADS represents the right to receive two BHP Billiton Plc ordinary shares.

The total market capitalisation of BHP Billiton Plc at 30 June 2010 was £38.7 billion, which represented approximately 2.42 per cent of the total market capitalisation of all companies listed on the LSE. The closing price for BHP Billiton Plc ordinary shares on the LSE on that date was £17.545.



## 11.5 Taxation

The taxation discussion below describes the material Australian income tax, UK tax and US federal income tax consequences to a US holder (as hereinafter defined) of owning BHP Billiton Limited ordinary shares or ADSs or BHP Billiton Plc ordinary shares or ADSs. Accordingly, the following discussion is not relevant to non-US holders of BHP Billiton Limited ordinary shares or ADSs or BHP Billiton Plc ordinary shares or ADSs.

The discussion is based on the Australian, UK and US tax laws currently in effect, as well as on the double taxation convention between Australia and the US (the Australian Treaty), the double taxation convention between the UK and the US (the UK Treaty) and the estate tax convention between the UK and the US (the UK–US Inheritance and Gift Tax Treaty). These laws are subject to change, possibly on a retroactive basis. For purposes of this discussion, a US holder is a beneficial owner of ordinary shares or ADSs who is, for US federal income tax purposes: (i) a citizen or resident alien of the US, (ii) a corporation (or other entity treated as a corporation for US federal income tax purposes) that is created or organised under the laws of the US or any political subdivision thereof, (iii) an estate the income of which is subject to US federal income taxation regardless of its source, or (iv) a trust (A) if a court within the US is able to exercise primary supervision over its administration and one or more US persons have the authority to control all of its substantial decisions or (B) that has made a valid election to be treated as a US person for tax purposes.

We recommend that holders of ordinary shares or ADSs consult their own tax advisers regarding the Australian, UK and US federal, state and local tax and other tax consequences of owning and disposing of ordinary shares and ADSs in their particular circumstances.

### *Shareholdings in BHP Billiton Limited*

#### *Australia taxation*

In this section, references to ‘resident’ and ‘non-resident’ refer to residence status for Australian income tax purposes.

#### *Dividends*

Dividends (including other distributions treated as dividends for Australian tax purpose) paid by BHP Billiton Limited to a US holder who or which is a resident of Australia, or to a non-resident of Australia whose holding is effectively connected with a permanent establishment in Australia, may be subject to income tax.

Under the Australian Treaty, dividends paid by BHP Billiton Limited to a US holder who or which is eligible for treaty benefits and whose holding is not effectively connected with a permanent establishment in Australia or, in the case of a shareholder who performs independent personal services from a ‘fixed base’ situated therein, is not connected with that ‘fixed base’, may be subject to Australian withholding tax at a rate not exceeding 15 per cent of such gross dividend.

The payment of Australian income tax by an Australian company, such as BHP Billiton Limited, generates a franking credit for the company. Broadly, an amount of tax paid by the company flows through to shareholders (as a ‘franking credit’) when the company pays a dividend which is franked by the company. Fully franked dividends paid to non-resident shareholders are not subject to withholding tax.

Dividends paid to non-residents of Australia are also exempt from withholding tax to the extent to which such dividends are declared by BHP Billiton Limited to be conduit foreign income (CFI). CFI is made up of certain amounts that are earned by BHP Billiton Limited that are not subject to tax in Australia, such as dividends remitted to Australia by foreign subsidiaries.

Any part of a dividend paid to a US holder that is not ‘franked’ and is not CFI will generally be subject to Australian withholding tax unless a specific exemption applies.

#### *Sale of ordinary shares and ADSs*

A US holder who or which is a resident of Australia (other than certain temporary residents) may be liable for income tax on any profit on disposal of ordinary shares or ADSs, or Australian capital gains tax on the disposal of ordinary shares or ADSs acquired after 19 September 1985.

No income or other tax is payable on any profit on disposal of ordinary shares or ADSs held by a US holder who or which is a non-resident of Australia except if the profit is of an income nature and sourced in Australia, or the sale is subject to Australian capital gains tax. Under the Australian Treaty, if the profit is sourced in Australia, it will not be taxable in Australia if it represents business profits of an enterprise carried on by a US holder entitled to treaty benefits and the enterprise does not carry on business in Australia through a permanent establishment situated in Australia. Australian capital gains tax will not generally apply to a disposal of the ordinary shares or ADSs by a US holder who or which is a non-resident of Australia unless the shares or ADSs have been acquired after 19 September 1985 and:

- the ordinary shares or ADSs have been used by the US holder in carrying on a trade or business through a permanent establishment in Australia;
- the US holder (together with associates) directly or indirectly owns or owned 10 per cent or more of the issued share capital of BHP Billiton Limited at the time of the disposal or throughout a 12-month period during the two years prior to the time of disposal and the underlying value of BHP Billiton Limited at the time of disposal is principally derived from taxable Australian real property; or
- the US holder is an individual who elected on becoming a non-resident of Australia to continue to have the ordinary shares or ADSs subject to Australian capital gains tax.

### *US taxation*

This section describes the material US federal income tax consequences to a US holder of owning ordinary shares or ADSs. It applies only to ordinary shares or ADSs that are held as capital assets for tax purposes. This section does not apply to a holder of ordinary shares or ADSs who is a member of a special class of holders subject to special rules, including a dealer in securities, a trader in securities that elects to use a mark-to-market method of accounting for its securities holdings, a tax-exempt organisation, a life insurance company, a person liable for alternative minimum tax, a person who actually or constructively owns 10 per cent or more of the voting stock of BHP Billiton Limited, a person who holds ordinary shares or ADSs as part of a straddle or a hedging or conversion transaction, or a person whose functional currency is not the US dollar.

If a partnership holds the ordinary shares or ADSs, the US federal income tax treatment of a partner will generally depend on the status of the partner and the tax treatment of the partnership. A partner in a partnership holding the ordinary shares or ADSs should consult its tax adviser with regard to the US federal income tax treatment of an investment in the ordinary shares or ADSs.

This section is based in part upon the representations of the Depositary and the assumption that each obligation in the deposit agreement and any related agreement will be performed in accordance with its terms.

In general, for US federal income tax purposes, a holder of ADSs will be treated as the owner of the ordinary shares represented by those ADSs. Exchanges of ordinary shares for ADSs, and ADSs for ordinary shares, will generally not be subject to US federal income tax.

### *Dividends*

Under US federal income tax laws and subject to the passive foreign investment company, or PFIC, rules discussed below, a US holder must include in its gross income the gross amount of any dividend paid by BHP Billiton Limited out of its current or accumulated earnings and profits (as determined for US federal income tax purposes). The holder must include any Australian tax withheld from the dividend payment in this gross amount even though the holder does not in fact receive it. The dividend is taxable to the holder when the holder, in the case of ordinary shares, or the Depositary, in the case of ADSs, actually or constructively receives the dividend.

Dividends paid to a non-corporate US holder on shares or ADSs in taxable years beginning before 1 January 2011 will be taxable at the rate applicable to long-term capital gains (generally at a rate of 15 per cent) provided that the US holder holds the shares or ADSs for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date and does not enter into certain risk reduction transactions with respect to the shares or ADSs during the abovementioned holding period. Absent new legislation extending the current rates, dividends paid in taxable years beginning on or after 1 January, 2011 will be subject to ordinary income rates. In addition, a non-corporate US holder that elects to treat the dividend income as 'investment income' pursuant to Section 163(d)(4) of the Code will not be eligible for the reduced rate of taxation. In the case of a corporate US holder, dividends on shares and ADSs are taxed as ordinary income and will not be eligible for the dividends received deduction generally allowed to US corporations in respect of dividends received from other US corporations.

Distributions in excess of current and accumulated earnings and profits, as determined for US federal income tax purposes, will be treated as a non-taxable return of capital to the extent of the holder's tax basis, determined in US dollars, in the ordinary shares or ADSs and thereafter as a capital gain.

The amount of any cash distribution paid in any foreign currency will be equal to the US dollar value of such currency, calculated by reference to the spot rate in effect on the date such distribution is received by the US holder or, in the case of ADSs, by the Depositary, regardless of whether and when the foreign currency is in fact converted into US dollars. If the foreign currency is converted into US dollars on the date received, the US holder generally should not recognise foreign currency gain or loss on such conversion. If the foreign currency is not converted into US dollars on the date received, the US holder will have a basis in the foreign currency equal to its US dollar value on the date received, and generally will recognise foreign currency gain or loss on a subsequent conversion or other disposal of such currency. Such foreign currency gain or loss generally will be treated as US source ordinary income or loss.

Subject to certain limitations, Australian tax withheld in accordance with the Australian Treaty and paid over to Australia will be creditable against your US federal income tax liability. Special rules apply in determining the foreign tax credit limitation with respect to dividends that are taxed at the capital gains rate. To the extent a refund of the tax withheld is available to a US holder under Australian law or under the Australian Treaty, the amount of tax withheld that is refundable will not be eligible for credit against the holder's US federal income tax liability. A US holder that does not elect to claim a US foreign tax credit may instead claim a deduction for Australian income tax withheld, but only for a taxable year in which the US holder elects to do so with respect to all foreign income taxes paid or accrued in such taxable year.

Dividends will be income from sources outside the US, and generally will be 'passive category' income or, in the case of certain taxpayers, 'general category' income, which are treated separately from each other for the purpose of computing the foreign tax credit allowable to a US holder. In general, your ability to use foreign tax credits may be limited and is dependent on your particular circumstances. US holders should consult their own tax advisers with respect to these matters.

#### ***Sale of ordinary shares and ADSs***

Subject to the PFIC rules discussed below, a US holder who sells or otherwise disposes of ordinary shares or ADSs will recognise a capital gain or loss for US federal income tax purposes equal to the difference between the US dollar value of the amount realised and the holder's tax basis, determined in US dollars, in those ordinary shares or ADSs. The gain or loss will generally be income or loss from sources within the US for foreign tax credit limitation purposes. The capital gain of a non-corporate US holder is generally taxed at preferential rates where the holder has a holding period greater than 12 months in the shares or ADSs sold. There are limitations on the deductibility of capital losses.

The US dollar value of any foreign currency received upon a sale or other disposition of ordinary shares or ADSs will be calculated by reference to the spot rate in effect on the date of sale or other disposal (or, in the case of a cash basis or electing accrual basis taxpayer, on the settlement date). A US holder will have a tax basis in the foreign currency received equal to that US dollar amount, and generally will recognise foreign currency gain or loss on a subsequent conversion or other disposal of the foreign currency. This foreign currency gain or loss generally will be treated as US source ordinary income or loss.

#### ***Passive Foreign Investment Company (PFIC) Rules***

We do not believe that the BHP Billiton Limited ordinary shares or ADSs will be treated as stock of a PFIC for US federal income tax purposes, but this conclusion is a factual determination that is made annually at the end of the year and thus may be subject to change. If BHP Billiton Limited were treated as a PFIC, any gain realised on the sale or other disposition of ordinary shares or ADSs would in general not be treated as a capital gain. Instead, a US holder would be treated as if it had realised such gain and certain 'excess distributions' ratably over its holding period for the ordinary shares or ADSs and would be taxed at the highest tax rate in effect for each such year to which the gain was allocated, together with an interest charge in respect of the tax attributable to each such year. In addition, dividends received with respect to ordinary shares or ADSs would not be eligible for the special tax rates applicable to qualified dividend income if BHP Billiton Limited were a PFIC either in the taxable year of the distribution or the preceding taxable year, but instead would be taxable at rates applicable to ordinary income. Assuming the shares or ADSs are 'marketable stock,' a US holder may mitigate the adverse tax consequences described above by electing to be taxed annually on a mark-to-market basis with respect to such shares or ADSs.

#### ***Shareholdings in BHP Billiton Plc***

##### ***UK taxation***

##### ***Dividends***

Under UK law, no UK tax is required to be withheld at source from dividends paid on ordinary shares or ADSs.

### ***Sale of ordinary shares and ADSs***

US holders will not be liable for UK tax on capital gains realised on disposal of ordinary shares or ADSs unless:

- they are resident or ordinarily resident in the UK; or
- they carry on a trade, profession or vocation in the UK through a branch or agency for the year in which the disposal occurs and the shares or ADSs have been used, held or acquired for the purposes of such trade (or profession or vocation), branch or agency. In the case of a trade, the term 'branch' includes a permanent establishment.

An individual who ceases to be resident in the UK for tax purposes while owning shares or ADSs and then disposes of those shares or ADSs while not UK resident may become subject to UK tax on capital gains if he/she subsequently becomes treated as UK resident again before five complete UK tax years of non-UK residence have elapsed from the date he/she left the UK. In this situation US holders will generally be entitled to claim US tax paid on such a disposition as a credit against any corresponding UK tax payable.

### ***UK inheritance tax***

Under the current the UK–US Inheritance and Gift Tax Treaty between the UK and the US, ordinary shares or ADSs held by a US holder who is domiciled for the purposes of the UK–US Inheritance and Gift Tax Treaty in the US, and is not for the purposes of the UK–US Inheritance and Gift Tax Treaty a national of the UK, will generally not be subject to UK inheritance tax on the individual's death or on a chargeable gift of the ordinary shares or ADSs during the individual's lifetime, provided that any applicable US federal gift or estate tax liability is paid, unless the ordinary shares or ADSs are part of the business property of a permanent establishment of the individual in the UK or, in the case of a shareholder who performs independent personal services, pertain to a fixed base situated in the UK. Where the ordinary shares or ADSs have been placed in trust by a settlor who, at the time of settlement, was a US resident shareholder, the ordinary shares or ADSs will generally not be subject to UK inheritance tax unless the settlor, at the time of settlement, was not domiciled in the US and was a UK national. In the exceptional case where the ordinary shares or ADSs are subject to both UK inheritance tax and US federal gift or estate tax, the UK–US Inheritance and Gift Tax Treaty generally provides for double taxation to be relieved by means of credit relief.

### ***UK stamp duty and stamp duty reserve tax***

UK stamp duty or stamp duty reserve tax (SDRT) will, subject to certain exemptions, be payable on any issue or transfer of shares to the Depositary or their nominee where those shares are for inclusion in the ADS program at a rate of 1.5 per cent of their price (if issued), the amount of any consideration provided (if transferred on sale) or their value (if transferred for no consideration). With effect from 1 October 2009, this 1.5% charge will not apply to issues of shares into EU depositary receipt systems and into EU clearance systems. However, the 1.5 per cent SDRT charge should continue to apply to the issue of shares to a clearance service or a depositary receipt issuer located outside the EU. No SDRT would be payable on the transfer of an ADS. No UK stamp duty should be payable on the transfer of an ADS provided that the instrument of transfer is executed and remains at all times outside the UK. Transfers of ordinary shares to persons other than the Depositary or their nominee will give rise to stamp duty or SDRT at the time of transfer. The relevant rate is currently 0.5 per cent of the amount payable for the shares. The purchaser normally pays the stamp duty or SDRT.

Special rules apply to transactions involving intermediates and stock lending.

### ***US taxation***

This section describes the material US federal income tax consequences to a US holder of owning ordinary shares or ADSs. It applies only to ordinary shares or ADSs that are held as capital assets for tax purposes. This section does not apply to a holder of ordinary shares or ADSs who is a member of a special class of holders subject to special rules, including a dealer in securities, a trader in securities who elects to use a mark-to-market method of accounting for their securities holdings, a tax-exempt organisation, a life insurance company, a person liable for alternative minimum tax, a person who actually or constructively owns 10 per cent or more of the voting stock of BHP Billiton Plc, a person who holds ordinary shares or ADSs as part of a straddle or a hedging or conversion transaction, or a person whose functional currency is not the US dollar.

If a partnership holds the ordinary shares or ADSs, the US federal income tax treatment of a partner will generally depend on the status of the partner and the tax treatment of the partnership. A partner in a partnership holding the ordinary shares or ADSs should consult its tax adviser with regard to the US federal income tax treatment of an investment in the ordinary shares or ADSs.

This section is based in part upon the representations of the Depositary and the assumption that each obligation in the deposit agreement and any related agreement will be performed in accordance with their terms.

In general, for US federal income tax purposes, a holder of ADSs will be treated as the owner of the ordinary shares represented by those ADSs. Exchanges of ordinary shares for ADSs, and ADSs for ordinary shares will generally not be subject to US federal income tax.

### ***Dividends***

Under US federal income tax laws and subject to the PFIC rules discussed below, a US holder must include in its gross income the gross amount of any dividend paid by BHP Billiton Plc out of its current or accumulated earnings and profits (as determined for US federal income tax purposes). The dividend is taxable to the holder when the holder, in the case of ordinary shares, or the Depositary, in the case of ADSs, actually or constructively receives the dividend.

Dividends paid to a non-corporate US holder on shares or ADSs in taxable years beginning before 1 January 2011 will be taxable at the rate applicable to long-term capital gains (generally at a rate of 15 per cent) provided that the US holder holds the shares or ADSs for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date, and does not enter into certain risk reduction transactions with respect to the shares or ADSs during the abovementioned holding period. Absent new legislation extending the current rates, dividends paid in taxable years beginning on or after January 1, 2011 will be subject to ordinary income rates. In addition, a non-corporate US holder that elects to treat the dividend income as 'investment income' pursuant to Section 163(d)(4) of the Code will not be eligible for the reduced rate of taxation. In the case of a corporate US holder, dividends on shares and ADSs are taxed as ordinary income and will not be eligible for the dividends received deduction generally allowed to US corporations in respect of dividends received from other US corporations.

Distributions in excess of current and accumulated earnings and profits, as determined for US federal income tax purposes, will be treated as a non-taxable return of capital to the extent of the holder's tax basis, determined in US dollars, in the ordinary shares or ADSs and thereafter as a capital gain.

The amount of any cash distribution paid in any foreign currency will be equal to the US dollar value of such currency, calculated by reference to the spot rate in effect on the date such distribution is received by the US holder or, in the case of ADSs, by the Depositary, regardless of whether and when the foreign currency is in fact converted into US dollars. If the foreign currency is converted into US dollars on the date received, the US holder generally should not recognise foreign currency gain or loss on such conversion. If the foreign currency is not converted into US dollars on the date received, the US holder will have a basis in the foreign currency equal to its US dollar value on the date received, and generally will recognise foreign currency gain or loss on a subsequent conversion or other disposal of such currency. Such foreign currency gain or loss generally will be treated as US source ordinary income or loss.

Dividends will be income from sources outside the US, and generally will be 'passive category' income or, for certain taxpayers, 'general category' income, which are treated separately from each other for the purpose of computing the foreign tax credit allowable to a US holder. In general, your ability to use foreign tax credits may be limited and is dependent on your particular circumstances. US holders should consult their own tax advisors with respect to these matters.

### ***Sale of ordinary shares and ADSs***

Subject to the PFIC rules discussed below, a US holder who sells or otherwise disposes of ordinary shares or ADSs will recognise a capital gain or loss for US federal income tax purposes equal to the difference between the US dollar value of the amount realised and the holder's tax basis, determined in US dollars, in those ordinary shares or ADSs. The gain or loss will generally be income or loss from sources within the US for foreign tax credit limitation purposes. The capital gain of a non-corporate US holder is generally taxed at preferential rates where the holder has a holding period greater than 12 months in the shares or ADSs sold. There are limitations on the deductibility of capital losses.

The US dollar value of any foreign currency received upon a sale or other disposition of ordinary shares or ADSs will be calculated by reference to the spot rate in effect on the date of sale or other disposal (or, in the case of a cash basis or electing accrual basis taxpayer, on the settlement date). A US holder will have a tax basis in the foreign currency received equal to that US dollar amount, and generally will recognise foreign currency gain or loss on a subsequent conversion or other disposal of the foreign currency. This foreign currency gain or loss generally will be treated as US source ordinary income or loss.

### ***Passive Foreign Investment Company (PFIC) Rules***

We do not believe that the BHP Billiton Plc ordinary shares or ADSs will be treated as stock of a PFIC for US federal income tax purposes, but this conclusion is a factual determination that is made annually at the end of the year and thus may be subject to change. If BHP Billiton Plc were treated as a PFIC, any gain realised on the sale or other disposition of ordinary shares or ADSs would in general not be treated as a capital gain. Instead, a US holder would be treated as if it had realised such gain and certain 'excess distributions' ratably over its holding period for the ordinary shares or ADSs and would be taxed at the highest tax rate in effect for each such year to which the gain was allocated, together with an interest charge in respect of the tax attributable to each such year. In addition, dividends received with respect to ordinary shares or ADSs would not be eligible for the special tax rates applicable to qualified dividend income if BHP Billiton Plc were a PFIC either in the taxable year of the distribution or the preceding taxable year, but instead would be taxable at rates applicable to ordinary income. Assuming the shares or ADSs are 'marketable stock,' a US holder may mitigate the adverse tax consequences described above by electing to be taxed annually on a mark-to-market basis with respect to such shares or ADSs.

## 12 Exhibits

### Exhibit 1 Constitution

- 1.1 Constitution of BHP Billiton Limited. <sup>(1)</sup>
- 1.2 Memorandum and Articles of Association of BHP Billiton Plc. <sup>(1)</sup>

### Exhibit 4 Material Contracts

- 4.1 DLC Structure Sharing Agreement, dated 29 June 2001, between BHP Limited and Billiton Plc. <sup>(2)</sup>
- 4.2 SVC Special Voting Shares Deed, dated 29 June 2001, among BHP Limited, BHP SVC Pty Limited, Billiton Plc, Billiton SVC Limited and The Law Debenture Trust Corporation p.l.c. <sup>(2)</sup>
- 4.3 SVC Special Voting Shares Amendment Deed, dated 13 August 2001, among BHP Limited, BHP SVC Pty Limited, Billiton Plc, Billiton SVC Limited and The Law Debenture Trust Corporation p.l.c. <sup>(2)</sup>
- 4.4 Deed Poll Guarantee, dated 29 June 2001, of BHP Limited. <sup>(2)</sup>
- 4.5 Deed Poll Guarantee, dated 29 June 2001, of Billiton Plc. <sup>(2)</sup>
- 4.6 Form of Service Agreement for Specified Executives (referred to in this Annual Report as the Key Management Personnel). <sup>(3)</sup>
- 4.7 BHP Billiton Ltd Group Incentive Scheme Rules 2004, dated August 2008. <sup>(4)</sup>
- 4.8 BHP Billiton Ltd Long Term Incentive Plan Rules, dated December 2007. <sup>(4)</sup>
- 4.9 BHP Billiton Plc Group Incentive Scheme Rules 2004, dated August 2008. <sup>(4)</sup>
- 4.10 BHP Billiton Plc Long Term Incentive Plan Rules, dated December 2007. <sup>(4)</sup>
- 4.11 Implementation Agreement between BHP Billiton Limited, BHP Billiton Plc and Rio Tinto Limited and Rio Tinto Plc dated 9 December 2009 (including the schedules thereto). <sup>(5)</sup>
- 4.12 Facility and Subscription Agreement, dated 18 August 2010, among BHP Billiton, Barclays Bank PLC acting as Facility Agent, Dollar Swingline Agent and Euro Swingline Agent, Banco Santander, S.A., Barclays Capital, BNP Paribas, J.P. Morgan plc, TD Securities and The Royal Bank of Scotland plc as Bookrunners, the Companies listed as Original Borrowers therein, the Financial Institutions included as Lenders therein and the Financial Institutions included as Mandated Lead Arrangers therein, as supplemented by the letter dated 18 August 2010. <sup>(6)</sup>

### Exhibit 8 List of Subsidiaries

- 8.1 List of subsidiaries of BHP Billiton Limited and BHP Billiton Plc.

### Exhibit 12 Certifications

- 12.1 Certification by Chief Executive Officer, Mr Marius Kloppers, dated 21 September 2010.
- 12.2 Certification by Chief Financial Officer, Mr Alex Vanselow, dated 21 September 2010.

### Exhibit 13 Certifications

- 13.1 Certification by Chief Executive Officer, Mr Marius Kloppers, dated 21 September 2010.
- 13.2 Certification by Chief Financial Officer, Mr Alex Vanselow, dated 21 September 2010.

### Exhibit 15

- 15.1 Consent of Independent Registered Public Accounting Firms KPMG and KPMG Audit Plc for incorporation by reference of audit report in registration statements on Form F-3 and Form S-8.

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**Footnotes**

- (1) Previously filed as an exhibit to BHP Billiton's annual report on Form 20-F for the year ended 30 June 2009 on 14 September 2009.
- (2) Previously filed as an exhibit to BHP Billiton's annual report on Form 20-F for the year ended 30 June 2001 on 19 November 2001.
- (3) Previously filed as an exhibit to BHP Billiton's annual report on Form 20-F for the year ended 30 June 2005 on 3 October 2005.
- (4) Previously filed as an exhibit to BHP Billiton's annual report on Form 20-F for the year ended 30 June 2008 on 15 September 2008.
- (5) Pursuant to a request for confidential treatment filed with the SEC, the confidential portions of this exhibit have been omitted and filed separately with the SEC.
- (6) Previously filed as exhibits to BHP Billiton Plc's tender offer statement on Schedule TO on 20 August 2010.



## **SIGNATURE**

The registrants hereby certify that they meet all of the requirements for filing on Form 20-F and that they have duly caused and authorised the undersigned to sign this annual report on their behalf.

BHP Limited  
BHP Billiton Plc

/s/ ALEX VANSELOW

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Alex Vanselow  
Chief Financial Officer

Date: 21 September 2010

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRMS

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To the members of BHP Billiton Plc and BHP Billiton Limited:

We have audited the BHP Billiton Group's (comprising BHP Billiton Plc, BHP Billiton Limited and their respective subsidiaries) internal control over financial reporting as of 30 June 2010, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organisations of the Treadway Commission (COSO). The BHP Billiton Group's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying section 5.13 Controls and Procedures. Our responsibility is to express an opinion on the BHP Billiton Group's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorisations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorised acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the BHP Billiton Group maintained, in all material respects, effective internal control over financial reporting as of 30 June 2010, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organisations of the Treadway Commission (COSO).

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the BHP Billiton Group as of 30 June 2010 and 2009, and the related consolidated income statements, consolidated statements of comprehensive income, consolidated statements of changes in equity and consolidated cash flow statements for each of the years in the three-year period ended 30 June 2010, and our report dated 21 September 2010 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG Audit Plc

KPMG Audit Plc  
London, United Kingdom  
21 September 2010

/s/ KPMG

KPMG  
Melbourne, Australia  
21 September 2010

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRMS

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To the members of BHP Billiton Plc and BHP Billiton Limited:

We have audited the accompanying consolidated balance sheets of the BHP Billiton Group (comprising BHP Billiton Plc, BHP Billiton Limited and their respective subsidiaries) as of 30 June 2010 and 2009, and the related consolidated income statements, consolidated statements of comprehensive income, consolidated statements of changes in equity and consolidated cash flow statements for each of the years in the three-year period ended 30 June 2010. These consolidated financial statements are the responsibility of the BHP Billiton Group's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the BHP Billiton Group as of 30 June 2010 and 2009, and the results of its operations and its cash flows for each of the years in the three-year period ended 30 June 2010, in conformity with International Financial Reporting Standards as issued by the International Accounting Standards Board.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the BHP Billiton Group's internal control over financial reporting as of 30 June 2010, based on criteria established in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organisations of the Treadway Commission (COSO), and our report dated 21 September 2010 expressed an unqualified opinion on the effectiveness of BHP Billiton Group's internal control over financial reporting.

/s/ KPMG Audit Plc

KPMG Audit Plc  
London, United Kingdom  
21 September 2010

/s/ KPMG

KPMG  
Melbourne, Australia  
21 September 2010

BHP BILLITON 2010 FINANCIAL STATEMENTS

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**Consolidated Income Statement**  
**for the year ended 30 June 2010**

	Notes	2010 US\$M	2009 US\$M	2008 US\$M
<b>Revenue</b>				
Group production		48,193	44,113	51,918
Third party products	2	4,605	6,098	7,555
<b>Revenue</b>	2	52,798	50,211	59,473
Other income	4	528	589	648
Expenses excluding net finance costs	5	(33,295)	(38,640)	(35,976)
<b>Profit from operations</b>		20,031	12,160	24,145
Comprising:				
Group production		19,920	11,657	24,529
Third party products		111	503	(384)
		20,031	12,160	24,145
Financial income	6	215	309	293
Financial expenses	6	(674)	(852)	(955)
Net finance costs	6	(459)	(543)	(662)
<b>Profit before taxation</b>		19,572	11,617	23,483
Income tax expense	7	(6,112)	(4,784)	(6,798)
Royalty related taxation (net of income tax benefit)	7	(451)	(495)	(723)
Total taxation expense	7	(6,563)	(5,279)	(7,521)
<b>Profit after taxation</b>		13,009	6,338	15,962
Attributable to non-controlling interests		287	461	572
Attributable to members of BHP Billiton Group		12,722	5,877	15,390
Earnings per ordinary share (basic) (US cents)	8	228.6	105.6	275.3
Earnings per ordinary share (diluted) (US cents)	8	227.8	105.4	274.8
Dividends per ordinary share – paid during the period (US cents)	9	83.0	82.0	56.0
Dividends per ordinary share – declared in respect of the period (US cents)	9	87.0	82.0	70.0

The accompanying notes form part of these financial statements.

**Consolidated Statement of Comprehensive Income**  
for the year ended 30 June 2010

	<u>Notes</u>	<u>2010</u> <u>US\$M</u>	<u>2009</u> <u>US\$M</u>	<u>2008</u> <u>US\$M</u>
<b>Profit after taxation</b>		<b>13,009</b>	6,338	15,962
<b>Other comprehensive income</b>				
Actuarial losses on pension and medical schemes		(38)	(227)	(96)
Available for sale investments:				
Net valuation gains/(losses) taken to equity		167	3	(76)
Net valuation losses transferred to the income statement		2	58	—
Cash flow hedges:				
(Losses)/gains taken to equity		(15)	710	(383)
Realised losses transferred to the income statement		2	22	73
Unrealised gain transferred to the income statement		—	(48)	—
Gains transferred to the initial carrying amount of hedged items		—	(26)	(190)
Exchange fluctuations on translation of foreign operations taken to equity		1	27	(21)
Exchange fluctuations on translation of foreign operations transferred to the income statement		(10)	—	—
Tax recognised within other comprehensive income	7	111	(253)	306
<b>Total other comprehensive income</b>		<b>220</b>	266	(387)
<b>Total comprehensive income</b>		<b>13,229</b>	6,604	15,575
Attributable to non-controlling interests		294	458	571
Attributable to members of BHP Billiton Group		<u>12,935</u>	<u>6,146</u>	<u>15,004</u>

The accompanying notes form part of these financial statements.

# Consolidated Balance Sheet

as at 30 June 2010

	Notes	2010 US\$M	2009 US\$M
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and cash equivalents	23	12,456	10,833
Trade and other receivables	10	6,543	5,153
Other financial assets	11	292	763
Inventories	12	5,334	4,821
Assets held for sale	3	—	213
Current tax assets		189	424
Other		320	279
<b>Total current assets</b>		<b>25,134</b>	<b>22,486</b>
<b>Non-current assets</b>			
Trade and other receivables	10	1,381	762
Other financial assets	11	1,510	1,543
Inventories	12	343	200
Property, plant and equipment	13	55,576	49,032
Intangible assets	14	687	661
Deferred tax assets	7	4,053	3,910
Other		168	176
<b>Total non-current assets</b>		<b>63,718</b>	<b>56,284</b>
<b>Total assets</b>		<b>88,852</b>	<b>78,770</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Trade and other payables	15	6,467	5,619
Interest bearing liabilities	16	2,191	1,094
Liabilities held for sale	3	—	363
Other financial liabilities	17	511	705
Current tax payable		1,685	1,931
Provisions	18	1,899	1,887
Deferred income		289	251
<b>Total current liabilities</b>		<b>13,042</b>	<b>11,850</b>
<b>Non-current liabilities</b>			
Trade and other payables	15	469	187
Interest bearing liabilities	16	13,573	15,325
Other financial liabilities	17	266	142
Deferred tax liabilities	7	4,320	3,038
Provisions	18	7,433	7,032
Deferred income		420	485
<b>Total non-current liabilities</b>		<b>26,481</b>	<b>26,209</b>
<b>Total liabilities</b>		<b>39,523</b>	<b>38,059</b>
<b>Net assets</b>		<b>49,329</b>	<b>40,711</b>
<b>EQUITY</b>			
Share capital – BHP Billiton Limited	19	1,227	1,227
Share capital – BHP Billiton Plc	19	1,116	1,116
Treasury shares	19	(525)	(525)
Reserves	20	1,906	1,305
Retained earnings	20	44,801	36,831
<b>Total equity attributable to members of BHP Billiton Group</b>		<b>48,525</b>	<b>39,954</b>
Non-controlling interests		804	757
<b>Total equity</b>		<b>49,329</b>	<b>40,711</b>

The accompanying notes form part of these financial statements.

**Consolidated Cash Flow Statement**  
**for the year ended 30 June 2010**

	<b>Notes</b>	<b>2010 US\$M</b>	<b>2009 US\$M</b>	<b>2008 US\$M</b>
<b>Operating activities</b>				
Profit before taxation		19,572	11,617	23,483
Adjustments for:				
Non-cash exceptional items		(255)	5,460	137
Depreciation and amortisation expense		4,759	3,871	3,612
Exploration and evaluation expense (excluding impairment)		1,030	1,009	859
Net gain on sale of non-current assets		(114)	(38)	(129)
Impairments of property, plant and equipment, financial assets and intangibles		35	190	137
Employee share awards expense		170	185	97
Financial income and expenses		459	543	662
Other		(265)	(320)	(629)
Changes in assets and liabilities:				
Trade and other receivables		(1,713)	4,894	(4,255)
Inventories		(571)	(116)	(1,313)
Trade and other payables		565	(847)	1,824
Net other financial assets and liabilities		(90)	(769)	526
Provisions and other liabilities		(306)	(497)	137
Cash generated from operations		23,276	25,182	25,148
Dividends received		20	30	51
Interest received		99	205	169
Interest paid		(520)	(519)	(799)
Income tax refunded		552	—	—
Income tax paid		(4,931)	(5,129)	(5,867)
Royalty related taxation paid		(576)	(906)	(885)
<b>Net operating cash flows</b>		<b>17,920</b>	<b>18,863</b>	<b>17,817</b>
<b>Investing activities</b>				
Purchases of property, plant and equipment		(9,323)	(9,492)	(7,558)
Exploration expenditure (including amounts expensed)		(1,333)	(1,243)	(1,350)
Purchase of intangibles		(85)	(141)	(16)
Investment in financial assets		(152)	(40)	(166)
Investment in subsidiaries, operations and jointly controlled entities, net of their cash		(508)	(286)	(154)
Payment on sale of operations		(156)	(126)	—
Cash outflows from investing activities		(11,557)	(11,328)	(9,244)
Proceeds from sale of property, plant and equipment		132	164	43
Proceeds from sale of financial assets		34	96	59
Proceeds from sale or partial sale of subsidiaries, operations and jointly controlled entities, net of their cash		376	17	78
<b>Net investing cash flows</b>		<b>(11,015)</b>	<b>(11,051)</b>	<b>(9,064)</b>
<b>Financing activities</b>				
Proceeds from interest bearing liabilities		567	7,323	7,201
Proceeds from debt related instruments		103	354	342
Repayment of interest bearing liabilities		(1,155)	(3,748)	(7,951)
Proceeds from ordinary shares		12	29	24
Contributions from non-controlling interests		335	—	—
Purchase of shares by Employee Share Ownership Plan Trusts		(274)	(169)	(250)
Share buy-back – BHP Billiton Plc		—	—	(3,115)
Dividends paid		(4,618)	(4,563)	(3,135)
Dividends paid to non-controlling interests		(277)	(406)	(115)
<b>Net financing cash flows</b>		<b>(5,307)</b>	<b>(1,180)</b>	<b>(6,999)</b>
<b>Net increase in cash and cash equivalents</b>		<b>1,598</b>	<b>6,632</b>	<b>1,754</b>
Cash and cash equivalents, net of overdrafts, at beginning of year		10,831	4,173	2,398
Effect of foreign currency exchange rate changes on cash and cash equivalents		26	26	21
<b>Cash and cash equivalents, net of overdrafts, at end of year</b>	23	<b>12,455</b>	<b>10,831</b>	<b>4,173</b>

The accompanying notes form part of these financial statements.



**Consolidated Statement of Changes in Equity**  
for the year ended 30 June 2010

	Attributable to members of the BHP Billiton Group								
	Share capital – BHP Billiton Limited	Share capital – BHP Billiton Plc	Treasury shares	Reserves	Retained earnings	Total	Non-controlling interests	Total equity	
US\$M									
Balance as at 1 July 2009	1,227	1,116	(525)	1,305	36,831	39,954	757	40,711	
Total comprehensive income	—	—	—	197	12,738	12,935	294	13,229	
Transactions with owners:									
Purchase of shares by ESOP Trusts	—	—	(274)	—	—	(274)	—	(274)	
Employee share awards exercised following vesting net of employee contributions	—	—	274	(88)	(178)	8	—	8	
Employee share awards lapsed	—	—	—	(28)	28	—	—	—	
Accrued employee entitlement for unvested awards	—	—	—	170	—	170	—	170	
Issue of share options to non-controlling interests	—	—	—	43	—	43	16	59	
Distribution to option holders	—	—	—	(10)	—	(10)	(6)	(16)	
Dividends paid	—	—	—	—	(4,618)	(4,618)	(277)	(4,895)	
Transactions with owners – contributed equity	—	—	—	317	—	317	20	337	
<b>Balance as at 30 June 2010</b>	<b>1,227</b>	<b>1,116</b>	<b>(525)</b>	<b>1,906</b>	<b>44,801</b>	<b>48,525</b>	<b>804</b>	<b>49,329</b>	
Balance as at 1 July 2008	1,227	1,116	(514)	750	35,756	38,335	708	39,043	
Total comprehensive income	—	—	—	404	5,742	6,146	458	6,604	
Transactions with owners:									
Purchase of shares by ESOP Trusts	—	—	(169)	—	—	(169)	—	(169)	
Employee share awards exercised following vesting net of employee contributions	—	—	158	(34)	(104)	20	—	20	
Accrued employee entitlement for unvested awards	—	—	—	185	—	185	—	185	
Dividends paid	—	—	—	—	(4,563)	(4,563)	(406)	(4,969)	
Transaction with owners – contributed equity	—	—	—	—	—	—	(3)	(3)	
Balance as at 30 June 2009	1,227	1,116	(525)	1,305	36,831	39,954	757	40,711	
Balance as at 1 July 2007	1,221	1,183	(1,457)	991	27,729	29,667	251	29,918	
Total comprehensive income	—	—	—	(368)	15,372	15,004	571	15,575	
Transactions with owners:									
Exercise of Employee Share Plan Options	6	—	—	—	—	6	—	6	
BHP Billiton Plc shares bought back and cancelled	—	(67)	—	67	—	—	—	—	
Purchase of shares by ESOP Trusts	—	—	(250)	—	—	(250)	—	(250)	
Employee share awards exercised following vesting net of employee contributions	—	—	260	(37)	(204)	19	—	19	
Shares bought back	—	—	(3,075)	—	—	(3,075)	—	(3,075)	
Shares cancelled	—	—	4,008	—	(4,008)	—	—	—	
Accrued employee entitlement for unvested awards	—	—	—	97	—	97	—	97	
Dividends paid	—	—	—	—	(3,133)	(3,133)	(113)	(3,246)	
Transaction with owners – contributed equity	—	—	—	—	—	—	(1)	(1)	
Balance as at 30 June 2008	1,227	1,116	(514)	750	35,756	38,335	708	39,043	

The accompanying notes form part of these financial statements.

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**1 Accounting policies**

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***Dual Listed Companies' structure and basis of preparation of financial statements***

***Merger terms***

On 29 June 2001, BHP Billiton Limited (previously known as BHP Limited), an Australian listed company, and BHP Billiton Plc (previously known as Billiton Plc), a UK listed company, entered into a Dual Listed Company (DLC) merger. This was effected by contractual arrangements between the Companies and amendments to their constitutional documents.

The effect of the DLC merger is that BHP Billiton Limited and its subsidiaries (the BHP Billiton Limited Group) and BHP Billiton Plc and its subsidiaries (the BHP Billiton Plc Group) operate together as a single economic entity (the Group). Under the arrangements:

- the shareholders of BHP Billiton Limited and BHP Billiton Plc have a common economic interest in both Groups;
- the shareholders of BHP Billiton Limited and BHP Billiton Plc take key decisions, including the election of Directors, through a joint electoral procedure under which the shareholders of the two Companies effectively vote on a joint basis;
- BHP Billiton Limited and BHP Billiton Plc have a common Board of Directors, a unified management structure and joint objectives;
- dividends and capital distributions made by the two Companies are equalised;
- BHP Billiton Limited and BHP Billiton Plc each executed a deed poll guarantee, guaranteeing (subject to certain exceptions) the contractual obligations (whether actual or contingent, primary or secondary) of the other incurred after 29 June 2001 together with specified obligations existing at that date.

If either BHP Billiton Limited or BHP Billiton Plc proposes to pay a dividend to its shareholders, then the other Company must pay a matching cash dividend of an equivalent amount per share to its shareholders. If either Company is prohibited by law or is otherwise unable to declare, pay or otherwise make all or any portion of such a matching dividend, then BHP Billiton Limited or BHP Billiton Plc will, so far as it is practicable to do so, enter into such transactions with each other as the Boards agree to be necessary or desirable so as to enable both Companies to pay dividends as nearly as practicable at the same time.

The DLC merger did not involve the change of legal ownership of any assets of BHP Billiton Limited or BHP Billiton Plc, any change of ownership of any existing shares or securities of BHP Billiton Limited or BHP Billiton Plc, the issue of any shares or securities or any payment by way of consideration, save for the issue by each Company of one special voting share to a trustee company which is the means by which the joint electoral procedure is operated.

***Accounting for the DLC merger***

The basis of accounting for the DLC merger was established under Australian and UK Generally Accepted Accounting Principles (GAAP), pursuant to the requirements of the Australian Securities and Investments Commission (ASIC) Practice Note 71 'Financial Reporting by Australian Entities in Dual-Listed Company Arrangements', an order issued by ASIC under section 340 of the Corporations Act 2001 on 2 September 2002, and in accordance with the UK Companies Act 1985. In accordance with the transitional provisions of IFRS 1/AASB 1 'First-time Adoption of International Financial Reporting Standards', the same basis of accounting is applied under International Financial Reporting Standards. Accordingly, these financial statements consolidate the Group as follows:

- Results for the years ended 30 June 2010, 30 June 2009 and 30 June 2008 are of the consolidated entity comprising the BHP Billiton Limited Group and the BHP Billiton Plc Group.
- Assets and liabilities of the BHP Billiton Limited Group and the BHP Billiton Plc Group were consolidated at the date of the merger at their existing carrying amounts.

## 1 Accounting policies continued

### *Basis of preparation*

This general purpose financial report for the year ended 30 June 2010 has been prepared in accordance with the requirements of the Australian Corporations Act 2001 and the UK Companies Act 2006 and with:

- Australian Accounting Standards, being Australian equivalents to International Financial Reporting Standards as issued by the Australian Accounting Standards Board (AASB) and interpretations effective as of 30 June 2010;
- International Financial Reporting Standards and interpretations as adopted by the European Union (EU) effective as of 30 June 2010;
- International Financial Reporting Standards and interpretations as issued by the International Accounting Standards Board effective as of 30 June 2010.

The above standards and interpretations are collectively referred to as 'IFRS' in this report.

The principal standards and interpretations that have been adopted for the first time in these financial statements are:

- Amendment to IFRS 2/AASB 2 'Share-based Payment' which modifies the definition of vesting conditions and broadens the scope of accounting for cancellations of share-based payment arrangements;
- Amendment to IFRS 3/AASB 3 'Business Combinations' which modifies the application of acquisition accounting for business combinations. Associated amendments to IAS 27/AASB 127 'Consolidated and Separate Financial Statements' change the accounting for non-controlling interests;
- IFRS 8/AASB 8 'Operating Segments' which requires segment information to be determined on the same basis used for reporting to senior management. Segment results are therefore presented exclusive of exceptional items;
- 'Improvements to IFRSs 2008'/AASB 2008-5 'Amendments to Australian Accounting Standards arising from the Annual Improvements Project' and AASB 2008-6 'Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project' which includes a collection of minor amendments to IFRS;
- IFRIC 18 'Transfers of Assets from Customers' which provides guidance on how to account for items of property, plant and equipment received from customers, or cash received from customers to acquire/construct specific assets that will be used to supply goods or services.

The adoption of these standards and interpretations did not have a material impact on the financial statements of the Group except for the amendments to IAS 27/AASB 127 'Consolidated and Separate Financial Statements'. These amendments have resulted in the excess of consideration received over the book value of net assets attributable to the equity instruments issued to non-controlling interests being recognised in equity rather than the income statement. Refer to note 20 for the financial impact of this amendment.

As a result of the Group applying IAS 1/AASB 101 'Presentation of Financial Statements' (revised from 1 July 2009), the financial statements include a Consolidated Statement of Comprehensive Income (which replaces the Consolidated Statement of Recognised Income and Expenses) and a Consolidated Statement of Changes in Equity.

The following standards and interpretations may have an impact on the Group in future reporting periods but are not yet effective:

- Amendments to IFRS 2/AASB 2 'Share-based Payment'. These amendments clarify the accounting for group cash settled share-based payment transactions;
- 'Improvements to IFRSs 2009'/AASB 2009-4 'Amendments to Australian Accounting Standards arising from the Annual Improvements Project' and AASB 2009-5 'Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project' which includes a collection of minor amendments to IFRS. The amendments include a requirement to classify expenditures on unrecognised assets as a cash flow from operating activities which will result in Group exploration cash flows which are not recognised as assets being reclassified from cash flows from investing activities to cash flows from operating activities in the Consolidated Cash Flow Statement;
- IFRS 9/AASB 9 'Financial Instruments' modifies the classification and measurement of financial assets;
- 'Improvements to IFRSs 2010'/AASB 2010-3 'Amendments to Australian Accounting Standards arising from the Annual Improvements Project' and AASB 2010-4 'Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project' include a collection of minor amendments to IFRS.

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**1 Accounting policies continued**

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These standards and interpretations are available for early adoption in the 30 June 2010 financial year (other than in the EU) but have not been applied in the preparation of these financial statements. The potential impacts on the financial statements of the Group of adopting these standards and interpretations have not yet been determined unless otherwise indicated. The latter two standards referred to above have not been endorsed by the EU and hence are not available for early adoption in the EU.

***Basis of measurement***

The financial statements are drawn up on the basis of historical cost principles, except for derivative financial instruments and certain other financial assets which are carried at fair value.

***Currency of presentation***

All amounts are expressed in millions of US dollars, unless otherwise stated, consistent with the predominant functional currency of the Group's operations.

***Change in accounting policy***

The accounting policies have been consistently applied by all entities included in the Group consolidated financial statements and are consistent with those applied in all prior years presented other than changes required by the adoption of new and amended accounting standards and interpretations as discussed above.

***Principles of consolidation***

The financial statements of the Group include the consolidation of BHP Billiton Limited, BHP Billiton Plc and their respective subsidiaries. Subsidiaries are entities controlled by either parent entity. Control exists where either parent entity has the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities. Subsidiaries are included in the consolidated financial report from the date control commences until the date control ceases. Where the Group's interest is less than 100 per cent, the interest attributable to outside shareholders is reflected in non-controlling interests. The effects of all transactions between entities within the Group have been eliminated.

***Joint ventures***

The Group undertakes a number of business activities through joint ventures. Joint ventures are established through contractual arrangements that require the unanimous consent of each of the venturers regarding the strategic financial and operating policies of the venture (joint control). The Group's joint ventures are of two types:

***Jointly controlled entities***

A jointly controlled entity is a corporation, partnership or other entity in which each participant holds an interest. A jointly controlled entity operates in the same way as other entities, controlling the assets of the joint venture, earning its own income and incurring its own liabilities and expenses. Interests in jointly controlled entities are accounted for using the proportionate consolidation method, whereby the Group's proportionate interest in the assets, liabilities, revenues and expenses of jointly controlled entities are recognised within each applicable line item of the financial statements. The share of jointly controlled entities' results is recognised in the Group's financial statements from the date that joint control commences until the date at which it ceases.

***Jointly controlled assets***

The Group has certain contractual arrangements with other participants to engage in joint activities that do not give rise to a jointly controlled entity. These arrangements involve the joint ownership of assets dedicated to the purposes of each venture but do not create a jointly controlled entity as the venturers directly derive the benefits of operation of their jointly owned assets, rather than deriving returns from an interest in a separate entity.

The financial statements of the Group include its share of the assets in such joint ventures, together with the liabilities, revenues and expenses arising jointly or otherwise from those operations. All such amounts are measured in accordance with the terms of each arrangement, which are usually in proportion to the Group's interest in the jointly controlled assets.

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**1 Accounting policies continued**

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***Business combinations***

Business combinations that occurred between 1 July 2004 and 30 June 2009 were accounted for by applying the purchase method of accounting, whereby the purchase consideration of the combination is allocated to the identifiable net assets acquired. Business combinations prior to 1 July 2004 have been accounted for in accordance with the Group's previous policies under Australian GAAP and UK GAAP and have not been restated.

Business combinations in the current financial year are accounted for by applying the acquisition method of accounting, whereby the identifiable assets, liabilities and contingent liabilities (identifiable net assets) are measured on the basis of fair value at the date of acquisition.

***Goodwill***

Where the fair value of consideration paid for a business combination exceeds the fair value of the Group's share of the identifiable net assets acquired, the difference is treated as purchased goodwill. Where the fair value of the Group's share of the identifiable net assets acquired exceeds the cost of acquisition, the difference is immediately recognised in the income statement. The recognition of goodwill attributable to a non-controlling interest in a business combination is determined on a transaction by transaction basis. Goodwill is not amortised, however its carrying amount is assessed annually against its recoverable amount as explained below under 'Impairment of non-current assets'. On the subsequent disposal or termination of a previously acquired business, any remaining balance of associated goodwill is included in the determination of the profit or loss on disposal or termination.

***Intangible assets***

Amounts paid for the acquisition of identifiable intangible assets, such as software and licences, are capitalised at the fair value of consideration paid and are recorded at cost less accumulated amortisation and impairment charges. Identifiable intangible assets with a finite life are amortised on a straight-line basis over their expected useful life, which is typically no greater than eight years. The Group has no identifiable intangible assets for which the expected useful life is indefinite.

***Foreign currencies***

The Group's reporting currency and the functional currency of the majority of its operations is the US dollar as this is assessed to be the principal currency of the economic environments in which they operate.

Transactions denominated in foreign currencies (currencies other than the functional currency of an operation) are recorded using the exchange rate ruling at the date of the underlying transaction. Monetary assets and liabilities denominated in foreign currencies are translated using the rate of exchange ruling at year end and the gains or losses on retranslation are included in the income statement, with the exception of foreign exchange gains or losses on foreign currency provisions for site closure and rehabilitation, which are capitalised in property, plant and equipment for operating sites.

Exchange variations resulting from the retranslation at closing rate of the net investments in subsidiaries and joint ventures arising after 1 July 2004 are accounted for in accordance with the policy stated below. Exchange variations arising before this date were transferred to retained earnings at the date of transition to IFRS.

Subsidiaries and joint ventures that have functional currencies other than US dollars translate their income statement items to US dollars at the date of each transaction. Assets and liabilities are translated at exchange rates prevailing at year end. Exchange variations resulting from the retranslation at closing rate of the net investment in such subsidiaries and joint ventures, together with differences between their income statement items translated at actual and closing rates, are recognised in the foreign currency translation reserve. For the purpose of foreign currency translation, the net investment in a foreign operation is determined inclusive of foreign currency intercompany balances for which settlement is neither planned nor likely to occur in the foreseeable future. The balance of the foreign currency translation reserve relating to a foreign operation that is disposed of, or partially disposed of, is recognised in the income statement at the time of disposal.

## 1 Accounting policies continued

### *Share-based payments*

The fair value at grant date of equity settled share awards granted on or after 8 November 2002 is charged to the income statement over the period for which the benefits of employee services are expected to be derived. The corresponding accrued employee entitlement is recorded in the employee share awards reserve. The fair value of awards is calculated using an option pricing model which considers the following factors:

- exercise price
- expected life of the award
- current market price of the underlying shares
- expected volatility
- expected dividends
- risk-free interest rate
- market-based performance hurdles
- non-vesting conditions

For equity-settled share awards granted on or before 7 November 2002 and that remained unvested at 1 July 2004, the estimated cost of share awards is charged to the income statement from grant date to the date of expected vesting. The estimated cost of awards is based on the market value of shares at the grant date or the intrinsic value of options awarded, adjusted to reflect the impact of performance conditions, where applicable.

Where awards are forfeited because non-market based vesting conditions are not satisfied, the expense previously recognised is proportionately reversed. Where shares in BHP Billiton Limited or BHP Billiton Plc are acquired by on-market purchases prior to settling vested entitlements, the cost of the acquired shares is carried as treasury shares and deducted from equity. When awards are satisfied by delivery of acquired shares, any difference between their acquisition cost and the remuneration expense recognised is charged directly to retained earnings. The tax effect of awards granted is recognised in income tax expense, except to the extent that the total tax deductions are expected to exceed the cumulative remuneration expense. In this situation, the excess of the associated current or deferred tax is recognised in equity as part of the employee share awards reserve.

### *Sales revenue*

Revenue from the sale of goods and disposal of other assets is recognised when persuasive evidence, usually in the form of an executed sales agreement, or an arrangement exists, indicating there has been a transfer of risks and rewards to the customer, no further work or processing is required by the Group, the quantity and quality of the goods has been determined with reasonable accuracy, the price is fixed or determinable, and collectability is reasonably assured. This is generally when title passes.

In the majority of sales for most commodities, sales agreements specify that title passes on the bill of lading date, which is the date the commodity is delivered to the shipping agent. For these sales, revenue is recognised on the bill of lading date. For certain sales (principally coal sales to adjoining power stations and diamond sales), title passes and revenue is recognised when the goods have been delivered.

In cases where the terms of the executed sales agreement allow for an adjustment to the sales price based on a survey of the goods by the customer (for instance an assay for mineral content), recognition of the sales revenue is based on the most recently determined estimate of product specifications.

For certain commodities, the sales price is determined on a provisional basis at the date of sale; adjustments to the sales price subsequently occurs based on movements in quoted market or contractual prices up to the date of final pricing. The period between provisional invoicing and final pricing is typically between 60 and 120 days. Revenue on provisionally priced sales is recognised based on the estimated fair value of the total consideration receivable. The revenue adjustment mechanism embedded within provisionally priced sales arrangements has the character of a commodity derivative. Accordingly, the fair value of the final sales price adjustment is re-estimated continuously and changes in fair value are recognised as an adjustment to revenue. In all cases, fair value is estimated by reference to forward market prices.

Revenue is not reduced for royalties and other taxes payable from the Group's production.

## 1 Accounting policies continued

The Group separately discloses sales of Group production from sales of third party products due to the significant difference in profit margin earned on these sales.

### *Exploration and evaluation expenditure*

Exploration and evaluation activity involves the search for mineral and petroleum resources, the determination of technical feasibility and the assessment of commercial viability of an identified resource. Exploration and evaluation activity includes:

- researching and analysing historical exploration data
- gathering exploration data through topographical, geochemical and geophysical studies
- exploratory drilling, trenching and sampling
- determining and examining the volume and grade of the resource
- surveying transportation and infrastructure requirements
- conducting market and finance studies

Administration costs that are not directly attributable to a specific exploration area are charged to the income statement. Licence costs paid in connection with a right to explore in an existing exploration area are capitalised and amortised over the term of the permit.

Exploration and evaluation expenditure (including amortisation of capitalised licence costs) is charged to the income statement as incurred except in the following circumstances, in which case the expenditure may be capitalised:

- In respect of minerals activities:
  - the exploration and evaluation activity is within an area of interest which was previously acquired in a business combination and measured at fair value on acquisition; or
  - the existence of a commercially viable mineral deposit has been established;
- In respect of petroleum activities:
  - the exploration and evaluation activity is within an area of interest for which it is expected that the expenditure will be recouped by future exploitation or sale; or
  - exploration and evaluation activity has not reached a stage which permits a reasonable assessment of the existence of commercially recoverable reserves.

Capitalised exploration and evaluation expenditure considered to be tangible is recorded as a component of property, plant and equipment at cost less impairment charges. Otherwise, it is recorded as an intangible asset (such as licences). As the asset is not available for use, it is not depreciated. All capitalised exploration and evaluation expenditure is monitored for indications of impairment. Where a potential impairment is indicated, assessment is performed for each area of interest in conjunction with the group of operating assets (representing a cash generating unit) to which the exploration is attributed. Exploration areas at which reserves have been discovered but that require major capital expenditure before production can begin are continually evaluated to ensure that commercial quantities of reserves exist or to ensure that additional exploration work is under way or planned. To the extent that capitalised expenditure is not expected to be recovered it is charged to the income statement.

Cash flows associated with exploration and evaluation expenditure (comprising both amounts expensed and amounts capitalised) are classified as investing activities in the cash flow statement.

### *Development expenditure*

When proved reserves are determined and development is sanctioned, capitalised exploration and evaluation expenditure is reclassified as 'assets under construction', and is disclosed as a component of property, plant and equipment. All subsequent development expenditure is capitalised and classified as 'assets under construction'. Development expenditure is net of proceeds from the sale of ore extracted during the development phase. On completion of development, all assets included in 'assets under construction' are reclassified as either 'plant and equipment' or 'other mineral assets'.

**1 Accounting policies continued*****Property, plant and equipment***

Property, plant and equipment is recorded at cost less accumulated depreciation and impairment charges. Cost is the fair value of consideration given to acquire the asset at the time of its acquisition or construction and includes the direct cost of bringing the asset to the location and condition necessary for operation and the estimated future cost of dismantling and removing the asset. Disposals are taken to account in the income statement. Where the disposal involves the sale or abandonment of a significant business (or all of the assets associated with such a business) the gain or loss is disclosed as an exceptional item.

***Other mineral assets***

Other mineral assets comprise:

- Capitalised exploration, evaluation and development expenditure (including development stripping) for properties now in production;
- Mineral rights and petroleum interests acquired;
- Capitalised production stripping (as described below in 'Overburden removal costs').

***Depreciation of property, plant and equipment***

The carrying amounts of property, plant and equipment (including initial and any subsequent capital expenditure) are depreciated to their estimated residual value over the estimated useful lives of the specific assets concerned, or the estimated life of the associated mine, field or lease, if shorter. Estimates of residual values and useful lives are reassessed annually and any change in estimate is taken into account in the determination of remaining depreciation charges. Depreciation commences on the date of commissioning. The major categories of property, plant and equipment are depreciated on a unit of production and/or straight-line basis using estimated lives indicated below. However, where assets are dedicated to a mine, field or lease and are not readily transferable, the below useful lives are subject to the lesser of the asset category's useful life and the life of the mine, field or lease:

- |   |   |
|---|---|
| • Buildings   | – 25 to 50 years                                  |
| • Land  | – not depreciated                                 |
| • Plant and equipment   | – 3 to 30 years straight-line                     |
| • Mineral rights and Petroleum interests                          | – based on reserves on a unit of production basis |
| • Capitalised exploration, evaluation and development expenditure | – based on reserves on a unit of production basis |

***Leased assets***

Assets held under leases which result in the Group receiving substantially all the risks and rewards of ownership of the asset (finance leases) are capitalised at the lower of the fair value of the property, plant and equipment or the estimated present value of the minimum lease payments.

The corresponding finance lease obligation is included within interest bearing liabilities. The interest element is allocated to accounting periods during the lease term to reflect a constant rate of interest on the remaining balance of the obligation.

Operating lease assets are not capitalised and rental payments are included in the income statement on a straight-line basis over the lease term. Provision is made for the present value of future operating lease payments in relation to surplus lease space when it is first determined that the space will be of no probable future benefit. Operating lease incentives are recognised as a liability when received and subsequently reduced by allocating lease payments between rental expense and reduction of the liability.

***Impairment of non-current assets***

Formal impairment tests are carried out annually for goodwill. Formal impairment tests for all other assets are performed when there is an indication of impairment. The Group conducts annually an internal review of asset values which is used as a source of information to assess for any indications of impairment. External factors, such as changes in expected future prices, costs and other market factors are also monitored to assess for indications of impairment. If any such indication exists an estimate of the asset's recoverable amount is calculated, being the higher of fair value less direct costs to sell and the asset's value in use.



## 1 Accounting policies continued

If the carrying amount of the asset exceeds its recoverable amount, the asset is impaired and an impairment loss is charged to the income statement so as to reduce the carrying amount in the balance sheet to its recoverable amount.

Fair value is determined as the amount that would be obtained from the sale of the asset in an arm's length transaction between knowledgeable and willing parties. Fair value for mineral assets is generally determined as the present value of the estimated future cash flows expected to arise from the continued use of the asset, including any expansion prospects, and its eventual disposal, using assumptions that an independent market participant may take into account. These cash flows are discounted by an appropriate discount rate to arrive at a net present value of the asset.

Value in use is determined as the present value of the estimated future cash flows expected to arise from the continued use of the asset in its present form and its eventual disposal. Value in use is determined by applying assumptions specific to the Group's continued use and cannot take into account future development. These assumptions are different to those used in calculating fair value and consequently the value in use calculation is likely to give a different result (usually lower) to a fair value calculation.

In testing for indications of impairment and performing impairment calculations, assets are considered as collective groups and referred to as cash generating units. Cash generating units are the smallest identifiable group of assets, liabilities and associated goodwill that generate cash inflows that are largely independent of the cash inflows from other assets or groups of assets.

The impairment assessments are based on a range of estimates and assumptions, including:

### Estimates/assumptions:

- Future production
- Commodity prices
- Exchange rates
- Discount rates

### Basis:

- proved and probable reserves, resource estimates and, in certain cases, expansion projects
- forward market and contract prices, and longer-term price protocol estimates
- current (forward) market exchange rates
- cost of capital risk-adjusted appropriate to the resource

### *Overburden removal costs*

Overburden and other mine waste materials are often removed during the initial development of a mine site in order to access the mineral deposit. This activity is referred to as development stripping. The directly attributable costs (inclusive of an allocation of relevant overhead expenditure) are initially capitalised as 'assets under construction'. Capitalisation of development stripping costs ceases at the time that saleable material begins to be extracted from the mine. On completion of development, all capitalised development stripping included in 'assets under construction' are transferred to 'other mineral assets'.

Production stripping commences at the time that saleable materials begin to be extracted from the mine and normally continues throughout the life of a mine. The costs of production stripping are charged to the income statement as operating costs when the ratio of waste material to ore extracted for an area of interest is expected to be constant throughout its estimated life. When the ratio of waste to ore is not expected to be constant, production stripping costs are accounted for as follows:

- All costs are initially charged to the income statement and classified as operating costs.
- When the current ratio of waste to ore is greater than the estimated life-of-mine ratio, a portion of the stripping costs (inclusive of an allocation of relevant overhead expenditure) is capitalised to 'other mineral assets'.
- In subsequent years when the ratio of waste to ore is less than the estimated life-of-mine ratio, a portion of capitalised stripping costs is charged to the income statement as operating costs.

The amount of production stripping costs capitalised or charged in a financial year is determined so that the stripping expense for the financial year reflects the estimated life-of-mine ratio. Changes to the estimated life-of-mine ratio are accounted for prospectively from the date of the change.

### *Inventories*

Inventories, including work in progress, are valued at the lower of cost and net realisable value. Cost is determined primarily on the basis of average costs. For processed inventories, cost is derived on an absorption costing basis. Cost comprises cost of purchasing raw materials and cost of production, including attributable mining and manufacturing overheads.

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**1 Accounting policies continued**

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***Finance costs***

Finance costs are generally expensed as incurred except where they relate to the financing of construction or development of qualifying assets requiring a substantial period of time to prepare for their intended future use.

Finance costs are capitalised up to the date when the asset is ready for its intended use. The amount of finance costs capitalised (before the effects of income tax) for the period is determined by applying the interest rate applicable to appropriate borrowings outstanding during the period to the average amount of capitalised expenditure for the qualifying assets during the period.

***Taxation***

Taxation on the profit or loss for the year comprises current and deferred tax. Taxation is recognised in the income statement except to the extent that it relates to items recognised directly in equity, in which case the tax is recognised in equity.

Current tax is the expected tax payable on the taxable income for the year using rates enacted or substantively enacted at the year end, and includes any adjustment to tax payable in respect of previous years.

Deferred tax is provided using the balance sheet liability method, providing for the tax effect of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for tax assessment or deduction purposes. Where an asset has no deductible or depreciable amount for income tax purposes, but has a deductible amount on sale or abandonment for capital gains tax purposes, that amount is included in the determination of temporary differences. The tax effect of certain temporary differences is not recognised, principally with respect to goodwill; temporary differences arising on the initial recognition of assets or liabilities (other than those arising in a business combination or in a manner that initially impacted accounting or taxable profit); and temporary differences relating to investments in subsidiaries, jointly controlled entities and associates to the extent that the Group is able to control the reversal of the temporary difference and the temporary difference is not expected to reverse in the foreseeable future. The amount of deferred tax recognised is based on the expected manner and timing of realisation or settlement of the carrying amount of assets and liabilities, with the exception of items that have a tax base solely derived under capital gains tax legislation, using tax rates enacted or substantively enacted at period end. To the extent that an item's tax base is solely derived from the amount deductible under capital gains tax legislation, deferred tax is determined as if such amounts are deductible in determining future assessable income.

A deferred tax asset is recognised only to the extent that it is probable that future taxable profits will be available against which the asset can be utilised. Deferred tax assets are reviewed at each balance sheet date and amended to the extent that it is no longer probable that the related tax benefit will be realised. Deferred tax assets and liabilities are offset when they relate to income taxes levied by the same taxation authority and the Group has both the right and the intention to settle its current tax assets and liabilities on a net or simultaneous basis.

Royalties and resource rent taxes are treated as taxation arrangements when they have the characteristics of a tax. This is considered to be the case when they are imposed under government authority and the amount payable is calculated by reference to revenue derived (net of any allowable deductions) after adjustment for items comprising temporary differences. For such arrangements, current and deferred tax is provided on the same basis as described above for other forms of taxation. Obligations arising from royalty arrangements that do not satisfy these criteria are recognised as current provisions and included in expenses.

***Provision for employee benefits***

Provision is made in the financial statements for all employee benefits, including on-costs. In relation to industry-based long service leave funds, the Group's liability, including obligations for funding shortfalls, is determined after deducting the fair value of dedicated assets of such funds.

Liabilities for wages and salaries, including non-monetary benefits, annual leave and accumulating sick leave obliged to be settled within 12 months of the reporting date, are recognised in sundry creditors or provision for employee benefits in respect of employees' services up to the reporting date and are measured at the amounts expected to be paid when the liabilities are settled. Liabilities for non-accumulating sick leave are recognised when the leave is taken and measured at the rates paid or payable.

## 1 Accounting policies continued

The liability for long service leave for which settlement within 12 months of the reporting date cannot be deferred is recognised in the current provision for employee benefits and is measured in accordance with annual leave described above. The liability for long service leave for which settlement can be deferred beyond 12 months from the reporting date is recognised in the non-current provision for employee benefits and measured as the present value of expected future payments to be made in respect of services provided by employees up to the reporting date. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using market yields at the reporting date on national government bonds with terms to maturity and currency that match, as closely as possible, the estimated future cash outflows.

### *Superannuation, pensions and other post-retirement benefits*

The Group operates or participates in a number of pension (including superannuation) schemes throughout the world. The funding of the schemes complies with local regulations. The assets of the schemes are generally held separately from those of the Group and are administered by trustees or management boards.

For defined contribution schemes or schemes operated on an industry-wide basis where it is not possible to identify assets attributable to the participation by the Group's employees, the pension charge is calculated on the basis of contributions payable.

For defined benefit schemes, the cost of providing pensions is charged to the income statement so as to recognise current and past service costs, interest cost on defined benefit obligations, and the effect of any curtailments or settlements, net of expected returns on plan assets. Actuarial gains and losses are recognised directly in equity. An asset or liability is consequently recognised in the balance sheet based on the present value of defined benefit obligations, less any unrecognised past service costs and the fair value of plan assets, except that any such asset cannot exceed the total of unrecognised past service costs and the present value of refunds from and reductions in future contributions to the plan. Defined benefit obligations are estimated by discounting expected future payments using market yields at the reporting date on high-quality corporate bonds in countries that have developed corporate bond markets. However, where developed corporate bond markets do not exist, the discount rates are selected by reference to national government bonds. In both instances, the bonds are selected with terms to maturity and currency that match, as closely as possible, the estimated future cash flows.

Certain Group companies provide post-retirement medical benefits to qualifying retirees. In some cases the benefits are provided through medical care schemes to which the Group, the employees, the retirees and covered family members contribute. In some schemes there is no funding of the benefits before retirement. These schemes are recognised on the same basis as described above for defined benefit pension schemes.

### *Closure and rehabilitation*

The mining, extraction and processing activities of the Group normally give rise to obligations for site closure or rehabilitation. Closure and rehabilitation works can include facility decommissioning and dismantling; removal or treatment of waste materials; site and land rehabilitation. The extent of work required and the associated costs are dependent on the requirements of relevant authorities and the Group's environmental policies.

Provisions for the cost of each closure and rehabilitation program are recognised at the time that environmental disturbance occurs. When the extent of disturbance increases over the life of an operation, the provision is increased accordingly. Costs included in the provision encompass all closure and rehabilitation activity expected to occur progressively over the life of the operation and at the time of closure in connection with disturbances at the reporting date. Routine operating costs that may impact the ultimate closure and rehabilitation activities, such as waste material handling conducted as an integral part of a mining or production process, are not included in the provision. Costs arising from unforeseen circumstances, such as the contamination caused by unplanned discharges, are recognised as an expense and liability when the event gives rise to an obligation which is probable and capable of reliable estimation.

The timing of the actual closure and rehabilitation expenditure is dependent upon a number of factors such as the life and nature of the asset, the operating licence conditions, the principles of our Charter and the environment in which the mine operates. Expenditure may occur before and after closure and can continue for an extended period of time dependent on closure and rehabilitation requirements. The majority of the expenditure is expected to be paid over periods of up to 50 years with some payments into perpetuity.

## 1 Accounting policies continued

Closure and rehabilitation provisions are measured at the expected value of future cash flows, discounted to their present value and determined according to the probability of alternative estimates of cash flows occurring for each operation. Discount rates used are specific to the country in which the operation is located. Significant judgements and estimates are involved in forming expectations of future activities and the amount and timing of the associated cash flows. Those expectations are formed based on existing environmental and regulatory requirements or, if more stringent, Group environmental policies which give rise to a constructive obligation.

When provisions for closure and rehabilitation are initially recognised, the corresponding cost is capitalised as an asset, representing part of the cost of acquiring the future economic benefits of the operation. The capitalised cost of closure and rehabilitation activities is recognised in property, plant and equipment and depreciated accordingly. The value of the provision is progressively increased over time as the effect of discounting unwinds, creating an expense recognised in financial expenses.

Closure and rehabilitation provisions are also adjusted for changes in estimates. Those adjustments are accounted for as a change in the corresponding capitalised cost, except where a reduction in the provision is greater than the undepreciated capitalised cost of the related assets, in which case the capitalised cost is reduced to nil and the remaining adjustment is recognised in the income statement. In the case of closed sites, changes to estimated costs are recognised immediately in the income statement. Changes to the capitalised cost result in an adjustment to future depreciation and financial charges. Adjustments to the estimated amount and timing of future closure and rehabilitation cash flows are a normal occurrence in light of the significant judgements and estimates involved. Factors influencing those changes include:

- revisions to estimated reserves, resources and lives of operations;
- developments in technology;
- regulatory requirements and environmental management strategies;
- changes in the estimated extent and costs of anticipated activities, including the effects of inflation and movements in foreign exchange rates;
- movements in interest rates affecting the discount rate applied.

### *Financial instruments*

All financial assets are initially recognised at the fair value of consideration paid. Subsequently, financial assets are carried at fair value or amortised cost less impairment. Where non-derivative financial assets are carried at fair value, gains and losses on remeasurement are recognised directly in equity unless the financial assets have been designated as being held at fair value through profit or loss, in which case the gains and losses are recognised directly in the income statement. Financial assets are designated as being held at fair value through profit or loss when this is necessary to reduce measurement inconsistencies for related assets and liabilities. All financial liabilities other than derivatives are initially recognised at fair value of consideration received net of transaction costs as appropriate (initial cost) and subsequently carried at amortised cost.

Derivatives, including those embedded in other contractual arrangements but separated for accounting purposes because they are not clearly and closely related to the host contract, are initially recognised at fair value on the date the contract is entered into and are subsequently remeasured at their fair value. The method of recognising the resulting gain or loss on remeasurement depends on whether the derivative is designated as a hedging instrument, and, if so, the nature of the item being hedged. The measurement of fair value is based on quoted market prices. Where no price information is available from a quoted market source, alternative market mechanisms or recent comparable transactions, fair value is estimated based on the Group's views on relevant future prices, net of valuation allowances to accommodate liquidity, modelling and other risks implicit in such estimates.

Forward exchange contracts held for hedging purposes are accounted for as either cash flow or fair value hedges. Interest rate swaps held for hedging purposes are generally accounted for as fair value hedges. Derivatives embedded within other contractual arrangements and the majority of commodity-based transactions executed through derivative contracts do not qualify for hedge accounting.

### *Fair value hedges*

Changes in the fair value of derivatives that are designated and qualify as fair value hedges are recorded in the income statement, together with any changes in the fair value of the hedged asset or liability that are attributable to the hedged risk. Any difference between the change in fair value of the derivative and the hedged risk constitutes ineffectiveness of the hedge and is recognised immediately in the income statement.

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**1 Accounting policies continued**

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*Cash flow hedges*

The effective portion of changes in the fair value of derivatives that are designated and qualify as cash flow hedges is recognised in equity in the hedging reserve. The gain or loss relating to the ineffective portion is recognised immediately in the income statement.

Amounts accumulated in equity are recycled in the income statement in the periods when the hedged item affects profit or loss. However, when the forecast transaction that is hedged results in the recognition of a non-financial asset (for example, plant and equipment purchases) or a non-financial liability, the gains and losses previously deferred in equity are transferred from equity and included in the measurement of the initial carrying amount of the asset or liability.

When a hedging instrument expires or is sold or terminated, or when a hedge no longer meets the criteria for hedge accounting, any cumulative gain or loss existing in equity at that time remains in equity and is recognised when the forecast transaction is ultimately recognised in the income statement. When a hedged forecast transaction is no longer expected to occur, the cumulative hedge gain or loss that was reported in equity is immediately transferred to the income statement.

*Derivatives that do not qualify for hedge accounting*

Certain derivative instruments do not qualify for hedge accounting. Changes in the fair value of any derivative instrument that does not qualify for hedge accounting are recognised immediately in the income statement.

*Available for sale and trading investments*

Available for sale and trading investments are measured at fair value. Gains and losses on the remeasurement of trading investments are recognised directly in the income statement. Gains and losses on the remeasurement of available for sale investments are recognised directly in equity and subsequently recognised in the income statement when realised by sale or redemption, or when a reduction in fair value is judged to represent an impairment.

*Application of critical accounting policies and estimates*

The preparation of the consolidated financial statements requires management to make judgements and estimates and form assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent liabilities at the date of the financial statements, and the reported revenue and expenses during the periods presented therein. On an ongoing basis, management evaluates its judgements and estimates in relation to assets, liabilities, contingent liabilities, revenue and expenses. Management bases its judgements and estimates on historical experience and on other various factors it believes to be reasonable under the circumstances, the results of which form the basis of the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions and conditions.

The Group has identified the following critical accounting policies under which significant judgements, estimates and assumptions are made and where actual results may differ from these estimates under different assumptions and conditions and may materially affect financial results or the financial position reported in future periods.

Further details of the nature of these assumptions and conditions may be found in the relevant notes to the financial statements.

*Reserve estimates*

Reserves are estimates of the amount of product that can be economically and legally extracted from the Group's properties. In order to estimate reserves, estimates are required about a range of geological, technical and economic factors, including quantities, grades, production techniques, recovery rates, production costs, transport costs, commodity demand, commodity prices and exchange rates.

Estimating the quantity and/or grade of reserves requires the size, shape and depth of orebodies or fields to be determined by analysing geological data such as drilling samples. This process may require complex and difficult geological judgements to interpret the data.

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**1 Accounting policies continued**

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The Group determines and reports ore reserves in Australia and the UK under the principles incorporated in the Australasian Code for Reporting Exploration Results of Mineral Resources and Ore Reserves December 2004, known as the JORC Code. The JORC Code requires the use of reasonable investment assumptions when reporting reserves. As a result, management will form a view of forecast sales prices, based on current and long-term historical average price trends. For example, if current prices remain above long-term historical averages for an extended period of time, management may assume that lower prices will prevail in the future and as a result, those lower prices are used to estimate reserves under the JORC Code. Lower price assumptions generally result in lower estimates of reserves.

Reserve reporting requirements for SEC (United States of America) filings are specified in Industry Guide 7, which requires economic assumptions to be based on current economic conditions (which may differ from assumptions based on reasonable investment assumptions). Accordingly, for SEC filings, we test our reserve estimates derived under JORC against assumed 'current economic conditions'. 'Current economic conditions' are based on the three-year historical average contract prices for commodities, such as iron ore and coal, and the three-year historical average for commodities that are traded on the London Metal Exchange, such as copper and nickel. However, we only report a different reserve in the US if, based on the US SEC pricing assumptions test, the reserve will be lower than that reported under JORC in Australia and the UK.

Oil and gas reserves reported in Australia and the UK, and the US for SEC filing purposes are based on the average of prices prevailing on the first day of each month for the past 12 months as required under the new SEC Rules 'Modernisation of Oil & Gas Reporting'. Reserves reported in prior periods are based on the prices prevailing at the time of the estimates as previously required by Statement of Financial Accounting Standards No. 69 'Disclosures about Oil and Gas Producing Activities', issued by the US Financial Accounting Standards Board.

Because the economic assumptions used to estimate reserves change from period to period, and because additional geological data is generated during the course of operations, estimates of reserves may change from period to period. Changes in reported reserves may affect the Group's financial results and financial position in a number of ways, including the following:

- Asset carrying amounts may be affected due to changes in estimated future cash flows.
- Depreciation, depletion and amortisation charged in the income statement may change where such charges are determined by the units of production basis, or where the useful economic lives of assets change.
- Overburden removal costs recorded on the balance sheet or charged to the income statement may change due to changes in stripping ratios or the units of production basis of depreciation.
- Decommissioning, site restoration and environmental provisions may change where changes in estimated reserves affect expectations about the timing or cost of these activities.
- The carrying amount of deferred tax assets may change due to changes in estimates of the likely recovery of the tax benefits.

***Exploration and evaluation expenditure***

The Group's accounting policy for exploration and evaluation expenditure results in certain items of expenditure being capitalised for an area of interest where it is considered likely to be recoverable by future exploitation or sale or where the activities have not reached a stage which permits a reasonable assessment of the existence of reserves. This policy requires management to make certain estimates and assumptions as to future events and circumstances, in particular whether an economically viable extraction operation can be established. Any such estimates and assumptions may change as new information becomes available. If, after having capitalised the expenditure under the policy, a judgement is made that recovery of the expenditure is unlikely, the relevant capitalised amount will be written off to the income statement.

***Development expenditure***

Development activities commence after project sanctioning by the appropriate level of management. Judgement is applied by management in determining when a project is economically viable. In exercising this judgement, management is required to make certain estimates and assumptions similar to those described above for capitalised exploration and evaluation expenditure. Any such estimates and assumptions may change as new information becomes available. If, after having commenced the development activity, a judgement is made that a development asset is impaired, the appropriate amount will be written off to the income statement.

**1 Accounting policies continued*****Property, plant and equipment – recoverable amount***

In accordance with the Group's accounting policy, each asset or cash generating unit is evaluated every reporting period to determine whether there are any indications of impairment. If any such indication exists, a formal estimate of recoverable amount is performed and an impairment loss recognised to the extent that carrying amount exceeds recoverable amount. The recoverable amount of an asset or cash generating group of assets is measured at the higher of fair value less costs to sell and value in use.

The determination of fair value and value in use requires management to make estimates and assumptions about expected production and sales volumes, commodity prices (considering current and historical prices, price trends and related factors), reserves (see 'Reserve estimates' above), operating costs, closure and rehabilitation costs and future capital expenditure. These estimates and assumptions are subject to risk and uncertainty; hence there is a possibility that changes in circumstances will alter these projections, which may impact the recoverable amount of the assets. In such circumstances, some or all of the carrying value of the assets may be further impaired or the impairment charge reduced with the impact recorded in the income statement.

***Defined benefit pension schemes***

The Group's accounting policy for defined benefit pension schemes requires management to make judgements as to the nature of benefits provided by each scheme and thereby determine the classification of each scheme. For defined benefit schemes, management is required to make annual estimates and assumptions about future returns on classes of scheme assets, future remuneration changes, employee attrition rates, administration costs, changes in benefits, inflation rates, exchange rates, life expectancy and expected remaining periods of service of employees. In making these estimates and assumptions, management considers advice provided by external advisers, such as actuaries. Where actual experience differs to these estimates, actuarial gains and losses are recognised directly in equity. Refer to note 29 for details of the key assumptions.

***Provision for closure and rehabilitation***

The Group's accounting policy for the recognition of closure and rehabilitation provisions requires significant estimates and assumptions such as: requirements of the relevant legal and regulatory framework; the magnitude of possible contamination and the timing, extent and costs of required closure and rehabilitation activity. These uncertainties may result in future actual expenditure differing from the amounts currently provided.

The provision recognised for each site is periodically reviewed and updated based on the facts and circumstances available at the time. Changes to the estimated future costs for operating sites are recognised in the balance sheet by adjusting both the closure and rehabilitation asset and provision. For closed sites, changes to estimated costs are recognised immediately in the income statement.

In addition to the uncertainties noted above, certain closure and rehabilitation activities are subject to legal disputes and depending on the ultimate resolution of these issues, the final liability for these matters could vary.

***Taxation***

The Group's accounting policy for taxation requires management's judgement as to the types of arrangements considered to be a tax on income in contrast to an operating cost. Judgement is also required in assessing whether deferred tax assets and certain deferred tax liabilities are recognised on the balance sheet. Deferred tax assets, including those arising from unrecouped tax losses, capital losses and temporary differences, are recognised only where it is considered more likely than not that they will be recovered, which is dependent on the generation of sufficient future taxable profits. Deferred tax liabilities arising from temporary differences in investments, caused principally by retained earnings held in foreign tax jurisdictions, are recognised unless repatriation of retained earnings can be controlled and are not expected to occur in the foreseeable future.

Assumptions about the generation of future taxable profits and repatriation of retained earnings depend on management's estimates of future cash flows. These depend on estimates of future production and sales volumes, commodity prices, reserves, operating costs, closure and rehabilitation costs, capital expenditure, dividends and other capital management transactions. Judgements are also required about the application of income tax legislation. These judgements and assumptions are subject to risk and uncertainty, hence there is a possibility that changes in circumstances will alter expectations, which may impact the amount of deferred tax assets and deferred tax liabilities recognised on the balance sheet and the amount of other tax losses and temporary differences not yet recognised. In such circumstances, some or all of the carrying amount of recognised deferred tax assets and liabilities may require adjustment, resulting in a corresponding credit or charge to the income statement.

## Notes to Financial Statements continued

### 1 Accounting policies continued

#### *Rounding of amounts*

Amounts in these financial statements have, unless otherwise indicated, been rounded to the nearest million dollars.

#### *Comparatives*

Where applicable, comparatives have been adjusted to present them on the same basis as current period figures.

#### *Exchange rates*

The following exchange rates relative to the US dollar have been applied in the financial statements:

	Average year ended 30 June 2010	Average year ended 30 June 2009	Average year ended 30 June 2008	As at 30 June 2010	As at 30 June 2009	As at 30 June 2008
Australian dollar <sup>(a)</sup>	<b>0.88</b>	0.75	0.90	<b>0.85</b>	0.81	0.96
Brazilian real	<b>1.80</b>	2.08	1.78	<b>1.81</b>	1.95	1.60
Canadian dollar	<b>1.06</b>	1.16	1.01	<b>1.06</b>	1.16	1.01
Chilean peso	<b>529</b>	582	489	<b>545</b>	530	522
Colombian peso	<b>1,970</b>	2,205	1,935	<b>1,920</b>	2,159	1,899
South African rand	<b>7.59</b>	9.01	7.29	<b>7.68</b>	7.82	7.91
Euro	<b>0.72</b>	0.73	0.68	<b>0.82</b>	0.71	0.63
UK pound sterling	<b>0.63</b>	0.63	0.50	<b>0.66</b>	0.60	0.50

<sup>(a)</sup> Displayed as US\$ to A\$1 based on common convention.

### 2 Segment reporting

#### *Business segments*

The Group operates nine Customer Sector Groups aligned with the commodities which we extract and market, reflecting the structure used by the Group's management to assess the performance of the Group:

<u>Customer Sector Group</u>	<u>Principal activities</u>
Petroleum	Exploration, development and production of oil and gas
Aluminium	Mining of bauxite, refining of bauxite into alumina and smelting of alumina into aluminium metal
Base Metals	Mining of copper, silver, lead, zinc, molybdenum, uranium and gold
Diamonds and Specialty Products	Mining of diamonds and titanium minerals; potash development
Stainless Steel Materials	Mining and production of nickel products
Iron Ore	Mining of iron ore
Manganese	Mining of manganese ore and production of manganese metal and alloys
Metallurgical Coal	Mining of metallurgical coal
Energy Coal	Mining of thermal (energy) coal

Group and unallocated items represent Group centre functions. Exploration and technology activities are recognised within relevant segments.

It is the Group's policy that inter-segment sales are made on a commercial basis.



Notes to Financial Statements continued

2 Segment reporting continued

US\$M	Petroleum	Aluminium	Base Metals	Diamonds and Specialty Products	Stainless Steel Materials	Iron Ore	Manganese	Metallurgical Coal	Energy Coal	Group and unallocated items/eliminations	BHP Billiton Group
<b>Year ended 30 June 2010</b>											
Revenue											
Group production	8,682	2,948	9,528	1,272	3,311	10,964	2,143	6,019	3,214	—	48,081
Third party products	86	1,405	881	—	306	67	7	—	1,051	802	4,605
Rendering of services	3	—	—	—	—	69	—	40	—	—	112
Inter-segment revenue	11	—	—	—	—	39	—	—	—	(50)	—
<b>Total revenue <sup>(a)</sup></b>	<b>8,782</b>	<b>4,353</b>	<b>10,409</b>	<b>1,272</b>	<b>3,617</b>	<b>11,139</b>	<b>2,150</b>	<b>6,059</b>	<b>4,265</b>	<b>752</b>	<b>52,798</b>
<b>Underlying EBITDA <sup>(b)</sup></b>	<b>6,571</b>	<b>684</b>	<b>5,393</b>	<b>648</b>	<b>1,085</b>	<b>6,496</b>	<b>784</b>	<b>2,363</b>	<b>971</b>	<b>(482)</b>	<b>24,513</b>
Depreciation and amortisation	(1,998)	(278)	(729)	(163)	(427)	(495)	(72)	(309)	(228)	(60)	(4,759)
Impairment (losses)/reversals recognised	—	—	(32)	—	10	—	—	(1)	(13)	1	(35)
<b>Underlying EBIT <sup>(b)</sup></b>	<b>4,573</b>	<b>406</b>	<b>4,632</b>	<b>485</b>	<b>668</b>	<b>6,001</b>	<b>712</b>	<b>2,053</b>	<b>730</b>	<b>(541)</b>	<b>19,719</b>
Comprising:											
Group production	4,570	393	4,639	485	646	6,003	717	2,053	642	(540)	19,608
Third party products	3	13	(7)	—	22	(2)	(5)	—	88	(1)	111
<b>Underlying EBIT <sup>(b)</sup></b>	<b>4,573</b>	<b>406</b>	<b>4,632</b>	<b>485</b>	<b>668</b>	<b>6,001</b>	<b>712</b>	<b>2,053</b>	<b>730</b>	<b>(541)</b>	<b>19,719</b>
Net finance costs <sup>(c)</sup>											(459)
Exceptional items <sup>(d)</sup>											312
<b>Profit before taxation</b>											<b>19,572</b>
<b>Capital expenditure</b>	<b>1,951</b>	<b>1,019</b>	<b>763</b>	<b>127</b>	<b>265</b>	<b>3,838</b>	<b>182</b>	<b>653</b>	<b>881</b>	<b>87</b>	<b>9,766</b>
<b>Total assets</b>	<b>12,733</b>	<b>8,078</b>	<b>14,970</b>	<b>2,588</b>	<b>4,507</b>	<b>13,592</b>	<b>2,082</b>	<b>5,597</b>	<b>5,425</b>	<b>19,280</b>	<b>88,852</b>
<b>Total liabilities</b>	<b>3,175</b>	<b>1,318</b>	<b>2,621</b>	<b>527</b>	<b>1,154</b>	<b>2,526</b>	<b>794</b>	<b>1,475</b>	<b>1,965</b>	<b>23,968</b>	<b>39,523</b>

**Notes to Financial Statements continued**

**2 Segment reporting continued**

<b>US\$M</b>	<b>Petroleum</b>	<b>Aluminium</b>	<b>Base Metals</b>	<b>Diamonds and Specialty Products</b>	<b>Stainless Steel Materials</b>	<b>Iron Ore</b>	<b>Manganese</b>	<b>Metallurgical Coal</b>	<b>Energy Coal</b>	<b>Group and unallocated items/eliminations</b>	<b>BHP Billiton Group</b>
<b>Year ended 30 June 2009</b>											
<b>Revenue</b>											
Group production	6,924	3,219	6,616	896	2,202	9,815	2,473	7,988	3,830	—	43,963
Third party products	192	932	488	—	112	132	63	18	2,694	1,467	6,098
Rendering of services	6	—	—	—	—	61	—	81	—	2	150
Inter-segment revenue	89	—	1	—	41	40	—	—	—	(171)	—
<b>Total revenue <sup>(a)</sup></b>	<b>7,211</b>	<b>4,151</b>	<b>7,105</b>	<b>896</b>	<b>2,355</b>	<b>10,048</b>	<b>2,536</b>	<b>8,087</b>	<b>6,524</b>	<b>1,298</b>	<b>50,211</b>
Underlying EBITDA <sup>(b)</sup>	5,456	476	1,994	370	(366)	6,631	1,397	4,988	1,676	(347)	22,275
Depreciation and amortisation	(1,288)	(298)	(663)	(222)	(439)	(384)	(48)	(277)	(210)	(42)	(3,871)
Impairment (losses)/reversals recognised	(83)	14	(39)	(3)	(49)	(18)	—	—	(6)	(6)	(190)
<b>Underlying EBIT <sup>(b)</sup></b>	<b>4,085</b>	<b>192</b>	<b>1,292</b>	<b>145</b>	<b>(854)</b>	<b>6,229</b>	<b>1,349</b>	<b>4,711</b>	<b>1,460</b>	<b>(395)</b>	<b>18,214</b>
<b>Comprising:</b>											
Group production	4,081	202	1,326	145	(905)	6,022	1,358	4,704	1,174	(396)	17,711
Third party products	4	(10)	(34)	—	51	207	(9)	7	286	1	503
<b>Underlying EBIT <sup>(b)</sup></b>	<b>4,085</b>	<b>192</b>	<b>1,292</b>	<b>145</b>	<b>(854)</b>	<b>6,229</b>	<b>1,349</b>	<b>4,711</b>	<b>1,460</b>	<b>(395)</b>	<b>18,214</b>
Net finance costs <sup>(c)</sup>											(543)
Exceptional items <sup>(d)</sup>											(6,054)
<b>Profit before taxation</b>											<b>11,617</b>
Capital expenditure	1,905	863	1,018	112	685	1,922	279	1,562	876	114	9,336
<b>Total assets</b>	<b>12,444</b>	<b>7,575</b>	<b>14,812</b>	<b>2,073</b>	<b>4,767</b>	<b>8,735</b>	<b>1,454</b>	<b>4,929</b>	<b>4,555</b>	<b>17,426</b>	<b>78,770</b>
<b>Total liabilities</b>	<b>3,388</b>	<b>1,242</b>	<b>2,995</b>	<b>292</b>	<b>1,482</b>	<b>1,501</b>	<b>571</b>	<b>1,249</b>	<b>2,004</b>	<b>23,335</b>	<b>38,059</b>

**Notes to Financial Statements continued**

**2 Segment reporting continued**

<b>US\$M</b>	<b>Petroleum</b>	<b>Aluminium</b>	<b>Base Metals</b>	<b>Diamonds and Specialty Products</b>	<b>Stainless Steel Materials</b>	<b>Iron Ore</b>	<b>Manganese</b>	<b>Metallurgical Coal</b>	<b>Energy Coal</b>	<b>Group and unallocated items/eliminations</b>	<b>BHP Billiton Group</b>
<b>Year ended 30 June 2008</b>											
<b>Revenue</b>											
Group production	7,997	4,675	13,231	969	5,040	9,246	2,844	3,818	3,921	—	51,741
Third party products	254	1,071	1,543	—	48	108	68	61	2,639	1,763	7,555
Rendering of services	10	—	—	—	—	63	—	62	—	42	177
Inter-segment revenue	121	—	—	—	—	38	—	—	—	(159)	—
<b>Total revenue <sup>(a)</sup></b>	<b>8,382</b>	<b>5,746</b>	<b>14,774</b>	<b>969</b>	<b>5,088</b>	<b>9,455</b>	<b>2,912</b>	<b>3,941</b>	<b>6,560</b>	<b>1,646</b>	<b>59,473</b>
Underlying EBITDA <sup>(b)</sup>	6,653	1,775	8,657	364	1,739	4,962	1,692	1,209	1,326	(346)	28,031
Depreciation and amortisation	(1,113)	(309)	(658)	(142)	(450)	(331)	(48)	(272)	(241)	(48)	(3,612)
Impairment (losses)/reversals recognised	(55)	(1)	(10)	(33)	(14)	—	—	—	(28)	4	(137)
<b>Underlying EBIT <sup>(b)</sup></b>	<b>5,485</b>	<b>1,465</b>	<b>7,989</b>	<b>189</b>	<b>1,275</b>	<b>4,631</b>	<b>1,644</b>	<b>937</b>	<b>1,057</b>	<b>(390)</b>	<b>24,282</b>
<b>Comprising:</b>											
Group production	5,483	1,445	8,190	189	1,275	4,748	1,644	941	1,146	(395)	24,666
Third party products	2	20	(201)	—	—	(117)	—	(4)	(89)	5	(384)
<b>Underlying EBIT <sup>(b)</sup></b>	<b>5,485</b>	<b>1,465</b>	<b>7,989</b>	<b>189</b>	<b>1,275</b>	<b>4,631</b>	<b>1,644</b>	<b>937</b>	<b>1,057</b>	<b>(390)</b>	<b>24,282</b>
Net finance costs <sup>(c)</sup>											(662)
Exceptional items <sup>(d)</sup>											(137)
<b>Profit before taxation</b>											<b>23,483</b>
Capital expenditure	2,116	556	989	123	1,191	1,832	155	500	438	29	7,929
<b>Total assets</b>	<b>11,874</b>	<b>7,672</b>	<b>15,356</b>	<b>1,964</b>	<b>8,477</b>	<b>8,656</b>	<b>1,688</b>	<b>3,916</b>	<b>5,173</b>	<b>11,232</b>	<b>76,008</b>
<b>Total liabilities</b>	<b>2,980</b>	<b>1,308</b>	<b>4,197</b>	<b>270</b>	<b>1,202</b>	<b>1,862</b>	<b>534</b>	<b>1,269</b>	<b>3,174</b>	<b>20,169</b>	<b>36,965</b>

<sup>(a)</sup> Revenue not attributable to reportable segment reflects sales of freight and fuel to third parties.

<sup>(b)</sup> Underlying EBIT is earnings before net finance costs and taxation and any exceptional items. Underlying EBITDA is Underlying EBIT, before depreciation, amortisation and impairments.

<sup>(c)</sup> Refer to note 6.

<sup>(d)</sup> Refer to note 3.

## Notes to Financial Statements continued

### 2 Segment reporting continued

#### *Geographical information*

	Revenue by location of customer		
	2010 US\$M	2009 US\$M	2008 US\$M
Australia	4,515	4,621	5,841
United Kingdom	1,289	3,042	3,091
Rest of Europe	8,554	7,764	11,258
China	13,236	9,873	11,670
Japan	5,336	7,138	6,885
Other Asia	9,840	9,280	10,111
North America	5,547	4,020	4,771
South America	2,013	1,652	2,640
Southern Africa	1,227	1,374	2,003
Rest of world	1,241	1,447	1,203
	<b>52,798</b>	<b>50,211</b>	<b>59,473</b>

	Non-current assets by location of assets <sup>(a)</sup>		
	2010 US\$M	2009 US\$M	2008 US\$M
Australia	35,267	28,779	28,166
United Kingdom	316	245	388
North America	7,143	7,382	7,050
South America	9,230	9,163	8,823
Southern Africa	5,466	4,286	3,883
Rest of world	733	976	1,084
Unallocated assets	5,563	5,453	4,934
	<b>63,718</b>	<b>56,284</b>	<b>54,328</b>

<sup>(a)</sup> Non-current assets attributed to geographical locations exclude deferred tax assets and other financial assets.

## Notes to Financial Statements continued

### 3 Exceptional items

Exceptional items are those items where their nature and amount is considered material to the financial statements. Such items included within the Group profit for the year are detailed below.

Year ended 30 June 2010	Gross US\$M	Tax US\$M	Net US\$M
<b>Exceptional items by category</b>			
Pinal Creek rehabilitation	186	(53)	133
Disposal of Ravensthorpe nickel operations	653	(196)	457
Restructuring of operations and deferral of projects	(298)	12	(286)
Renegotiation of power supply agreements	(229)	50	(179)
Release of income tax provisions	—	128	128
	<u>312</u>	<u>(59)</u>	<u>253</u>

#### *Pinal Creek rehabilitation:*

On 22 February 2010 a settlement was reached in relation to the Pinal Creek (US) groundwater contamination which resulted in other parties taking on full responsibility for groundwater remediation and partly funding the Group for past and future rehabilitation costs. As a result, a gain of US\$186 million (US\$53 million tax expense) has been recognised reflecting the release of rehabilitation provisions and cash received.

#### *Disposal of Ravensthorpe nickel operations:*

On 9 December 2009, the Group announced it had signed an agreement to sell the Ravensthorpe nickel operations (Australia). The sale was completed on 10 February 2010. As a result of the sale, impairment charges recognised as exceptional items in the financial year ended 30 June 2009 have been partially reversed totalling US\$611 million (US\$183 million tax expense). In addition, certain obligations that remained with the Group were mitigated and related provisions released; together with minor net operating costs this resulted in a gain of US\$42 million (US\$13 million tax expense).

#### *Restructuring of operations and deferral of projects:*

Continuing power supply constraints impacting the Group's three Aluminium smelter operations in southern Africa, and temporary delays with the Guinea Alumina project, have given rise to charges for the impairment of property, plant and equipment and restructuring provisions. A total charge of US\$298 million (US\$12 million tax benefit) was recognised by the Group in the year ended 30 June 2010.

#### *Renegotiation of power supply arrangements:*

Renegotiation of long-term power supply arrangements in southern Africa have impacted the value of embedded derivatives contained within those arrangements. A total charge of US\$229 million (US\$50 million tax benefit) was recognised by the Group in the year ended 30 June 2010.

#### *Release of income tax provisions:*

The Australian Taxation Office (ATO) issued amended assessments in prior years denying bad debt deductions arising from the investments in Hartley, Beenup and Boodarie Iron and the denial of capital allowance claims made on the Boodarie Iron project. BHP Billiton lodged objections and has been successful on all counts in the Federal Court and the Full Federal Court. The ATO has not sought to appeal the Boodarie Iron bad debt disallowance to the High Court which resulted in a release of US\$128 million from the Group's income tax provisions. The ATO sought special leave to appeal to the High Court in relation to the Beenup bad debt disallowance and the denial of the capital allowance claims on the Boodarie Iron project and has been granted special leave only in relation to the denial of the capital allowance claims on the Boodarie Iron project.

## Notes to Financial Statements continued

### 3 Exceptional items continued

*Exceptional items are classified by nature of expense as follows:*

Year ended 30 June 2010 US\$M	(Impairment)/ impairment reversal of property, plant and equipment	Closure and rehabilitation provisions released	Funding received for past and future rehabilitation costs	Contract cancellation, redundancy and other restructuring costs (incurred)/ released	Embedded derivative revaluations	Gross
Renegotiation of power supply agreements	—	—	—	—	(229)	(229)
Restructuring of operations and deferral of projects	(292)	—	—	(6)	—	(298)
Disposal of the Ravensthorpe nickel operations	611	—	—	42	—	653
Pinal Creek rehabilitation	—	130	56	—	—	186
	<u>319</u>	<u>130</u>	<u>56</u>	<u>36</u>	<u>(229)</u>	<u>312</u>

Year ended 30 June 2009	Gross US\$M	Tax US\$M	Net US\$M
Exceptional items by category			
Suspension of Ravensthorpe nickel operations	(3,615)	1,076	(2,539)
Announced sale of Yabulu refinery	(510)	(175)	(685)
Withdrawal or sale of other operations	(665)	(23)	(688)
Deferral of projects and restructuring of operations	(306)	86	(220)
Newcastle steelworks rehabilitation	(508)	152	(356)
Lapsed offers for Rio Tinto	(450)	93	(357)
	<u>(6,054)</u>	<u>1,209</u>	<u>(4,845)</u>

#### *Suspension of Ravensthorpe nickel operations:*

On 21 January 2009, the Group announced the suspension of operations at Ravensthorpe nickel operations (Australia) and as a consequence stopped the processing of the mixed nickel cobalt hydroxide product at Yabulu (Australia). As a result, an impairment charge and increased provisions for contract cancellation, redundancy and other closure costs of US\$3,615 million (US\$1,076 million tax benefit) were recognised. This exceptional item did not include the loss from operations of Ravensthorpe nickel operations of US\$173 million.

#### *Announced sale of Yabulu refinery:*

On 3 July 2009, the Group announced the sale of the Yabulu operations. As a result, impairment charges of US\$510 million (US\$ nil tax benefit) were recognised in addition to those recognised on suspension of the Ravensthorpe nickel operations. As a result of the sale, deferred tax assets of US\$175 million were no longer expected to be realised by the Group and were recognised as a charge to income tax expense. The remaining assets and liabilities of the Yabulu operations were classified as held for sale as at 30 June 2009.

#### *Withdrawal or sale of other operations:*

As part of the Group's regular review of the long-term viability of operations, a total charge of US\$665 million (US\$23 million tax expense) was recognised primarily in relation to the decisions to cease development of the Maruwai Haju trial mine (Indonesia), sell the Suriname operations, suspend copper sulphide mining operations at Pinto Valley (US) and cease the pre-feasibility study at Corridor Sands (Mozambique). The remaining assets and liabilities of the Suriname operations were classified as held for sale as at 30 June 2009.

#### *Deferral of projects and restructuring of operations:*

As part of the Group's regular review of the long-term viability of continuing operations, a total charge of US\$306 million (US\$86 million tax benefit) was recognised primarily in relation to the deferral of expansions at the Nickel West operations (Australia), deferral of the Guinea Alumina project (Guinea) and the restructuring of the Bayside Aluminium Casthouse operations (South Africa).

## Notes to Financial Statements continued

### 3 Exceptional items continued

#### *Newcastle steelworks rehabilitation:*

The Group recognised a charge of US\$508 million (US\$152 million tax benefit) for additional rehabilitation obligations in respect of former operations at the Newcastle steelworks (Australia). The increase in obligations related to changes in the estimated volume of sediment in the Hunter River requiring remediation and treatment, and increases in estimated treatment costs.

#### *Lapsed offers for Rio Tinto:*

The Group's offers for Rio Tinto lapsed on 27 November 2008 following the Board's decision that it no longer believed that completion of the offers was in the best interests of BHP Billiton shareholders. The Group incurred fees associated with the US\$55 billion debt facility (US\$156 million cost, US\$31 million tax benefit), investment bankers', lawyers' and accountants' fees, printing expenses and other charges (US\$294 million cost, US\$62 million tax benefit) in progressing this matter over the 18 months up to the lapsing of the offers, which were expensed in year ended 30 June 2009.

#### *Exceptional items are classified by nature of expense as follows:*

Year ended 30 June 2009 US\$M	Impairments of property, plant and equipment <sup>(a)</sup>	Closure and rehabilitation provisions	Contract cancellation, redundancy and other closure costs	Inventory impairments	Rio Tinto offer costs	Gross
Suspension of Ravensthorpe nickel operations	(3,260)	—	(228)	(127)	—	(3,615)
Announced sale of Yabulu refinery	(510)	—	—	—	—	(510)
Withdrawal or sale of other operations	(463)	(34)	(137)	(31)	—	(665)
Deferral of projects and restructuring of operations	(217)	—	(80)	(9)	—	(306)
Newcastle steelworks rehabilitation	—	(508)	—	—	—	(508)
Lapsed offers for Rio Tinto	—	—	—	—	(450)	(450)
	(4,450)	(542)	(445)	(167)	(450)	(6,054)

<sup>(a)</sup> Impairments recorded in respect of Ravensthorpe nickel operations have been calculated by reference to fair value less costs to sell, based on an internal valuation. Impairments recorded in respect of Yabulu refinery have been calculated with respect to the sale proceeds expected to be received.

#### *Assets held for sale:*

The remaining assets and liabilities of Yabulu and Suriname were classified as current assets held for sale of US\$213 million (comprising inventory of US\$131 million, property, plant and equipment of US\$55 million and other working capital assets of US\$27 million), and as current liabilities held for sale of US\$363 million (comprising closure and rehabilitation provision of US\$260 million and working capital liabilities of US\$103 million) at 30 June 2009.

Year ended 30 June 2008	Gross US\$M	Tax US\$M	Net US\$M
Exceptional items by category			
Recognition of benefit of tax losses in respect of the acquisition of WMC and consequent reduction in goodwill	(137)	159	22
	(137)	159	22

#### *Recognition of benefit of tax losses in respect of the acquisition of WMC and consequent reduction in goodwill:*

Tax losses incurred by WMC Resources Ltd (WMC) were not recognised as a deferred tax asset at acquisition pending a ruling application to the Australian Taxation Office. The ruling was issued confirming the availability of those losses. This resulted in the recognition of a deferred tax asset (US\$197 million) and consequential adjustment to deferred tax liabilities (US\$38 million) through income tax expense at current exchange rates. As a further consequence, the Group recognised an expense for a corresponding reduction in goodwill measured at the exchange rate at the date of acquisition.

## Notes to Financial Statements continued

### 4 Other income

	2010 US\$M	2009 US\$M	2008 US\$M
Dividend income	16	33	53
Royalties	12	11	18
Gains on sale of property, plant and equipment	76	48	64
Gains/(losses) on sale of investments	22	8	(1)
Gains/(losses) on sale of subsidiaries and operations	16	(18)	66
Commission income	118	106	100
Insurance recoveries	21	88	38
Other income	247	313	310
<b>Total other income</b>	<b>528</b>	<b>589</b>	<b>648</b>

### 5 Expenses

	2010 US\$M	2009 US\$M	2008 US\$M
Changes in inventories of finished goods and work in progress	(501)	(11)	(750)
Raw materials and consumables used	6,652	6,227	7,529
Employee benefits expense	4,661	4,147	4,271
External services (including transportation)	9,733	9,725	8,947
Third party commodity purchases	4,478	5,785	7,820
Net foreign exchange losses/(gains)	112	(324)	243
Research and development costs before crediting related grants	65	156	244
Fair value change on derivatives <sup>(a)</sup>	259	(560)	433
Impairment of available for sale financial assets	2	71	—
Government royalties paid and payable	1,653	1,905	1,369
Depreciation and amortisation expense	4,759	3,871	3,612
Exploration and evaluation expenditure incurred and expensed in the current period	1,030	1,009	859
Exploration and evaluation expenditure previously capitalised, written off as unsuccessful or abandoned <sup>(b)</sup>	256	96	47
Impairment of property, plant and equipment <sup>(b)</sup>	89	4,439	90
Reversal of previously written off capitalised exploration and evaluation expenditure	(1)	—	—
Reversal of previously impaired property, plant and equipment <sup>(b)</sup>	(630)	—	—
Impairment of goodwill and other intangible assets	—	34	—
Reduction of previously recognised goodwill	—	—	137
Operating lease rentals	390	409	451
All other operating expenses	288	1,661	674
<b>Total expenses</b>	<b>33,295</b>	<b>38,640</b>	<b>35,976</b>



Notes to Financial Statements continued

5 Expenses continued

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Aggregate employee benefits expense</b>			
Wages, salaries and redundancies	4,271	3,877	3,949
Employee share awards <sup>(c)</sup>	210	164	138
Social security costs	13	15	14
Pensions and other post-retirement obligations costs – refer to note 29	336	289	259
	<u>4,830</u>	<u>4,345</u>	<u>4,360</u>
Less employee benefits expense classified as exploration and evaluation expenditure above	169	198	89
<b>Employee benefits expense</b>	<u>4,661</u>	<u>4,147</u>	<u>4,271</u>

<sup>(a)</sup> Fair value change on derivatives includes realised losses of US\$95 million (2009: US\$219 million realised losses; 2008: US\$207 million realised gains) and unrealised losses of US\$164 million (2009: US\$779 million unrealised gains; 2008: US\$640 million unrealised losses).

<sup>(b)</sup> Includes exceptional items of US\$319 million (2009: US\$4,450 million; 2008: US\$ nil). Refer to note 3.

<sup>(c)</sup> Employee share awards expense is US\$210.490 million (2009: US\$163.820 million; 2008: US\$137.935 million).

## Notes to Financial Statements continued

### 6 Net finance costs

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Financial expenses</b>			
Interest on bank loans and overdrafts <sup>(a)</sup>	24	47	52
Interest on all other borrowings <sup>(a)</sup>	460	527	670
Finance lease and hire purchase interest	14	15	14
Dividends on redeemable preference shares	—	1	1
Discounting on provisions and other liabilities	359	315	310
Discounting on post-retirement employee benefits	130	132	138
Interest capitalised <sup>(b)</sup>	(301)	(149)	(204)
Fair value change on hedged loans	131	390	259
Fair value change on hedging derivatives	(138)	(377)	(257)
Exchange variations on net debt	(5)	(49)	(28)
	<u>674</u>	<u>852</u>	<u>955</u>
<b>Financial income</b>			
Interest income <sup>(c)</sup>	(117)	(198)	(168)
Expected return on pension scheme assets	(98)	(111)	(125)
	<u>(215)</u>	<u>(309)</u>	<u>(293)</u>
<b>Net finance costs</b>	<u>459</u>	<u>543</u>	<u>662</u>

<sup>(a)</sup> Includes interest expense on financial liabilities carried at amortised cost of US\$274 million (2009: US\$338 million; 2008: US\$233 million).

<sup>(b)</sup> Interest has been capitalised at the rate of interest applicable to the specific borrowings financing the assets under construction or, where financed through general borrowings, at a capitalisation rate representing the average interest rate on such borrowings. For the year ended 30 June 2010, the general capitalisation rate was 3.5 per cent (2009: 4.25 per cent; 2008: 5.0 per cent).

<sup>(c)</sup> Includes interest income on financial assets carried at amortised cost of US\$117 million (2009: US\$198 million; 2008: US\$168 million).

### 7 Income tax and deferred tax

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Total taxation expense comprises:</b>			
Current tax expense	5,395	6,078	7,103
Deferred tax expense	1,168	(799)	418
	<u>6,563</u>	<u>5,279</u>	<u>7,521</u>
<b>Total taxation expense attributed to geographical jurisdiction</b>			
UK	178	319	217
Australia	3,798	3,158	3,397
Rest of world	2,587	1,802	3,907
	<u>6,563</u>	<u>5,279</u>	<u>7,521</u>

**Notes to Financial Statements continued**

**7 Income tax and deferred tax continued**

	<b>2010</b>		<b>2009</b>		<b>2008</b>	
	<b>%</b>	<b>US\$M</b>	<b>%</b>	<b>US\$M</b>	<b>%</b>	<b>US\$M</b>
<b>Factors affecting income tax expense for the period</b>						
Income tax expense differs to the standard rate of corporation tax as follows:						
Profit before taxation		<b>19,572</b>		11,617		23,483
Tax on profit at standard rate of 30 per cent	<b>30.0</b>	<b>5,872</b>	30.0	3,485	30.0	7,045
Investment and development allowance	<b>(1.4)</b>	<b>(279)</b>	(1.2)	(142)	(1.6)	(386)
Amounts (over)/under provided in prior years	<b>(1.0)</b>	<b>(181)</b>	0.1	16	(0.3)	(61)
(Initial recognition)/derecognition of tax assets	<b>(0.2)</b>	<b>(42)</b>	2.5	290	(0.8)	(183)
Non-deductible depreciation, amortisation and exploration expenditure	<b>0.5</b>	<b>92</b>	0.7	91	0.6	147
Tax rate differential on foreign income	<b>0.5</b>	<b>94</b>	(0.2)	(26)	0.7	166
Tax on remitted and unremitted foreign earnings	<b>1.1</b>	<b>221</b>	1.7	196	0.7	158
Non tax-effected operating losses and capital gains	<b>0.8</b>	<b>152</b>	2.9	338	0.2	54
Exchange variations and other translation adjustments	<b>0.5</b>	<b>106</b>	3.8	444	(1.0)	(229)
Tax rate changes	<b>0.1</b>	<b>17</b>	—	—	—	(9)
Other	<b>0.3</b>	<b>60</b>	0.8	92	0.4	96
<b>Income tax expense</b>	<b>31.2</b>	<b>6,112</b>	41.1	4,784	28.9	6,798
Royalty related taxation (net of income tax benefits)	<b>2.3</b>	<b>451</b>	4.3	495	3.1	723
<b>Total taxation expense</b>	<b>33.5</b>	<b>6,563</b>	45.4	5,279	32.0	7,521

Income tax relating to components of other comprehensive income is as follows:

	<b>2010</b>	<b>2009</b>	<b>2008</b>
	<b>US\$M</b>	<b>US\$M</b>	<b>US\$M</b>
Actuarial losses on pension and medical schemes	<b>15</b>	62	20
Available for sale investments:			
Net valuation gains/(losses) taken to equity	<b>(16)</b>	(21)	8
Net valuation losses transferred to the income statement	—	—	—
Cash flow hedges:			
(Losses)/gains taken to equity	<b>5</b>	(245)	147
Realised losses transferred to the income statement	<b>(1)</b>	(7)	(26)
Unrealised gain transferred to the income statement	—	15	—
Gains transferred to the initial carrying amount of hedged items	—	5	49
Exchange fluctuations on translation of foreign operations taken to equity	—	—	—
Exchange fluctuations on translation of foreign operations transferred to the income statement	—	—	—
Employee entitlements taken directly to retained earnings on exercise	<b>39</b>	27	57
Accrued employee entitlements for unexercised awards	<b>69</b>	(89)	51
<b>Total income tax relating to components of other comprehensive income <sup>(a)</sup></b>	<b>111</b>	(253)	306

<sup>(a)</sup> Included within total income tax relating to components of other comprehensive income is US\$75 million relating to deferred taxes and US\$36 million relating to current taxes (2009: US\$(297) million and US\$44 million; 2008: US\$234 million and US\$72 million).

## Notes to Financial Statements continued

### 7 Income tax and deferred tax continued

The movement for the year in the Group's net deferred tax position is as follows:

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Net deferred tax (liability)/asset</b>			
At the beginning of the financial year	872	370	572
Income tax (charge)/credit recorded in the income statement	(1,151)	799	(427)
Effect of change in tax rates recorded in the income statement	(17)	—	9
Income tax credit/(charge) recorded directly in equity	75	(297)	234
Acquisitions and disposals of subsidiaries and operations	(49)	6	—
Exchange variations and other movements	3	(6)	(18)
<b>At the end of the financial year</b>	<b>(267)</b>	<b>872</b>	<b>370</b>

The composition of the Group's net deferred tax asset and liability recognised in the balance sheet and the deferred tax expense charged/(credited) to the income statement is as follows:

	Deferred tax assets		Deferred tax liabilities		Charged/(credited) to the income statement		
	2010 US\$M	2009 US\$M	2010 US\$M	2009 US\$M	2010 US\$M	2009 US\$M	2008 US\$M
<b>Type of temporary difference</b>							
Depreciation	(805)	(156)	2,661	2,451	938	692	98
Exploration expenditure	555	446	(15)	(12)	(112)	(95)	(26)
Employee benefits	216	210	(232)	(284)	49	39	(66)
Closure and rehabilitation	401	448	(1,123)	(964)	(119)	(128)	(113)
Resource rent tax	223	21	657	281	175	(256)	291
Other provisions	94	108	(76)	(83)	14	(28)	(115)
Deferred income	69	(2)	(49)	(62)	(60)	(293)	298
Deferred charges	(36)	(53)	421	415	(11)	47	209
Investments, including foreign tax credits	1,592	1,425	612	527	(69)	(179)	(75)
Foreign exchange gains and losses	29	(124)	1,026	518	353	(316)	332
Non tax-depreciable fair value adjustments, revaluations and mineral rights	(23)	(24)	179	345	(148)	119	(54)
Tax-effected losses	1,600	1,510	(17)	(5)	(242)	(378)	(21)
Other	138	101	276	(89)	400	(23)	(340)
<b>Total</b>	<b>4,053</b>	<b>3,910</b>	<b>4,320</b>	<b>3,038</b>	<b>1,168</b>	<b>(799)</b>	<b>418</b>

	2010 US\$M	2009 US\$M
<b>Unrecognised deferred tax assets</b>		
Tax losses and tax credits	652	784
Investments in subsidiaries and jointly controlled entities	6	379
Other deductible temporary differences	2,189	2,143
<b>Total unrecognised deferred tax assets</b>	<b>2,847</b>	<b>3,306</b>
<b>Unrecognised deferred tax liabilities</b>		
Investments in subsidiaries and jointly controlled entities	1,782	1,421
<b>Total unrecognised deferred tax liabilities</b>	<b>1,782</b>	<b>1,421</b>

## Notes to Financial Statements continued

### 7 Income tax and deferred tax continued

#### *Tax losses*

At 30 June 2010, the Group had income and capital tax losses with a tax benefit of US\$437 million (2009: US\$552 million) which are not recognised as deferred tax assets. The Group recognises the benefit of tax losses only to the extent of anticipated future taxable income or gains in relevant jurisdictions. The gross amount of tax losses carried forward that have not been tax effected expire as follows:

Year of expiry	Australia US\$M	UK US\$M	Rest of world US\$M	Total losses US\$M
<b>Income tax losses</b>				
Not later than one year	—	—	17	17
Later than one year and not later than two years	—	—	12	12
Later than two years and not later than five years	—	—	69	69
Later than five years and not later than ten years	—	—	7	7
Later than ten years and not later than twenty years	—	—	314	314
Unlimited	—	394	76	470
	—	394	495	889
<b>Capital tax losses</b>				
Unlimited	559	2	29	590
<b>Gross amount of tax losses not recognised</b>	<b>559</b>	<b>396</b>	<b>524</b>	<b>1,479</b>
<b>Tax effect of total losses not recognised</b>	<b>168</b>	<b>111</b>	<b>158</b>	<b>437</b>

#### *Tax credits*

At 30 June 2010, the Group had US\$215 million of tax credits that have not been recognised (2009: US\$232 million).

#### *Deductible temporary differences*

At 30 June 2010, the Group had deductible temporary differences for which deferred tax assets of US\$2,195 million (2009: US\$2,522 million) have not been recognised because it is not probable that future taxable profits will be available against which the Group can utilise the benefits. The deductible temporary differences do not expire under current tax legislation.

#### *Temporary differences associated with investments in subsidiaries and jointly controlled entities*

At 30 June 2010, deferred tax liabilities of US\$1,782 million (2009: US\$1,421 million) associated with undistributed earnings of subsidiaries and jointly controlled entities have not been recognised because the Group is able to control the timing of the reversal of the temporary differences and it is not probable that such differences will reverse in the foreseeable future.

#### *Other factors affecting taxation*

The Australian Taxation Office (ATO) has issued amended assessments during the period from 2005 to 2008 denying bad debt deductions arising from the investments in Hartley, Beenup and Boodarie Iron and the denial of capital allowance claims made on the Boodarie Iron project. BHP Billiton lodged objections against all the amended assessments. An amount of US\$686 million was paid to the ATO pursuant to ATO disputed assessment guidelines, which require that taxpayers generally must pay half of the tax in dispute to defer recovery proceedings.

## Notes to Financial Statements continued

### 7 Income tax and deferred tax continued

The Boodarie Iron and Beenup bad debt disallowance matters and the Boodarie Iron capital allowance matter were heard concurrently in the Federal Court in January 2009. BHP Billiton was successful on all counts. The ATO appealed and the matter was heard in the Full Federal Court in November 2009. BHP Billiton was again successful on all counts. The ATO sought special leave to appeal to the High Court only in relation to the Beenup bad debt disallowance and the denial of the capital allowance claims on the Boodarie Iron project. The High Court has granted special leave only in relation to the denial of the capital allowance claims on the Boodarie Iron project. A date for the appeal has not yet been set. As a result of the ATO not seeking to challenge the Boodarie Iron project bad debt disallowance, the ATO has refunded US\$552 million to BHP Billiton including interest. BHP Billiton also expects that as a result of the High Court not granting special leave for the Beenup bad debt disallowance, the ATO will refund the amount paid in relation to this dispute of US\$62 million plus interest. BHP Billiton settled the Hartley matter with the ATO in September 2009.

The amount remaining in dispute following the decision of the High Court for the denial of capital allowance claims on the Boodarie Iron project is approximately US\$435 million, being primary tax of US\$328 million and US\$107 million of interest (after tax).

### 8 Earnings per share

	2010	2009	2008
Basic earnings per ordinary share (US cents)	228.6	105.6	275.3
Diluted earnings per ordinary share (US cents)	227.8	105.4	274.8
Basic earnings per American Depositary Share (ADS) (US cents) <sup>(a)</sup>	457.2	211.2	550.6
Diluted earnings per American Depositary Share (ADS) (US cents) <sup>(a)</sup>	455.6	210.8	549.6
Basic earnings (US\$M)	12,722	5,877	15,390
Diluted earnings (US\$M) <sup>(b)</sup>	12,743	5,899	15,402

The weighted average number of shares used for the purposes of calculating diluted earnings per share reconciles to the number used to calculate basic earnings per share as follows:

Weighted average number of shares	2010 Million	2009 Million	2008 Million
Basic earnings per ordinary share denominator	5,565	5,565	5,590
Shares and options contingently issuable under employee share ownership plans <sup>(c)</sup>	30	33	15
Diluted earnings per ordinary share denominator <sup>(d)</sup>	5,595	5,598	5,605

<sup>(a)</sup> Each American Depositary Share (ADS) represents two ordinary shares.

<sup>(b)</sup> Diluted earnings are calculated after adding back dividend equivalent payments of US\$21 million (2009: US\$22 million; 2008: US\$12 million) that would not be made if potential ordinary shares were converted to fully paid.

<sup>(c)</sup> The calculation of the number of ordinary shares used in the computation of basic earnings per share is the aggregate of the weighted average number of ordinary shares of BHP Billiton Limited and BHP Billiton Plc outstanding during the period after deduction of the number of shares held by the Billiton share repurchase scheme, the Billiton Employee Share Ownership Plan Trust, and the BHP Bonus Equity Plan Trust and adjusting for the BHP Billiton Limited bonus share issue. Included in the calculation of fully diluted earnings per share are shares contingently issuable under Employee Share Ownership Plans.

<sup>(d)</sup> Diluted earnings per share calculation excludes 2,177,884 of instruments (2009: nil; 2008: nil) which are considered antidilutive.

Notes to Financial Statements continued

9 Dividends

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Dividends paid during the period</b>			
BHP Billiton Limited	2,787	2,754	1,881
BHP Billiton Plc – Ordinary shares	1,831	1,809	1,252
– Preference shares <sup>(a)</sup>	—	—	—
	<u>4,618</u>	<u>4,563</u>	<u>3,133</u>
<b>Dividends declared in respect of the period</b>			
BHP Billiton Limited	2,921	2,754	2,351
BHP Billiton Plc – Ordinary shares	1,920	1,809	1,545
– Preference shares <sup>(a)</sup>	—	—	—
	<u>4,841</u>	<u>4,563</u>	<u>3,896</u>
	2010 US cents	2009 US cents	2008 US cents
<b>Dividends paid during the period (per share)</b>			
Prior year final dividend	41.0	41.0	27.0
Interim dividend	42.0	41.0	29.0
	<u>83.0</u>	<u>82.0</u>	<u>56.0</u>
<b>Dividends declared in respect of the period (per share)</b>			
Interim dividend	42.0	41.0	29.0
Final dividend	45.0	41.0	41.0
	<u>87.0</u>	<u>82.0</u>	<u>70.0</u>

Dividends are declared after period end in the announcement of the results for the period. Interim dividends are declared in February and paid in March. Final dividends are declared in August and paid in September. Dividends declared are not recorded as a liability at the end of the period to which they relate. Subsequent to year end, on 25 August 2010, BHP Billiton declared a final dividend of 45.0 US cents per share (US\$2,504 million), which will be paid on 30 September 2010 (2009: 41.0 US cents per share – US\$2,281 million; 2008: 41.0 US cents per share – US\$2,282 million).

Each American Depositary Share (ADS) represents two ordinary shares of BHP Billiton Limited or BHP Billiton Plc. Dividends declared on each ADS represent twice the dividend declared on BHP Billiton ordinary shares.

BHP Billiton Limited dividends for all periods presented are, or will be, fully franked based on a tax rate of 30 per cent.

	2010 US\$M	2009 US\$M	2008 US\$M
Franking credits as at 30 June	3,861	2,506	1,623
Franking credits arising from the payment of current tax payable	818	1,265	818
<b>Total franking credits available <sup>(b)</sup></b>	<u>4,679</u>	<u>3,771</u>	<u>2,441</u>

<sup>(a)</sup> 5.5 per cent dividend on 50,000 preference shares of £1 each declared and paid annually (2009: 5.5 per cent; 2008: 5.5 per cent).

<sup>(b)</sup> The payment of the final 2010 dividend declared after 30 June 2010 will reduce the franking account balance by US\$648 million.

Notes to Financial Statements continued

**10 Trade and other receivables**

	2010 US\$M	2009 US\$M
<b>Current</b>		
Trade receivables	5,092	3,881
Provision for doubtful debts	(147)	(176)
Total trade receivables	4,945	3,705
Employee Share Plan loans <sup>(a)</sup>	3	4
Other receivables	1,595	1,444
<b>Total current receivables <sup>(b)</sup></b>	<b>6,543</b>	<b>5,153</b>
<b>Non-current</b>		
Employee Share Plan loans <sup>(a)</sup>	21	24
Interest bearing loans receivable	683	—
Other receivables	677	738
<b>Total non-current receivables <sup>(b)</sup></b>	<b>1,381</b>	<b>762</b>
	2010 US\$M	2009 US\$M
<b>Movement in provision for doubtful debts</b>		
At the beginning of the financial year	176	49
Charge/(credit) for the year:		
Underlying charge in the income statement	4	189
Released to the income statement	(19)	(1)
Utilised	(14)	(61)
<b>At the end of the financial year</b>	<b>147</b>	<b>176</b>

<sup>(a)</sup> Under the terms of the BHP Billiton Limited Employee Share Plan, shares have been issued to employees for subscription at market price less a discount not exceeding 10 per cent. Interest free employee loans are full recourse and are available to fund the purchase of such shares for a period of up to 20 years, repayable by application of dividends or an equivalent amount. Refer to note 32.

<sup>(b)</sup> Disclosures relating to receivables from related parties are set out in note 31.



## Notes to Financial Statements continued

### 11 Other financial assets

	2010 US\$M	2009 US\$M
<b>Current</b>		
<b>At fair value</b>		
Cross currency and interest rate swaps	23	79
Forward exchange contracts	28	13
Commodity contracts	240	657
Other derivative contracts	1	14
<b>Total current other financial assets</b>	<b>292</b>	<b>763</b>
<b>Non-current</b>		
<b>At fair value</b>		
Cross currency and interest rate swaps	595	690
Commodity contracts	42	121
Other derivative contracts	111	283
Shares – fair value through profit or loss	—	35
Shares – available for sale	657	321
Other investments – available for sale <sup>(a)</sup>	105	93
<b>Total non-current other financial assets</b>	<b>1,510</b>	<b>1,543</b>

<sup>(a)</sup> Includes investments held by BHP Billiton Energy Coal South Africa Rehabilitation Trust. The future realisation of this investment is intended to fund environmental obligations relating to the closure of the South African coal operations, and consequently this investment, while under the Group's control, is not available for the general purposes of the Group. Any income from this investment is reinvested or applied to meet these obligations. The Group retains responsibility for these environmental obligations until such time as the former mine sites have been rehabilitated in accordance with the relevant environmental legislation. These obligations are therefore included under non-current provisions. Refer to note 18.

### 12 Inventories

		2010 US\$M	2009 US\$M
<b>Current</b>			
Raw materials and consumables	– at net realisable value <sup>(a)</sup>	—	1
	– at cost	1,518	1,402
		1,518	1,403
Work in progress	– at net realisable value <sup>(a)</sup>	18	23
	– at cost	2,129	1,847
		2,147	1,870
Finished goods	– at net realisable value <sup>(a)</sup>	300	66
	– at cost	1,369	1,482
		1,669	1,548
<b>Total current inventories</b>		<b>5,334</b>	<b>4,821</b>
<b>Non-current</b>			
Raw materials and consumables	– at cost	124	54
Work in progress	– at cost	209	141
Finished goods	– at cost	10	5
<b>Total non-current inventories</b>		<b>343</b>	<b>200</b>

<sup>(a)</sup> US\$33 million of inventory write-downs were recognised during the year (2009: US\$219 million; 2008: US\$24 million). Inventory write-downs of US\$21 million made in previous periods were reversed during the year (2009: US\$1 million; 2008: US\$7 million).

Notes to Financial Statements continued

**13 Property, plant and equipment**

	Land and buildings US\$M	Plant and equipment US\$M	Other mineral assets US\$M	Assets under construction US\$M	Exploration and evaluation US\$M	Total US\$M
<b>Year ended 30 June 2010</b>						
<b>Cost</b>						
At the beginning of the financial year	5,708	47,533	14,812	8,298	1,444	77,795
Additions	53	975	622	9,452	314	11,416
Acquisitions of subsidiaries and operations	—	—	508	—	—	508
Disposals	(117)	(870)	(6)	—	(24)	(1,017)
Disposals of subsidiaries and operations	(352)	(2,348)	(109)	(5)	—	(2,814)
Exchange variations taken to reserves	(1)	(179)	(38)	2	(1)	(217)
Transfers and other movements	857	5,449	(39)	(7,028)	235	(526)
At the end of the financial year	6,148	50,560	15,750	10,719	1,968	85,145
<b>Accumulated depreciation</b>						
At the beginning of the financial year	2,168	22,141	4,113	—	341	28,763
Charge for the year	235	3,813	618	—	66	4,732
Impairments for the year	3	86	—	—	256	345
Reversals of impairments	(121)	(426)	(83)	—	(1)	(631)
Disposals	(85)	(770)	(6)	—	(24)	(885)
Disposals of subsidiaries and operations	(239)	(1,925)	(26)	—	—	(2,190)
Exchange variations taken to reserves	—	(166)	(35)	—	—	(201)
Transfers and other movements	4	(233)	(159)	—	24	(364)
At the end of the financial year	1,965	22,520	4,422	—	662	29,569
<b>Net book value at 30 June 2010</b>	<b>4,183</b>	<b>28,040</b>	<b>11,328</b>	<b>10,719</b>	<b>1,306</b>	<b>55,576</b>
<b>Year ended 30 June 2009</b>						
<b>Cost</b>						
At the beginning of the financial year	5,114	44,293	13,069	6,703	1,253	70,432
Additions	103	521	1,457	7,717	231	10,029
Acquisitions of subsidiaries and operations	—	—	286	—	—	286
Disposals	(55)	(296)	(36)	(2)	(64)	(453)
Disposals of subsidiaries and operations	(8)	(2)	(27)	—	—	(37)
Transfer to assets held for sale	(131)	(1,708)	(5)	(90)	—	(1,934)
Exchange variations taken to reserves	(10)	(565)	(87)	—	—	(662)
Transfers and other movements	695	5,290	155	(6,030)	24	134
At the end of the financial year	5,708	47,533	14,812	8,298	1,444	77,795
<b>Accumulated depreciation</b>						
At the beginning of the financial year	1,659	17,678	3,547	3	213	23,100
Charge for the year	245	3,022	522	—	63	3,852
Impairments for the year	392	3,847	200	—	96	4,535
Disposals	(19)	(255)	(35)	—	(28)	(337)
Disposals of subsidiaries and operations	—	(2)	—	—	—	(2)
Transfer to assets held for sale	(110)	(1,764)	(5)	—	—	(1,879)
Exchange variations taken to reserves	(8)	(480)	(77)	—	—	(565)
Transfers and other movements	9	95	(39)	(3)	(3)	59
At the end of the financial year	2,168	22,141	4,113	—	341	28,763
<b>Net book value at 30 June 2009</b>	<b>3,540</b>	<b>25,392</b>	<b>10,699</b>	<b>8,298</b>	<b>1,103</b>	<b>49,032</b>

Notes to Financial Statements continued

**14 Intangible assets**

	2010			2009		
	Goodwill US\$M	Other intangibles US\$M	Total US\$M	Goodwill US\$M	Other intangibles US\$M	Total US\$M
<b>Cost</b>						
At the beginning of the financial year	398	426	824	442	418	860
Additions	—	85	85	—	141	141
Disposals	—	(8)	(8)	—	(22)	(22)
Exchange variations taken to reserves	—	(1)	(1)	—	(3)	(3)
Transfer to assets held for sale	—	—	—	(27)	—	(27)
Transfers and other movements	(28)	(5)	(33)	(17)	(108)	(125)
At the end of the financial year	370	497	867	398	426	824
<b>Accumulated amortisation and impairments</b>						
At the beginning of the financial year	—	163	163	—	235	235
Disposals	—	(8)	(8)	—	(16)	(16)
Charge for the year	—	27	27	—	19	19
Impairments for the year	—	—	—	27	7	34
Exchange variations taken to reserves	—	(1)	(1)	—	(2)	(2)
Transfer to assets held for sale	—	—	—	(27)	—	(27)
Transfers and other movements	—	(1)	(1)	—	(80)	(80)
At the end of the financial year	—	180	180	—	163	163
<b>Total intangible assets <sup>(a)</sup></b>	<b>370</b>	<b>317</b>	<b>687</b>	<b>398</b>	<b>263</b>	<b>661</b>

<sup>(a)</sup> The Group's aggregate net book value of goodwill is US\$370 million (2009: US\$398 million), representing less than one per cent of net equity at 30 June 2010 (2009: less than two per cent). The goodwill is allocated across a number of cash generating units (CGUs) in different Customer Sector Groups, with no CGU or Customer Sector Group accounting for more than US\$150 million of total goodwill.

**15 Trade and other payables**

	2010 US\$M	2009 US\$M
<b>Current</b>		
Trade creditors	4,470	3,760
Other creditors	1,997	1,859
<b>Total current payables</b>	<b>6,467</b>	<b>5,619</b>
<b>Non-current</b>		
Other creditors	469	187
<b>Total non-current payables</b>	<b>469</b>	<b>187</b>

## Notes to Financial Statements continued

### 16 Interest bearing liabilities

	2010 US\$M	2009 US\$M
<b>Current</b>		
Unsecured bank loans	393	721
Notes and debentures	1,424	—
Secured bank loans	184	109
Finance leases	63	60
Unsecured other	126	202
Unsecured bank overdrafts and short-term borrowings	1	2
<b>Total current interest bearing liabilities</b>	<b>2,191</b>	<b>1,094</b>
<b>Non-current</b>		
Unsecured bank loans	361	535
Notes and debentures	12,012	13,946
Secured bank loans <sup>(a)</sup>	424	509
Redeemable preference shares <sup>(b)</sup>	15	15
Finance leases	162	163
Unsecured other <sup>(a)</sup>	250	157
Secured other <sup>(a)</sup>	349	—
<b>Total non-current interest bearing liabilities</b>	<b>13,573</b>	<b>15,325</b>

<sup>(a)</sup> Includes US\$324 million (2009: US\$ nil) proportionate share of bank loans and other borrowings arranged by jointly controlled entities to fund the financing of joint venture partners. While the Group chose to finance the joint ventures directly and not to participate in the external borrowing programs arranged by the joint ventures, the Group recognises its share of those borrowings on proportionate consolidation of the assets and liabilities of each venture (refer to note 1). A corresponding amount of interest bearing loans receivable is recognised in other receivables (refer to note 10), reflecting the direct funding of the Group's contribution to each joint venture.

<sup>(b)</sup> Comprises 150 (2009: 150) Series A preferred shares issued by BHP Billiton Foreign Holdings Inc. at US\$100,000 each fully paid, cumulative, non-participating. The shares are redeemable at par at the option of BHP Billiton Foreign Holdings Inc. after 3 August 2013 and at the option of the holder of the shares after 3 February 2016.

### 17 Other financial liabilities

	2010 US\$M	2009 US\$M
<b>Current</b>		
Cross currency and interest rate swaps	282	—
Forward exchange contracts	6	18
Commodity contracts	194	683
Other derivative contracts	29	4
<b>Total current other financial liabilities</b>	<b>511</b>	<b>705</b>
<b>Non-current</b>		
Cross currency and interest rate swaps	174	—
Commodity contracts	41	111
Other derivative contracts	51	31
<b>Total non-current other financial liabilities</b>	<b>266</b>	<b>142</b>

Notes to Financial Statements continued

18 Provisions

	2010 US\$M	2009 US\$M
<b>Current</b>		
Employee benefits <sup>(a)</sup>	1,054	990
Restructuring <sup>(b)</sup>	55	240
Closure and rehabilitation <sup>(c)</sup>	378	427
Post-retirement employee benefits <sup>(d)</sup>	18	10
Other	394	220
<b>Total current provisions</b>	<b>1,899</b>	<b>1,887</b>
<b>Non-current</b>		
Employee benefits <sup>(a)</sup>	257	266
Restructuring <sup>(b)</sup>	49	69
Closure and rehabilitation <sup>(c)</sup>	6,264	5,729
Post-retirement employee benefits <sup>(d)</sup>	621	681
Other	242	287
<b>Total non-current provisions</b>	<b>7,433</b>	<b>7,032</b>

- (a) The expenditure associated with total employee benefits will occur in a manner consistent with when employees choose to exercise their entitlement to benefits.
- (b) Total restructuring provisions include provision for business terminations of US\$15 million (2009: US\$276 million).
- (c) Total closure and rehabilitation provisions include provision for closed sites of US\$1,973 million (2009: US\$2,304 million).
- (d) The provision for post-retirement employee benefits includes pension liabilities of US\$295 million (2009: US\$376 million) and post-retirement medical benefit liabilities of US\$344 million (2009: US\$315 million). Refer to note 29. The non-current provision includes non-executive Directors' retirement benefits of US\$1 million (2009: US\$2 million).

	Employee benefits US\$M	Restructuring US\$M	Closure and rehabilitation US\$M	Post-retirement employee benefits US\$M	Other US\$M	Total US\$M
At the beginning of the financial year	1,256	309	6,156	691	507	8,919
Amounts capitalised	—	—	697	—	—	697
Charge/(credit) for the year:						
Underlying	843	14	230	60	546	1,693
Discounting	—	6	348	130	—	484
Expected return on pension scheme assets	—	—	—	(98)	—	(98)
Exchange variations	29	16	85	14	6	150
Released during the year	(65)	(69)	(282)	—	(131)	(547)
Actuarial loss taken to retained earnings	—	—	—	38	—	38
Exchange variations taken to reserves	—	—	(12)	(6)	—	(18)
Utilisation	(749)	(152)	(319)	(180)	(289)	(1,689)
Disposals of subsidiaries and operations	(1)	(20)	(261)	(7)	—	(289)
Transfers and other movements	(2)	—	—	(3)	(3)	(8)
<b>At the end of the financial year</b>	<b>1,311</b>	<b>104</b>	<b>6,642</b>	<b>639</b>	<b>636</b>	<b>9,332</b>

# Notes to Financial Statements continued

## 19 Share capital

	BHP Billiton Limited			BHP Billiton Plc		
	2010 US\$M	2009 US\$M	2008 US\$M	2010 US\$M	2009 US\$M	2008 US\$M
<b>Share capital</b>						
Balance at the beginning of the financial year	1,227	1,227	1,221	1,116	1,116	1,183
Exercise of Employee Share Plan Options	—	—	6	—	—	—
Shares bought back and cancelled <sup>(a)</sup>	—	—	—	—	—	(67)
<b>Balance at the end of the financial year</b>	<b>1,227</b>	<b>1,227</b>	<b>1,227</b>	<b>1,116</b>	<b>1,116</b>	<b>1,116</b>
<b>Treasury shares</b>						
Balance at the beginning of the financial year	(1)	(1)	(2)	(524)	(513)	(1,455)
Purchase of shares by ESOP Trusts	(216)	(132)	(230)	(58)	(37)	(20)
Employee share awards exercised following vesting	216	132	231	58	26	29
Shares bought back <sup>(a)</sup>	—	—	—	—	—	(3,075)
Shares cancelled <sup>(a)</sup>	—	—	—	—	—	4,008
<b>Balance at the end of the financial year</b>	<b>(1)</b>	<b>(1)</b>	<b>(1)</b>	<b>(524)</b>	<b>(524)</b>	<b>(513)</b>

	BHP Billiton Limited			BHP Billiton Plc		
	2010 Shares (d)	2009 Shares (d)	2008 Shares (d)	2010 Shares (c) (d)	2009 Shares (c) (d)	2008 Shares (c) (d)
<b>Share capital issued</b>						
Ordinary shares fully paid	3,358,359,496	3,358,359,496	3,358,359,496	2,231,121,202	2,231,121,202	2,231,121,202
Comprising						
– Shares held by the public	3,358,312,376	3,358,312,376	3,358,260,180	2,206,076,344	2,206,130,916	2,206,662,027
– Treasury shares	47,120	47,120	99,316	25,044,858	24,990,286	24,459,175
Ordinary shares paid to A\$1.36	110,000	110,000	195,000			
Special Voting Share of no par value <sup>(e)</sup>	1	1	1			
5.5% Preference shares of £1 each <sup>(f)</sup>				50,000	50,000	50,000
Special Voting Share of US\$0.50 par value <sup>(e)</sup>				1	1	1

	BHP Billiton Limited			BHP Billiton Plc		
	2010 Shares	2009 Shares	2008 Shares	2010 Shares	2009 Shares	2008 Shares
<b>Movement in shares held by the public</b>						
Opening number of shares	3,358,312,376	3,358,260,180	3,357,372,156	2,206,130,916	2,206,662,027	2,302,854,320
Shares issued on exercise of Employee Share Plan Options	—	—	855,923	—	—	—
Purchase of shares by ESOP Trusts	(6,304,733)	(5,274,136)	(6,550,854)	(2,081,566)	(1,447,706)	(589,802)
Employee share awards exercised following vesting	6,304,733	5,326,332	6,582,955	2,026,994	916,595	1,301,595
Shares bought back <sup>(a)</sup>	—	—	—	—	—	(96,904,086)
<b>Closing number of shares <sup>(g)</sup></b>	<b>3,358,312,376</b>	<b>3,358,312,376</b>	<b>3,358,260,180</b>	<b>2,206,076,344</b>	<b>2,206,130,916</b>	<b>2,206,662,027</b>

Notes to Financial Statements continued

19 Share capital continued

	BHP Billiton Limited			BHP Billiton Plc		
	2010 Shares	2009 Shares	2008 Shares	2010 Shares	2009 Shares	2008 Shares
<b>Movement in treasury shares</b>						
Opening number of shares	47,120	99,316	131,417	24,990,286	24,459,175	63,607,682
Purchase of shares by ESOP Trusts	6,304,733	5,274,136	6,550,854	2,081,566	1,447,706	589,802
Employee share awards exercised following vesting	(6,304,733)	(5,326,332)	(6,582,955)	(2,026,994)	(916,595)	(1,301,595)
Shares bought back <sup>(a)</sup>	—	—	—	—	—	96,904,086
Shares cancelled <sup>(a)</sup>	—	—	—	—	—	(135,340,800)
<b>Closing number of shares</b>	<b>47,120</b>	<b>47,120</b>	<b>99,316</b>	<b>25,044,858</b>	<b>24,990,286</b>	<b>24,459,175</b>

	BHP Billiton Limited		
	2010 Shares	2009 Shares	2008 Shares
<b>Movement in shares partly paid to A\$1.36</b>			
Opening number of shares	110,000	195,000	195,000
Partly paid shares converted to fully paid <sup>(h)</sup>	—	(85,000)	—
<b>Closing number of shares <sup>(i)</sup></b>	<b>110,000</b>	<b>110,000</b>	<b>195,000</b>

<sup>(a)</sup> On 23 August 2006, BHP Billiton announced a US\$3 billion capital return to shareholders through an 18-month series of on-market share buy-backs. On 7 February 2007, a US\$10 billion extension to this program was announced. As of that date, US\$1,705 million of shares in BHP Billiton Plc had been repurchased under the August program, leaving US\$1,295 million to be carried forward and added to the February 2007 program. All BHP Billiton Plc shares bought back are accounted for as Treasury shares within the share capital of BHP Billiton Plc. Details of the purchases are shown in the table below. Cost per share represents the average cost per share for BHP Billiton Plc shares and final cost per share for BHP Billiton Limited shares. Shares in BHP Billiton Plc purchased by BHP Billiton Limited have been cancelled, in accordance with the resolutions passed at the 2006 Annual General Meetings.

Year ended	Shares purchased	Number	Cost per share and discount	Total cost US\$M	Purchased by:			
					BHP Billiton Limited		BHP Billiton Plc	
					Shares	US\$M	Shares	US\$M
30 June 2008	BHP Billiton Plc	96,904,086	£ 12.37	3,075	96,904,086	3,075	—	—
			8.7 per cent <sup>(i)</sup>					

(i) Represents the discount to the average BHP Billiton Limited share price between 7 September 2006 and 14 December 2007.

As at 30 June 2010, shares in BHP Billiton Plc bought back as part of the above program but not cancelled are held as Treasury shares. On 14 December 2007, the share buy-back program was suspended in light of the Group's offers for Rio Tinto plc and Rio Tinto Limited. On 27 November 2008, the offers lapsed. No shares were bought back under the program in the year ended 30 June 2010.

<sup>(b)</sup> An Equalisation Share (US\$0.50 par value) has been authorised to be issued to enable a distribution to be made by BHP Billiton Plc Group to the BHP Billiton Limited Group should this be required under the terms of the DLC merger. The Directors have the ability to issue the Equalisation Share if required under those terms. The Constitution of BHP Billiton Limited allows the Directors of that Company to issue a similar Equalisation Share. There has been no movement in this class of share. This share forms part of BHP Billiton Plc's total share capital.

<sup>(c)</sup> The total number of BHP Billiton Plc authorised ordinary shares of US\$0.50 par value is 2,762,974,200 (2009: 2,762,974,200; 2008: 2,762,974,200).

<sup>(d)</sup> The total number of BHP Billiton Limited shares of all classes is 3,358,469,497 of which 99.99 per cent are ordinary shares fully paid (2009: 3,358,469,497, 99.99 per cent; 2008: 3,358,554,497, 99.99 per cent). The total number of BHP Billiton Plc shares of all classes is 2,763,024,202, of which 99.99 per cent are authorised ordinary shares of US\$0.50 par value (2009: 2,763,024,202, 99.99 per cent; 2008: 2,763,024,202, 99.99 per cent). Any surplus remaining after payment of preferred distributions shall be payable to the holders of BHP Billiton Limited and BHP Billiton Plc ordinary shares in equal amounts per share.

**19 Share capital continued**

- (e) Each of BHP Billiton Limited and BHP Billiton Plc issued one Special Voting Share to facilitate joint voting by shareholders of BHP Billiton Limited and BHP Billiton Plc on Joint Electorate Actions. There has been no movement in these shares.
- (f) Preference shares have the right to repayment of the amount paid up on the nominal value and any unpaid dividends in priority to the holders of any other class of shares in BHP Billiton Plc on a return of capital or winding up. The holders of preference shares have limited voting rights if payment of the preference dividends are six months or more in arrears or a resolution is passed changing the rights of the preference shareholders. There has been no movement in these shares, all of which are held by JP Morgan plc.
- (g) During the period 1 July 2010 to 7 September 2010, no Executive Share Scheme partly paid shares were paid up in full, no fully paid ordinary shares (including attached bonus shares) were issued on the exercise of Employee Share Plan Options, no fully paid ordinary shares (including attached bonus shares) were issued on the exercise of Performance Share Plan Performance Rights and no fully paid ordinary shares were issued on the exercise of Group Incentive Scheme awards.
- (h) During the year ended 30 June 2009, partly paid shares were converted to an equal number of fully paid shares and satisfied via on-market purchase.
- (i) At 30 June 2010, 70,000 partly paid shares on issue are entitled to 79,928 bonus shares on becoming fully paid. The remaining partly paid shares are entitled to an equal number of fully paid shares upon conversion to fully paid shares.



Notes to Financial Statements continued

20 Other equity

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Reserves</b>			
<b>Share premium account <sup>(a)</sup></b>			
Balance at the beginning of the financial year	518	518	518
<b>Balance at the end of the financial year</b>	<b>518</b>	<b>518</b>	<b>518</b>
<b>Foreign currency translation reserve <sup>(b)</sup></b>			
Balance at the beginning of the financial year	24	(3)	18
Exchange fluctuations on translation of foreign operations taken to equity	1	27	(21)
Exchange fluctuations on translation of foreign operations taken to the income statement	(10)	—	—
Total other comprehensive income	(9)	27	(21)
<b>Balance at the end of the financial year</b>	<b>15</b>	<b>24</b>	<b>(3)</b>
<b>Employee share awards reserve <sup>(c)</sup></b>			
Balance at the beginning of the financial year	434	372	261
Deferred tax arising on accrued employee entitlement for unexercised awards	69	(89)	51
Total other comprehensive income	69	(89)	51
Accrued employee entitlement for unvested awards	170	185	97
Employee share awards exercised following vesting	(88)	(34)	(37)
Employee share awards lapsed	(28)	—	—
<b>Balance at the end of the financial year</b>	<b>557</b>	<b>434</b>	<b>372</b>
<b>Hedging reserve – cash flow hedges <sup>(d)</sup></b>			
Balance at the beginning of the financial year	9	(417)	(87)
Net (loss)/gain on cash flow hedges taken to equity	(15)	710	(383)
Net realised loss on cash flow hedges transferred to the income statement	2	22	73
Net unrealised gain on cash flow hedges transferred to the income statement	—	(48)	—
Net gains on cash flow hedges transferred to initial carrying amount of hedged items	—	(26)	(190)
Deferred tax relating to cash flow hedges	4	(232)	170
Total other comprehensive income	(9)	426	(330)
<b>Balance at the end of the financial year</b>	<b>—</b>	<b>9</b>	<b>(417)</b>
<b>Financial assets reserve <sup>(e)</sup></b>			
Balance at the beginning of the financial year	202	162	230
Net valuation gain/(loss) taken to equity	160	3	(76)
Net valuation losses transferred to the income statement	2	58	—
Deferred tax relating to revaluations	(16)	(21)	8
Total other comprehensive income	146	40	(68)
<b>Balance at the end of the financial year</b>	<b>348</b>	<b>202</b>	<b>162</b>
<b>Share buy-back reserve <sup>(f)</sup></b>			
Balance at the beginning of the financial year	118	118	51
BHP Billiton Plc shares cancelled	—	—	67
<b>Balance at the end of the financial year</b>	<b>118</b>	<b>118</b>	<b>118</b>
<b>Non-controlling interest contribution reserve <sup>(g)</sup></b>			
Balance at the beginning of the financial year	—	—	—
Issue of share options to non-controlling interests	43	—	—
Distribution to option holders	(10)	—	—
Transactions with owners – contributed equity	317	—	—
<b>Balance at the end of the financial year</b>	<b>350</b>	<b>—</b>	<b>—</b>
<b>Total reserves</b>	<b>1,906</b>	<b>1,305</b>	<b>750</b>

Notes to Financial Statements continued

20 Other equity continued

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Retained earnings</b>			
Balance at the beginning of the financial year	36,831	35,756	27,729
Profit for the year	12,722	5,877	15,390
Actuarial losses	(38)	(224)	(95)
Tax recognised directly in other comprehensive income	54	89	77
Total comprehensive income	12,738	5,742	15,372
Dividends paid	(4,618)	(4,563)	(3,133)
BHP Billiton Plc share buy-back – refer to note 19	—	—	(4,008)
Employee share awards exercised following vesting, net of employee contributions and lapses	(150)	(104)	(204)
<b>Balance at the end of the financial year</b>	<b>44,801</b>	<b>36,831</b>	<b>35,756</b>

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Non-controlling interests</b>			
Balance at the beginning of the financial year	757	708	251
Profit for the year	287	461	572
Actuarial losses on pension and medical schemes	—	(3)	(1)
Net valuation gains taken to equity	7	—	—
Tax recognised directly in other comprehensive income	—	—	—
Total comprehensive income	294	458	571
Issue of share options to non-controlling interests	16	—	—
Distribution to option holders	(6)	—	—
Transactions with owners – contributed equity	20	(3)	(1)
Dividends paid	(277)	(406)	(113)
<b>Balance at the end of the financial year</b>	<b>804</b>	<b>757</b>	<b>708</b>

- (a) The share premium account represents the premium paid on the issue of BHP Billiton Plc shares recognised in accordance with the UK Companies Act 2006.
- (b) The foreign currency translation reserve represents exchange differences arising on the translation of non-US dollar functional currency operations within the Group into US dollars.
- (c) The employee share awards reserve represents the accrued employee entitlements to share awards that have been charged to the income statement and have not yet been exercised.
- (d) The hedging reserve represents hedging gains and losses recognised on the effective portion of cash flow hedges. The cumulative deferred gain or loss on the hedge is recognised in the income statement when the hedged transaction impacts the income statement, or is recognised as an adjustment to the cost of non-financial hedged items.
- (e) The financial assets reserve represents the revaluation of available for sale financial assets. Where a revalued financial asset is sold or impaired, the relevant portion of the reserve is transferred to the income statement.
- (f) The share buy-back reserve represents the par value of BHP Billiton Plc shares which were purchased and subsequently cancelled. The cancellation of the shares creates a non-distributable reserve.
- (g) The non-controlling interest contribution reserve represents the excess of consideration received over the book value of net assets attributable to the equity instruments held by non-controlling interests.

## Notes to Financial Statements continued

### 21 Contingent liabilities

Contingent liabilities at balance date, not otherwise provided for in the financial statements, are categorised as arising from:

	2010 US\$M	2009 US\$M
<b>Jointly controlled entities</b>		
Bank guarantees <sup>(a)</sup>	7	—
Actual or potential litigation <sup>(b)</sup>	878	724
	<u>885</u>	<u>724</u>
<b>Subsidiaries and jointly controlled assets (including guarantees)</b>		
Bank guarantees <sup>(a)</sup>	1	1
Actual or potential litigation <sup>(b)</sup>	455	217
Other	3	9
	<u>459</u>	<u>227</u>
<b>Total contingent liabilities</b>	<u>1,344</u>	<u>951</u>

<sup>(a)</sup> The Group has entered into various counter-indemnities of bank and performance guarantees related to its own future performance in the normal course of business.

<sup>(b)</sup> Actual or potential litigation amounts relate to a number of actions against the Group, none of which are individually significant and where the liability is not probable and therefore the Group has not provided for such amounts in these financial statements. Additionally, there are a number of legal claims or potential claims against the Group, the outcome of which cannot be foreseen at present, and for which no amounts have been included in the table above.

### 22 Commitments

	2010 US\$M	2009 US\$M
<b>Capital expenditure commitments not provided for in the financial statements</b>		
Due not later than one year	4,311	3,716
Due later than one year and not later than two years	491	895
Due later than two years and not later than three years	171	126
Due later than three years and not later than four years	16	35
<b>Total capital expenditure commitments</b>	<u>4,989</u>	<u>4,772</u>
<b>Lease expenditure commitments</b>		
<i>Finance leases</i>		
Due not later than one year	95	89
Due later than one year and not later than two years	60	57
Due later than two years and not later than three years	51	59
Due later than three years and not later than four years	49	46
Due later than four years and not later than five years	49	46
Due later than five years	140	179
Total commitments under finance leases	444	476
Future financing charges	(111)	(133)
Right to reimbursement from joint venture partner	(108)	(120)
<b>Finance lease liability</b>	<u>225</u>	<u>223</u>
<i>Operating leases <sup>(a)</sup></i>		
Due not later than one year	695	576
Due later than one year and not later than two years	580	659
Due later than two years and not later than three years	601	450
Due later than three years and not later than four years	255	316
Due later than four years and not later than five years	98	91
Due later than five years	830	200
<b>Total commitments under operating leases</b>	<u>3,059</u>	<u>2,292</u>
<b>Other expenditure commitments <sup>(b)</sup></b>		
Due not later than one year	2,793	2,626
Due later than one year and not later than two years	1,291	1,486
Due later than two years and not later than three years	1,111	877
Due later than three years and not later than four years	768	971
Due later than four years and not later than five years	444	657
Due later than five years	1,923	1,803
<b>Total commitments for other expenditure</b>	<u>8,330</u>	<u>8,420</u>

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**22 Commitments continued**

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- (a) Operating leases are entered into as a means of acquiring property, plant and equipment. Rental payments are generally fixed, but with inflation escalation clauses on which contingent rentals are determined. Certain leases contain extension and renewal options.
- (b) Other expenditure commitments include the supply of goods and services, royalties, exploration expenditure and chartering costs.

***Other Commitments***

On 5 June 2009, BHP Billiton signed a framework agreement, including non-binding core principles, with Rio Tinto to form a 50-50 production joint venture combining the economic interests of both companies' current and future iron ore assets in Western Australia. On 5 December 2009, BHP Billiton and Rio Tinto signed binding agreements that set out the terms that will regulate the establishment of the joint venture and its ongoing operation. To equalise the net value of the parties' asset contributions to the joint venture, at completion BHP Billiton will pay US\$5.8 billion to Rio Tinto, adjusted to reflect equalisation of net cash flows from 1 July 2009 to completion. There is a US\$275.5 million break fee associated with this transaction which is payable by either party under certain circumstances.

## Notes to Financial Statements continued

### 23 Notes to the consolidated cash flow statement

#### *Cash and cash equivalents*

For the purpose of the consolidated cash flow statement, cash equivalents include highly liquid investments that are readily convertible to cash and with a maturity of less than 90 days, bank overdrafts and interest bearing liabilities at call.

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Cash and cash equivalents comprise:</b>			
Cash	1,369	1,156	1,734
Short-term deposits	11,087	9,677	2,503
Total cash and cash equivalents <sup>(a)</sup>	12,456	10,833	4,237
Bank overdrafts and short-term borrowings – refer to note 16	(1)	(2)	(64)
<b>Total cash and cash equivalents, net of overdrafts</b>	<b>12,455</b>	<b>10,831</b>	<b>4,173</b>

<sup>(a)</sup> Cash and cash equivalents include US\$330 million (2009: US\$368 million; 2008: US\$591 million) which is restricted by legal or contractual arrangements.

#### *Exploration and evaluation expenditure*

Exploration and evaluation expenditure (excluding impairments) is classified as an investing activity as described in IAS 7/AASB 107 'Cash Flow Statements' and is therefore a reconciling item between profit after taxation and net operating cash flows.

Exploration and evaluation expenditure classified as investing activities in the cash flow statement is reconciled as follows:

	2010 US\$M	2009 US\$M	2008 US\$M
Expensed in the income statement (excluding impairments)	1,030	1,009	859
Capitalised in property, plant and equipment	303	234	491
<b>Cash outflow from investing activities</b>	<b>1,333</b>	<b>1,243</b>	<b>1,350</b>

#### *Significant non-cash investing and financing transactions*

Property, plant and equipment of US\$56 million (2009: US\$59 million; 2008: US\$211 million) was acquired under finance leases.

Property, plant and equipment of US\$236 million (2009: US\$ nil; 2008: US\$ nil) was acquired under vendor financing arrangements.

#### *Disposal of subsidiaries and operations*

The Group disposed of the following subsidiaries and operations during the year ended:

#### **30 June 2010**

- Esidulini game reserve
- Kendilo coal operation
- Manganese Metal Company (Pty) Ltd
- Pering mine
- Ravensthorpe nickel operations
- Suriname Bauxite Mines and the Paranam Refinery
- Yabulu nickel refinery

## Notes to Financial Statements continued

### 23 Notes to the consolidated cash flow statement continued

#### 30 June 2009

- BHP Asia Pacific Nickel Pty Ltd
- Mayaniquel SA
- Minera Geleen SA
- PT Gag Nickel
- Sociedad Contractual Minera Otway

#### 30 June 2008

- Elouera coal mine
- Optimum Colliery operations

The carrying amount of assets and liabilities disposed are as follows:

	2010 US\$M	2009 US\$M	2008 US\$M
Cash and cash equivalents	137	—	—
Trade and other receivables	11	1	14
Inventories	169	—	20
Current tax assets	9	—	—
Other current assets	11	6	—
Property, plant and equipment	682	35	223
Trade and other payables	(66)	(1)	(107)
Interest bearing liabilities	(27)	—	—
Current tax payable	(1)	—	—
Provisions	(590)	—	(304)
<b>Net identifiable assets/(liabilities) <sup>(a)</sup></b>	<b>335</b>	<b>41</b>	<b>(154)</b>
Gross consideration	351	23	(88)
Less cash balances disposed of	(137)	—	—
Net consideration	214	23	(88)
Comprising of:			
– Cash	214	17	38
– Deferred consideration/(payable)	—	6	(126)
<b>Total net consideration received/(paid)</b>	<b>214</b>	<b>23</b>	<b>(88)</b>
<b>Gains/(losses) on sale of subsidiaries and operations</b>	<b>16</b>	<b>(18)</b>	<b>66</b>

<sup>(a)</sup> Net identifiable assets/(liabilities) disposed of in the current financial year include property, plant and equipment of US\$58 million, current tax assets of US\$9 million and provisions of US\$301 million classified as held for sale in 2009.

#### *Acquisition of subsidiaries and operations*

The Group acquired the following subsidiaries and operations during the year ended:

#### 30 June 2010

- 100 per cent of Athabasca Potash Inc.
- 100 per cent of United Minerals Corporations NL

#### 30 June 2009

- 100 per cent of Anglo Potash Limited

## Notes to Financial Statements continued

### 23 Notes to the consolidated cash flow statement continued

30 June 2008

- A 33.3 per cent interest in Guinea Alumina Corporation Ltd

The fair values of assets and liabilities acquired are as follows:

	2010 US\$M	2009 US\$M	2008 US\$M
Property, plant and equipment	508	270	30
Net identifiable assets	508	270	30
Net consideration paid	508	270	30

### 24 Business combinations

30 June 2010

There were no business combinations entered into by the Group in the current or previous financial year.

## Notes to Financial Statements continued

### 25 Subsidiaries

Significant subsidiaries of the Group are as follows:

Name	Country of incorporation	Principal activity	The Group's effective interest	
			2010 %	2009 %
Anglo Potash Limited	Canada	Potash exploration	100	100
Athabasca Potash Inc.	Canada	Potash exploration	100	—
BHP Billiton Aluminium Australia Pty Ltd	Australia	Bauxite mining and alumina refining	100	100
BHP Billiton Aluminium (RAA) Pty Ltd	Australia	Bauxite mining and alumina refining	100	100
BHP Billiton Aluminium (Worsley) Pty Ltd	Australia	Bauxite mining and alumina refining	100	100
BHP Billiton Canada Inc.	Canada	Diamond mining	100	100
BHP Billiton Direct Reduced Iron Pty Ltd	Australia	Hot briquette iron plant (closed)	100	100
BHP Billiton Energy Coal South Africa Limited	South Africa	Coal mining	100	100
BHP Billiton Finance BV	Netherlands	Finance	100	100
BHP Billiton Finance Ltd	Australia	Finance	100	100
BHP Billiton Finance (USA) Ltd (a)	Australia	Finance	100	100
BHP Billiton Foreign Holdings Inc.	US	Holding company	100	100
BHP Billiton Group Operations Pty Ltd	Australia	Administrative services	100	100
BHP Billiton International Services Limited	UK	Service company	100	100
BHP Billiton Iron Ore Pty Limited	Australia	Service company	100	100
BHP Billiton Marketing AG	Switzerland	Marketing and trading	100	100
BHP Billiton Marketing Inc.	US	Marketing and trading	100	100
BHP Billiton Metais SA	Brazil	Alumina refining and aluminium smelting	100	100
BHP Billiton Minerals Pty Ltd	Australia	Iron ore, coal, silver, lead and zinc mining	100	100
BHP Billiton Nickel Operations Pty Ltd	Australia	Holding company	100	100
BHP Billiton Nickel West Pty Ltd	Australia	Nickel mining, smelting, refining and administrative services	100	100
BHP Billiton Olympic Dam Corporation Pty Ltd	Australia	Copper and uranium mining	100	100
BHP Billiton Petroleum (Americas) Inc.	US	Hydrocarbons exploration and production	100	100
BHP Billiton Petroleum (Australia) Pty Ltd	Australia	Hydrocarbons production	100	100
BHP Billiton Petroleum (Bass Strait) Pty Ltd	Australia	Hydrocarbons production	100	100
BHP Billiton Petroleum (Colombia) Corporation	Canada	Hydrocarbons exploration and production	100	100
BHP Billiton Petroleum (Deepwater) Inc.	US	Hydrocarbons exploration, development and production	100	100
BHP Billiton Petroleum (GOM) Inc.	US	Hydrocarbons exploration	100	100
BHP Billiton Petroleum (North West Shelf) Pty Ltd	Australia	Hydrocarbons production	100	100
BHP Billiton Petroleum Great Britain Limited	UK	Hydrocarbons production	100	100
BHP Billiton Petroleum (International Exploration) Pty Ltd	Australia	Hydrocarbons development and production	100	100
BHP Billiton Petroleum (New Ventures) Corporation	Canada	Hydrocarbons exploration and production	100	100
BHP Billiton Petroleum (Sabah) Corporation	Canada	Hydrocarbons exploration and production	100	100
BHP Billiton Petroleum Pty Ltd	Australia	Hydrocarbons exploration and production	100	100
BHP Billiton Petroleum (Victoria) Pty Ltd	Australia	Hydrocarbons development	100	100
BHP Billiton SA Limited	South Africa	Holding and service company	100	100
BHP Billiton Shared Business Services Pty Ltd	Australia	Service company	100	100
BHP Billiton Shared Services Malaysia Sdn. Bhd.	Malaysia	Service company	100	100
BHP Billiton SSM Development Pty Ltd	Australia	Holding company	100	100
BHP Billiton (Trinidad – 2c) Limited	Canada	Hydrocarbons development	100	100
BHP Billiton World Exploration Inc.	Canada	Minerals exploration	100	100
BHP Canadian Diamonds Company	Canada	Diamond mining	100	100
BHP Chile Inc.	US	Service company	100	100
BHP Coal Pty Limited	Australia	Holding company and coal mining	100	100
BHP Copper Inc.	US	Holding company and copper mining	100	100
BHP Escondida Inc.	US	Holding company	100	100
BHP Iron Ore (Jimblebar) Pty Ltd	Australia	Iron ore mining	100	100
BHP Mitsui Coal Pty Limited	Australia	Holding company and coal mining	80	80
BHP Navajo Coal Company	US	Coal mining	100	100
BHP Petroleum (Laurentian) Corporation	Canada	Hydrocarbons exploration and production	100	100
BHP Petroleum (Pakistan) Pty Ltd	Australia	Hydrocarbons production	100	100
BHP Queensland Coal Investments Pty Ltd	Australia	Holding company and coal mining	100	100
BHPB Freight Pty Ltd	Australia	Transport services	100	100
Billiton Aluminium SA Limited	South Africa	Aluminium smelting	100	100
Billiton Marketing Holding BV	Netherlands	Holding company	100	100
Billiton Nickel (Ravensthorpe) Pty Ltd	Australia	Holding company	100	100
Broken Hill Proprietary (USA) Inc.	US	Service company	100	100
Cerro Matoso SA	Colombia	Nickel mining and ferro-nickel smelting	99.9	99.9



## Notes to Financial Statements continued

### 25 Subsidiaries continued

Name	Country of incorporation	Principal activity	The Group's effective interest	
			2010 %	2009 %
Compañía Minera Cerro Colorado Limitada	Chile	Copper mining	100	100
Dendrobium Coal Pty Ltd	Australia	Coal mining	100	100
Endeavour Coal Pty Ltd	Australia	Coal mining	100	100
Groote Eylandt Mining Company Pty Ltd	Australia	Manganese mining	60	60
Hillside Aluminium Limited	South Africa	Aluminium smelting	100	100
Hotazel Manganese Mines (Proprietary) Limited	South Africa	Manganese ore mining and processing	54.6	—
Hunter Valley Energy Coal Pty Ltd	Australia	Coal mining	100	100
Illawarra Coal Holdings Pty Ltd	Australia	Coal mining	100	100
Illawarra Services Pty Ltd	Australia	Coal mining	100	100
Minera Spence SA	Chile	Copper mining	100	100
QNI Western Australia Pty Limited	Australia	Holding company	100	100
Rio Algom Limited	Canada	Holding company	100	100
Samancor AG	Switzerland	Marketing	60	60
Samancor Manganese Proprietary Limited	South Africa	Manganese mining and manganese alloys	60	60
San Juan Coal Company	US	Coal mining	100	100
Tasmanian Electro Metallurgical Company Pty Ltd	Australia	Manganese alloys	60	60
UMAL Consolidated Pty Ltd	Australia	Holding company and coal mining	100	100
United Iron Pty Ltd	Australia	Iron ore exploration	100	—
WMC Finance (USA) Limited	Australia	Finance	100	100

(a) BHP Billiton Finance (USA) Ltd is 100 per cent owned by BHP Billiton Limited. BHP Billiton Limited and BHP Billiton Plc have each fully and unconditionally guaranteed BHP Billiton Finance (USA) Ltd's debt securities.

### 26 Interests in jointly controlled entities

All entities included below are subject to joint control as a result of governing contractual arrangements.

Major shareholdings in jointly controlled entities	Country of incorporation	Principal activity	Reporting date <sup>(a)</sup>	Ownership interest <sup>(a)</sup>	
				2010 %	2009 %
Caesar Oil Pipeline Company LLC	US	Hydrocarbons transportation	31 May	25	25
Cleopatra Gas Gathering Company LLC	US	Hydrocarbons transportation	31 May	22	22
Guinea Alumina Corporation Ltd	British Virgin Islands	Bauxite mine and alumina refinery development	31 Dec	33.3	33.3
Mozal SARL	Mozambique	Aluminium smelting	30 June	47.1	47.1
Compañía Minera Antamina SA	Peru	Copper and zinc mining	30 June	33.75	33.75
Minera Escondida Limitada <sup>(b)</sup>	Chile	Copper mining	30 June	57.5	57.5
Phola Coal Processing Plant (Pty) Ltd	South Africa	Coal handling and processing plant	30 June	50	50
Richards Bay Minerals <sup>(c)</sup>	South Africa	Mineral sands mining and processing	31 Dec	37.76	50
Samarco Mineracao SA	Brazil	Iron ore mining	31 Dec	50	50
Carbones del Cerrejón LLC	Anguilla	Coal mining in Colombia	31 Dec	33.33	33.33
Newcastle Coal Infrastructure Group Pty Limited	Australia	Coal export terminal	30 June	35.5	35.5

	Group share	
	2010 US\$M	2009 US\$M
<b>Net assets of jointly controlled entities</b>		
Current assets	3,352	2,813
Non-current assets	7,212	7,275
Current liabilities	(2,162)	(2,092)
Non-current liabilities	(2,388)	(2,029)
<b>Net assets</b>	<b>6,014</b>	<b>5,967</b>

**26 Interests in jointly controlled entities continued**

	Group share		
	2010 US\$M	2009 US\$M	2008 US\$M
<b>Share of jointly controlled entities' profit</b>			
Revenue	<b>8,642</b>	6,130	10,728
Net operating costs	<b>(4,597)</b>	(4,103)	(3,912)
Operating profit	<b>4,045</b>	2,027	6,816
Net finance costs	<b>(68)</b>	(129)	(94)
Income tax expense	<b>(903)</b>	(465)	(1,418)
<b>Profit after taxation</b>	<b>3,074</b>	1,433	5,304

	Group share	
	2010 US\$M	2009 US\$M
<b>Share of contingent liabilities and expenditure commitments of jointly controlled entities</b>		
Contingent liabilities	<b>885</b>	724
Capital expenditure commitments	<b>274</b>	152
Other expenditure commitments	<b>1,455</b>	1,537

- (a) The ownership interest at the Group's and the jointly controlled entity's reporting date are the same. While the annual financial reporting date may be different to the Group's, financial information is obtained as at 30 June in order to report on a consistent annual basis with the Group's reporting date.
- (b) While the Group holds a 57.5 per cent interest in Minera Escondida Limitada, the entity is subject to effective joint control due to participant and management agreements which results in the operation of an Owners' Council, whereby significant commercial and operational decisions are determined on aggregate voting interests of at least 75 per cent of the total ownership interest. Accordingly the Group does not have the ability to unilaterally control, and therefore consolidate, the investment in accordance with IAS 27/AASB 127 'Consolidated and Separate Financial Statements'.
- (c) Richards Bay Minerals comprises two legal entities, Richards Bay Mining (Proprietary) Limited and Richards Bay Titanium (Proprietary) Limited, in each of which the Group has a 50 per cent interest and which function as a single economic entity. After deducting non-controlling interests in subsidiaries of Richards Bay Minerals, the Group's economic interest in the operations of Richards Bay Minerals is 37.76 per cent.

## Notes to Financial Statements continued

### 27 Interests in jointly controlled assets

The principal jointly controlled assets in which the Group has an interest and which are proportionately included in the financial statements are as follows:

Name	Country of operation	Principal activity	The Group's effective interest	
			2010 %	2009 %
Atlantis	US	Hydrocarbons exploration and production	44	44
Bass Strait	Australia	Hydrocarbons exploration and production	50	50
Liverpool Bay	UK	Hydrocarbons exploration and production	46.1	46.1
Mad Dog	US	Hydrocarbons exploration and production	23.9	23.9
Minerva	Australia	Hydrocarbons exploration and production	90	90
Neptune	US	Hydrocarbons exploration and production	35	35
North West Shelf	Australia	Hydrocarbons exploration and production	8-17	8-17
Ohanet	Algeria	Hydrocarbons exploration and production	45	45
Pyrenees	Australia	Hydrocarbons exploration and development	71.43	71.43
ROD Integrated Development	Algeria	Hydrocarbons exploration and production	45	45
Shenzi	US	Hydrocarbons exploration and production	44	44
Stybarrow	Australia	Hydrocarbons exploration and production	50	50
Greater Angostura	Trinidad and Tobago	Hydrocarbons production	45	45
Zamzama	Pakistan	Hydrocarbons exploration and production	38.5	38.5
Alumar	Brazil	Alumina refining	36	36
		Aluminium smelting	40	40
Billiton Suriname <sup>(a)</sup>	Suriname	Bauxite mining and alumina refining	—	45
Worsley	Australia	Bauxite mining and alumina refining	86	86
Central Queensland Coal Associates	Australia	Coal mining	50	50
Gregory	Australia	Coal mining	50	50
Mt Goldsworthy	Australia	Iron ore mining	85	85
Mt Newman	Australia	Iron ore mining	85	85
Yandi	Australia	Iron ore mining	85	85
EKATI	Canada	Diamond mining	80	80
Douglas/Middelburg Mine <sup>(b)</sup>	South Africa	Coal mining	—	84

	2010 US\$M	2009 US\$M
<b>Share of contingent liabilities and capital expenditure commitments relating to jointly controlled assets</b>		
Contingent liabilities – unsecured <sup>(c)</sup>	120	94
Contracts for capital expenditure commitments not completed <sup>(c)</sup>	4,103	4,282

<sup>(a)</sup> Billiton Suriname was sold effective 31 July 2009.

<sup>(b)</sup> The Douglas/Middelburg Mine joint venture was dissolved on 1 December 2009. The mining leases, previously held jointly by Xstrata Plc, (through Tavistock Collieries Plc) and BHP Billiton Energy Coal South Africa Limited, have been divided into discrete areas which are now wholly owned and operated by Tavistock Collieries Plc and BHP Billiton Energy Coal South Africa Limited.

<sup>(c)</sup> Included in contingent liabilities and capital expenditure commitments for the Group. Refer to notes 21 and 22 respectively.

## 28 Financial risk management

### *The Group financial risk management strategy*

The financial risks arising from the Group's operations comprise market, liquidity and credit risk. These risks arise in the normal course of business, and the Group manages its exposure to them in accordance with the Group's Portfolio Risk Management Strategy. The objective of the strategy is to support the delivery of the Group's financial targets while protecting its future financial security and flexibility by taking advantage of the natural diversification provided by the scale, diversity and flexibility of the Group's operations and activities.

A Cash Flow at Risk ('CFaR') framework is used to measure the aggregate and diversified impact of financial risks upon the Group's financial targets. The principal measurement of risk is CFaR measured on a portfolio basis – which is defined as the worst expected loss relative to projected business plan cash flows over a one-year horizon under normal market conditions at a confidence level of 95 per cent. The CFaR framework includes Board-approved limits on the quantum of the CFaR relative to the Group's financial targets.

### *Market risk*

The Group's activities expose it to market risks associated with movements in interest rates, foreign currencies and commodity prices. Under the strategy outlined above, the Group seeks to achieve financing costs, currency impacts, input costs and commodity prices on a floating or index basis. This strategy gives rise to a risk of variability in earnings which is measured under the CFaR framework.

In executing the strategy, financial instruments are potentially employed in four distinct but related activities. The following table summarises these activities and the key risk management processes.

<u>Activity</u>	<u>Key risk management processes</u>
<b>1 Risk mitigation</b>  Hedging of revenues with financial instruments may be executed to mitigate risk at the portfolio level when CFaR exceeds the Board-approved limits. Similarly, and on an exception basis, hedging for the purposes of mitigating risk related to specific and significant expenditure on investments or capital projects will be executed if necessary to support the Group's strategic objectives.	<ul style="list-style-type: none"> <li>• Assessment of portfolio CFaR against Board-approved limits</li> <li>• Execution of transactions within approved mandates</li> </ul>
<b>2 Economic hedging of commodity sales, operating costs and debt instruments</b>  Where group commodity production is sold to customers on pricing terms that deviate from the relevant index target, and where a relevant derivatives market exists, financial instruments may be executed as an economic hedge to align the revenue price exposure with the index target.  Where debt is issued in a currency other than the US dollar and/or at a fixed interest rate, fair value hedges may be executed to align the debt exposure with the Group's functional currency of US dollars and/or to swap to a floating interest rate.	<ul style="list-style-type: none"> <li>• Assessment of portfolio CFaR against Board-approved limits</li> <li>• Measuring and reporting the exposure in customer commodity contracts and issued debt instruments</li> <li>• Executing hedging derivatives to align the total group exposure to the index target</li> </ul>
<b>3 Strategic financial transactions</b>  Opportunistic transactions may be executed with financial instruments to capture value from perceived market over/under valuations.	<ul style="list-style-type: none"> <li>• Exposures managed within value at risk and stop loss limits</li> <li>• Execution of transactions within approved mandates</li> </ul>
<b>4 Proprietary trading</b>  Certain of our business units are mandated to undertake trading activities in specifically approved commodity derivatives. These activities are in support of our underlying commodity businesses and provide market and commercial insight.	<ul style="list-style-type: none"> <li>• Measuring and reporting the exposure in mandated activities</li> <li>• Exposures managed within approved mandates (including position limits, value at risk limits and stop loss limits)</li> </ul>

## Notes to Financial Statements continued

### 28 Financial risk management continued

Primary responsibility for identification and control of financial risks, including authorising and monitoring the use of financial instruments for the above activities and stipulating policy thereon, rests with the Financial Risk Management Committee under authority delegated by the Group Management Committee.

#### *Interest rate risk*

The Group is exposed to interest rate risk on its outstanding borrowings and investments from the possibility that changes in interest rates will affect future cash flows or the fair value of fixed rate financial instruments. Interest rate risk is managed as part of the Portfolio Risk Management Strategy and within the overall CFaR limit.

The majority of the Group's debt is raised under central borrowing programs. The Group has entered into interest rate swaps and cross currency interest rate swaps to convert most of the centrally raised debt into US dollar floating rate exposures. As at 30 June 2010, the Group holds US\$2,577 million (2009: US\$7,696 million) of fixed interest borrowings that have not been swapped to floating rates, arising principally from debt raised during the year ended 30 June 2009 and debt raised prior to the DLC merger. The Group's strategy has not changed and the remainder of the fixed rate debt raised during the year ended 30 June 2009 has been swapped to floating interest rates since 30 June 2010. The Group's earnings are sensitive to changes in interest rates on the floating rate component of the Group's net borrowings.

The fair value of interest rate swaps, cross currency interest rate swaps, currency swaps and forward exchange contracts in fair value hedge relationships used to hedge both interest rate and foreign currency risks are as follows:

	Fair value	
	2010	2009
	US\$M	US\$M
<b>Interest rate swaps</b>		
<b>US dollar swaps</b>		
<i>Pay floating/receive fixed</i>		
Not later than one year	13	—
Later than one year but not later than two years	90	30
Later than two years but not later than five years	200	156
Later than five years	288	180
<b>Cross currency interest rate swaps</b>		
<b>Euro to US dollar swaps</b>		
<i>Pay floating/receive fixed</i>		
Not later than one year	10	—
Later than one year but not later than two years	—	147
Later than two years but not later than five years	17	114
<b>Euro to US dollar swaps</b>		
<i>Pay fixed/receive fixed</i>		
Later than five years	(174)	—
<b>Forward exchange contracts</b>		
<b>Euro to US dollar foreign exchange contract</b>		
<i>Pay US dollar/receive Euro</i>		
Not later than one year	(282)	—
<b>Total fair value of derivatives</b>	<b>162</b>	<b>627</b>

Included within 'Cross currency and interest rate swaps' in note 11 are derivatives held to hedge currency risk on Euro Bonds raised during the year ended 30 June 2009. These are discussed in 'Currency risk' below.

Based on the net debt position as at 30 June 2010, taking into account interest rate swaps and cross currency interest rate swaps, it is estimated that a one percentage point increase in the US LIBOR interest rate will decrease the Group's profit after taxation and equity by US\$2 million (2009: increase of US\$23 million). This assumes that the change in interest rates is effective from the beginning of the financial year and the fixed/floating mix and balances are constant over the year. However, interest rates and the debt profile of the Group may not remain constant in the coming financial year and therefore such sensitivity analysis should be used with care.

## Notes to Financial Statements continued

### 28 Financial risk management continued

#### *Currency risk*

The US dollar is the functional currency of most operations within the Group and as a result currency exposures arise from transactions and balances in currencies other than the US dollar. The Group's potential currency exposures comprise:

- translational exposure in respect of non-functional currency monetary items
- transactional exposure in respect of non-functional currency expenditure and revenues

The Group's foreign currency risk is managed as part of the Portfolio Risk Management Strategy within the overall CFaR limit.

#### *Translational exposure in respect of non-functional currency monetary items*

Monetary items, including financial assets and liabilities, denominated in currencies other than the functional currency of an operation are periodically restated to US dollar equivalents, and the associated gain or loss is taken to the income statement. The exception is foreign exchange gains or losses on foreign currency provisions for closure and rehabilitation at operating sites which are capitalised in property, plant and equipment.

The following table shows the foreign currency risk arising from financial assets and liabilities which are denominated in currencies other than the functional currency of the operations.

	Net financial assets/(liabilities)					Total US\$M
	US\$ US\$M	A\$ US\$M	SA rand US\$M	GBP US\$M	Other US\$M	
<b>2010</b>						
<b>Functional currency of Group operation</b>						
US dollars	—	(1,398)	90	31	(942)	(2,219)
Australian dollars	(1)	—	—	—	—	(1)
UK pounds sterling	4	—	—	—	—	4
	<b>3</b>	<b>(1,398)</b>	<b>90</b>	<b>31</b>	<b>(942)</b>	<b>(2,216)</b>
<b>2009</b>						
<b>Functional currency of Group operation</b>						
US dollars	—	(1,895)	306	87	(248)	(1,750)
Australian dollars	—	—	—	—	—	—
UK pounds sterling	3	—	—	—	—	3
	<b>3</b>	<b>(1,895)</b>	<b>306</b>	<b>87</b>	<b>(248)</b>	<b>(1,747)</b>

In March 2009, the Group issued a two tranche Euro Bond, comprising €1,250 million of 4.75 per cent Euro Bonds due 2012 and €1,000 million of 6.375 per cent Euro Bonds due 2016. Cross currency swaps and forward exchange contracts were taken out to hedge the currency risk on these bonds. These contracts were designated as cash flow hedges of the foreign currency risk associated with the Euro Bonds. The fair value of these derivatives is as follows:

	Fair value	
	2010 US\$M	2009 US\$M
<b>Cross currency swaps</b>		
<b>Euro to US dollar swaps</b>		
<i>Pay fixed/received fixed</i>		
Later than five years	—	63
<b>Forward exchange contracts</b>		
<b>Euro to US dollar foreign exchange contract</b>		
<i>Pay US dollar/receive Euro</i>		
Not later than one year	—	79
<b>Total fair value of derivatives</b>	<b>—</b>	<b>142</b>

## Notes to Financial Statements continued

### 28 Financial risk management continued

During the year ended 30 June 2010 the cash flow hedge relationships have been de-designated. Interest rate swaps, cross currency interest rate swaps, currency swaps and forward exchange contracts were taken out and have been designated as fair value hedges for risks associated with the Euro Bonds. These are discussed in 'Interest rate risk' above.

The principal non-functional currencies to which the Group is exposed are the Australian dollar, South African rand and UK pound sterling. Based on the Group's net financial assets and liabilities as at 30 June 2010, a weakening of the US dollar against these currencies as illustrated in the table below, with all other variables held constant, would have affected post-tax profit and equity as follows:

<u>Currency movement</u>	<u>2010 US\$M</u>		<u>2009 US\$M</u>	
	<u>Post-tax profit</u>	<u>Equity</u>	<u>Post-tax profit</u>	<u>Equity</u>
1 cent movement in Australian dollar	(9)	(8)	(11)	(11)
0.2 rand movement in South African rand	(2)	5	3	5
1 pence movement in UK pound sterling	—	—	1	1

The Group's financial asset and liability profile may not remain constant, and therefore these sensitivities should be used with care.

#### *Transactional exposure in respect of non-functional currency expenditure and revenues*

Certain operating and capital expenditure is incurred by some operations in currencies other than their functional currency. To a lesser extent, certain sales revenue is earned in currencies other than the functional currency of operations, and certain exchange control restrictions may require that funds be maintained in currencies other than the functional currency of the operation. These currency risks are managed as part of the Portfolio Risk Management Strategy and within the overall CFaR limit. When required under this strategy the Group enters into forward exchange contracts.

The fair value of forward exchange contracts outstanding to manage short-term foreign currency cash flows relating to operating activities is an asset of US\$22 million (2009: a liability of US\$5 million).

#### *Commodity price risk*

Contracts for the sale and physical delivery of commodities are executed whenever possible on a pricing basis intended to achieve a relevant index target. Where pricing terms deviate from the index, derivative commodity contracts are used when available to return realised prices to the index. Contracts for the physical delivery of commodities are not typically financial instruments and are carried in the balance sheet at cost (typically at nil); they are therefore excluded from the fair value and sensitivity tables below. Accordingly, the financial instrument exposures set out in the tables below do not represent all of the commodity price risks managed according to the Group's objectives. Movements in the fair value of contracts included in the tables below are offset by movements in the fair value of the physical contracts, however only the former movement is recognised in the Group's income statement prior to settlement. The risk associated with commodity prices is managed as part of the Portfolio Risk Management Strategy and within the overall CFaR limit.

Financial instruments with commodity price risk included in the following tables are those entered into for the following activities:

- economic hedging of prices realised on commodity contracts as described above
- proprietary trading
- purchases and sales of physical contracts that can be cash-settled
- cash flow hedging of revenues
- derivatives embedded within other supply contracts

All such instruments are carried in the balance sheet at fair value.

## Notes to Financial Statements continued

### 28 Financial risk management continued

#### *Forward commodity and other derivative contracts*

	2010		2009	
	Fair value of asset US\$M	Fair value of liability US\$M	Fair value of asset US\$M	Fair value of liability US\$M
Aluminium	21	26	123	88
Copper	83	84	385	404
Zinc	29	19	13	16
Lead	40	26	20	20
Silver	4	9	12	10
Nickel	47	36	55	77
Iron ore	—	2	9	—
Energy coal	21	31	71	74
Metallurgical coal	—	2	—	1
Petroleum	—	33	5	46
Electricity	—	—	206	2
Gas	111	31	92	3
Freight	38	13	84	88
Other	—	3	—	—
<b>Total</b>	<b>394</b>	<b>315</b>	<b>1,075</b>	<b>829</b>
Comprising:				
Current	241	223	671	687
Non-current	153	92	404	142

The Group's exposure at 30 June 2010 to the impact of movements in commodity prices upon the financial instruments, other than those designated as a cash flow hedge or embedded derivatives, is set out in the following table.

	Units of exposure	2010		2009	
		Net exposure receive/(deliver)	Impact on equity and profit of 10% movement in market price (post-tax) US\$M	Net exposure receive/(deliver)	Impact on equity and profit of 10% movement in market price (post-tax) US\$M
Aluminium	'000 tonnes	(8)	(2)	11	2
Copper	'000 tonnes	20	18	17	7
Zinc	'000 tonnes	4	—	—	2
Lead	'000 tonnes	(13)	—	5	2
Silver	Million ounces	(3)	(3)	2	3
Nickel	'000 tonnes	(1)	(2)	1	2
Iron ore	'000 tonnes	273	3	(483)	(4)
Energy coal	'000 tonnes	1,370	13	(865)	(9)
Petroleum	'000 barrels	—	—	678	4
Electricity	'000 MWh	—	—	—	—
Gas	'000 therms	—	—	(10,850)	—
Freight	Time charter days	(1,490)	(4)	(427)	(2)
	'000 voyage charter tonnes	510	1	1,245	2

#### *Provisionally priced commodity sales contracts*

Not included in the above tables are provisionally priced sales volumes for which price finalisation, referenced to the relevant index, is outstanding at balance date. Provisional pricing mechanisms embedded within these sales arrangements have the character of a commodity derivative and are carried at fair value as part of trade receivables. The Group's exposure at 30 June 2010 to the impact of movements in commodity prices upon provisionally invoiced sales volumes is set out in the following table.

	Units of exposure	2010		2009	
		Net exposure receive/(deliver)	Impact on equity and profit of 10% movement in market price (post-tax) US\$M	Net exposure receive/(deliver)	Impact on equity and profit of 10% movement in market price (post-tax) US\$M
Copper	'000 tonnes	(237)	(100)	(235)	(76)



## Notes to Financial Statements continued

### 28 Financial risk management continued

The sensitivities in the above tables have been determined as the absolute impact on fair value of a 10 per cent increase in commodity prices at each reporting date, while holding all other variables, including foreign currency and exchange rates, constant.

The relationship between commodity prices and foreign currencies is complex and movements in foreign exchange can impact commodity prices. The sensitivities should therefore be used with care.

#### *Liquidity risk*

The Group's liquidity risk arises from the possibility that it may not be able to settle or meet its obligations as they fall due and is managed as part of the Portfolio Risk Management Strategy and within the overall CFaR limit. Operational, capital and regulatory requirements are considered in the management of liquidity risk, in conjunction with short- and long-term forecast information.

Additional liquidity risk arises on debt related derivatives due to the possibility that a market for derivatives might not exist in some circumstances. To counter this risk the Group only uses derivatives in highly liquid markets.

During the year ended 30 June 2010, Moody's Investors Service made no change to the Group's long-term credit rating of A1 (the short-term credit rating is P-1). Standard & Poor's made no change to the Group's long-term credit rating of A+ (the short-term credit rating is A-1). The Group's strong credit profile, diversified funding sources and committed credit facilities ensure that sufficient liquid funds are maintained to meet its daily cash requirements. The Group's policy on counterparty credit exposure ensures that only counterparties of a high credit standing are used for the investment of any excess cash.

There were no defaults on loans payable during the period.

#### *Standby arrangements and unused credit facilities*

Details of major standby and support arrangements are as follows:

	Facility available 2010 US\$M	Used 2010 US\$M	Unused 2010 US\$M	Facility available 2009 US\$M	Used 2009 US\$M	Unused 2009 US\$M
Revolving credit facility <sup>(a)</sup>	3,000	—	3,000	3,000	—	3,000
Other facilities <sup>(b)</sup>	58	—	58	58	—	58
<b>Total financing facilities</b>	<b>3,058</b>	<b>—</b>	<b>3,058</b>	<b>3,058</b>	<b>—</b>	<b>3,058</b>

- (a) The multi-currency revolving credit facility is available for general corporate purposes and matures in October 2011. This facility is used for general corporate purposes and as backup for the commercial paper programs. The interest rates under this facility are based on an interbank rate plus a margin. The applicable margin is typical for a credit facility extended to a company with the Group's credit rating.
- (b) Other bank facilities are arranged with a number of banks with the general terms and conditions agreed on a periodic basis.

## Notes to Financial Statements continued

### 28 Financial risk management continued

#### *Maturity profile of financial liabilities*

The maturity profile of the Group's financial liabilities based on the contractual amounts, taking into account the derivatives related to debt, is as follows:

	Bank loans, debentures and other loans US\$M	Expected future interest payments US\$M	Derivatives related to net debt US\$M	Other derivatives US\$M	Obligations under finance leases US\$M	Other financial liabilities US\$M	Total US\$M
<b>2010</b>							
<b>Due for payment:</b>							
In one year or less or on demand	2,038	741	(54)	241	77	6,245	9,288
In more than one year but not more than two years	2,286	689	346	37	64	30	3,452
In more than two years but not more than three years	1,827	567	10	19	23	5	2,451
In more than three years but not more than four years	2,837	475	10	10	23	4	3,359
In more than four years but not more than five years	134	357	11	11	23	—	536
In more than five years	5,841	1,124	143	3	85	323	7,519
	<u>14,963</u>	<u>3,953</u>	<u>466</u>	<u>321</u>	<u>295</u>	<u>6,607</u>	<u>26,605</u>
<b>Carrying amount</b>	<b>15,524</b>	<b>—</b>	<b>456</b>	<b>321</b>	<b>225</b>	<b>6,770</b>	<b>23,296</b>
	Bank loans, debentures and other loans US\$M	Expected future interest payments US\$M	Derivatives related to net debt US\$M	Other derivatives US\$M	Obligations under finance leases US\$M	Other financial liabilities US\$M	Total US\$M
<b>2009</b>							
<b>Due for payment:</b>							
In one year or less or on demand	1,426	819	—	705	69	5,636	8,655
In more than one year but not more than two years	1,795	792	—	103	37	169	2,896
In more than two years but not more than three years	2,500	728	—	26	39	29	3,322
In more than three years but not more than four years	1,808	597	—	7	26	9	2,447
In more than four years but not more than five years	2,612	509	—	3	26	6	3,156
In more than five years	5,624	1,502	—	3	112	16	7,257
	<u>15,765</u>	<u>4,947</u>	<u>—</u>	<u>847</u>	<u>309</u>	<u>5,865</u>	<u>27,733</u>
<b>Carrying amount</b>	<b>16,181</b>	<b>—</b>	<b>—</b>	<b>847</b>	<b>223</b>	<b>5,821</b>	<b>23,072</b>

The amounts presented in the tables above comprise the contractual undiscounted cash flows, and therefore will not always agree with the amounts presented in the balance sheet. The Group holds derivatives related to net debt, commodities and currencies that are classified as other financial assets when they are expected to generate cash inflows (refer to note 11). These contracts are excluded from the table above in 2009.

#### *Credit risk*

Credit risk arises from the non-performance by counterparties of their contractual financial obligations towards the Group. To manage credit risk the Group maintains Group-wide procedures covering the application for credit approvals, granting and renewal of counterparty limits and daily monitoring of exposures against these limits. As part of these processes the financial viability of all counterparties is regularly monitored and assessed. The maximum exposure to credit risk is limited to the total carrying value of relevant financial assets on the balance sheet as at the reporting date.

## Notes to Financial Statements continued

### 28 Financial risk management continued

The Group's credit risk exposures are categorised under the following headings:

#### *Counterparties*

The Group conducts transactions with the following major types of counterparties:

- *Receivables counterparties*  
The majority of sales to the Group's customers are made on open terms.
- *Payment guarantee counterparties*  
A proportion of sales to Group customers occur via secured payment mechanisms.
- *Derivative counterparties*  
Counterparties to derivative contracts consist of a diverse number of financial institutions and industrial counterparties in the relevant markets.
- *Cash investment counterparties*  
As part of managing cash flow and liquidity, the Group holds short-term cash investments with a range of approved financial institutions.

The Group has no significant concentration of credit risk with any single counterparty or group of counterparties.

#### *Geographic*

The Group trades in all major geographic regions. Countries in which the Group has a significant credit risk exposure include South Africa, Australia, the US, Japan and China. Where appropriate, secured payment mechanisms and other risk mitigation instruments are used to protect revenues from credit risk losses.

#### *Industry*

In line with our asset portfolio, the Group sells into a diverse range of industries and customer sectors. This diversity means that the Group is not materially exposed to any individual industry or customer.

The following table shows the Group's receivables at the reporting date that are exposed to credit risk and the ageing and impairment profile thereon.

	Gross amount US\$M	Receivables past due and impaired US\$M	Receivables neither past due nor impaired US\$M	Receivables past due but not impaired			
				Less than 30 days US\$M	31 to 60 days US\$M	61 to 90 days US\$M	Over 90 days US\$M
<b>2010</b>							
Trade accounts receivables	5,092	147	4,907	27	6	1	4
Other receivables	2,994	15	2,864	32	10	3	70
<b>Total</b>	<b>8,086</b>	<b>162</b>	<b>7,771</b>	<b>59</b>	<b>16</b>	<b>4</b>	<b>74</b>
	Gross amount US\$M	Receivables past due and impaired US\$M	Receivables neither past due nor impaired US\$M	Receivables past due but not impaired			
				Less than 30 days US\$M	31 to 60 days US\$M	61 to 90 days US\$M	Over 90 days US\$M
<b>2009</b>							
Trade accounts receivables	3,881	176	3,671	—	4	—	30
Other receivables	2,216	6	2,031	127	3	1	48
<b>Total</b>	<b>6,097</b>	<b>182</b>	<b>5,702</b>	<b>127</b>	<b>7</b>	<b>1</b>	<b>78</b>

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**28 Financial risk management continued**

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Receivables are deemed to be past due or impaired with reference to the Group's normal terms and conditions of business. These terms and conditions are determined on a case-by-case basis with reference to the customer's credit quality and prevailing market conditions. Receivables that are classified as 'past due' in the above tables are those that have not been settled within the terms and conditions that have been agreed with that customer. For an analysis of movements in impaired receivables, refer to note 10.

The credit quality of the Group's customers is monitored on an ongoing basis and assessed for impairment where indicators of such impairment exist. The solvency of each debtor and their ability to repay the receivable is considered in assessing receivables for impairment. In certain circumstances the Group may seek collateral as security for the receivable. Where receivables have been impaired, the Group actively seeks to recover the amounts in question and enforce compliance with credit terms.

No other financial assets were past due or impaired at 30 June 2010 (30 June 2009: nil).

***Fair values***

All financial assets and financial liabilities, other than derivatives, are initially recognised at the fair value of consideration paid or received, net of transaction costs as appropriate, and subsequently carried at fair value or amortised cost, as indicated in the tables below.

Derivatives are initially recognised at fair value on the date the contract is entered into and are subsequently remeasured at their fair value. This measurement of fair value is principally based on quoted market prices. Where no price information is available from a quoted market source, alternative market mechanisms or recent comparable transactions, fair value is estimated based on the Group's views on relevant future prices, net of valuation allowances to accommodate liquidity, modelling and other risks implicit in such estimates.

The financial assets and liabilities are presented by class in the tables below at their carrying values, which generally approximate to the fair values. In the case of US\$2,577 million (2009: US\$7,696 million) of centrally managed fixed rate debt not swapped to floating rate, the fair value at 30 June 2010 is US\$3,031 million (2009: US\$8,277 million).

Notes to Financial Statements continued

28 Financial risk management continued

*Financial assets and liabilities*

2010	Notes	Loans and receivables US\$M	Available for sale securities US\$M	Held at fair value through profit or loss US\$M	Cash flow hedges US\$M	Other financial assets and liabilities at amortised cost US\$M	Total US\$M
<b>Financial assets</b>							
Cash and cash equivalents	23	12,456	—	—	—	—	12,456
Trade and other receivables <sup>(a)</sup>	10	5,938	—	812	—	—	6,750
Cross currency and interest rate swaps	11	—	—	618	—	—	618
Forward exchange contracts	11	—	—	28	—	—	28
Commodity contracts	11	—	—	282	—	—	282
Other derivative contracts	11	—	—	112	—	—	112
Interest bearing loans receivable	10	683	—	—	—	—	683
Shares	11	—	657	—	—	—	657
Other investments	11	—	105	—	—	—	105
<b>Total financial assets</b>		<b>19,077</b>	<b>762</b>	<b>1,852</b>	<b>—</b>	<b>—</b>	<b>21,691</b>
Non-financial assets							67,161
<b>Total assets</b>							<b>88,852</b>
<b>Financial liabilities</b>							
Trade and other payables <sup>(b)</sup>	15	—	—	—	—	6,755	6,755
Cross currency and interest rate swaps	17	—	—	456	—	—	456
Forward exchange contracts	17	—	—	6	—	—	6
Commodity contracts	17	—	—	235	—	—	235
Other derivative contracts	17	—	—	80	—	—	80
Unsecured bank overdrafts and short-term borrowings	16	—	—	—	—	1	1
Unsecured bank loans	16	—	—	—	—	754	754
Notes and debentures <sup>(c)</sup>	16	—	—	—	—	13,436	13,436
Secured bank loans	16	—	—	—	—	957	957
Redeemable preference shares	16	—	—	—	—	15	15
Finance leases	16	—	—	—	—	225	225
Unsecured other	16	—	—	—	—	376	376
<b>Total financial liabilities</b>		<b>—</b>	<b>—</b>	<b>777</b>	<b>—</b>	<b>22,519</b>	<b>23,296</b>
Non-financial liabilities							16,227
<b>Total liabilities</b>							<b>39,523</b>

<sup>(a)</sup> Excludes input taxes of US\$491 million included in other receivables. Refer to note 10.

<sup>(b)</sup> Excludes input taxes of US\$181 million included in other payables. Refer to note 15.

<sup>(c)</sup> Includes US\$10,847 million of centrally managed fixed rate debt swapped to floating rate under fair value hedges, and is consequently fair valued for interest rate risk.

Notes to Financial Statements continued

28 Financial risk management continued

*Financial assets and liabilities continued*

2009	Notes	Loans and receivables US\$M	Available for sale securities US\$M	Held at fair value through profit or loss US\$M	Cash flow hedges US\$M	Other financial assets and liabilities at amortised cost US\$M	Total US\$M
<b>Financial assets</b>							
Cash and cash equivalents	23	10,833	—	—	—	—	10,833
Trade and other receivables <sup>(a)</sup>	10	4,581	—	890	—	—	5,471
Cross currency and interest rate swaps	11	—	—	627	142	—	769
Forward exchange contracts	11	—	—	13	—	—	13
Commodity contracts	11	—	—	778	—	—	778
Other derivative contracts	11	—	—	297	—	—	297
Shares	11	—	321	35	—	—	356
Other investments	11	—	93	—	—	—	93
<b>Total financial assets</b>		<b>15,414</b>	<b>414</b>	<b>2,640</b>	<b>142</b>	<b>—</b>	<b>18,610</b>
<b>Non-financial assets</b>							<b>60,160</b>
<b>Total assets</b>							<b>78,770</b>
<b>Financial liabilities</b>							
Trade and other payables <sup>(b)</sup>	15	—	—	—	—	5,666	5,666
Forward exchange contracts	17	—	—	18	—	—	18
Commodity contracts	17	—	—	794	—	—	794
Other derivative contracts	17	—	—	35	—	—	35
Unsecured bank overdrafts and short-term borrowings	16	—	—	—	—	2	2
Unsecured bank loans	16	—	—	—	—	1,256	1,256
Notes and debentures <sup>(c)</sup>	16	—	—	—	—	13,946	13,946
Secured bank loans	16	—	—	—	—	618	618
Redeemable preference shares	16	—	—	—	—	15	15
Finance leases	16	—	—	—	—	223	223
Unsecured other	16	—	—	—	—	359	359
<b>Total financial liabilities</b>		<b>—</b>	<b>—</b>	<b>847</b>	<b>—</b>	<b>22,085</b>	<b>22,932</b>
<b>Non-financial liabilities</b>							<b>15,127</b>
<b>Total liabilities</b>							<b>38,059</b>

<sup>(a)</sup> Excludes input taxes of US\$444 million included in other receivables. Refer to note 10.

<sup>(b)</sup> Excludes input taxes of US\$140 million included in other payables. Refer to note 15.

<sup>(c)</sup> Includes US\$6,264 million of centrally managed fixed rate debt swapped to floating rate under fair value hedges and is consequently fair valued for interest rate risk.

## Notes to Financial Statements continued

### 28 Financial risk management continued

#### Valuation hierarchy

The carrying amount of financial assets and liabilities measured at fair value is principally calculated with reference to quoted prices in active markets for identical assets or liabilities. Where no price information is available from a quoted market source, alternative market mechanisms or recent comparable transactions, fair value is estimated based on the Group's views on relevant future prices, net of valuation allowances to accommodate liquidity, modelling and other risks implicit in such estimates. Movements in the fair value of financial assets and liabilities may be recognised through the income statement or in other comprehensive income. The following table shows the Group's financial assets and liabilities carried at fair value with reference to the nature of valuation inputs used.

2010	Level 1 <sup>(a)</sup> US\$M	Level 2 <sup>(b)</sup> US\$M	Level 3 <sup>(c)</sup> US\$M	Total US\$M
<b>Financial assets and liabilities</b>				
Trade and other receivables	—	812	—	812
Cross currency and interest rate swaps	—	162	—	162
Forward exchange contracts	—	22	—	22
Commodity contracts	—	47	—	47
Other derivative contracts	—	(9)	41	32
Investments held as available for sale	13	112	637	762
<b>Total</b>	<b>13</b>	<b>1,146</b>	<b>678</b>	<b>1,837</b>

- (a) Valuation is based on unadjusted quoted prices in active markets for identical financial assets and liabilities.  
(b) Valuation is based on inputs (other than quoted prices included in Level 1) that are observable for the financial asset or liability, either directly (i.e. as unquoted prices) or indirectly (i.e. derived from prices).  
(c) Valuation is based on inputs that are not based on observable market data.

#### Level 3 financial assets and liabilities

The following table shows the movements in the Group's level 3 financial assets and liabilities.

	2010 US\$M
<b>Balance at the beginning of the financial year</b>	<b>590</b>
Additions	141
Disposals	(8)
Currency translation adjustments	—
Realised (losses) recognised in the income statement <sup>(a)</sup>	(229)
Unrealised gains recognised in the income statement <sup>(a)</sup>	21
Unrealised gains recognised in other comprehensive income <sup>(b)</sup>	147
Transfers from Property, plant and equipment	16
<b>Balance at the end of the financial year</b>	<b>678</b>

- (a) Realised and unrealised gains and losses recognised in the income statement are recorded in expenses. Refer to note 5.  
(b) Unrealised gains and losses recognised in other comprehensive income are recorded in the Financial assets reserve. Refer to note 20.

#### Sensitivity of Level 3 financial assets and liabilities

The carrying amount of financial assets and liabilities that are valued using inputs other than observable market data are calculated using appropriate valuation models, including discounted cash flow modelling, with inputs such as commodity prices, foreign exchange rates and inflation. The potential effect of using reasonably possible alternative assumptions in these models, based on a change in the most significant input by 10 per cent while holding all other variables constant, is shown in the following table. Significant inputs are assessed individually for each financial asset and liability.

## Notes to Financial Statements continued

### 28 Financial risk management continued

	Carrying value US\$M	Post-tax profit		Equity	
		10% increase in input US\$M	10% decrease in input US\$M	10% increase in input US\$M	10% decrease in input US\$M
<b>2010</b>					
<b>Financial assets and liabilities</b>					
Other derivative contracts	41	(20)	21	(20)	21
Investments held as available for sale	637	—	—	128	(140)
<b>Total</b>	<b>678</b>	<b>(20)</b>	<b>21</b>	<b>108</b>	<b>(119)</b>

#### *Capital management*

The Group defines capital as the total equity of the Group. The Group manages capital with the goal of maintaining levels of gearing designed to optimise the cost of capital and return on capital employed, while also growing the business consistently through project developments and acquisitions. The Group's priorities for cash flow are:

- reinvestment in projects that carry attractive rates of return regardless of the economic climate
- commitment to a solid 'A' credit rating
- returning excess capital to shareholders via dividends and capital management (for example share buy-backs)

The Group's strategy is focused on upstream, large, long-life, low-cost, expandable, export-oriented assets and the Group continually reviews its portfolio to identify assets which do not fit this strategy. The Group will invest capital in assets where they fit our strategy.

The Group monitors capital using a gearing ratio, being the ratio of net debt to net debt plus net assets.

	2010 US\$M	2009 US\$M
Cash and cash equivalents	(12,456)	(10,833)
Current debt	2,191	1,094
Non-current debt	13,573	15,325
<b>Net debt</b>	<b>3,308</b>	<b>5,586</b>
<b>Net assets/Total equity</b>	<b>49,329</b>	<b>40,711</b>
<b>Gearing</b>	<b>6.3%</b>	<b>12.1%</b>



**29 Pension and other post-retirement obligations***Defined contribution pension schemes and multi-employer pension schemes*

The Group contributed US\$276 million (2009: US\$231 million; 2008: US\$218 million) to defined contribution plans and multi-employer defined contribution plans. These contributions are expensed as incurred. Contributions to defined contribution plans for Key Management Personnel are disclosed in note 30.

*Defined benefit pension schemes*

The Group has closed all defined benefit schemes to new entrants. Defined benefit pension schemes remain operating in Australia, the US, Canada, South America, Europe and South Africa for existing members. Full actuarial valuations are prepared and updated annually to 30 June by local actuaries for all schemes. The Projected Unit Credit valuation method is used. The Group operates final salary schemes that provide final salary benefits only, non-salary related schemes that provide flat dollar benefits and mixed benefit schemes that consist of a final salary defined benefit portion and a defined contribution portion.

*Defined benefit post-retirement medical schemes*

The Group operates a number of post-retirement medical schemes in the US, Canada and South Africa. Full actuarial valuations are prepared by local actuaries for all schemes. All of the post-retirement medical schemes in the Group are unfunded.

The following tables set out details in respect of the Group's defined benefit pension and post-retirement medical schemes.

*Balance sheet disclosures*

The amounts recognised in the balance sheet are as follows:

	Defined benefit pension schemes		Post-retirement medical schemes	
	2010 US\$M	2009 US\$M	2010 US\$M	2009 US\$M
Present value of funded defined benefit obligation	1,673	1,666	—	—
Present value of unfunded defined benefit obligation	89	70	343	310
Unrecognised past service credits	—	—	1	5
Fair value of defined benefit scheme assets	(1,547)	(1,455)	—	—
Scheme deficit	215	281	344	315
Unrecognised surplus	69	78	—	—
Adjustment for employer contributions tax	11	17	—	—
<b>Net liability recognised in the balance sheet</b>	<b>295</b>	<b>376</b>	<b>344</b>	<b>315</b>

The Group has no legal obligation to settle these liabilities with any immediate contributions or additional one-off contributions. The Group intends to continue to contribute to each defined benefit pension and post-retirement medical scheme in accordance with the latest recommendations of each scheme actuary.

## Notes to Financial Statements continued

### 29 Pension and other post-retirement obligations continued

#### *Income statement disclosures*

The amounts recognised in the income statement are as follows:

	Defined benefit pension schemes			Post-retirement medical schemes		
	2010 US\$M	2009 US\$M	2008 US\$M	2010 US\$M	2009 US\$M	2008 US\$M
Current service cost	54	58	75	6	5	7
Interest cost	108	110	113	22	22	25
Expected return on pension scheme assets	(98)	(111)	(125)	—	—	—
Past service costs	—	1	—	—	(5)	—
(Gains)/losses on settlements/curtailments	—	(4)	—	(7)	3	(41)
<b>Total expense</b>	<b>64</b>	<b>54</b>	<b>63</b>	<b>21</b>	<b>25</b>	<b>(9)</b>
- Recognised in employee benefits expense	54	55	75	6	3	(34)
- Recognised in net finance costs	10	(1)	(12)	22	22	25
- Recognised in other income	—	—	—	(7)	—	—

#### *Statement of Comprehensive Income (SOCI) disclosures*

The amounts recognised in the Statement of Comprehensive Income are as follows:

	Defined benefit pension schemes			Post-retirement medical schemes		
	2010 US\$M	2009 US\$M	2008 US\$M	2010 US\$M	2009 US\$M	2008 US\$M
Actuarial (gains)/losses	(1)	239	106	25	—	(17)
Limit on net assets and other adjustments	14	(12)	7	—	—	—
<b>Total amount recognised in the SOCI</b>	<b>13</b>	<b>227</b>	<b>113</b>	<b>25</b>	<b>—</b>	<b>(17)</b>
<b>Total cumulative amount recognised in the SOCI <sup>(a)</sup></b>	<b>268</b>	<b>255</b>	<b>28</b>	<b>52</b>	<b>27</b>	<b>27</b>

<sup>(a)</sup> Cumulative amounts are calculated from the transition to IFRS on 1 July 2004.

The actual return on assets for the defined benefit pension schemes is as follows:

	Defined benefit pension schemes		
	2010 US\$M	2009 US\$M	2008 US\$M
The actual return on assets for the defined benefit pension schemes	175	(117)	(5)

The changes in the present value of defined benefit obligations are as follows:

	Defined benefit pension schemes		Post-retirement medical schemes	
	2010 US\$M	2009 US\$M	2010 US\$M	2009 US\$M
Defined benefit obligation at beginning of year	1,736	1,889	310	328
Current service cost	54	58	6	5
Interest cost	108	110	22	22
Contributions by scheme participants	3	3	—	—
Actuarial losses/(gains) on benefit obligation	76	11	25	—
Benefits paid to participants	(164)	(171)	(18)	(17)
Past service costs	—	1	—	(11)
Curtailment (gains)/losses	—	(4)	(7)	3
Exchange variations	2	(161)	5	(3)
Other adjustments	(53)	—	—	(17)
<b>Defined benefit obligation at end of year</b>	<b>1,762</b>	<b>1,736</b>	<b>343</b>	<b>310</b>

## Notes to Financial Statements continued

### 29 Pension and other post-retirement obligations continued

The changes in the fair value of scheme assets for defined benefit pension schemes are as follows:

	Defined benefit pension schemes	
	2010 US\$M	2009 US\$M
Fair value of scheme assets at beginning of year	1,455	1,768
Expected return on scheme assets	98	111
Actuarial gains/(losses) on scheme assets	77	(228)
Employer contributions	162	111
Contributions by scheme participants	3	3
Benefits paid	(164)	(171)
Exchange variations	(1)	(139)
Other adjustments	(83)	—
<b>Fair value of scheme assets at end of year</b>	<b>1,547</b>	<b>1,455</b>

The fair values of defined benefit pension scheme assets segregated by major asset class are as follows:

Asset class	Fair Value	
	2010 US\$M	2009 US\$M
Bonds	884	882
Equities	391	345
Property	22	16
Cash and net current assets	49	24
Insured annuities	187	177
Other	14	11
<b>Total</b>	<b>1,547</b>	<b>1,455</b>

Scheme assets classified as 'Other' as at 30 June 2010 primarily comprise of investments in private equity in Australia.

The fair value of scheme assets includes no amounts relating to any of the Group's own financial instruments or any of the property occupied by or other assets used by the Group.

The investment strategy is determined by each plan's fiduciary body in consultation with the Group. In general, the investment strategy for each plan is set by reference to the duration and risk profile of the plan, as well as the plan's solvency level.

#### *Actuarial assumptions*

The principal actuarial assumptions at the reporting date (expressed as weighted averages) for defined benefit pension schemes are as follows:

	Australia		Americas		Europe		South Africa	
	2010 %	2009 %	2010 %	2009 %	2010 %	2009 %	2010 %	2009 %
Discount rate	5.4	5.3	5.5	6.3	5.3	6.2	8.8	9.0
Future salary increases	4.0	3.9	4.5	3.8	4.7	4.9	6.9	6.9
Future pension increases	2.5	—	4.0	2.3	2.6	2.8	5.9	5.9
Expected rate of return on pension scheme assets	5.8	5.2	5.9	6.6	5.6	5.6	9.4	10.0

## Notes to Financial Statements continued

### 29 Pension and other post-retirement obligations continued

The principal actuarial assumptions at the reporting date (expressed as weighted averages) for post-retirement medical schemes are as follows:

	Americas		South Africa	
	2010	2009	2010	2009
	%	%	%	%
Discount rate	5.2	6.0	9.0	9.1
Medical cost trend rate (ultimate)	4.2	5.0	7.3	7.6

Assumptions regarding future mortality can be material depending upon the size and nature of the plan liabilities. Post-retirement mortality assumptions in the Americas, Europe and South Africa are based on post-retirement mortality tables that are standard in these regions.

The overall expected rate of return on assets is the weighted average of the expected rate of return on each applicable asset class and reflects the long-term target asset allocation as at the reporting date. For bonds, the expected rate of return reflects the redemption yields available on corporate and government bonds, as applicable, as at the reporting date. For all other asset classes, the expected rate of return reflects the rate of return expected over the long term.

For the main funds, these tables imply the following expected future lifetimes (in years) for employees aged 65 as at the balance sheet date: US males 19.8, US females 21.6; Canadian males 19.4, Canadian females 21.8; Netherlands males 19.0, Netherlands females 21.1; UK males 22.4, UK females 24.8; South African males 14.8, South African females 18.7.

The present value of defined benefit obligations, fair value of scheme assets and associated experience adjustments for the defined benefit pension and post-retirement medical schemes are shown for the current year and the previous four years as follows:

	Defined benefit pension schemes				
	2010	2009	2008	2007	2006
	US\$M	US\$M	US\$M	US\$M	US\$M
Present value of defined benefit obligation	1,762	1,736	1,889	1,787	1,759
Fair value of defined benefit scheme assets	(1,547)	(1,455)	(1,768)	(1,756)	(1,585)
<b>Deficit in the schemes</b>	<b>215</b>	<b>281</b>	<b>121</b>	<b>31</b>	<b>174</b>
Experience gain/(loss) adjustments to scheme liabilities	16	(2)	(8)	7	(58)
Experience gain/(loss) adjustments to scheme assets	76	(228)	(130)	101	45

	Post-retirement medical schemes				
	2010	2009	2008	2007	2006
	US\$M	US\$M	US\$M	US\$M	US\$M
Present value of defined benefit obligation	343	310	328	380	353
Experience gain/(loss) adjustments to scheme liabilities	(7)	4	8	1	(17)

Experience adjustments to scheme liabilities do not include the effect of changes in actuarial assumptions.

Estimated contributions for the defined benefit pension and post-retirement medical schemes are as follows:

	Defined benefit pension schemes	Post-retirement medical schemes
	US\$M	US\$M
Estimated employer contributions for the year ending 30 June 2011	117	22
Estimated contributions by scheme participants for the year ending 30 June 2011	3	n/a

## Notes to Financial Statements continued

### 29 Pension and other post-retirement obligations continued

The impact of a one percentage point variation in the medical cost trend rate (for the post-retirement medical schemes) on the Group's results is as follows:

	2010 US\$M	2009 US\$M
Effect of an increase in the medical cost trend of 1% point on:		
Total of current service and interest cost	3	7
Defined benefit obligation	<u>31</u>	<u>40</u>
Effect of a decrease in the medical cost trend of 1% point on:		
Total of current service and interest cost	(3)	(1)
Defined benefit obligation	<u>(26)</u>	<u>(18)</u>

### 30 Key Management Personnel

Key Management Personnel compensation comprises:

	2010 US\$	2009 US\$	2008 US\$
Short-term employee benefits	21,851,956	20,015,590	20,607,717
Post-employment benefits	5,281,930	2,870,982	2,958,123
Share-based payments	26,017,590	23,530,682	12,428,149
<b>Total</b>	<b><u>53,151,476</u></b>	<b><u>46,417,254</u></b>	<b><u>35,993,989</u></b>

Notes to Financial Statements continued

30 Key Management Personnel continued

*Equity Instrument disclosures relating to Key Management Personnel*

*BHP Billiton Limited ordinary shares under award*

		At 30 June 2008	Granted	Lapsed	Exercised	At 30 June 2009	Granted	Lapsed	Exercised / Matched	At 30 June 2010	Vested during the year ended 30 June 2009	Vested during the year ended 30 June 2010	Vested at 30 June 2009 (a)	Vested at 30 June 2010 (a)
Marius Kloppers	LTIP Performance	333,327	500,000	—	—	833,327	250,000	—	—	1,083,327	—	—	—	—
	GIS Deferred	27,582	95,847	—	—	123,429	46,951	—	27,582	142,798	—	27,582	—	—
	Shareplus	160	168	—	—	328	194	—	160	362	—	160	—	—
Marcus Randolph	LTIP Performance	592,676	225,000	—	—	817,676	120,000	—	110,000	827,676	—	110,000	—	—
	GIS Deferred	85,302	45,027	—	61,654	68,675	25,126	—	23,648	70,153	29,455	23,648	—	—
	Shareplus	157	172	—	—	329	190	—	157	362	—	157	—	—
Alex Vanselow	LTIP Performance	642,676	225,000	—	—	867,676	120,000	—	110,000	877,676	—	110,000	—	—
	GIS Deferred	73,510	—	—	48,663	24,847	27,727	—	24,847	27,727	23,030	24,847	—	—
	Shareplus	157	168	—	—	325	193	—	157	361	—	157	—	—
Karen Wood	LTIP Performance	489,187	175,000	—	—	664,187	90,000	—	80,000	674,187	—	80,000	—	—
	GIS Deferred	85,003	30,778	—	26,631	89,150	23,686	—	58,372	54,464	18,267	19,643	38,729	—
	GIS Performance	16,547	—	—	16,547	—	—	—	—	—	—	—	—	—
	PSP	25,846	—	—	—	25,846	—	—	25,846	—	—	—	—	—
	Shareplus	157	168	—	—	325	193	—	157	361	—	157	—	—
J. Michael Yeager	LTIP Performance	737,702	225,000	—	—	962,702	120,000	—	—	1,082,702	—	—	—	—
	GIS Deferred	33,074	56,373	—	6,614	82,833	29,877	—	26,460	86,250	6,614	26,460	—	—
	Shareplus	134	210	—	—	344	138	—	134	348	—	134	—	—
Total		<u>3,143,197</u>	<u>1,578,911</u>	<u>—</u>	<u>160,109</u>	<u>4,561,999</u>	<u>854,275</u>	<u>—</u>	<u>487,520</u>	<u>4,928,754</u>	<u>77,366</u>	<u>422,945</u>	<u>38,729</u>	<u>—</u>

Notes to Financial Statements continued

30 Key Management Personnel continued

*BHP Billiton Limited ordinary shares under option*

	Scheme	At 30 June 2008	Granted	Lapsed	Exercised	At 30 June 2009	Granted	Lapsed	Exercised	At 30 June 2010	Vested during the year ended 30 June 2009	Vested during the year ended 30 June 2010	Vested at 30 June 2009 <sup>(a)</sup>	Vested at 30 June 2010 <sup>(a)</sup>
Alex Vanselow	GIS Options	—	153,768	—	—	153,768	—	—	—	153,768	—	—	—	—
	Total	—	153,768	—	—	153,768	—	—	—	153,768	—	—	—	—

*BHP Billiton Plc ordinary shares under award*

	Scheme	At 30 June 2008	Granted	Lapsed	Exercised	At 30 June 2009	Granted	Lapsed	Exercised / Matched	At 30 June 2010	Vested during the year ended 30 June 2009	Vested during the year ended 30 June 2010	Vested at 30 June 2009 <sup>(a)</sup>	Vested at 30 June 2010 <sup>(a)</sup>
Marius Kloppers	LTIP Performance	675,000	—	—	—	675,000	—	—	225,000	450,000	—	225,000	—	—
	GIS Deferred	90,071	—	—	90,071	—	—	—	—	—	37,300	—	—	—
Alberto Calderon	LTIP Performance	331,993	225,000	—	—	556,993	120,000	—	—	676,993	—	—	—	—
	GIS Deferred	29,133	—	—	—	29,133	33,343	—	29,133	33,343	11,926	17,207	11,926	—
	Shareplus	156	188	—	—	344	193	—	156	381	—	156	—	—
Andrew Mackenzie	LTIP Performance	—	325,839	—	—	325,839	120,000	—	—	445,839	—	—	—	—
	GIS Deferred	—	—	—	—	—	12,476	—	—	12,476	—	—	—	—
	Shareplus	—	—	—	—	—	175	—	—	175	—	—	—	—
	Total	1,126,353	551,027	—	90,071	1,587,309	286,187	—	254,289	1,619,207	49,226	242,363	11,926	—

*BHP Billiton Plc ordinary shares under option*

	Scheme	At 30 June 2008	Granted	Lapsed	Exercised	At 30 June 2009	Granted	Lapsed	Exercised	At 30 June 2010	Vested during the year ended 30 June 2009	Vested during the year ended 30 June 2010	Vested at 30 June 2009 <sup>(a)</sup>	Vested at 30 June 2010 <sup>(a)</sup>
Alberto Calderon	GIS Options	—	143,227	—	—	143,227	—	—	—	143,227	—	—	—	—
Andrew Mackenzie	GIS Options	—	—	—	—	—	16,119	—	—	16,119	—	—	—	—
	Total	—	143,227	—	—	143,227	16,119	—	—	159,346	—	—	—	—

(a) All awards and options that are vested are exercisable.

No options have been granted to Key Management Personnel since the end of the financial year. Further information on options and rights, including grant dates and exercise dates regarding options granted to Key Management Personnel under the employee share ownership plan, is set out in note 32.

Notes to Financial Statements continued

30 Key Management Personnel continued

*Equity holdings and transactions*

The movement during the financial year in the number of ordinary shares of the Group held directly, indirectly or beneficially, by each specified Key Management Personnel, including their personally related entities were as follows:

BHP Billiton Limited shares <sup>(a)</sup>	Held at 30 June 2008 <sup>(d)</sup>	Purchases	Received on exercise of options or rights	Disposals	Held at 30 June 2009 <sup>(d)</sup>	Purchases	Received on exercise/ matching of options or rights	Disposals	Held at 30 June 2010 <sup>(d)</sup>
Marius Kloppers	160	168	—	—	328	194	27,742	—	28,264
Marcus Randolph	175,594	172	61,654	120,000	117,420	190	133,805	60,000	191,415
Alex Vanselow	53,057	168	48,663	2,000	99,888	193	135,004	60,822	174,263
Karen Wood	45,813	168	43,178	17,200	71,959	193	164,375	127,394	109,133
J. Michael Yeager	134	210	6,614	—	6,958	138	26,594	9,710	23,980
Paul Anderson	106,000	—	—	—	106,000	—	—	—	106,000
Don Argus	321,890	—	—	—	321,890	7,300	—	—	329,190
Alan Boeckmann	—	—	—	—	—	3,150	—	—	3,150
Malcolm Broomhead <sup>(c)</sup>	—	—	—	—	9,000	—	—	—	9,000
Carlos Cordeiro	6,550	—	—	—	6,550	—	—	—	6,550
David Crawford	33,127	—	—	—	33,127	—	—	—	33,127
E. Gail de Planque	3,580	1,600	—	—	5,180	—	—	—	5,180
Carolyn Hewson <sup>(c)</sup>	—	—	—	—	2,000	—	—	—	2,000
David Jenkins	2,066	—	—	—	2,066	—	—	—	2,066
David Morgan <sup>(c)</sup>	156,758	—	—	—	156,758	—	—	—	156,758
Wayne Murdy <sup>(b)</sup>	4,030	—	—	—	4,030	—	—	—	4,030
Jacques Nasser	5,600	—	—	—	5,600	—	—	—	5,600
John Schubert	23,675	—	—	—	23,675	—	—	—	23,675

BHP Billiton Plc shares <sup>(a)</sup>	Held at 30 June 2008 <sup>(d)</sup>	Purchases	Received on exercise of options or rights	Disposals	Held at 30 June 2009 <sup>(d)</sup>	Purchases	Received on exercise/ matching of options or rights	Disposals	Held at 30 June 2010 <sup>(d)</sup>
Marius Kloppers	396,683	—	90,071	43,234	443,520	—	225,000	119,842	548,678
Alberto Calderon	156	188	—	—	344	193	29,289	11,999	17,827
Andrew Mackenzie	55,000	—	—	—	55,000	175	—	—	55,175
Paul Anderson	4,000	—	—	—	4,000	—	—	—	4,000
Don Argus	—	—	—	—	—	21,740	—	—	21,740
Alan Boeckmann	—	—	—	—	—	3,680	—	—	3,680
John Buchanan	20,000	—	—	—	20,000	—	—	—	20,000
David Crawford	—	—	—	—	—	6,000	—	—	6,000
David Jenkins	10,000	—	—	—	10,000	—	—	—	10,000
Wayne Murdy	—	—	—	—	—	3,512	—	—	3,512
Keith Rumble <sup>(b) (c)</sup>	7,200	5,000	—	—	12,200	—	—	—	12,200

<sup>(a)</sup> All interests are beneficial and includes holdings of American depositary shares and shares held in the name of the spouse, superannuation fund and/or nominee.

<sup>(b)</sup> Mr Rumble's balance reflects his holding as at appointment date, 1 September 2008, and Mr Murdy's balance reflects his holding as at appointment date, 18 June 2009.



## Notes to Financial Statements continued

### 30 Key Management Personnel continued

- (c) Ms Hewson's and Mr Broomhead's balance reflects their holdings at appointment date, 31 March 2010.
- (d) Closing balances represent the holding at year end or the holding at date of appointment or resignation as a KMP.
- (e) Mr Morgan's and Mr Rumble's balance at 30 June 2008 have been adjusted to reflect additional ordinary shares held.

Directors and their personally related entities receive the same dividends and bonus share entitlements as those available to other holders of the same class of shares. Partly paid shares did not participate in dividends.

Refer to note 32 for details of the employee share ownership plans referred to above.

#### *Transactions with Key Management Personnel*

During the year, there were no purchases from the Group (2009: Alex Vanselow US\$29,613).

There are no amounts payable at 30 June 2010 (2009: US\$ nil).

#### *Loans with Key Management Personnel*

There are US\$ nil loans (2009: US\$ nil) with Key Management Personnel.

#### *Transactions with personally related entities*

A number of Directors or former Directors of the Group hold or have held positions in other companies, where it is considered they control or significantly influence the financial or operating policies of those entities. One of those entities, Fluor Corporation, is considered to be a personally related entity of Mr Alan Boeckmann. Mr Boeckmann was elected as a director to the Group in September 2008. During the year, Fluor Corporation provided products and services to the Group totalling US\$426.368 million (2009: US\$222.821 million) in accordance with normal terms and conditions. As at 30 June 2010, US\$7.083 million was owing by the Group to Fluor Corporation (2009: US\$3.473 million).

### 31 Related party transactions

#### *Subsidiaries*

The percentage of ordinary shares held in significant subsidiaries is disclosed in note 25 to the financial statements.

#### *Jointly controlled entities*

The percentage interest held in significant jointly controlled entities is disclosed in note 26 to the financial statements.

#### *Key Management Personnel*

Disclosures relating to Key Management Personnel are set out in note 30 to the financial statements.

#### *Transactions with related parties*

	Jointly controlled entities <sup>(a)</sup>		Transactions with other related parties <sup>(b)</sup>	
	2010 US\$M	2009 US\$M	2010 US\$M	2009 US\$M
Sales of goods/services	9.677	17.288	—	—
Purchase of goods/services	346.156	267.739	—	—
Interest income	20.970	0.125	—	—
Loans made to related parties	323.688	—	—	—

- (a) Disclosures in respect of transactions with jointly controlled entities represent the amount of such transactions which do not eliminate on proportionate consolidation.
- (b) Excludes disclosures relating to post-employment benefit plans for the benefit of Group employees. These are shown in note 29.

## Notes to Financial Statements continued

### 31 Related party transactions continued

Transactions between each parent company and its subsidiaries, which are related parties of that company, are eliminated on consolidation and are not disclosed in this note.

#### *Outstanding balances with related parties*

	Jointly controlled entities <sup>(a)</sup>		Transactions with other related parties	
	2010 US\$M	2009 US\$M	2010 US\$M	2009 US\$M
Trade amounts owing to related parties	<b>44.561</b>	67.694	—	—
Trade amounts owing from related parties	<b>38.566</b>	11.320	—	—
Other amounts owing from related parties	<b>323.688</b>	—	—	—

<sup>(a)</sup> Disclosures in respect of amounts owing to/from jointly controlled entities represent those balances which do not eliminate upon proportionate consolidation.

#### *Terms and conditions*

Sales to and purchases from related parties of goods and services are made in arm's length transactions at normal market prices and on normal commercial terms.

Outstanding balances at year end are unsecured and settlement occurs in cash.

Other amounts owing from related parties represent secured loans made to jointly controlled entities under co-funding arrangements. Such loans are made on an arm's length basis with interest charged at market rates and are due to be repaid between 22 January 2011 and 22 January 2022.

No guarantees are provided or received for any related party receivables or payables.

No provision for doubtful debts has been recognised in relation to any outstanding balances and no expense has been recognised in respect of bad or doubtful debts due from related parties.

## Notes to Financial Statements continued

### 32 Employee share ownership plans

#### *Employee share awards – current plans*

	Number of awards on issue at the beginning of the financial year	Number of awards issued during the year	Number of awards vested and exercised	Number of awards lapsed	Number of awards remaining at the end of the financial year	Number of awards vested and exercisable at the end of the financial year
<b>2010</b>						
<b>BHP Billiton Limited</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	3,709,437	153,367	1,249,998	21,334	2,591,472	671,873
Group Incentive Scheme Options <sup>(a)</sup>	1,985,321	—	321,509	58,144	1,605,668	525,536
- weighted average exercise price – A\$	29.92	—	22.14	29.15	31.51	36.36
- weighted average share price – A\$			44.76			
- weighted average contractual term for outstanding options - days					56	
Group Incentive Scheme Performance Shares <sup>(a)</sup>	77,651	—	63,242	10,868	3,541	3,541
Group Short-Term Incentive Plan Deferred Shares <sup>(a)</sup>	—	891,037	20,081	3,239	867,717	—
Group Short-Term Incentive Plan Options <sup>(a)</sup>	—	268,558	—	20,652	247,906	—
- weighted average exercise price – A\$	—	38.41	—	38.41	38.41	—
- weighted average share price – A\$			—			
- weighted average contractual term for outstanding options - days					420	
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	20,331,131	700,000	2,771,669	468,766	17,790,696	760,150
Management Award Plan Restricted Shares <sup>(a)</sup>	2,352,947	2,413,149	129,160	228,692	4,408,244	—
Shareplus Matched Shares <sup>(b)</sup>	2,082,831	1,469,556	952,917	166,710	2,432,760	—
<b>BHP Billiton Plc</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	1,468,731	45,819	666,987	4,816	842,747	206,894
Group Incentive Scheme Options <sup>(a)</sup>	1,413,717	16,119	144,884	36,105	1,248,847	296,106
- weighted average exercise price – £	11.14	18.68	10.72	8.09	11.38	12.53
- weighted average share price – £			18.11			
- weighted average contractual term for outstanding options - days					56	
Group Incentive Scheme Performance Shares <sup>(a)</sup>	41,022	—	36,188	4,834	—	—
Group Short-Term Incentive Plan Deferred Shares <sup>(a)</sup>	—	424,555	—	3,558	420,997	—
Group Short-Term Incentive Plan Options <sup>(a)</sup>	—	32,989	—	3,532	29,457	—
- weighted average exercise price – £	—	16.44	—	16.44	16.44	—
- weighted average share price – £			—			
- weighted average contractual term for outstanding options - days					420	
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	8,258,750	240,000	1,185,345	288,700	7,024,705	338,954
Management Award Plan Restricted Shares <sup>(a)</sup>	959,610	962,000	21,151	89,918	1,810,541	—
Shareplus Matched Shares <sup>(b)</sup>	616,595	332,151	292,899	47,916	607,931	—

#### *Fair value and assumptions in the calculation of fair value*

	Weighted average fair value of awards granted during the year <sup>(c)</sup> US\$	Risk-free interest rate <sup>(d)</sup>	Estimated life of awards	Share price at grant date	Estimated volatility of share price <sup>(e)</sup>	Dividend yield
<b>2010</b>						
<b>BHP Billiton Limited</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	25.22	n/a	3 years	A\$ 33.90	n/a	n/a
Group Incentive Scheme Options <sup>(a)</sup>	—	—	—	—	—	—
Group Short-Term Incentive Plan Deferred Shares <sup>(a)</sup>	25.22	n/a	3 years	A\$ 33.90	n/a	n/a
Group Short-Term Incentive Plan Options <sup>(a)</sup>	7.37	n/a	3 years	A\$ 33.90	35.0 %	3.98 %
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	9.49	2.58 %	5 years	A\$ 33.90	31.0 %	3.98 %
Management Award Plan Restricted Shares <sup>(a)</sup>	24.21	n/a	3 years	A\$ 33.90	n/a	3.98 %
Shareplus Matched Shares <sup>(b)</sup>	33.59	2.51 %	3 years	A\$ 44.29	n/a	3.28 %
<b>BHP Billiton Plc</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	21.83	n/a	3 years	£ 14.25	n/a	n/a
Group Incentive Scheme Options <sup>(a)</sup>	6.59	n/a	3 years	£ 14.25	40.0 %	3.58 %
Group Short-Term Incentive Plan Deferred Shares <sup>(a)</sup>	21.83	n/a	3 years	£ 14.25	n/a	n/a
Group Short-Term Incentive Plan Options <sup>(a)</sup>	6.59	n/a	3 years	£ 14.25	40.0 %	3.58 %
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	8.32	2.58 %	5 years	£ 14.25	31.0 %	3.58 %
Management Award Plan Restricted Shares <sup>(a)</sup>	21.04	n/a	3 years	£ 14.25	n/a	3.58 %
Shareplus Matched Shares <sup>(b)</sup>	28.63	3.42 %	3 years	£ 19.44	n/a	2.97 %

Notes to Financial Statements continued

32 Employee share ownership plans continued

*Employee share awards – current plans*

	Number of awards on issue at the beginning of the financial year	Number of awards issued during the year	Number of awards vested and exercised	Number of awards lapsed	Number of awards remaining at the end of the financial year	Number of awards vested and exercisable at the end of the financial year
<b>2009</b>						
<b>BHP Billiton Limited</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	3,422,157	1,980,820	1,621,584	71,956	3,709,437	874,599
Group Incentive Scheme Options <sup>(a)</sup>	1,331,293	1,182,159	522,906	5,225	1,985,321	483,068
- weighted average exercise price – A\$	25.05	29.15	15.95	11.11	29.92	22.74
- weighted average share price – A\$			35.14			
- weighted average contractual term for outstanding options - days					340	
Group Incentive Scheme Performance Shares <sup>(a)</sup>	639,287	—	523,548	38,088	77,651	77,651
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	20,260,877	1,350,000	7,750	1,271,996	20,331,131	—
Management Award Plan Restricted Shares <sup>(a)</sup>	—	2,484,233	15,556	115,730	2,352,947	—
Shareplus Matched Shares <sup>(b)</sup>	985,333	1,270,067	91,125	81,444	2,082,831	—
<b>BHP Billiton Plc</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	1,456,483	679,170	599,621	67,301	1,468,731	367,762
Group Incentive Scheme Options <sup>(a)</sup>	641,124	957,588	172,951	12,044	1,413,717	289,088
- weighted average exercise price – £	10.60	10.89	7.90	8.59	11.14	8.81
- weighted average share price – £			14.34			
- weighted average contractual term for outstanding options - days					364	
Group Incentive Scheme Performance Shares <sup>(a)</sup>	150,687	—	101,865	7,800	41,022	41,022
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	8,194,079	550,839	—	486,168	8,258,750	—
Management Award Plan Restricted Shares <sup>(a)</sup>	—	1,052,500	8,666	84,224	959,610	—
Shareplus Matched Shares <sup>(b)</sup>	305,468	405,841	68,280	26,434	616,595	—

*Fair value and assumptions in the calculation of fair value*

	Weighted average fair value of awards granted during the year <sup>(c)</sup> US\$	Risk-free interest rate <sup>(d)</sup>	Estimated life of awards	Share price at grant date	Estimated volatility of share price <sup>(e)</sup>	Dividend yield
<b>2009</b>						
<b>BHP Billiton Limited</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	24.94	6.39%	3 years	n/a	n/a	n/a
Group Incentive Scheme Options <sup>(a)</sup>	8.46	6.39%	3 years	A\$ 44.40	30.0%	2.05%
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	15.74	3.30%	5 years	A\$ 44.40	28.9%	2.05%
Management Award Plan Restricted Shares <sup>(a)</sup>	39.97	n/a	3 years	A\$ 44.40	n/a	2.05%
Shareplus Matched Shares <sup>(b)</sup>	23.79	5.93%	3 years	A\$ 42.06	n/a	1.47%
<b>BHP Billiton Plc</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	19.90	5.69%	3 years	n/a	n/a	n/a
Group Incentive Scheme Options <sup>(a)</sup>	6.34	5.69%	3 years	£ 18.41	35.0%	1.65%
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	13.55	3.30%	5 years	£ 18.41	28.9%	1.65%
Management Award Plan Restricted Shares <sup>(a)</sup>	34.84	n/a	3 years	£ 18.41	n/a	1.65%
Shareplus Matched Shares <sup>(b)</sup>	19.82	6.52%	3 years	£ 17.44	n/a	1.53%

Notes to Financial Statements continued

32 Employee share ownership plans continued

*Employee share awards – current plans*

	Number of awards on issue at the beginning of the financial year	Number of awards issued during the year	Number of awards vested and exercised	Number of awards lapsed	Number of awards remaining at the end of the financial year	Number of awards vested and exercisable at the end of the financial year
<b>2008</b>						
<b>BHP Billiton Limited</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	4,211,961	1,104,588	1,878,079	16,313	3,422,157	1,208,840
Group Incentive Scheme Options <sup>(a)</sup>	2,067,911	320,094	1,056,712	—	1,331,293	786,351
- weighted average exercise price – A\$	16.26	43.61	13.47	—	25.05	17.14
- weighted average share price – A\$			40.28			
- weighted average contractual term for outstanding options - days					260	
Group Incentive Scheme Performance Shares <sup>(a)</sup>	1,915,489	—	1,073,121	203,081	639,287	639,287
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	16,766,200	6,018,068	—	2,523,391	20,260,877	—
Shareplus Matched Shares <sup>(b)</sup>	—	1,027,618	12,770	29,515	985,333	—
<b>BHP Billiton Plc</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	1,670,111	515,152	709,074	19,706	1,456,483	404,426
Group Incentive Scheme Options <sup>(a)</sup>	723,632	177,158	259,666	—	641,124	302,671
- weighted average exercise price – £	7.86	16.51	7.00	—	10.60	7.61
- weighted average share price – £			16.90			
- weighted average contractual term for outstanding options - days					237	
Group Incentive Scheme Performance Shares <sup>(a)</sup>	594,363	—	319,210	124,466	150,687	150,687
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	6,311,626	2,340,993	15,000	443,540	8,194,079	—
Shareplus Matched Shares <sup>(b)</sup>	—	321,587	5,270	10,849	305,468	—

*Fair value and assumptions in the calculation of fair value*

	Weighted average fair value of awards granted during the year <sup>(c)</sup> US\$	Risk-free interest rate <sup>(d)</sup>	Estimated life of awards	Share price at grant date	Estimated volatility of share price <sup>(e)</sup>	Dividend yield
<b>2008</b>						
<b>BHP Billiton Limited</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	34.28	5.79%	3 years	n/a	n/a	n/a
Group Incentive Scheme Options <sup>(a)</sup>	9.50	5.79%	3 years	A\$ 42.05	27.0%	1.52%
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	11.04	5.00%	5 years	A\$ 35.03	26.0%	1.70%
Shareplus Matched Shares <sup>(b)</sup>	34.85	6.35%	3 years	A\$ 30.30	n/a	1.68%
<b>BHP Billiton Plc</b>						
Group Incentive Scheme Deferred Shares <sup>(a)</sup>	31.37	4.76%	3 years	n/a	n/a	n/a
Group Incentive Scheme Options <sup>(a)</sup>	7.98	4.76%	3 years	£ 15.45	31.0%	1.49%
Long Term Incentive Plan Performance Shares <sup>(a)</sup>	10.33	5.00%	5 years	£ 13.90	26.0%	1.70%
Shareplus Matched Shares <sup>(b)</sup>	30.62	6.64%	3 years	£ 11.68	n/a	1.67%

Notes to Financial Statements continued

32 Employee share ownership plans continued

*Employee share awards – past plans* <sup>(f)</sup>

	Number of awards at the beginning of the financial year	Number of awards issued	Number of awards exercised	Number of awards lapsed	Number of awards remaining at the end of the financial year	Number of awards exercisable at the end of the financial year
<b>2010</b>						
<b>BHP Billiton Limited</b>						
Employee Share Plan Options	1,632,133	—	766,838	—	865,295	865,295
- weighted average exercise price – A\$	8.38	—	8.39	—	8.37	8.37
Employee Share Plan Shares	9,134,763	—	924,545	—	8,210,218	8,210,218
Executive Share Scheme Partly Paid Shares	189,918	—	—	—	189,918	189,918
Performance Share Plan Performance Rights	95,038	—	36,475	—	58,563	58,563
<b>BHP Billiton Plc</b>						
Co-Investment Plan	24,047	—	1,051	—	22,996	22,996
	Number of awards at the beginning of the financial year	Number of awards issued	Number of awards exercised	Number of awards lapsed	Number of awards remaining at the end of the financial year	Number of awards exercisable at the end of the financial year
<b>2009</b>						
<b>BHP Billiton Limited</b>						
Employee Share Plan Options	4,620,131	—	2,229,098	758,900	1,632,133	1,632,133
- weighted average exercise price – A\$	7.59	—	7.25	6.10	8.38	8.38
Employee Share Plan Shares	11,039,818	—	1,905,055	—	9,134,763	9,134,763
Executive Share Scheme Partly Paid Shares	274,918	—	85,000	—	189,918	189,918
Performance Share Plan Performance Rights	357,607	—	262,569	—	95,038	95,038
<b>BHP Billiton Plc</b>						
Co-Investment Plan	27,776	—	3,729	—	24,047	24,047
Restricted Share Scheme	76,633	—	26,915	49,718	—	—
	Number of awards at the beginning of the financial year	Number of awards issued	Number of awards exercised	Number of awards lapsed	Number of awards remaining at the end of the financial year	Number of awards exercisable at the end of the financial year
<b>2008</b>						
<b>BHP Billiton Limited</b>						
Employee Share Plan Options	7,725,422	—	3,092,470	12,821	4,620,131	4,620,131
- weighted average exercise price – A\$	7.65	—	7.74	6.92	7.59	7.59
Employee Share Plan Shares	12,501,289	—	1,461,471	—	11,039,818	11,039,818
Executive Share Scheme Partly Paid Shares	274,918	—	—	—	274,918	274,918
Performance Share Plan Performance Rights	518,942	—	161,335	—	357,607	357,607
<b>BHP Billiton Plc</b>						
Co-Investment Plan	32,746	—	4,970	—	27,776	27,776
Restricted Share Scheme	76,633	—	—	—	76,633	76,633

Notes to Financial Statements continued

32 Employee share ownership plans continued

*Employee share awards – summary* <sup>(h) (i)</sup>

	Awards outstanding at:				
Month of issue	30 June 2010	7 September 2010	Exercise price <sup>(g)</sup>		Exercise period / release date
<b>BHP Billiton Limited</b>					
<b>Employee Share Plan Options</b>					
November 2001	406,290	406,290	A\$	8.30	Oct 2004 – Sep 2011
November 2001	77,220	77,220	A\$	8.29	Oct 2004 – Sep 2011
December 2000	140,427	99,124	A\$	8.72	Jul 2003 – Dec 2010
December 2000	26,588	15,487	A\$	8.71	Jul 2003 – Dec 2010
November 2000	77,441	77,441	A\$	8.28	Jul 2003 – Dec 2010
November 2000	137,329	97,061	A\$	8.27	Jul 2003 – Dec 2010
	<b>865,295</b>	<b>772,623</b>			
<b>Employee Share Plan Shares</b>					
October 1997	1,348,510	1,328,892	—		Oct 1997 – Oct 2017
May 1995	2,260,252	2,231,341	—		May 1995 – May 2015
May 1994	1,579,388	1,554,607	—		May 1994 – May 2014
May 1993	1,283,460	1,258,678	—		May 1993 – May 2013
May 1992	1,070,135	1,047,419	—		May 1992 – May 2012
April 1991	668,473	651,952	—		Apr 1991 – Apr 2011
	<b>8,210,218</b>	<b>8,072,889</b>			
<b>Executive Share Scheme Partly Paid Shares</b>					
October 1997	74,959	74,959	—		Oct 1997 – Oct 2017
October 1996	74,959	74,959	—		Oct 1996 – Oct 2016
October 1995	40,000	40,000	—		Oct 1995 – Oct 2015
	<b>189,918</b>	<b>189,918</b>			
<b>Group Incentive Scheme</b>					
<b>Deferred Shares</b>					
December 2009	153,367	153,367	—		Aug 2011 – Aug 2014
December 2008	1,766,232	1,128,584	—		Aug 2010 – Aug 2013
December 2007	356,319	322,495	—		Aug 2009 – Aug 2012
December 2006	269,289	243,201	—		Aug 2008 – Aug 2011
December 2005	46,265	—	—		Aug 2007 – Aug 2010
<b>Options</b>					
December 2008	1,080,132	1,061,795	A\$	29.15	Aug 2010 – Aug 2013
December 2007	320,094	320,094	A\$	43.61	Aug 2009 – Aug 2012
December 2006	148,175	141,162	A\$	26.28	Aug 2008 – Aug 2011
December 2005	57,267	—	A\$	21.91	Aug 2007 – Aug 2010
<b>Performance Shares</b>					
December 2004	3,541	—	—		Aug 2007 – Aug 2010
	<b>4,200,681</b>	<b>3,370,698</b>			
<b>Group Short-Term Incentive Plan</b>					
<b>Deferred Shares</b>					
December 2009	867,717	848,196	—		Aug 2011 – Aug 2014
<b>Options</b>					
December 2009	247,906	247,906	A\$	38.41	Aug 2011 – Aug 2014
	<b>1,115,623</b>	<b>1,096,102</b>			
<b>Long Term Incentive Plan Performance Shares</b>					
December 2009	700,000	700,000	—		Aug 2014 – Aug 2019
December 2008	1,350,000	1,350,000	—		Aug 2013 – Aug 2018
December 2007	5,177,191	5,099,551	—		Aug 2012 – Aug 2017
December 2006	4,903,290	4,831,063	—		Aug 2011 – Aug 2016
December 2005	4,900,065	3,057,965	—		Aug 2010 – Aug 2015
December 2004	760,150	635,858	—		Aug 2009 – Aug 2014
	<b>17,790,696</b>	<b>15,674,437</b>			
<b>Management Award Plan</b>					
December 2009	2,324,497	2,324,038	—		Aug 2012 – Aug 2015
November 2008 and March 2009	2,083,747	1,983,454	—		Aug 2011 – Aug 2014
	<b>4,408,244</b>	<b>4,307,492</b>			

## Notes to Financial Statements continued

### 32 Employee share ownership plans continued

	Awards outstanding at:			
Month of issue	30 June 2010	7 September 2010	Exercise price <sup>(g)</sup>	Exercise period / release date
Performance Share Plan Performance Rights				
November 2001 (LTI)	58,563	58,563	—	Oct 2004 – Aug 2011
	58,563	58,563		
Shareplus				
September 2009 to June 2010	1,290,786	1,260,866	—	Apr 2012
September 2008 to June 2009	1,141,974	1,118,091	—	Apr 2011
	2,432,760	2,378,957		
BHP Billiton Plc				
Co-Investment Plan				
October 2001	22,996	7,997	—	Oct 2003 – Sep 2011
	22,996	7,997		
Group Incentive Scheme				
Deferred Shares				
December 2009	45,819	45,819	—	Aug 2011 – Aug 2014
December 2008	590,034	426,709	—	Aug 2010 – Aug 2013
December 2007	109,600	107,975	—	Aug 2009 – Aug 2012
December 2006	73,052	68,979	—	Aug 2008 – Aug 2011
December 2005	24,242	—	—	Aug 2007 – Aug 2010
Options				
December 2009	16,119	16,119	£ 18.68	Aug 2011 – Aug 2014
December 2008	936,622	796,907	£ 10.89	Aug 2010 – Aug 2013
December 2007	134,451	134,451	£ 16.51	Aug 2009 – Aug 2012
December 2006	71,817	71,817	£ 9.72	Aug 2008 – Aug 2011
December 2005	89,838	—	£ 8.82	Aug 2007 – Aug 2010
	2,091,594	1,668,776		
Group Short-Term Incentive Plan				
Deferred Shares				
December 2009	420,997	419,030	—	Aug 2011 – Aug 2014
Options				
December 2009	29,457	29,457	£ 16.44	Aug 2011 – Aug 2014
	450,454	448,487		
Long Term Incentive Plan Performance Shares				
December 2009	240,000	240,000	—	Aug 2014 – Aug 2019
December 2008	550,839	550,839	—	Aug 2013 – Aug 2018
December 2007	1,895,178	1,866,560	—	Aug 2012 – Aug 2017
December 2006	1,954,560	1,921,109	—	Aug 2011 – Aug 2016
December 2005	2,045,174	1,494,762	—	Aug 2010 – Aug 2015
December 2004	338,954	279,417	—	Aug 2009 – Aug 2014
	7,024,705	6,352,687		
Management Award Plan				
December 2009	927,194	912,763	—	Aug 2012 – Aug 2015
November 2008 and March 2009	883,347	862,750	—	Aug 2011 – Aug 2014
	1,810,541	1,775,513		
Shareplus				
September 2009 to June 2010	313,667	301,213	—	Apr 2012
September 2008 to June 2009	294,264	280,933	—	Apr 2011
	607,931	582,146		

(a) Awards were made to senior management under four active employee ownership plans in BHP Billiton for the year ended 30 June 2010: the Long Term Incentive Plan (LTIP), Group Incentive Scheme (GIS), Management Awards Plan (MAP) and Group Short-Term Incentive Plan (GSTIP). These awards take the form of Performance Shares, Deferred Shares and/or Options, and Restricted Shares in either BHP Billiton Limited or BHP Billiton Plc. Awards made are subject to performance hurdles (LTIP) and service conditions (all plans). Subject to the performance conditions and service conditions being met and the extent to which they are met, the awards will vest and the participant will become entitled to the appropriate number of ordinary shares or, if relevant, entitled to exercise options over the relevant number of ordinary shares. A description of the plans follows:



**32 Employee share ownership plans continued**(i) GIS and GSTIP

The GIS awards are split equally between a cash award (being a percentage of base salary) and a grant of Deferred Shares and/or Options. The GSTIP is a replacement plan to the GIS for certain employees below the GMC and was first introduced during the year ended 30 June 2009. Awards are split equally between a cash award (being a percentage of base salary) and a grant of Deferred Shares and/or Options. Deferred Shares and/or Options are subject to a two-year vesting period before they can be exercised. If, during that period, an individual resigns without the Remuneration Committee's consent, or is dismissed for cause, their entitlement is forfeited. Deferred Shares and/or Options in respect of the year ended 30 June 2010 will be awarded during the year ending 30 June 2011.

(ii) LTIP and MAP

The LTIP awards are in the form of Performance Shares, and are awarded annually. The performance hurdle applicable to the awards granted requires the Group's Total Shareholder Return (TSR) over a five-year performance period to be greater than the weighted average TSR of a peer group of companies. To the extent that the performance hurdle is not achieved, awards are forfeited. There is no retesting. For all Performance Shares to vest, the Group's TSR must exceed the weighted average TSR of the Index by a specified percentage, determined each year by the Remuneration Committee. Since the establishment of the LTIP in 2004, this percentage has been set each year at 5.5 per cent. For performance between the weighted average TSR of the Index and 5.5 per cent per annum above the Index, vesting occurs on a sliding scale.

The MAP is a replacement plan to the LTIP for employees below the GMC. Under the MAP participants receive an Award of Restricted Shares, the number of which is determined by role, performance and organisational level. There are no performance conditions attached to the Award and all the shares that have been granted will vest at the end of three years providing participants remain in employment over that time.

Participants in all award plans are eligible to receive a payment equal to the dividend amount that would have been earned on the underlying shares represented by the Deferred Shares, Options, Restricted Shares and Performance Shares awarded to those participants (the Dividend Equivalent Payment). The Dividend Equivalent Payment is made to the participants once the underlying shares are issued or transferred to them. No Dividend Equivalent Payment is made in respect of Deferred Shares, Options and Performance Shares that lapse.

- (b) Shareplus, an all-employee share purchase plan, commenced in April 2007. Employees may contribute up to US\$5,000 to acquire shares (Acquired Shares) in any Plan year. On the third anniversary of the start of a Plan year, the Company will match the number of Acquired Shares held by the employee at that time with Matched Shares. The employees have no beneficial entitlement to the Matched Shares until they are awarded. Acquired Shares are purchased on a quarterly basis. Employees can sell their Acquired Shares at any time. If, prior to the third anniversary, an individual resigns without the Remuneration Committee's consent, or is dismissed for cause, their entitlement to Matched Shares is forfeited.
- (c) The fair value of awards as presented in the tables above represents the fair value at grant date. The fair values of awards granted were estimated using a Monte Carlo simulation methodology, Black-Scholes option pricing technique and net present value technique.
- (d) The risk-free interest rate used for the LTIP is an annual compound rate. The risk-free interest rate used for the GIS Options and Deferred Shares is a government bond rate.
- (e) Historical volatility has been used to estimate the volatility of the share price.
- (f) Awards issued under these plans occurred before 7 November 2002 and as such are exempt from the provisions of IFRS 2 'Share-based Payment'. Details of these plans have been provided here for information purposes only.
- (g) Exercise price on awards issued is equal to the exercise price as per awards outstanding.
- (h) Shares issued on exercise of BHP Billiton's employee share ownership plans include shares purchased on-market.
- (i) In respect of employee share awards, the Group utilises the following trusts:
  - (i) The Billiton Employee Share Ownership Plan Trust (the Trust) is a discretionary trust for the benefit of all employees of BHP Billiton Plc and its subsidiaries. The trustee is an independent company, resident in Jersey. The Trust uses funds provided by BHP Billiton Plc and/or its subsidiaries as appropriate to acquire ordinary shares to enable awards to be made or satisfied under the LTIP, MAP, GIS, GSTIP, RSS, CIP, Shareplus and other employee share schemes operated by BHP Billiton Plc from time to time. The ordinary shares may be acquired by purchase in the market or by subscription at not less than nominal value. The Trust has waived its rights to dividends on shares held to meet future awards under Shareplus.
  - (ii) The BHP Performance Share Plan Trust (PSP Trust) is a discretionary trust established to distribute shares under selected BHP Billiton Limited employee share plan schemes. The trustee of the trust is BHP Billiton Employee Plan Pty Ltd, an Australian company. The trust uses funds provided by BHP Billiton Limited and/or its subsidiaries to acquire shares on market to satisfy exercises made under the LTIP, MAP, GIS, GSTIP and PSP.
  - (iii) The BHP Billiton Limited Executive Incentive Schemes Trust (BEIS Trust) is a discretionary trust established for the purposes of holding shares in BHP Billiton Limited to satisfy exercises made under the LTIP, MAP, GIS, GSTIP, Shareplus and other employee share schemes operated by BHP Billiton Limited from time to time.

**33 Employees**

	2010 Number	2009 Number	2008 Number
<b>Average number of employees <sup>(a)</sup></b>			
Petroleum	2,178	2,105	2,143
Aluminium	4,471	4,938	5,145
Base Metals	7,434	7,731	7,443
Diamonds and Specialty Products	1,689	1,923	2,043
Stainless Steel Materials	3,481	4,039	4,223
Iron Ore	3,624	3,254	3,105
Manganese	2,549	2,532	2,142
Metallurgical Coal	3,533	3,892	3,680
Energy Coal	8,762	8,437	9,183
Group and unallocated	1,849	2,139	2,625
	<b>39,570</b>	<b>40,990</b>	<b>41,732</b>

<sup>(a)</sup> Average employee numbers include executive Directors, 100 per cent of employees of subsidiary companies, and our share of proportionate consolidated entities and operations. Part-time employees are included on a full-time equivalent basis. Employees of businesses acquired or disposed of during the year are included for the period of ownership. People employed by contractors are not included.

**34 Auditor's remuneration**

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Fees payable to the Group's auditor for audit services</b>			
Audit of the Group's annual report	3,799	4,011	3,517
Audit of subsidiaries and associates pursuant to legislation <sup>(a)</sup>	9,578	11,312	10,159
Total audit services	<b>13,377</b>	<b>15,323</b>	<b>13,676</b>
<b>Fees payable to the Group's auditor for other services</b>			
Other services pursuant to legislation <sup>(b)</sup>	5,433	6,050	5,009
Other services relating to taxation <sup>(c)</sup>	0,065	0,068	0,063
Other services relating to corporate finance <sup>(d)</sup>	2,308	3,571	3,253
All other services <sup>(e)</sup>	1,021	0,762	1,085
Total other services	<b>8,827</b>	<b>10,451</b>	<b>9,410</b>
<b>Total fees</b>	<b>22,204</b>	<b>25,774</b>	<b>23,086</b>

All amounts were paid to KPMG or KPMG affiliated firms.

- (a) This amount primarily includes the statutory audit of subsidiaries and other audit work performed in relation to the Group's Annual Report by KPMG non-head office teams, as well as audit fees of US\$0.093 million (2009: US\$0.079 million; 2008: US\$0.100 million) for pension funds. For UK purposes this would be classified as a separate component of 'other services'.
- (b) Mainly comprises review of half year reports and audit work in relation to compliance with section 404 of the US Sarbanes-Oxley Act.
- (c) Mainly comprises tax compliance services.
- (d) Mainly comprises services in connection with acquisitions, divestments and debt raising transactions.
- (e) Mainly comprises advice on accounting matters and performing other procedures of an audit nature.

**35 Subsequent events**

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On 20 August 2010, the Group announced an all-cash offer to acquire all of the issued and outstanding common shares of Potash Corporation of Saskatchewan Inc. (PotashCorp) at a price of US\$130 per common share. As part of this transaction a funding facility of US\$45 billion has been established.

Other than the matters outlined elsewhere in these financial statements, no matters or circumstances have arisen since the end of the financial year that have significantly affected, or may significantly affect, the operations, results of operations or state of affairs of the BHP Billiton Group in subsequent accounting periods.

## Supplementary oil and gas information – unaudited

### Reserves and production

Proved oil and gas reserves and net crude oil and condensate, natural gas, LNG and NGL production information is included in the 'Petroleum Reserves' and 'Production' sections of this Annual Report.

### Capitalised costs incurred relating to oil and gas exploration and production activities

The following table shows the aggregate capitalised costs relating to oil and gas exploration and production activities and related accumulated depreciation, depletion, amortisation and valuation allowances.

	Australia US\$M	United States US\$M	Other <sup>(a)</sup> US\$M	Total US\$M
<b>Capitalised cost</b>				
<b>2010</b>				
Unproved properties	276	711	61	1,048
Proved properties	<u>9,578</u>	<u>6,373</u>	<u>4,071</u>	<u>20,022</u>
Total costs	9,854	7,084	4,132	21,070
Less: Accumulated depreciation, depletion, amortisation and valuation allowances	<u>(4,608)</u>	<u>(2,373)</u>	<u>(3,237)</u>	<u>(10,218)</u>
<b>Net capitalised costs</b>	<u>5,246</u>	<u>4,711</u>	<u>895</u>	<u>10,852</u>
<b>2009</b>				
Unproved properties	224	606	24	854
Proved properties	<u>8,269</u>	<u>5,818</u>	<u>4,115</u>	<u>18,202</u>
Total costs	8,493	6,424	4,139	19,056
Less: Accumulated depreciation, depletion, amortisation and valuation allowances	<u>(4,008)</u>	<u>(1,216)</u>	<u>(3,232)</u>	<u>(8,456)</u>
<b>Net capitalised costs</b>	<u>4,485</u>	<u>5,208</u>	<u>907</u>	<u>10,600</u>
<b>2008</b>				
Unproved properties	193	544	24	761
Proved properties	<u>7,171</u>	<u>4,997</u>	<u>4,503</u>	<u>16,671</u>
Total costs	7,364	5,541	4,527	17,432
Less: Accumulated depreciation, depletion, amortisation and valuation allowances	<u>(3,479)</u>	<u>(684)</u>	<u>(3,418)</u>	<u>(7,581)</u>
<b>Net capitalised costs</b>	<u>3,885</u>	<u>4,857</u>	<u>1,109</u>	<u>9,851</u>

<sup>(a)</sup> See Section 2.2.2 for a description of Petroleum's activities.

### Costs incurred relating to oil and gas property acquisition, exploration and development activities

The following table shows costs incurred relating to oil and gas property acquisition, exploration and development activities (whether charged to expense or capitalised). Amounts shown include interest capitalised.

Property acquisition costs represent costs incurred to purchase or lease oil and gas properties. Exploration costs include costs of geological and geophysical activities and drilling of exploratory wells. Development costs were all incurred to develop booked proved undeveloped reserves.

### Supplementary oil and gas information – unaudited continued

	Australia US\$M	United States US\$M	Other US\$M	Total US\$M
<b>2010</b>				
Acquisitions of proved property	—	—	—	—
Acquisitions of unproved property	—	40	—	40
Exploration <sup>(a)</sup>	109	371	371	851
Development	1,297	525	184	2,006
<b>Total costs <sup>(b)</sup></b>	<b>1,406</b>	<b>936</b>	<b>555</b>	<b>2,897</b>
<b>2009</b>				
Acquisitions of proved property	—	—	—	—
Acquisitions of unproved property	—	60	—	60
Exploration <sup>(a)</sup>	86	183	219	488
Development	1,153	807	115	2,075
<b>Total costs <sup>(b)</sup></b>	<b>1,239</b>	<b>1,050</b>	<b>334</b>	<b>2,623</b>
<b>2008</b>				
Acquisitions of proved property	—	—	—	—
Acquisitions of unproved property	—	—	—	—
Exploration <sup>(a)</sup>	121	392	179	692
Development	999	1,124	80	2,203
<b>Total costs <sup>(b)</sup></b>	<b>1,120</b>	<b>1,516</b>	<b>259</b>	<b>2,895</b>

<sup>(a)</sup> Represents gross exploration expenditure.

<sup>(b)</sup> Total costs include US\$2,260 million (2009: US\$2,223 million; 2008: US\$2,583 million) capitalised during the year.

### Results of operations from oil and gas producing activities

The following information is similar to the disclosures in note 2 to the financial statements ‘Segment reporting’ but differs in several respects as to the level of detail and geographic information. Amounts shown in the following table exclude financial income, financial expenses, and general corporate overheads.

Income taxes were determined by applying the applicable statutory rates to pre-tax income with adjustments for permanent differences and tax credits. Certain allocations of tax provisions among geographic areas were necessary and are based on management’s assessment of the principal factors giving rise to the tax obligation.

Revenues include sales to affiliates but amounts are not significant.

## Supplementary oil and gas information – unaudited continued

	Australia US\$M	United States US\$M	Other US\$M	Total US\$M
<b>2010</b>				
Oil and gas revenue	4,321	3,177	1,198	8,696
Production costs	(586)	(275)	(216)	(1,077)
Exploration expenses	(60)	(248)	(329)	(637)
Depreciation, depletion and amortisation	(597)	(1,179)	(212)	(1,988)
Production taxes <sup>(a)</sup>	(264)	—	(8)	(272)
	<u>2,814</u>	<u>1,475</u>	<u>433</u>	<u>4,722</u>
Income taxes	(815)	(516)	(326)	(1,657)
Royalty related taxes <sup>(b)</sup>	(397)	—	14	(383)
<b>Results of oil and gas producing activities <sup>(c)</sup></b>	<u><b>1,602</b></u>	<u><b>959</b></u>	<u><b>121</b></u>	<u><b>2,682</b></u>
<b>2009</b>				
Oil and gas revenue	4,337	1,439	1,243	7,019
Production costs	(376)	(172)	(206)	(754)
Exploration expenses	(55)	(123)	(222)	(400)
Depreciation, depletion and amortisation	(553)	(560)	(248)	(1,361)
Production taxes <sup>(a)</sup>	(293)	—	(9)	(302)
	<u>3,060</u>	<u>584</u>	<u>558</u>	<u>4,202</u>
Income taxes	(928)	(214)	(347)	(1,489)
Royalty related taxes <sup>(b)</sup>	(470)	—	(11)	(481)
<b>Results of oil and gas producing activities <sup>(c)</sup></b>	<u><b>1,662</b></u>	<u><b>370</b></u>	<u><b>200</b></u>	<u><b>2,232</b></u>
<b>2008</b>				
Oil and gas revenue	4,860	1,358	1,882	8,100
Production costs	(301)	(103)	(233)	(637)
Exploration expenses	(48)	(187)	(124)	(359)
Depreciation, depletion and amortisation	(461)	(312)	(330)	(1,103)
Production taxes <sup>(a)</sup>	(229)	—	(11)	(240)
	<u>3,821</u>	<u>756</u>	<u>1,184</u>	<u>5,761</u>
Income taxes	(1,650)	(266)	(723)	(2,639)
Royalty related taxes <sup>(b)</sup>	(590)	—	(5)	(595)
<b>Results of oil and gas producing activities <sup>(c)</sup></b>	<u><b>1,581</b></u>	<u><b>490</b></u>	<u><b>456</b></u>	<u><b>2,527</b></u>

<sup>(a)</sup> Includes royalties and excise duty.

<sup>(b)</sup> Includes petroleum resource rent tax and petroleum revenue tax where applicable.

<sup>(c)</sup> Amounts shown exclude financial income, financial expenses and general corporate overheads and, accordingly, do not represent all of the operations attributable to the Petroleum segment presented in note 2 to the financial statements. There are no non-controlling equity interests.

### Standardised measure of discounted future net cash flows relating to proved oil and gas reserves ('Standardised measure')

The purpose of this disclosure is to provide data with respect to the estimated future net cash flows from future production of proved developed and undeveloped reserves of crude oil, condensate, natural gas liquids and natural gas.

The Standardised measure is based on the Group's estimated proved reserves, (as presented in section 2.14.1 'Petroleum Reserves') and this data should be read in conjunction with that disclosure, which is hereby incorporated by reference into this section. The Standardised measure is prepared on a basis which presumes that year end economic and operating conditions will continue over the periods in which year end proved reserves would be produced. The effects of future inflation, future changes in exchange rates, expected future changes in technology, taxes, operating practices and any regulatory changes have not been included.

The Standardised measure is prepared by projecting the estimated future annual production of proved reserves owned at period end and pricing that future production to derive future cash inflows. Estimates of future cash flows for 2010 are computed using the average first-day-of-the-month price during the 12-month period for 2010 and using the year end prices for 2009 and 2008. Future price increases for all periods presented are considered only to the extent that they are provided by fixed and determinable contractual arrangements in effect at year end and are not dependent upon future inflation or exchange rate changes.

## Supplementary oil and gas information – unaudited continued

Future cash inflows for all periods presented are then reduced by future costs of producing and developing the year end proved reserves based on costs in effect at year end without regard to future inflation or changes in technology or operating practices. Future development costs include the costs of drilling and equipping development wells and construction of platforms and production facilities to gain access to proved reserves owned at year end. They also include future costs, net of residual salvage value, associated with the abandonment of wells, dismantling of production platforms and rehabilitation of drilling sites. Future cash inflows are further reduced by future income taxes based on tax rates in effect at year end and after considering the future deductions and credits applicable to proved properties owned at year end. The resultant annual future net cash flows (after deductions of operating costs including resource rent taxes, development costs and income taxes) are discounted at 10 per cent per annum to derive the Standardised measure.

There are many important variables, assumptions and imprecisions inherent in developing the Standardised measure, the most important of which are the level of proved reserves and the rate of production thereof. The Standardised measure is not an estimate of the fair market value of the BHP Billiton Group's oil and gas reserves. An estimate of fair value would also take into account, among other things, the expected recovery of reserves in excess of proved reserves, anticipated future changes in prices, costs and exchange rates, anticipated future changes in secondary tax and income tax rates and alternative discount factors representing the time value of money and adjustments for risks inherent in producing oil and gas.

	Australia US\$M	United States US\$M	Other US\$M	Total US\$M
<b>Standardised measure</b>				
<b>2010</b>				
Future cash inflows	41,544	19,792	5,810	67,146
Future production costs	(15,618)	(3,060)	(1,336)	(20,014)
Future development costs	(6,933)	(3,733)	(607)	(11,273)
Future income taxes	(4,502)	(3,888)	(1,852)	(10,242)
Future net cash flows	14,491	9,111	2,015	25,617
Discount at 10 per cent per annum	(6,092)	(3,560)	(538)	(10,190)
<b>Standardised measure</b>	<b>8,399</b>	<b>5,551</b>	<b>1,477</b>	<b>15,427</b>
<b>2009</b>				
Future cash inflows	36,016	13,463	6,354	55,833
Future production costs	(14,198)	(1,778)	(1,340)	(17,316)
Future development costs	(7,699)	(2,053)	(672)	(10,424)
Future income taxes	(3,314)	(2,647)	(1,989)	(7,950)
Future net cash flows	10,805	6,985	2,353	20,143
Discount at 10 per cent per annum	(4,877)	(2,619)	(642)	(8,138)
<b>Standardised measure</b>	<b>5,928</b>	<b>4,366</b>	<b>1,711</b>	<b>12,005</b>
<b>2008</b>				
Future cash inflows	63,266	27,973	9,499	100,738
Future production costs	(23,558)	(2,125)	(2,086)	(27,769)
Future development costs	(7,356)	(1,626)	(859)	(9,841)
Future income taxes	(9,941)	(7,852)	(3,214)	(21,007)
Future net cash flows	22,411	16,370	3,340	42,121
Discount at 10 per cent per annum	(8,490)	(6,176)	(839)	(15,505)
<b>Standardised measure</b>	<b>13,921</b>	<b>10,194</b>	<b>2,501</b>	<b>26,616</b>

Changes in the Standardised measure are presented in the following table. The beginning of year and end of year totals are shown after reduction for income taxes and these, together with the changes in income tax amounts, are shown as discounted amounts (at 10 per cent per annum). All other items of change represent discounted amounts before consideration of income tax effects.

**Supplementary oil and gas information – unaudited continued**

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Changes in the Standardised measure</b>			
Standardised measure at the beginning of the year	<b>12,005</b>	26,616	13,545
<i>Revisions:</i>			
Prices, net of production costs	<b>4,029</b>	(21,588)	20,778
Revisions of quantity estimates <sup>(a)</sup>	<b>2,716</b>	1,100	1,629
Accretion of discount	<b>1,751</b>	3,998	2,011
Changes in production timing and other <sup>(b)</sup>	<b>(89)</b>	(3,690)	(1,792)
	<b>20,412</b>	6,436	36,171
Sales of oil and gas, net of production costs	<b>(6,964)</b>	(5,421)	(7,156)
Acquisitions of reserves-in-place	—	—	—
Sales of reserves-in-place	—	—	—
Development costs incurred which reduced previously estimated development costs	<b>2,006</b>	2,075	2,203
Extensions, discoveries, and improved recoveries, net of future costs	<b>1,375</b>	1,056	2,199
Changes in future income taxes	<b>(1,402)</b>	7,859	(6,801)
<b>Standardised measure at the end of the year</b>	<b>15,427</b>	<b>12,005</b>	<b>26,616</b>

(a) Changes in reserves quantities are shown in the Petroleum Reserves tables in section 2.14.1.

(b) Includes the effect of foreign exchange and changes in future development costs.

**Accounting for suspended exploratory well costs**

Refer to Accounting Policies 'Exploration and evaluation expenditure' for a discussion of the accounting policy applied to the cost of exploratory wells. Suspended wells are also reviewed in this context.

The following table presents the changes to capitalised exploratory well costs that were pending the determination of proved reserves for the three years ended 30 June 2010, 30 June 2009 and 30 June 2008.

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Movement in capitalised exploratory well costs</b>			
Balance at the beginning of the year	<b>299.7</b>	245.9	236.3
Additions to capitalised exploratory well costs pending the determination of proved reserves	<b>214.8</b>	122.4	111.2
Capitalised exploratory well costs charged to expense	<b>1.0</b>	(68.6)	(100.1)
Capitalised exploratory well costs reclassified to wells, equipment, and facilities based on the determination of proved reserves	<b>(33.2)</b>	—	(1.5)
<b>Balance at the end of the year</b>	<b>482.3</b>	<b>299.7</b>	<b>245.9</b>

The following table provides an ageing of capitalised exploratory well costs, based on the date the drilling was completed, and the number of projects for which exploratory well costs has been capitalised for a period greater than one year since the completion of drilling.

	2010 US\$M	2009 US\$M	2008 US\$M
<b>Ageing of capitalised exploratory well costs</b>			
Exploratory well costs capitalised for a period of one year or less	<b>213.0</b>	83.0	78.7
Exploratory well costs capitalised for a period greater than one year	<b>269.3</b>	216.7	167.2
<b>Balance at the end of the year</b>	<b>482.3</b>	<b>299.7</b>	<b>245.9</b>
	<b>2010</b>	<b>2009</b>	<b>2008</b>
<b>Number of projects that have been capitalised for a period greater than one year</b>	<b>8</b>	<b>7</b>	<b>7</b>



## Supplementary oil and gas information – unaudited continued

### Drilling and other exploratory and development activities

The number of crude oil and natural gas wells drilled and completed for each of the last three years was as follows:

	Net Exploratory Wells			Net Development Wells			Total
	Productive	Dry	Total	Productive	Dry	Total	
<b>Year ended 30 June 2010</b>							
Australia	1	—	1	11	1	12	13
United States	—	1	1	1	—	1	2
Other	—	2	2	1	—	1	3
<b>Total</b>	<u>1</u>	<u>3</u>	<u>4</u>	<u>13</u>	<u>1</u>	<u>14</u>	<u>18</u>
<b>Year ended 30 June 2009</b>							
Australia	—	1	1	8	—	8	9
United States	—	1	1	6	1	7	8
Other	—	—	—	4	—	4	4
<b>Total</b>	<u>—</u>	<u>2</u>	<u>2</u>	<u>18</u>	<u>1</u>	<u>19</u>	<u>21</u>
<b>Year ended 30 June 2008</b>							
Australia	2	—	2	7	—	7	9
United States	—	1	1	7	—	7	8
Other	—	—	—	1	—	1	1
<b>Total</b>	<u>2</u>	<u>1</u>	<u>3</u>	<u>15</u>	<u>—</u>	<u>15</u>	<u>18</u>

The number of wells drilled refers to the number of wells completed at any time during the respective year, regardless of when drilling was initiated. Completion refers to the installation of permanent equipment for production of oil or gas, or, in the case of a dry well, to reporting to the appropriate authority that the well has been abandoned.

An exploratory well is a well drilled to find and produce oil or gas in an unproved area, to find a new reservoir in a field previously found to be productive of oil or gas in another reservoir, or to extend a known reservoir. A development well is a well drilled within the proved area of an oil or gas reservoir to the depth of a stratigraphic horizon known to be productive.

A productive well is an exploratory, development or extension well that is not a dry well. A dry well (hole) is an exploratory, development, or extension well that proves to be incapable of producing either oil or gas in sufficient quantities to justify completion as an oil or gas well.

### Oil and gas properties, wells, operations, and acreage

The following tables show the number of gross and net productive crude oil and natural gas wells and total gross and net developed and undeveloped oil and natural gas acreage as at 30 June 2010. A gross well or acre is one in which a working interest is owned, while a net well or acre exists when the sum of fractional working interests owned in gross wells or acres equals one. Productive wells are producing wells and wells mechanically capable of production. Developed acreage is comprised of leased acres that are within an area by or assignable to a productive well. Undeveloped acreage is comprised of leased acres on which wells have not been drilled or completed to a point that would permit the production of economic quantities of oil and gas, regardless of whether such acres contain proved reserves.

The number of productive crude oil and natural gas wells in which we held an interest at 30 June 2010 was as follows:

	Crude Oil Wells		Natural Gas Wells		Total	
	Gross	Net	Gross	Net	Gross	Net
Australia	361	177	122	51	483	228
United States	48	17	14	5	62	22
Other	73	31	98	35	171	66
<b>Total</b>	<u>482</u>	<u>225</u>	<u>234</u>	<u>91</u>	<u>716</u>	<u>316</u>

## Supplementary oil and gas information – unaudited continued

Of the productive crude oil and natural gas wells, 28 (Net: 12) had multiple completions.

Developed and undeveloped acreage (including both leases and concessions) held at 30 June 2010 was as follows:

<u>Thousands of acres</u>	<u>Developed Acreage</u>		<u>Undeveloped Acreage</u>	
	<u>Gross</u>	<u>Net</u>	<u>Gross</u>	<u>Net</u>
Australia	2,093	840	4,788	2,325
United States	156	52	1,614	1,053
Other <sup>(a)</sup>	437	183	50,952	27,724
<b>Total <sup>(b)</sup></b>	<u>2,686</u>	<u>1,075</u>	<u>57,354</u>	<u>31,102</u>

(a) Primarily consists of acreage in South Africa, Falklands, Colombia, Philippines and India.

(b) Approximately 19,743,000 gross acres (9,397,000 net acres) will expire in 2011, 8,530,000 gross acres (5,813,000 net acres) will expire in 2012 and 6,112,000 gross acres (4,480,000 net acres) will expire in 2013.

**Exhibit 4.11**

**Implementation Agreement**

Rio Tinto Limited

Rio Tinto plc

BHP Billiton Limited

BHP Billiton plc

**\* \* \* Pursuant to a request for confidential treatment filed  
with the Securities and Exchange Commission, confidential  
portions of this exhibit have been omitted and filed separately  
with the Securities and Exchange Commission**

# Implementation Agreement

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# Implementation Agreement

2009

## Date

## Parties

1. **Rio Tinto Limited** (ABN 96 004 458 404), a company incorporated in Australia, of Level 33, 120 Collins Street, Melbourne, Victoria, Australia (**RTL**).
2. **Rio Tinto plc** (registration number 00719885), a company incorporated in England and Wales, of 2 Eastbourne Terrace, London, United Kingdom (**RTP** and, together with RTL, **Rio Tinto**).
3. **BHP Billiton Limited** (ABN 49 004 028 077), a company incorporated in Australia, of 180 Lonsdale Street, Melbourne, Victoria, Australia (**BHPBL**).
4. **BHP Billiton plc** (registration number 3196209), a company incorporated in England and Wales, of Neathouse Place, London, United Kingdom (**BHPBP** and, together with BHPBL, **BHP Billiton**).

## Recitals

- A. On 5 June 2009, BHP Billiton and Rio Tinto entered into an Iron Ore JV Framework Agreement concerning a proposal to establish a 50:50 iron ore production joint venture in accordance with certain Core Principles agreed between them.
- B. In accordance with clause 1 of the Iron Ore JV Framework Agreement, Rio Tinto and BHP Billiton have negotiated this Agreement, the Joint Venture Agreement and the other Transaction Documents for the establishment of the WA Iron Ore JV.
- C. This Agreement prescribes:
  - (a) conditions precedent to establishment of the WA Iron Ore JV;
  - (b) what Rio Tinto and BHP Billiton must do to prepare for establishment of the WA Iron Ore JV; and
  - (c) the warranties that each of Rio Tinto and BHP Billiton must give to the other, as a basis for establishment of the WA Iron Ore JV.

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Agreement, unless the subject matter or context requires otherwise, the terms defined in item 1.1 of Schedule 1 have the meaning given to them in that schedule.

### 1.2 Interpretation

The interpretation provisions in items 1.2 to 1.7 of Schedule 1 apply to the interpretation of this Agreement.



## Implementation Agreement

### 2. Conditions Precedent

#### 2.1 Conditions Precedent

Completion is conditional on prior satisfaction of the following conditions precedent:

- (a) **(Competition law approvals):** The competition law Conditions Precedent set out in Schedule 2.
- (b) **(FIRB approval):** The Treasurer of the Commonwealth of Australia either:
  - (i) ceasing to be empowered to make an order under Part II of the Foreign Acquisitions and Takeovers Act 1975 (Cth) in respect of:
    - (A) Rio Tinto and BHP Billiton entering into the WA Iron Ore JV (and performing their obligations concerning the WA Iron Ore JV); and
    - (B) each of Rio Tinto and BHP Billiton implementing its respective reorganisation steps pursuant to clause 5.3, with no order being made; or
  - (ii) giving advice in writing of a decision by or on behalf of the Treasurer stating or to the effect that the Commonwealth Government of Australia has no objection in relation to:
    - (A) Rio Tinto and BHP Billiton entering into the WA Iron Ore JV (and performing their obligations concerning the WA Iron Ore JV); and
    - (B) each of Rio Tinto and BHP Billiton implementing its respective reorganisation steps pursuant to clause 5.3.
- (c) **(Tax):** BHPBL (as Head Company of the BHP Billiton Consolidated Group) and RTL (as Head Company of the Rio Tinto Consolidated Group) obtaining the Private Rulings from the Commissioner of Taxation set out in Part 1 of Schedule 3.
- (d) **(Stamp Duty):** To the extent that the ruling, advice or decision relates to:
  - (i) Rio Tinto:
    - (A) a relevant entity in the Rio Tinto Group obtaining each ruling, advice or decision set out in item 1.1 of Part 2 of Schedule 3 from the applicable Commissioner of State Revenue or Commissioner of Territory Revenue; or
    - (B) if the relevant Commissioner will not issue such a ruling, advice or decision and item 1.2 of Part 2 of Schedule 3 expressly contemplates such a scenario, Rio Tinto, acting reasonably, being satisfied of the matters set out in item 1.2 of Part 2 of Schedule 3 in relation to the subject matter of that ruling, advice or decision; and
  - (ii) BHP Billiton:
    - (A) a relevant entity in the BHP Billiton Group obtaining each ruling, advice or decision set out in item 1.3 of Part 2 of Schedule 3 from the applicable Commissioner of State Revenue or Commissioner of Territory Revenue; or
    - (B) if the relevant Commissioner will not issue such a ruling, advice or decision and item 1.4 of Part 2 of Schedule 3 expressly contemplates such a scenario, BHP Billiton, acting reasonably, being satisfied of the matters set out in item 1.4 of Part 2 of Schedule 3 in relation to the subject matter of that ruling, advice or decision.
- (e) **(Western Australian Government approvals):**
  - (i) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## Implementation Agreement

(ii) \* \* \*

- (f) **(Shareholder approvals):** The necessary shareholder resolutions to approve the WA Iron Ore JV being passed by the members of each of Rio Tinto and BHP Billiton.
- (g) **(Security and reorganisations):**
  - (i) the reorganisation steps to be implemented pursuant to clause 5.3 being completed;
  - (ii) the Parent Company Guarantees being given;
  - (iii) the Owner Cross Charges being granted; and
  - (iv) any Creditor Deed Poll required in respect of the Agreed Opening Iron Ore Loans and the Agreed Opening Excluded Loans being executed.

### 2.2 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clause 2.1 (other than paragraphs (c) and (d)) are for the benefit of each of Rio Tinto and BHP Billiton, and Rio Tinto and BHP Billiton may only jointly waive any non-fulfilment of any of those Conditions Precedent by giving their written consent.
- (b) The Conditions Precedent in clause 2.1(c):
  - (i) in respect of item 1.2 of Part 1 of Schedule 3 are for the benefit of Rio Tinto and only Rio Tinto may waive any non-fulfilment of any one or more of those Conditions Precedent by giving its written consent; and
  - (ii) in respect of item 1.3 of Part 1 of Schedule 3 are for the benefit of each of Rio Tinto and BHP Billiton, and Rio Tinto and BHP Billiton may only jointly waive any non-fulfilment of any of those Conditions Precedent by giving their written consent.
- (c) The Conditions Precedent in clause 2.1(d)(i) are for the benefit of Rio Tinto and only Rio Tinto may waive any non-fulfilment of any one or more of those Conditions Precedent by giving its written consent, provided that Rio Tinto bears any Stamp Duty that may be payable in relation to the matters to which the relevant Condition Precedent relates (and, for the avoidance of doubt, the Stamp Duty must not be borne by a JV Entity).
- (d) The Conditions Precedent in clause 2.1(d)(ii) are for the benefit of BHP Billiton and only BHP Billiton may waive any non-fulfilment of any one or more of those Conditions Precedent by giving its written consent, provided that BHP Billiton bears any Stamp Duty that may be payable in relation to the matters to which the relevant Condition Precedent relates (and, for the avoidance of doubt, the Stamp Duty must not be borne by a JV Entity).

### 2.3 Obligation to achieve satisfaction of Conditions Precedent

- (a) Each of Rio Tinto and BHP Billiton must use its reasonable endeavours to achieve satisfaction of the Conditions Precedent as soon as practicable.
- (b) In complying with paragraph (a), each of Rio Tinto and BHP Billiton must:
  - (i) cooperate with the other for the purposes of satisfying the Conditions Precedent;

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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- (ii) to the extent permitted by the relevant Authority, use its reasonable endeavours to ensure that discussions or communications with an Authority relating substantially or primarily to the WA Iron Ore JV, including any notification or submission to the Authority in relation to the WA Iron Ore JV, occur on a joint basis;
- (iii) where a joint submission to an Authority in relation to the WA Iron Ore JV is not permitted or practicable, use its reasonable endeavours to ensure that, to the extent permitted by law, drafts of its submission are provided to the other and the material content of each notification or submission is jointly agreed prior to lodgement; and
- (iv) keep the other informed of:
  - (A) progress in respect of procuring the satisfaction of any Condition Precedent, including providing copies of any correspondence or lodgements with an Authority;
  - (B) any fact, matter or circumstance of which it becomes aware that it reasonably believes will result in any delay in the satisfaction of a Condition Precedent or a Condition Precedent not being satisfied in accordance with its terms; and
  - (C) satisfaction of a Condition Precedent which applies to it, within two Business Days after becoming aware of the satisfaction of such Condition Precedent.
- (c) In relation to any discussions with an Authority that are not conducted on a joint basis, each of Rio Tinto and BHP Billiton must:
  - (i) to the extent practicable, give the other prior notice of the discussion if it reasonably expects that matters of substance relating to the WA Iron Ore JV will arise;
  - (ii) to the extent practicable, use its reasonable endeavours to agree with the other a common position on matters relating to the WA Iron Ore JV and to present that position during any discussions with an Authority;
  - (iii) refrain from representing the views of the other and, where a common position has not been agreed and it knows the other holds a different view regarding matters relating to the WA Iron Ore JV, refrain from referring to or discussing that difference in view; and
  - (iv) if matters relating to the WA Iron Ore JV are discussed, inform the other of the substance of such discussions as soon as practicable after they have been held.
- (d) Nothing in this Agreement requires Rio Tinto or BHP Billiton to:
  - (i) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
  - (ii) disclose any competitively sensitive or confidential information to the other.
- (e) For the avoidance of doubt, if a Condition Precedent is satisfied on the basis of a condition or an undertaking that is accepted by Rio Tinto and BHP Billiton under clauses 2.3(d) and 1.1, that Condition Precedent will have been satisfied,
- (f) Notwithstanding that a particular Condition Precedent under clause 2.1(c) or clause 2.1(d) has been satisfied, if, between the date of this Agreement and Completion, \* \* \*
  - (i) BHP Billiton, in the case of the Conditions Precedent in clauses 2.1(c) (in respect of item 1.1 of Part 1 of Schedule 3) and 2.1(d)(ii); and

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- (ii) Rio Tinto, in the case of the Conditions Precedent in clauses 2.1(c) (in respect of item 1.2 of Part 1 of Schedule 3) and 2.1(d)(i); and
- (iii) either BHP Billiton or Rio Tinto in the case of the Conditions Precedent in item 1.3 of Part 1 of Schedule 3, may give a notice to the other pursuant to this clause 2.3(f) and the relevant Condition Precedent will be deemed to be no longer satisfied until such time as notice is given to the contrary.

### 2.4 Obligation to obtain consent

Where an Authority, as a condition of giving an Authorisation required to satisfy a Condition Precedent, requires BHP Billiton (or a BHP Billiton Group entity) or Rio Tinto (or a Rio Tinto Group entity) to provide an undertaking or agree to any condition, then BHP Billiton or Rio Tinto, as applicable, must first, before such undertaking or condition is agreed to, obtain the consent of the other, \* \* \*

- (a) \* \* \*
- (b) \* \* \*

No such undertaking or condition will affect the Participating Shares of the Owners as at the JV Commencement Date, as set out in clause 2.1(d) of the Joint Venture Agreement.

### 2.5 End Date

This Agreement, other than this clause 2 and clauses 1 (Definitions and Interpretation), 17 (Public announcements and confidentiality), 18 (GST), 20 (Iron Ore JV Framework Agreement), 21 (Governing law and jurisdiction) and 22 (Ancillary provisions), will immediately terminate and be of no further force or effect if the Conditions Precedent are not satisfied or waived by 31 December 2010 or such later date as Rio Tinto and BHP Billiton may agree in writing (*End Date*). Termination of this Agreement will be without prejudice to the rights of Rio Tinto or BHP Billiton that have arisen prior to termination, including any claim under the Iron Ore JV Framework Agreement.

## 3. Conduct prior to Completion

### 3.1 Business conduct prior to Completion

- (a) Subject to this clause 3, except where otherwise agreed by Rio Tinto or BHP Billiton, from the date of this Agreement until the JV Commencement Date, each of BHP Billiton and Rio Tinto must, and must procure that each of its Related Corporations:
  - (i) operate its Relevant Period Iron Ore Assets in the ordinary course, independently of the other; but
  - (ii) not dispose of its Relevant Period Iron Ore Assets otherwise than in the ordinary course, and must not grant any Security Interest over its Relevant Period Iron Ore Assets other than a Security Interest that would be permitted under clause 11 of the Joint Venture Agreement if it were in force.
- (b) Paragraph (a) does not restrict either BHP Billiton or Rio Tinto (or their respective Related Corporations) prior to Completion:
  - (i) marketing and selling Iron Ore Product; or

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- (ii) initiating or progressing:
  - (A) any expansion capital project in respect of any Relevant Period Iron Ore Asset that is not listed in Schedule 4; or
  - (B) any acquisition that falls within the definition of a New Opportunity.

### 3.2 Consequences of an Event

- (a) If a Relevant Period Iron Ore Asset (other than a construction project in progress) of any of a BHP Billiton JV Entity, other BHP Billiton Group entity, a Rio Tinto JV Entity or other Rio Tinto Group entity is, or has been, damaged or destroyed due to the happening of an event during the Relevant Period, BHP Billiton or Rio Tinto (as applicable) must reinstate, repair or replace (or must procure that the relevant JV Entity or BHP Billiton Group entity or Rio Tinto Group entity, as applicable, reinstates, repairs or replaces) such Relevant Period Iron Ore Assets to the same capacity and standard as prior to the damage or destruction as soon as practicable after the date of this Agreement, provided that such capacity or standard may be improved to the next highest level available where the original capacity or standard is no longer available or feasible.
- (b) If a Relevant Period Iron Ore Asset is destroyed or damaged, and/or an event which would give rise to a business interruption claim under the Agreed Policy Terms (whether or not the event also involved the destruction of, or damage to, a Relevant Period Iron Ore Asset) occurs, during the Relevant Period (an *Event*), whichever of BHP Billiton or Rio Tinto owns, or whose Related Corporation owns, the relevant Relevant Period Iron Ore Assets or would be entitled to make a business interruption claim under the Agreed Policy Terms must procure that the Adjuster assesses the loss arising from the business interruption in accordance with the Agreed Policy Terms. Any damage, destruction, loss or series of losses arising from substantially the same facts, matters or circumstances will be taken to relate to a single Event, regardless of the number of locations affected.
- (c) If one or more JV Entities suffers loss as a result of an Event and those JV Entities do not, in aggregate, receive insurance proceeds and other recoveries (net of the costs of those recoveries and the amounts (if any) that the JV Entities have to remit to their insurers) (together, *Recoveries*) that are not Excluded Assets, and are not amounts on account of GST, in respect of that Event equal to the aggregate of:
  - (i) the amount of the loss from business interruption assessed by the Adjusters pursuant to paragraph (b); and
  - (ii) the actual costs expended by the JV Entities or their Related Corporations in reinstating, repairing or replacing the relevant Relevant Period Iron Ore Assets (*PD Costs*),(together, the *Assessed Loss*) within 24 months after the date of the Event (the *Claim Period*), then:
  - (iii) whichever of BHP Billiton or Rio Tinto is a Related Corporation of the JV Entities that suffered the loss must bear the amount of the Assessed Loss in excess of the applicable Deductible (not to exceed the Maximum Amount) less all Recoveries in respect of the Assessed Loss received by the JV Entities during the Claim Period that do not constitute Excluded Assets and are not amounts on account of GST (the *Shortfall*), by:
    - (A) to the extent that the Shortfall relates to PD Costs—subscribing for Shares in the relevant Issuer or procuring that the relevant JV Entities
    - (B) apply Excluded Assets, in amounts sufficient in aggregate to cover that element of the Shortfall; and

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(C) to the extent that the Shortfall relates to loss from business interruption (**BI Loss**)—paying to whichever of BHP Billiton or Rio Tinto is not a Related Corporation of the relevant JV Entity an amount equal to half of that element of the Shortfall; and

(iv) any Recoveries with respect to the Event received by the relevant JV Entities after the Claim Period will constitute Excluded Assets.

For the purposes of this paragraph (c):

(v) **Deductible** means:

(A) where the Event relates to, or arises from, damage to, or destruction of, a shiploader or wharf—\* \* \* per Event; and

(B) in all other cases—\* \* \* per Event; and

(vi) in determining the extent to which a Shortfall relates to PD Costs and to BI Loss respectively, any Recoveries received with respect to the relevant Event that are not Excluded Assets and the applicable Deductible are each taken to relate to PD Costs and BI Loss in the same proportion that the PD Costs and BI Loss respectively bear to the Assessed Loss.

(d) If one or more JV Entities suffers loss as a result of an Event, and such JV Entities receive (whether before or after the JV Commencement Date) insurance proceeds in respect of that Event in excess of the lesser of:

(i) the Assessed Loss; and

(ii) the Maximum Amount,

the excess insurance proceeds will constitute Excluded Assets.

(e) If further PD Costs are expended after the Claim Period in relation to an Event, whichever of BHP Billiton or Rio Tinto is a Related Corporation of the JV Entity that expended those PD Costs must bear those additional PD Costs by, at the end of each six month period following the end of the Claim Period, subscribing for Shares in the relevant Issuer or procuring that the relevant JV Entity applies Excluded Assets, in amounts sufficient in aggregate to cover PD Costs for that six month period.

(f) Each of BHP Billiton and Rio Tinto must, and must procure that its relevant Related Corporations, take all reasonable actions to recover the maximum amount possible with respect to any Event from its insurers or any relevant third parties as soon as reasonably practicable.

(g) Each of BHP Billiton and Rio Tinto may, at its discretion, effect and maintain liability (including with respect to contract works), property damage and business interruption insurances (if any) in connection with its Relevant Period Iron Ore Assets during the Relevant Period.

(h) Each of BHP Billiton and Rio Tinto may, at its discretion, effect and maintain contract works insurance in connection with any construction project relating to its Relevant Period Iron Ore Assets commenced or in progress during the Relevant Period.

(i) Whichever of BHP Billiton or Rio Tinto is a Related Corporation of a JV Entity that is the subject of a public liability claim (including in connection with contract works) after the JV Commencement Date in connection with an event that happened during the Relevant Period must bear any expenditure by the JV Entity in connection with the public liability claim by subscribing for Shares in the relevant Issuer or procuring that the relevant JV Entity applies Excluded Assets, in amounts

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sufficient in aggregate to cover that liability and associated costs. Any Recoveries by the JV Entity with respect to such expenditure received after the JV Commencement Date will constitute Excluded Assets.

- (j) If a Relevant Period Iron Ore Asset that is a construction project in progress of a BHP Billiton JV Entity or other BHP Billiton Group entity or of a Rio Tinto JV Entity or other Rio Tinto Group entity, respectively, is damaged or destroyed due to the happening of an Event during the Relevant Period, BHP Billiton or Rio Tinto (as applicable) must reinstate, repair or replace (or must procure that the relevant JV Entity or BHP Billiton Group entity or Rio Tinto Group entity, as applicable, reinstates, repairs or replaces), such Relevant Period Iron Ore Asset to at least the same capacity and standard as prior to the loss or destruction as soon as practicable.
- (k) Whichever of BHP Billiton or Rio Tinto is a Related Corporation of the JV Entity that owns a Relevant Period Iron Ore Asset that is a construction project in progress that is damaged or destroyed due to the happening of an Event during the Relevant Period must bear the full costs to the JV Entity of reinstating, repairing or replacing such Relevant Period Iron Ore Asset incurred after the JV Commencement Date by subscribing for Shares in the relevant Issuer or procuring that the relevant JV Entity applies Excluded Assets, in amounts sufficient in aggregate to cover those costs. Any Recoveries with respect to such costs received after the JV Commencement Date by the JV Entity that owns the relevant Relevant Period Iron Ore Asset (whether under a contract works insurance policy or otherwise) will constitute Excluded Assets.
- (l) If a JV Entity receives a payment after the JV Commencement Date under any property damage and business interruption insurance policy in connection with an Event that happened during the Relevant Period, and the applicable deductible under the relevant insurance policy is less than the applicable Deductible under paragraph (c), then to the extent that the payment, when aggregated with any prior insurance payments received (whether before or after the JV Commencement Date) relating to the same Event under any property damage and business interruption insurance policy, does not exceed the difference between the applicable deductible under the relevant insurance policy and the applicable Deductible under paragraph (c), that payment will constitute an Excluded Asset.

### 3.3 Capital Expenditure prior to JV Commencement Date

- (a) Each of Rio Tinto and BHP Billiton agrees to continue to invest in sustaining capital expenditure for its Relevant Period Iron Ore Assets in the ordinary course, between the date of this Agreement and the JV Commencement Date.
- (b) Schedule 4 identifies the Board sanctioned expansion capital projects in relation to Relevant Period Iron Ore Assets involving expected capital expenditure of US\$250 million or more and publicly announced by Rio Tinto or BHP Billiton, respectively, as at the date of the Iron Ore JV Framework Agreement, which will form part of the Iron Ore Assets from the JV Commencement Date. \* \* \*

### 3.4 RGP5 warranty

- (a) BHP Billiton warrants that:
  - (i) RGP5 will be designed, constructed and commissioned for the purpose contemplated by, and in accordance with, the RGP5 Scope of Work provided to Rio Tinto by BHP Billiton; and

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- (ii) the entire costs (excluding the costs of prefeasibility and feasibility studies (**RGP5 study costs**)) of procuring the completion of design, construction and commissioning of RGP5 in accordance with the RGP5 Scope of Work and achieving RGP5 Handover will not exceed US\$4.8 billion (85% share).
- (b) BHP Billiton will be liable for \* \* \* and for all costs incurred above US\$4.8 billion (85% share), excluding RGP5 study costs, in connection with the completion of design, construction and commissioning of RGP5 in accordance with the RGP5 Scope of Work (as varied from time to time in accordance with this clause 3.4) and achieving RGP5 Handover and these amounts will be funded in accordance with paragraph (d), and will not constitute JV Cash Costs. Until the JV Commencement Date, BHP Billiton must use all reasonable endeavours to ensure that RGP5 Handover is achieved by 31 December 2011. For the avoidance of doubt, all RGP5 Facilities which have been or are to be constructed or procured for the purposes of RGP5 will be Iron Ore Assets.
- (c) After the JV Commencement Date, the Manager must ensure that RGP5 is designed, constructed and commissioned in accordance with the RGP5 Scope of Work and the Agreed Practice Standard, except as otherwise agreed by the Owners' Council.
- (d) In relation to all amounts for which BHP Billiton is liable under paragraph (b), BHP Billiton must procure that:
  - (i) the relevant BHP Billiton JV Entity applies funds which are Excluded Assets; or
  - (ii) the BHP Billiton Owner subscribes for Shares in the BHP Billiton Issuer, in amounts sufficient (in aggregate) to cover BHP Billiton's liability. BHP Billiton must procure that the BHP Billiton Issuer applies all proceeds of subscription to meet the costs for which BHP Billiton is liable under paragraph (b).
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- (h) \* \* \*

### 3.5 Pre-Completion obligations

- (a) Each of Rio Tinto and BHP Billiton must negotiate in good faith for the purposes of agreeing **Terms of Reference** for the Audit Committee, the Remuneration Committee, the Technical Committee and the Sustainable Development Committee as soon as reasonably practicable after the date of this Agreement, and in any event no later than 90 days after the date of this Agreement.
- (b) Each of Rio Tinto and BHP Billiton must use its reasonable endeavours to do the following things as soon as reasonably practicable after the date of this Agreement, and in any event no later than Completion:
  - (i) **(Common valuer):**
    - (A) identify and appoint a common valuer to determine any fair market valuations required by them in relation to the accounting treatment of the other's Iron Ore Assets, subject to paragraph (B) and having regard to the tender process for the initial Auditor of the WA Iron Ore JV referred to in clause 3.6(b) (viii); but

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- (B) if either Rio Tinto or BHP Billiton, in its reasonable opinion, considers that it would contravene any Law to appoint a common valuer, individual valuers may be appointed;
  - (ii) **(AUP)**: negotiate in good faith for the purposes of agreeing the AUPs to be undertaken by the Auditor;
  - (iii) **(Revised Accounting Policy)**:
    - (A) negotiate in good faith for the purposes of agreeing a proposed ***Revised Accounting Policy*** which sets out all accounting policies to be applied in preparing JV Financial Information, and complies with paragraph (b) of this clause; and
    - (B) submit the Revised Accounting Policy to the Implementation Oversight Committee for consideration and approval and, if so agreed, procure that a representative of each of the Owners initials the Revised Accounting Policy at Completion;
  - (iv) **(Tax Allocation Methodology)**: negotiate in good faith for the purposes of agreeing the appropriate ***Tax Allocation Methodology*** for attribution to Iron Ore Assets and Iron Ore Liabilities, and Excluded Assets and Excluded Liabilities, of:
    - (A) payments made and received in respect of:
      - (1) tax by the Head Company of the BHP Billiton Consolidated Group or the Rio Tinto Consolidated Group (as applicable); or
      - (2) any other taxes (including GST, payroll tax, land tax or like items) which are assessed or payable on a group basis; and
    - (B) payments made and received under any Tax Sharing Agreement or Tax Funding Agreement applicable to the Head Company of the BHP Billiton Consolidated Group or the Rio Tinto Consolidated Group (as applicable), for the purposes of the Funding and Distribution Policy. The Tax Allocation Methodology must have regard to the general principles set out in items 8.2 and 8.6 of the Funding and Distribution Policy;
  - (v) **(Initial Agreed Interest Rate and Initial Agreed Term recommendation)**: negotiate in good faith for the purposes of agreeing:
    - (A) the Initial Agreed Interest Rate for Participant Loans, Call Deposits, Term Deposits and Sole Risk Loans; and
    - (B) the Initial Agreed Term for Participant Loans and Term Deposits, which will apply under the Funding and Distribution Policy;
  - (vi) **(Infrastructure and Blending Principles)**: negotiate in good faith for the purposes of agreeing legally binding agreements reflecting the principles set out in the Infrastructure and Blending Principles (the ***Infrastructure Sharing Agreement*** and the ***Blending Agreement***); and
  - (vii) **(Set-Off Agreement)**: negotiate in good faith for the purposes of agreeing a legally binding ***Set-Off Agreement***, which allows for the offsetting of amounts as contemplated by the Funding and Distribution Policy.
- (c) The Revised Accounting Policy must:
- (i) be consistent in all material respects with the policies referred to in item 8 of the Accounting Policy including, without limitation, the modifications to be applied to the accounting policies

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of the Rio Tinto Group and the BHP Billiton Group for the purposes of preparing JV Financial Information as set out in schedule 1 to the Accounting Policy;

- (ii) subject to sub-paragraph (i) above, and to the extent that the accounting policies adopted by the Rio Tinto Group and the BHP Billiton Group are consistent with each other, be consistent with those accounting policies; and
- (iii) subject to sub-paragraph (i) above, and to the extent that the accounting policies adopted by the Rio Tinto Group and the BHP Billiton Group are not consistent with each other, adopt the accounting policy that is expected to maximise the costs to be expensed and result in such costs being reported at the earliest possible time in the JV Financial Information. An accounting policy that is different from the policy used by either the Rio Tinto Group or the BHP Billiton Group may be adopted if it is expected to maximise the costs to be expensed and result in such costs being reported at the earliest possible time in the JV Financial Information, but having regard to the costs and benefits of adopting an accounting policy which is different from the accounting policies of both Owners.

### 3.6 Implementation Management Committee

- (a) As soon as practicable after the date of this Agreement, Rio Tinto and BHP Billiton must establish an ***Implementation Management Committee*** made up of the future CEO, the designated future members of the Senior Executive Team and other senior members of the future management team. The Implementation Management Committee must be drawn approximately equally from current employees of the Rio Tinto Group and the BHP Billiton Group and members will be appointed by agreement between Rio Tinto and BHP Billiton.
- (b) The role of the Implementation Management Committee will, subject to antitrust Law, be to act as a forum for consultation and planning between Rio Tinto and BHP Billiton in relation to the implementation of the WA Iron Ore JV, and to make recommendations to the Implementation Oversight Committee as directed by the Implementation Oversight Committee or considered appropriate by the Implementation Management Committee, having regard in all cases to the provisions of the Joint Venture Agreement including the mandate given to the CEO under clause 4.7 of the Joint Venture Agreement to make the WA Iron Ore JV operationally stand-alone as soon as practicably possible. Recommendations will be made on subjects including without limitation the following:
  - (i) **(Related party transactions)**: identification of all related party transactions between JV Entities and Affiliates, and whether they should cease on, or continue after, the JV Commencement Date;
  - (ii) **(Systems recommendation)**: systems, standards and procedures to be adopted by the WA Iron Ore JV from the JV Commencement Date. Except as otherwise agreed between BHP Billiton and Rio Tinto (for example under the Transaction Documents), the WA Iron Ore JV will initially source systems, standards and procedures from the BHP Billiton Group and Rio Tinto Group selected by reference to their fitness for purpose in the overall context of the WA Iron Ore JV;
  - (iii) **(Transitional services recommendation)**: identification of the transitional services to be provided by Rio Tinto, BHP Billiton or their Affiliates to the Manager from the JV Commencement Date, which are to be specified in the relevant schedule to the Transitional Services Agreement;
  - (iv) **(Support Assets recommendation)**: in relation to assets in which the BHP Billiton Group or Rio Tinto Group has a legal, beneficial or economic interest, other than assets expressly

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referred to in the definition of Excluded Assets, that are used for functions that support Iron Ore Production Activities, the division of those assets into the following classes:

- (A) assets that should form part of the WA Iron Ore JV, to be made available on the JV Commencement Date (**Support Assets**); and
- (B) assets that should not form part of the WA Iron Ore JV (**Retained Assets**).

In making the Support Assets recommendation, the Implementation Management Committee must apply the following principles:

- (C) assets primarily used in connection with BHP Billiton or Rio Tinto's Iron Ore Production Activities should generally be Support Assets; and
  - (D) assets not primarily used in connection with BHP Billiton or Rio Tinto's Iron Ore Production Activities should generally be Retained Assets;
- (v) **(First Business Plan)**: the First Business Plan, which must be prepared in compliance with the requirements of clause 3.10 of the Joint Venture Agreement;
  - (vi) **(First Budget)**: the First Budget, which must be prepared in compliance with the requirements of clause 3.10 of the Joint Venture Agreement (including the First Synergies Capture Plan as a discrete component);
  - (vii) **(First Synergies Capture Plan)**: the First Synergies Capture Plan, which must:
    - (A) reflect the Expected JV Synergies;
    - (B) include details of the synergies the WA Iron Ore JV is expected to achieve, which will form a baseline against which synergy capture can be measured; and
    - (C) be prepared in compliance with the requirements of clause 3.10 of the Joint Venture Agreement.
  - (viii) **(Initial Auditor and internal auditor recommendation)**: a recommendation as to the identity of the initial Auditor and of the internal auditor of the WA Iron Ore JV. The Implementation Management Committee must make the initial Auditor recommendation prior to Completion, having first conducted a tender process in relation to the initial Auditor. The Implementation Management Committee must make the initial internal auditor recommendation prior to Completion, in accordance with the resourcing model for the internal auditor determined by the Implementation Oversight Committee and having first conducted such selection process as the Implementation Oversight Committee agrees (which may include a tender process);
  - (ix) **(Workforce recommendations)**: in relation to the WA Iron Ore JV's workforce:
    - (A) subject to clause 4.5(e) of the Joint Venture Agreement, organisation design principles applicable for the WA Iron Ore JV workforce at all levels and for all functions, including for the Senior Executive Team, consistent with the Workforce Principles;
    - (B) offers of employment and associated recruitment processes for employees and contractors, which must be designed in accordance with the Workforce Principles and items 2 and 6 of Schedule 6;
    - (C) subject to clause 4.6(a) of the Joint Venture Agreement, remuneration and benefit principles, which must be developed in accordance with the Workforce Principles and item 3 of Schedule 6;
    - (D) long-term incentive arrangements for eligible employees, which must be designed in accordance with the Workforce Principles and item 3 of Schedule 6;

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- (E) defined contribution and, where applicable, defined benefit superannuation arrangements, which must be developed in accordance with the Workforce Principles and item 4 of Schedule 6; and
- (F) subject to clause 4.15 of the Joint Venture Agreement, workers' compensation insurance arrangements, which must be developed in accordance with the Workforce Principles and item 5 of Schedule 6;
- (x) **(Procurement model recommendation)**: the procurement arrangements and procedures to apply to the WA Iron Ore JV from the JV Commencement Date; and
- (xi) **(Hedging Policy)**: the hedging policy to apply to the WA Iron Ore JV from the JV Commencement Date.
- (c) The Implementation Management Committee must prepare and provide to each of Rio Tinto and BHP Billiton one month prior to the expected date of Completion \* \* \* in relation to the period from the JV Commencement Date to the end of that Half Year. At Completion each Owner must provide \* \* \* in relation to the period from the JV Commencement Date to the end of that Half Year.
- (d) The employees of the BHP Billiton Group on the Implementation Management Committee will collectively have one vote and the employees of the Rio Tinto Group on the Implementation Management Committee will collectively have one vote. Decisions of the Implementation Management Committee relating to recommendations must be unanimous. Where the Implementation Management Committee is unable to make a unanimous decision, it must provide the Implementation Oversight Committee with:
  - (i) a description of the reasons why the decision was not unanimous; and
  - (ii) the applicable alternative proposals proposed by members of the Implementation Management Committee.

### 3.7 Implementation Oversight Committee

- (a) As soon as practicable after the date of this Agreement, Rio Tinto and BHP Billiton must establish an **Implementation Oversight Committee** made up of the designated future Owners' Council Representatives.
- (b) The role of the Implementation Oversight Committee will, subject to antitrust Law, be to:
  - (i) oversee the implementation of the WA Iron Ore JV, including directing the Implementation Management Committee and subject to paragraph (c) approving (with or without variations) recommendations, proposals or draft documents submitted by the Implementation Management Committee under clause 3.6(b) and matters referred to in clause 3.5(b)(iii); and
  - (ii) identify and agree any decisions to be taken by the Owners' Council immediately following Completion (in addition to the adoption of the Owners' Council Completion Resolutions), including the adoption of the Revised Accounting Policy as the Accounting Policy pursuant to clause 3.13 of the Joint Venture Agreement, subject only to such amendments to the Revised Accounting Policy as the Implementation Oversight Committee or the Owners' Council agree are necessary to ensure that the Revised Accounting Policy complies with clause 3.5(c).
- (c) All decisions of the Implementation Oversight Committee must be unanimous. The representatives of the BHP Billiton Group on the Implementation Oversight Committee will collectively have one vote

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and the representatives of the Rio Tinto Group on the Implementation Oversight Committee will collectively have one vote.

### 3.8 \* \* \*

- (a) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
  - (ii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*

## 4. Shareholder Meetings and shareholder approval materials

### 4.1 Shareholder Meetings

As soon as practicable after the conditions precedent in clauses 2.1(a) to 2.1(e) (inclusive) have been satisfied or waived, each of BHP Billiton and Rio Tinto must convene its Shareholder Meetings to be held at the earliest practicable date.

### 4.2 Form and Content

- (a) Each of BHP Billiton and Rio Tinto agree to consult with each other in good faith in relation to the form and content of their respective Shareholder Circulars and to take into account reasonable comments of the other.
- (b) Where common content (eg description of synergies) is to be included in each of the Shareholder Circulars, each of BHP Billiton and Rio Tinto must use their reasonable endeavours to agree such content.
- (c) Each of BHP Billiton and Rio Tinto must prepare its Shareholder Circular in compliance with the requirements (if any) imposed by applicable Laws.

### 4.3 Supply and use of information

- (a) Each of BHP Billiton and Rio Tinto must, to the extent permitted by Law and as expeditiously as practicable:
  - (i) supply to the other information related to the BHP Billiton Group (***BHP Billiton Information***) and Rio Tinto Group (***Rio Tinto Information***), respectively; and
  - (ii) assist in adapting that information,  
as reasonably required by the other to ensure that the other's Shareholder Circular complies with all applicable Laws, in reasonable time to allow the other to prepare the relevant documentation.
- (b) Until the Shareholder Meetings are held, each of BHP Billiton and Rio Tinto must notify the other if it becomes aware that any information provided pursuant to paragraph (a) is, or has become,

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misleading or deceptive or contains any material omissions and must provide any further information reasonably required by the other to ensure such information is no longer misleading or deceptive and does not contain any material omissions.

- (c) Each of BHP Billiton and Rio Tinto must obtain the consent of the other (which must not be unreasonably withheld) to the inclusion of Rio Tinto Information or BHP Billiton Information, respectively, in its Shareholder Circular and related materials and to the context in which such information appears.
- (d) Each of BHP Billiton and Rio Tinto must ensure that any Rio Tinto Information or BHP Billiton Information, respectively, provided to it pursuant to paragraph (a), is not used by it or any of its Related Corporations for any purpose other than the preparation of its Shareholder Circular and related materials.

### 4.4 Responsibility for own information

- (a) Each of BHP Billiton and Rio Tinto:
  - (i) must ensure that, at the time it is supplied and at the date of publication of the Shareholder Circulars, the BHP Billiton Information and the Rio Tinto Information, respectively, is not misleading or deceptive in any material respect (whether by omission or otherwise); and
  - (ii) will rely on the other to verify the information supplied by the other for inclusion in the Shareholder Circulars and related materials.
- (b) Rio Tinto must indemnify BHP Billiton, in its own right and as trustee for its Related Corporations, its officers and employees, and the officers and employees of its Related Corporations, (the ***BHP Billiton Indemnified Parties***) against any costs or liability suffered or incurred by any BHP Billiton Indemnified Party arising from the Rio Tinto Information containing any material statement which is false or misleading (including because of any material omission).
- (c) BHP Billiton must indemnify Rio Tinto, in its own right and as trustee for its Related Corporations, its officers and employees, and the officers and employees of its Related Corporations, (the ***Rio Tinto Indemnified Parties***) against any costs or liability suffered or incurred by any Rio Tinto Indemnified Party arising from the BHP Billiton Information containing any material statement which is false or misleading (including because of any material omission).

## 5. Reorganisation

### 5.1 Incorporation of the Manager

At or before Completion, each of Rio Tinto and BHP Billiton must:

- (a) jointly with the other, procure the incorporation of the Manager;
- (b) procure that each of BHP Billiton Minerals Pty Ltd and Hamersley Holdings Limited subscribes for or acquires half the issued shares of the Manager and causes the Manager to adopt a constitution agreed and initialled by Rio Tinto and BHP Billiton; and
- (c) nominate and procure the appointment of directors of the Manager in accordance with clause 4.4 of the Joint Venture Agreement.

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### 5.2 Constitutions of JV Entities

At or before Completion, each of Rio Tinto and BHP Billiton must procure that each JV Entity which is its wholly owned Subsidiary has the following provisions in its constitution:

- (a) a provision which permits the directors to act in the best interests of the holding company of the JV Entity if:
  - (i) the director acts in good faith in the best interests of the holding company; and
  - (ii) the JV Entity is not insolvent at the time the director acts and does not become insolvent because of the director's act; and
- (b) a provision that provides that if a director, or a person who appointed the director, has an interest or a duty to an Owner and its Related Corporations in relation to a matter that relates to the affairs of the JV Entity, and the director complies with section 191 of the Corporations Act, then (subject to the Corporations Act):
  - (i) the director may be counted in a quorum at a board meeting that considers, and is entitled to vote on, any matter that relates to the interest or duty;
  - (ii) the JV Entity may proceed with any transaction that relates to the interest or duty and the director may participate in the execution of any relevant document by or on behalf of the JV Entity; and
  - (iii) the JV Entity cannot avoid the transaction merely because of the existence of the interest or duty.

### 5.3 Obligations to undertake pre-Completion reorganisations

Before Completion:

- (a) \* \* \*
  - (i) Rio Tinto must, subject to clause 5.7(a), implement and complete the reorganisation steps set out in item 1.1 of Part 1 of Schedule 7; and
  - (ii) BHP Billiton must, subject to clause 5.7(b), implement and complete the reorganisation steps set out in item 2.1 of Part 2 of Schedule 7.
- (b) Each of Rio Tinto and BHP Billiton must keep the other informed on a reasonably regular basis in respect of the actions taken by it to implement and complete reorganisation steps and the progress achieved.

### 5.4 Other reorganisation steps

- (a) As soon as practicable after the date of this Agreement \* \* \*
  - (i) Rio Tinto must, subject to clause 5.8(a), use its reasonable endeavours to implement and complete the reorganisation steps set out in item 1.2 of Part 1 of Schedule 7; and
  - (ii) BHP Billiton must:
    - (A) subject to clause 5.8(b) use its reasonable endeavours to implement and complete the reorganisation steps set out in items 2.2(a) and 2.2(b) of Part 2 of Schedule 7; and

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- (B) subject to clause 5.8(c), use its reasonable endeavours to cause \* \* \* to be made available to the WA Iron Ore JV \* \* \*
- (b) Each of Rio Tinto and BHP Billiton acknowledges that the obligations in paragraphs (a)(i) and (a)(ii), respectively, \* \* \*
- (c) Each of Rio Tinto and BHP Billiton must keep the other informed on a reasonably regular basis in respect of the actions taken to implement and complete reorganisation steps and the progress achieved.
- (d) BHP Billiton must bear any loss or liability suffered or incurred by any Rio Tinto Indemnified Party:
- (i) \* \* \*
- (ii) \* \* \*
- and such loss or liability will be an Excluded Liability.
- (e) Where:
- (i) \* \* \*
- (ii) \* \* \*
- BHP Billiton must ensure that \* \* \* and all costs incurred in discharging this obligation will be Excluded Liabilities.
- (f) In relation to all amounts for which BHP Billiton is liable under paragraphs (d) and (e), BHP Billiton must procure that:
- (i) the relevant BHP Billiton JV Entity applies funds which are Excluded Assets; or
- (ii) the BHP Billiton Owner subscribes for Shares in the BHP Billiton Issuer,
- in amounts sufficient (in aggregate) to cover BHP Billiton's liability. BHP Billiton must procure that the BHP Billiton Issuer applies all proceeds of subscription to meet the costs for which BHP Billiton is liable under paragraphs (d) and (e).

### 5.5 Additional reorganisation steps

- (a) Without limiting the operation of clause 3.6(b)(iv), if Rio Tinto or BHP Billiton \* \* \* Rio Tinto or BHP Billiton (as applicable) must:
- (i) promptly inform the other \* \* \*; and
- (ii) subject to clause 5.8, \* \* \* as soon as is reasonably practicable, in the manner agreed with the other.
- (b) \* \* \*

### 5.6 Corporate structure

Each of Rio Tinto and BHP Billiton agrees that, except as contemplated by the Transaction Documents, \* \* \* without the prior consent of the other.

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### 5.7 Conditions precedent to pre-Completion reorganisations

Each of Rio Tinto and BHP Billiton acknowledges and agrees that:

- (a) Rio Tinto will only be required pursuant to clause 5.3(a)(i) to implement and complete the reorganisation steps set out in item 1.1 of Part 1 of Schedule 7; and
- (b) BHP Billiton will only be required pursuant to clause 5.3(a)(ii) to implement and complete the reorganisation steps set out in item 2.1 of Part 2 of Schedule 7,

once each Condition Precedent in clauses 2.1(a) to 2.1(f) has been fulfilled in accordance with clause 2.1 or its non-fulfilment has been waived in accordance with clause 2.2.

### 5.8 Conditions precedent to other reorganisations

- (a) Rio Tinto will only be required to implement and complete the other reorganisation steps pursuant to clause 5.4(a)(i) and any reorganisation steps identified pursuant to clause 5.5:
  - (i) where the reorganisation step involves \* \* \* at the time the reorganisation step is implemented;
  - (ii) once it receives the written consent of:
    - (A) \* \* \*
    - (B) \* \* \*
  - (iii) once the Treasurer of the Commonwealth of Australia either:
    - (A) ceases to be empowered to make an order under Part II of the Foreign Acquisitions and Takeovers Act 1975 (Cth) in respect of Rio Tinto implementing its other reorganisation steps pursuant to clause 5.4(a)(i), with no order being made; or
    - (B) gives advice in writing of a decision by or on behalf of the Treasurer stating or to the effect that the Commonwealth Government of Australia has no objection and that advice does not impose any conditions in relation to Rio Tinto implementing its other reorganisation steps pursuant to clause 5.4(a)(i); and
  - (iv) to the extent that the completion of the reorganisation step or steps would not result in any Rio Tinto Group entity incurring any income tax or capital gains tax, land tax or any ad valorem Stamp Duty.
- (b) BHP Billiton will only be required to implement and complete the other reorganisation steps pursuant to clause 5.4(a)(ii) (A) and any reorganisation steps identified pursuant to clause 5.5:
  - (i) where the reorganisation step involves \* \* \* at the time the reorganisation step is implemented;
  - (ii) once it receives the written consent (if required) of:
    - (A) \* \* \*
    - (B) \* \* \*
  - (iii) once the Treasurer of the Commonwealth of Australia either:
    - (A) ceases to be empowered to make an order under Part II of the Foreign Acquisitions and Takeovers Act 1975 (Cth) in respect of BHP Billiton implementing its other reorganisation steps pursuant to clause 5.4(a)(ii)(A), with no order being made; or

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- (B) gives advice in writing of a decision by or on behalf of the Treasurer stating or to the effect that the Commonwealth Government of Australia has no objection and that advice does not impose any conditions in relation to BHP Billiton implementing its other reorganisation steps pursuant to clause 5.4 (a)(ii)(A); and
- (iv) to the extent that the completion of the reorganisation step or steps would not result in any BHP Billiton Group entity incurring any income tax or capital gains tax, land tax or any ad valorem Stamp Duty; and
- (c) BHP Billiton will only be required to cause \* \* \* to the extent that doing so would not result in any BHP Billiton Group entity incurring any income tax or capital gains tax, land tax or any ad valorem Stamp Duty.

### 5.9 Duty on earlier reorganisations

- (a) **(Rio Tinto)** To the extent that:
  - (i) any reorganisation step set out in Schedule 7, or any additional reorganisation step identified pursuant to clause 5.5, that Rio Tinto is required to implement and complete results in the revocation of, or assessment or reassessment in relation to, any connected entity exemption or corporate reconstruction relief from the payment of Stamp Duty in any jurisdiction, or otherwise results in Stamp Duty; or
  - (ii) the issue of Debentures by the Rio Tinto Issuer results in the revocation of, or assessment or reassessment in relation to, any connected entity exemption or corporate reconstruction relief from the payment of Stamp Duty in any jurisdiction, Rio Tinto must bear any Stamp Duty that may be payable (and, for the avoidance of doubt, such Stamp Duty must not be borne by a JV Entity); and
- (b) **(BHP Billiton)** To the extent that:
  - (i) any reorganisation step set out in Schedule 7, or any additional reorganisation step identified pursuant to clause 5.5, that BHP Billiton is required to implement and complete results in the revocation of, or assessment or reassessment in relation to, any connected entity exemption or corporate reconstruction relief from the payment of Stamp Duty in any jurisdiction, or otherwise results in Stamp Duty; or
  - (ii) the issue of Debentures by the BHP Billiton Issuer results in the revocation of, or assessment or reassessment in relation to, any connected entity exemption or corporate reconstruction relief from the payment of Stamp Duty in any jurisdiction,

BHP Billiton must bear any Stamp Duty that may be payable (and, for the avoidance of doubt, such Stamp Duty must not be borne by a JV Entity).

## 6. Completion

### 6.1 Timing of Completion

- (a) Completion must occur on the third Business Day after the date on which the last of the Conditions Precedent referred to in clause 2.1(a) to (f) (inclusive) is satisfied or waived or such other date as Rio Tinto and BHP Billiton may agree (provided that date is before the End Date) (the **Completion Date**).

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- (b) On the Completion Date, Completion will not occur until each of the Conditions Precedent referred to in clause 2.1(g) is satisfied or waived.

### 6.2 Obligations at Completion

At Completion each of Rio Tinto and BHP Billiton must:

- (a) execute, deliver and, where relevant, complete the Completion Documents (other than any previously executed and delivered under clause 2.1(g)) (and cause any Rio Tinto Group entity or BHP Billiton Group entity named as a party to a Completion Document to execute, deliver and, where relevant, complete it (as applicable) (other than any previously executed and delivered under clause 2.1(g));
- (b) procure that BHP Billiton Minerals Pty Ltd and Hamersley Holdings Limited cause the Manager to execute, deliver and, where relevant, complete the Completion Documents to which it is a party;
- (c) as **Proposing Party**, provide a notice (the **Capital Projects Notice**) to the other (the **Receiving Party**) specifying any **New Capital Expansion Project**, being:
  - (i) any expansion capital project in respect of a Relevant Period Iron Ore Asset that is not listed in Schedule 4 which is in execution at the time of Completion (an **Additional Capital Project**), including a copy of the completed Feasibility Study relating to that project (together with, subject to antitrust Law, the financial model, study reports and supporting information that were generated by the Proposing Party in connection with the Feasibility Study); or
  - (ii) \* \* \*
- (d) discharge all of its other obligations arising on Completion under any Transaction Document;
- (e) procure that:
  - (i) each of the Rio Tinto Owner and the BHP Billiton Owner subscribes for Debentures; and
  - (ii) each of the BHP Billiton Issuer and the Rio Tinto Issuer issues Debentures, in accordance with clauses 7.1 to 7.3 (inclusive); and
- (f) establish the Owners' Council pursuant to clause 3.1 of the Joint Venture Agreement and ensure that a duly convened Owners' Council meeting is held at which a quorum is present for the purposes of passing the Owners' Council Completion Resolutions.

### 6.3 Inter-dependency

- (a) The obligations of Rio Tinto and BHP Billiton at Completion, as outlined in clause 6.2, are inter-dependent.
- (b) Each of Rio Tinto and BHP Billiton agrees it must discharge its obligations under clause 6.2 in the following order:
  - (i) execute, deliver and, where relevant, complete each Debenture Deed Poll (and cause any Rio Tinto Group entity or BHP Billiton Group entity named as a party to each Debenture Deed Poll to execute, deliver and, where relevant, complete it (as applicable)) and procure that:
    - (A) each of the Rio Tinto Owner and the BHP Billiton Owner subscribes for Debentures; and

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- (B) each of the BHP Billiton Issuer and the Rio Tinto Issuer issues Debentures, in accordance with clauses 7.1 to 7.3 (inclusive);
  - (ii) execute, deliver and, where relevant, complete the Joint Venture Agreement (and cause any Rio Tinto Group entity or BHP Billiton Group entity named as a party to the Joint Venture Agreement to execute, deliver and, where relevant, complete it (as applicable)); and
  - (iii) execute, deliver and, where relevant, complete each Ore Sales Agreement (and cause any Rio Tinto Group entity or BHP Billiton Group entity named as a party to each Ore Sales Agreement to execute, deliver and, where relevant, complete it (as applicable)),
- followed by all other obligations under clause 6.2, which will thereafter be performed simultaneously.

### 6.4 WA Iron Ore JV commencement

If Completion occurs, on and from the JV Commencement Date the WA Iron Ore JV will be deemed to be established.

## 7. Subscription for Debentures

### 7.1 Subscription for Debentures on Completion

On Completion, for the purpose of financing the Rio Tinto JV Entities and the BHP Billiton JV Entities, Rio Tinto and BHP Billiton, respectively, must procure that:

- (a) the Rio Tinto Owner subscribes for, and the BHP Billiton Issuer issues to the Rio Tinto Owner, Debentures with a face value of A\$10,000 each for a total subscription price determined in accordance with clause 7.2; and
- (b) the BHP Billiton Owner subscribes for, and the Rio Tinto Issuer issues to the BHP Billiton Owner, Debentures with a face value of A\$10,000 each for a total subscription price determined in accordance with clause 7.3.

### 7.2 Subscription Price payable by Rio Tinto and BHP Billiton opening cash amounts

- (a) The subscription price for the Debentures to be issued to the Rio Tinto Owner will equal 50% of the BHP Billiton JV Entities' estimated cash requirements for the first month after the JV Commencement Date, as identified in the First Budget, which amount will be payable in Australian dollars by the Rio Tinto Owner on Completion.
- (b) BHP Billiton must ensure that at Completion, the BHP Billiton JV Entities have cash on hand (contributed as equity or by application of Existing JV Deposits) equal to 50% of the BHP Billiton JV Entities' estimated cash requirements for the first month after the JV Commencement Date, as identified in the First Budget.
- (c) The cash amounts referred to in paragraphs (a) and (b) will be Iron Ore Assets and will be available to discharge JV Cash Costs of the BHP Billiton JV Entities arising on or after the JV Commencement Date in accordance with the Funding and Distribution Policy. Any cash amounts held by a BHP Billiton JV Entity at Completion that are additional to the amounts referred to in paragraphs (a) and (b) will be Excluded Assets.

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- (d) The cash amounts referred to in paragraphs (a) and (b) will be placed on Call Deposit in equal shares with the Rio Tinto Owner and the BHP Billiton Owner (or their Designated Finance Companies) in accordance with item 2.8 of the Funding and Distribution Policy.

### 7.3 Subscription Price payable by BHP Billiton and Rio Tinto opening cash amounts

- (a) The subscription price for the Debentures to be issued to the BHP Billiton Owner will equal:
  - (i) 50% of the Rio Tinto JV Entities' estimated cash requirements for the first month after the JV Commencement Date, as identified in the First Budget, which amount will be payable in Australian dollars by the BHP Billiton Owner on Completion; plus
  - (ii) the BHP Billiton Equalisation Investment, determined in accordance with item 1 of Schedule 8, which amount will be payable in US dollars by the BHP Billiton Owner on Completion. The number of Debentures to be subscribed for will be determined by converting the BHP Billiton Equalisation Investment into Australian dollars using the applicable Bloomberg Fix exchange rate (code: BFIX) reported by Bloomberg at 4pm (Sydney time) on the Completion Date.
- (b) Rio Tinto must ensure that at Completion, the Rio Tinto JV Entities have cash on hand (contributed as equity or by application of Existing JV Deposits) equal to 50% of the Rio Tinto JV Entities' estimated cash requirements for the first month after the JV Commencement Date, as identified in the First Budget.
- (c) The cash amounts referred to in paragraphs (a) and (b) will be Iron Ore Assets and will be available to discharge:
  - (i) JV Cash Costs of the Rio Tinto JV Entities arising on or after the JV Commencement Date in accordance with the Funding and Distribution Policy; and
  - (ii) the Agreed Opening Iron Ore Loans of the Rio Tinto Issuer.

Any cash amounts held by a Rio Tinto JV Entity at Completion, after satisfaction of Agreed Opening Iron Ore Loans, that are additional to the amounts referred to in paragraphs (a) and (b) will be Excluded Assets.
- (d) The cash amounts referred to in paragraphs (a) and (b), minus an amount equal to the Agreed Opening Iron Ore Loans, will be placed on Call Deposit in equal shares with the Rio Tinto Owner and the BHP Billiton Owner (or their Designated Finance Companies) in accordance with item 2.8 of the Funding and Distribution Policy.

### 7.4 Subscription for Debentures after Completion

- (a) For the purpose of financing the Rio Tinto JV Entities and the BHP Billiton JV Entities, each of Rio Tinto and BHP Billiton, respectively, must procure that:
  - (i) if the Adjustment Amount determined in accordance with Schedule 8 is positive, the Rio Tinto Owner subscribes for, and the BHP Billiton Issuer issues to the Rio Tinto Owner, further Debentures with a face value of A\$10,000 each for a subscription price equal to the Adjustment Amount; or
  - (ii) if the Adjustment Amount determined in accordance with Schedule 8 is negative, the BHP Billiton Owner subscribes for, and the Rio Tinto Issuer issues to the BHP Billiton Owner, further Debentures with a face value of A\$10,000 each for a subscription price equal to the Adjustment Amount,

on the fifth Business Day after finalisation of the Final Completion Accounts under Schedule 8.

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- (b) For the purpose of this clause 7.4, the subscription price will be payable in US dollars. The number of Debentures to be subscribed for will be determined by converting the Adjustment Amount into Australian dollars using the applicable Bloomberg Fix exchange rate (code: BFIX) reported by Bloomberg at 4pm (Sydney time) on the subscription date.
- (c) Any cash amounts subscribed for Debentures under this clause 7.4 will be Excluded Assets.

### 7.5 Further subscription for Debentures after Completion

- (a) If, after Completion, item 2.6(b) or item 6 of Schedule 8 requires:
  - (i) the BHP Billiton Owner to subscribe for further Debentures, BHP Billiton must procure that the BHP Billiton Owner subscribes for, and Rio Tinto must procure that the Rio Tinto Issuer issues, further Debentures with a face value of A\$10,000 each for a subscription price equal to the amount required by items 2.6(b) or 6 of Schedule 8 (as applicable); or
  - (ii) the Rio Tinto Owner to subscribe for further Debentures, Rio Tinto must procure that the Rio Tinto Owner subscribes for, and BHP Billiton must procure that the BHP Billiton Issuer issues, further Debentures with a face value of A\$10,000 each for a subscription price equal to the amount required by items 2.6(b) or 6 of Schedule 8 (as applicable).
- (b) For the purpose of this clause 7.5, the subscription price will be payable in US dollars. The number of Debentures to be subscribed for will be determined by converting the amount required by items 2.6(b) or 6 of Schedule 8 (as applicable) into Australian dollars using the applicable Bloomberg Fix exchange rate (code: BFIX) reported by Bloomberg at 4pm (Sydney time) on the subscription date.
- (c) Any cash amounts subscribed for Debentures under this clause 7.5 will be Excluded Assets.

### 7.6 Method of payment of subscription price for Debentures

All payments required to be made under this clause 1 must be made in accordance with item 1.5 of Schedule 1.

## 8. New Capital Expansion Projects, other capital expansion projects and studies

- (a) If a Capital Projects Notice given pursuant to clause 6.2(c) concerns an Additional Capital Project involving capital expenditure of less than US\$250 million, then that Additional Capital Project will be treated as within the scope of the WA Iron Ore JV on and from the JV Commencement Date and will be a JV New Capital Expansion Project.
- (b) If a Capital Projects Notice given pursuant to clause 6.2(c) concerns:
  - (i) an Additional Capital Project \* \* \* ; or
  - (ii) an Additional Capital Project that the parties otherwise agree this clause 8(b) applies to,then that Additional Capital Project will be treated as within the scope of the WA Iron Ore JV on and from the JV Commencement Date and will be a JV New Capital Expansion Project.
- (c) If a Capital Projects Notice is given pursuant to clause 6.2(c) which does not relate to an Additional Capital Project of the kind referred to in paragraphs (a) or (b):
  - (i) the New Capital Expansion Project will be treated as within the scope of the WA Iron Ore JV on and from the JV Commencement Date and will be a JV New Capital Expansion Project

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unless within 180 days of receipt of the Capital Projects Notice, the Receiving Party elects by written notice to the Proposing Party to exclude the New Capital Expansion Project from the scope of the WA Iron Ore JV. If the Receiving Party so elects, the Proposing Party may, within 90 days after receiving the notice of election, elect by notice to the Receiving Party to undertake the New Capital Expansion Project, in which case it will be treated as a Sole Risk Development or a Sole Risk Opportunity (as applicable) pursuant to clause 8 of the Joint Venture Agreement on and from the JV Commencement Date, and any liabilities attaching to it (other than study costs) will be Sole Risk Liabilities, and the adjustment contemplated by item 2.6 of Schedule 8 and clause 7.5 must be determined and made (***Agreed Sole Risk Adjustment***);

- (ii) until the election is made by the Receiving Party, or the period referred to in paragraph (c)(i) in which the Receiving Party may make the election expires:
    - (A) until the JV Commencement Date, the Proposing Party agrees to continue to implement all relevant Additional Capital Projects in the form described in the Capital Projects Notice (subject to the operation of Schedule 8) at its own cost; and
    - (B) from the JV Commencement Date, in accordance with clause 4.3(f) of the Joint Venture Agreement, the Manager will continue to implement all relevant Additional Capital Projects in the form described in the Capital Projects Notice and the Proposing Party must pay any amounts requested by the Manager to fund the Additional Capital Project (***NCEP Calls***) by way of loans to the Manager (***Post-Commencement NCEP Loans***) on the same terms as the Participant Loans (except that the interest rate on the Post-Commencement NCEP Loans, until converted to Participant Loans or Sole Risk Loans, will be the rate at which amounts are Escalated);
  - (iii) if no election is made to exclude the New Capital Expansion Project, or the period referred to in paragraph (c)(i) in which the Receiving Party may make the election expires, the Receiving Party must provide a Participant Loan for its Participating Share of the Escalated NCEP Calls relating to that project, and the proceeds of that Participant Loan must be applied to repay half of the relevant Post-Commencement NCEP Loans and the remaining balance of those Post-Commencement NCEP Loans will automatically convert to a Participant Loan; and
  - (iv) if an election is made by the Receiving Party under paragraph (c)(i) to exclude the New Capital Expansion Project, all NCEP Loans will automatically convert to Sole Risk Loans.
- (d) Where a capital expansion project in relation to a Relevant Period Iron Ore Asset is not identified in Schedule 4 or in a Capital Projects Notice given pursuant to clause 6.2(c), then:
- (i) if a study has been conducted that would fall within the definition of a Preliminary Study if conducted by the Manager for the WA Iron Ore JV, it will be treated as a Preliminary Study and clauses 8.2(a) to 8.2(c), inclusive, of the Joint Venture Agreement will apply to that project;
  - (ii) if a study has been conducted that would fall within the definition of a Pre-Feasibility Study if conducted by the Manager for the WA Iron Ore JV, it will be treated as a Pre-Feasibility Study and clauses 8.2(d) to 8.2(f), inclusive, of the Joint Venture Agreement will apply to that project;
  - (iii) if a study has been conducted that would fall within the definition of a Feasibility Study if conducted by the Manager for the WA Iron Ore JV, it will be treated as a Feasibility Study and clauses 8.2(g) to 8.2(i) of the Joint Venture Agreement will apply to that project; and

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- (iv) if a definitive proposal has been developed for a New Opportunity, clause 8.4(c) of the Joint Venture Agreement will apply to it.
- (e) Subject to Existing JV Arrangements, if a study is being conducted by a JV Entity at the JV Commencement Date which would fall within the definition of Preliminary Study, Pre-Feasibility Study or Feasibility Study if conducted by the Manager for the WA Iron Ore JV, the Manager must continue and complete that study as if it had been initiated by the Manager under the appropriate provisions in clause 8.2 of the Joint Venture Agreement.
- (f) If at the JV Commencement Date either Rio Tinto or BHP Billiton is aware of a potential New Opportunity for which no definitive proposal has been developed but which it may wish to pursue, it must procure that the Rio Tinto Owner or the BHP Billiton Owner (as applicable) gives notice to the Manager under clause 8.4(a)(i) of the Joint Venture Agreement as soon as reasonably practicable after the JV Commencement Date and the provisions of clause 8.4 of the Joint Venture Agreement will apply to the New Opportunity which is the subject of the notice.

### 9. Employment contract for CEO

Each of Rio Tinto and BHP Billiton acknowledges that the form of the employment contract for the CEO, initialled by Rio Tinto and BHP Billiton for the purposes of identification on the date of this Agreement, is in a form acceptable to it for presentation to the proposed CEO, and each must use reasonable endeavours to procure that the CEO is employed on the terms of that employment contract.

### 10. Historical Iron Ore Asset Information

#### 10.1 Availability of Historical Iron Ore Asset Information

- (a) Subject to antitrust Law, on and from Completion and until the JV Commencement Date, each of BHP Billiton and Rio Tinto must make available, and must procure that each of its Related Corporations makes available, to the Implementation Management Committee any Historical Iron Ore Asset Information requested by the Implementation Management Committee.
- (b) On and from the JV Commencement Date, each Owner must make available to the Manager any Historical Iron Ore Asset Information requested by the Manager.
- (c) Where documents required to be made available under this clause contain both information falling within and information falling outside the definition of Historical Iron Ore Asset Information, information in the latter category may be excluded or redacted.

#### 10.2 Information within control of JV Entities

At any time, each of BHP Billiton and Rio Tinto may remove any information from the control of a BHP Billiton JV Entity or a Rio Tinto JV Entity, respectively, which does not constitute Historical Iron Ore Asset Information.

### 11. \* \* \*

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



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### 12. WA Iron Ore JV Accounting Systems

- (a) As soon as reasonably practicable, BHP Billiton and Rio Tinto:
  - (i) must jointly with the other, procure that WA Iron Ore JV accounting systems are established on a single integrated SAP system in compliance with clause 4.10(b) of the Joint Venture Agreement and the ERP Service and Licence Agreement (*WA Iron Ore JV Accounting Systems*); and
  - (ii) may conduct a detailed review of the WA Iron Ore JV Accounting Systems prior to their commencing operation, and to the extent necessary, each other's accounting systems, for the purposes of satisfying themselves and the Manager that the systems are established in compliance with clause 4.10(b) of the Joint Venture Agreement and the ERP Service and Licence Agreement.
- (b) If the WA Iron Ore Accounting Systems are not established by the JV Commencement Date, prior to the JV Commencement Date each Owner:
  - (i) must ensure that interim accounting rules, systems and procedures are established (which may rely on existing systems) which supply each of Rio Tinto and BHP Billiton and the Manager with the information required to prepare all accounting records and reports in respect of JV Operations after the JV Commencement Date in compliance with clause 4.10(b) of the Joint Venture Agreement and the ERP Service and Licence Agreement (*Interim Accounting Systems*); and
  - (ii) may conduct a detailed review of the Interim Accounting Systems, and to the extent necessary, the other Owner's accounting systems, for the purposes of satisfying itself that the Interim Accounting Systems will supply each of Rio Tinto and BHP Billiton and the Manager with the information required to prepare all accounting records and reports in respect of JV Operations from the JV Commencement Date in compliance with clause 4.10(b) of the Joint Venture Agreement and the ERP Service and Licence Agreement.
- (c) Following the review of the accounting systems pursuant to paragraphs (a) and (b), and prior to their establishment, Rio Tinto and BHP Billiton must consult in good faith to determine such adjustments, if any, as may need to be made to the systems so as to ensure that they are compliant with clause 4.10(b) of the Joint Venture Agreement and the ERP Service and Licence Agreement, and the cost of those adjustments.
- (d) The cost of making adjustments to the accounting systems agreed by Rio Tinto and BHP Billiton following a review will be borne by whichever of Rio Tinto or BHP Billiton's systems are deficient, unless, following discussions in good faith, Rio Tinto and BHP Billiton agree otherwise.

### 13. Undisclosed Liabilities

- (a) The WA Iron Ore JV will bear all Iron Ore Liabilities, except:
  - (i) Undisclosed Liabilities to the extent BHP Billiton or Rio Tinto must bear those liabilities pursuant to paragraph (b); and
  - (ii) as otherwise provided in the Transaction Documents.
- (b) If Undisclosed Liabilities:
  - (i) attaching to Iron Ore Assets of the Rio Tinto JV Entities exceed US\$300 million in aggregate, Rio Tinto will bear the amount of those Undisclosed Liabilities in excess of US\$300 million, and that excess amount will be an Excluded Liability; or

## Implementation Agreement

- (ii) attaching to Iron Ore Assets of the BHP Billiton JV Entities exceed US\$300 million in aggregate, BHP Billiton will bear the amount of those Undisclosed Liabilities in excess of US\$300 million, and that excess amount will be an Excluded Liability.

To the extent that specific apportionment for a liability cannot be made by reference to specific events of causation, liabilities of a gradual or recurring nature which relate to periods both before and after the Effective Date will be borne on a time apportionment basis.

- (c) For the purposes of paragraph (b), any individual Undisclosed Liability that is less than US\$50 million (not being one of a number of claims arising from substantially the same facts, matters or circumstances, which, in aggregate, exceed US\$50 million) will be disregarded for the purposes of determining whether Undisclosed Liabilities, when aggregated, exceed US\$300 million.
- (d) For the purposes of this clause 13, Undisclosed Liabilities will be calculated after allowing for any reduction in present or future Tax, Tax rebate or Tax credit received or receivable by the relevant JV Entity in relation to the Undisclosed Liability.
- (e) The Manager in accordance with clause 4.3(f) of the Joint Venture Agreement and each of Rio Tinto and BHP Billiton must notify the others as soon as practicable after it becomes aware of any individual Undisclosed Liability which is a claim in the amount of US\$50 million or more.
- (f) If:
  - (i) Rio Tinto is required to bear Undisclosed Liabilities in accordance with paragraph (b)(i), then Rio Tinto must procure that:
    - (A) the relevant Rio Tinto JV Entity applies funds which are Excluded Assets; or
    - (B) the Rio Tinto Owner subscribes for Shares in the Rio Tinto Issuer,in amounts sufficient (in aggregate) to cover Rio Tinto's liability (ie the amount by which those Undisclosed Liabilities exceed US\$300 million). Rio Tinto must procure that the Rio Tinto Issuer applies all proceeds of subscription to meet the amount of the excess; and
  - (ii) BHP Billiton is required to bear Undisclosed Liabilities in accordance with paragraph (b)(ii), then BHP Billiton must procure that:
    - (A) the relevant BHP Billiton JV Entity applies funds which are Excluded Assets; or
    - (B) the BHP Billiton Owner subscribes for Shares in the BHP Billiton Issuer,in amounts sufficient (in aggregate) to cover BHP Billiton's liability (ie the amount by which those Undisclosed Liabilities exceed US\$300 million). BHP Billiton must procure that the BHP Billiton Issuer applies all proceeds of subscription to meet the amount of the excess.

Obligations under this paragraph must be discharged within 45 Business Days of notification of those Undisclosed Liabilities to Rio Tinto or BHP Billiton, as applicable, by the Manager.

- (g) Where Rio Tinto or BHP Billiton, as applicable (the **Responsible Party**), is required to bear Undisclosed Liabilities in accordance with paragraph (b), it must indemnify BHP Billiton or Rio Tinto, as applicable (the **Indemnified Party**), against any loss or liability suffered or incurred by the Indemnified Party, as a result of the Responsible Party failing to ensure that the relevant Rio Tinto JV Entity or BHP Billiton JV Entity has sufficient funds to cover the amount of Undisclosed Liabilities it is required to bear in accordance with paragraph (b) (**an Indemnified Party Claim**).
- (h) The Responsible Party:
  - (i) is responsible for conducting, negotiating, defending or settling any claim in relation to an Undisclosed Liability, to the extent that it is obliged to bear the majority of that Undisclosed Liability in accordance with this clause 13, at its own expense; and

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- (ii) must be consulted in the conduct, negotiation, defence or settlement of any claim in relation to any individual Undisclosed Liability, where the claim is in the amount of US\$50 million or more.
- (i) At the Responsible Party's expense, both the Manager, in accordance with clause 4.3(f) of the Joint Venture Agreement, and the Indemnified Party must provide such assistance in relation to the claim as the Responsible Party reasonably requests.

### 14. Debt at JV Commencement Date

#### 14.1 \* \* \*

- \* \* \*
- (a) \* \* \*
- (b) \* \* \*
- \* \* \*
- (c) \* \* \*
- (d) \* \* \*

#### 14.2 Intra-group Debt

- (a) Each of BHP Billiton and Rio Tinto must procure that, as at the start of the JV Commencement Date:
  - (i) in the case of BHP Billiton, neither the BHP Billiton Issuer nor any of its subsidiaries which are BHP Billiton JV Entities or which directly or indirectly hold shares in BHP Billiton JV Entities; and
  - (ii) in the case of Rio Tinto, neither the Rio Tinto Issuer nor any of its subsidiaries which are Rio Tinto JV Entities or which directly or indirectly hold shares in Rio Tinto JV Entities,has any Intra-group Debt, except for:
  - (iii) any Agreed Opening Iron Ore Loans;
  - (iv) any Agreed Opening Excluded Loans;
  - (v) any obligation to counter-indemnify an Affiliate in respect of an Owner Guarantee; and
  - (vi) any Iron Ore Liabilities in respect of transactions approved by the Implementation Oversight Committee or agreed between Rio Tinto and BHP Billiton.
- (b) Each of BHP Billiton and Rio Tinto must procure that, before the JV Commencement Date any Intra-group Debt that is not permitted by paragraphs (a)(iii) to (a)(vi) (inclusive) is either discharged and extinguished in full or is converted to equity, such discharge or conversion to equity to be done:
  - (i) in the case of a wholly-owned subsidiary, in such manner as to ensure that the relevant entity remains a wholly-owned subsidiary of the BHP Billiton Issuer or the Rio Tinto Issuer (as the case requires); and
  - (ii) in all cases, in such manner as to ensure that no Stamp Duty or other Tax liability arises.
- (c) If after subscription for, and issue of, all Debentures at Completion pursuant to clause 7.3, any part of Rio Tinto's or BHP Billiton's Agreed Opening Iron Ore Loans remain outstanding, the outstanding balance will be converted to an Excluded Loan of Rio Tinto or BHP Billiton (as applicable) from Completion.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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### 14.3 Existing JV Deposits

Amounts held on deposit by a JV Entity pursuant to an Existing JV Arrangement will constitute Excluded Assets of the Owner in relation to the JV Entity, except for:

- (a) any amounts which BHP Billiton elects to have treated as part of the cash on hand of BHP Billiton JV Entities at Completion, pursuant to clause 7.2(b); and
- (b) any amounts which Rio Tinto elects to have treated as part of the cash on hand of Rio Tinto JV Entities at Completion, pursuant to clause 7.3(b).

### 15. Indemnified Tax Liabilities

- (a) Rio Tinto will bear all Indemnified Tax Liabilities of the Rio Tinto Group, and be entitled to the benefit of all Indemnity-related Tax Assets of the Rio Tinto Group.
- (b) BHP Billiton will bear all Indemnified Tax Liabilities of the BHP Billiton Group, and be entitled to the benefit of all Indemnity-related Tax Assets of the BHP Billiton Group.
- (c) If:
  - (i) a Rio Tinto JV Entity incurs an Indemnified Tax Liability which Rio Tinto is required to bear in accordance with paragraph (a), then Rio Tinto must either discharge the Indemnified Tax Liability directly, or ensure that the relevant Rio Tinto JV Entity has access to sufficient funds which are Excluded Assets, through a Permitted Funding Mechanism, to discharge the liability; and
  - (ii) a BHP Billiton JV Entity incurs an Indemnified Tax Liability which BHP Billiton is required to bear in accordance with paragraph (b), then BHP Billiton must either discharge the Indemnified Tax Liability directly, or ensure that the relevant BHP Billiton JV Entity has access to sufficient funds which are Excluded Assets, through a Permitted Funding Mechanism, to discharge the liability,so that in either case the Indemnified Tax Liability is discharged no later than the due date for payment of the Indemnified Tax Liability.
- (d) Where Rio Tinto or BHP Billiton, as applicable, is the party required to bear an Indemnified Tax Liability in accordance with paragraph (a) or (b) (the **Responsible Party**), it must indemnify BHP Billiton or Rio Tinto, as applicable, (the **Indemnified Party**) against any loss or liability suffered or incurred by the Indemnified Party, as a result of the Responsible Party failing to comply with paragraph (c).
- (e) The Responsible Party is responsible for conducting, negotiating, defending or settling any claim in relation to an Indemnified Tax Liability or an Indemnity-related Tax Asset at its own expense.

### 16. Representations and warranties

#### 16.1 Warranties

- (a) Each of Rio Tinto and BHP Billiton gives the other the warranties in Part 1 of Schedule 9 as at the date of this Agreement and as at the JV Commencement Date.
- (b) BHP Billiton gives Rio Tinto the warranty in Part 3 of Schedule 9 as at the date of this Agreement.
- (c) Rio Tinto gives BHP Billiton the warranty in Part 2 of Schedule 9 as at the date of this Agreement.

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### 16.2 Acknowledgement

- (a) Each of Rio Tinto and BHP Billiton acknowledges that the other has executed this Agreement and agreed to take part in the transactions that this Agreement contemplates in reliance on the warranties given by the other pursuant to clause 16.1.
- (b) Each of Rio Tinto and BHP Billiton acknowledges that, except for the warranties given pursuant to clause 16.1, the other does not make any express or implied representation or warranty, including any representation or warranty as to the accuracy or completeness of the Due Diligence Materials.
- (c) Each of Rio Tinto and BHP Billiton acknowledges that it has made its own assessment of the Due Diligence Materials provided by BHP Billiton or Rio Tinto, respectively, and has made use of these Due Diligence Materials solely at its own risk.
- (d) To the full extent permitted by law, every condition, warranty, term, provision, representation or undertaking (whether express, implied, written, oral, collateral, statutory or otherwise), except for a warranty given pursuant to clause 16.1, is excluded.

### 16.3 Manager must notify Rio Tinto and BHP Billiton of breach

The Manager, in accordance with clause 4.3(f) of the Joint Venture Agreement, must notify Rio Tinto and BHP Billiton as soon as reasonably practicable after it becomes aware of a breach or potential breach of any warranty given pursuant to clause 16.1.

### 16.4 Rio Tinto indemnity

Rio Tinto must indemnify the BHP Billiton Indemnified Parties against any loss or liability suffered or incurred by any BHP Billiton Indemnified Party and arising from any warranty given by Rio Tinto not being true, complete and accurate.

### 16.5 BHP Billiton indemnity

BHP Billiton must indemnify the Rio Tinto Indemnified Parties against any loss or liability suffered or incurred by any Rio Tinto Indemnified Party and arising from any warranty given by BHP Billiton not being true, complete and accurate.

### 16.6 Limits on Claims

Rights to make any claim on the warranties under this clause 16 (a **Claim**) are limited as follows:

- (a) If either Rio Tinto or BHP Billiton makes a Claim it must give written notice of the Claim to the other (the **Claim Recipient**) (setting out in reasonable detail the nature of the Claim and the damages sought to the extent the amount can reasonably be determined) as soon as reasonably practicable after it becomes aware of the facts, matters or circumstances on which the Claim is based and in any event within two years of the JV Commencement Date.
- (b) No liability in respect of a Claim attaches to a Claim Recipient unless the aggregate amount of all Claims against it exceeds US\$250 million. A Claim Recipient will be liable in respect of all such Claims and not merely the excess. A Claim Recipient will not be liable for any single Claim which is less than US\$50 million and any single Claim less than US\$50 million (not being one of a number of claims arising from substantially the same facts, matters or circumstances, which, in aggregate, exceed US\$50 million) will be disregarded in calculating the aggregate amount of all Claims against a Claim Recipient.

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- (c) For the purpose of paragraph (b), the amount of a Claim will be calculated before allowing for any reduction in present or future Tax, Tax rebate or Tax credit received or receivable by the party in relation to the Claim.
- (d) A Claim Recipient is not liable to the other party for any amount equal to any reduction in present or future Tax, Tax rebate or Tax credit received or receivable by it or by any of its Related Corporations in relation to the amount or matter the subject of the Claim.
- (e) The respective liabilities of Rio Tinto and BHP Billiton in respect of Claims brought by them against each other will be netted off so that only the net amount, if any, by which the aggregate liability of one Claim Recipient for Claims exceeds the aggregate liability of the other for Claims, will be paid by the relevant Claim Recipient to the other. No payment will be made in respect of any Claims prior to the expiration of the two year period referred to in paragraph (a). If one Claim Recipient's liability for Claims pursuant to paragraph (b) exceeds US\$250 million but the other's liability for Claims is US\$250 million or less, then for the purposes of determining the net amount payable by one Claim Recipient to the other under this paragraph (e), a Claim Recipient will be deemed to be liable to make payments to the other under paragraph (b) even if the aggregate amount of its liability under paragraph (b) is US\$250 million or less.
- (f) Neither Rio Tinto nor BHP Billiton may make a Claim in respect of the amount of any Undisclosed Liabilities, which are to be borne in accordance with clause 13.

### 17. Public announcements and confidentiality

#### 17.1 Public announcements

- (a) Each of Rio Tinto and BHP Billiton must use its reasonable endeavours to agree the wording and timing of all public announcements and statements by both or either of them relating to the WA Iron Ore JV (including, subject to paragraph (b), any disclosure to any stock exchange) before any announcement or statement is made. Copies of any public announcement or statement must be given to each other in the most expeditious manner reasonably available.
- (b) Neither Rio Tinto nor BHP Billiton may make any public or press announcement concerning the WA Iron Ore JV without the prior approval of the other (such approval not to be unreasonably withheld or delayed), except to the extent required under any applicable legislation or other legal requirement or the rules or regulations of any recognised stock exchange which apply to it or any of its Related Corporations.

#### 17.2 Rio Tinto and BHP Billiton responsible for respective Related Corporations, officers and employees and professional advisers

- (a) Each of Rio Tinto and BHP Billiton must procure that its:
  - (i) Related Corporations;
  - (ii) directors, employees, officers and agents or of any of its Related Corporations (each an *officer* or an *employee*); and
  - (iii) professional advisers (including legal advisers and consultants) (*professional advisers*),comply with this clause 17 as if they were parties to this Agreement.
- (b) A breach of this clause 17 by a Related Corporation, officer or employee or professional adviser of Rio Tinto or BHP Billiton will be deemed to be a breach of this clause 17 by Rio Tinto or BHP Billiton, respectively.

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- (c) If a Related Corporation, officer or employee or professional adviser of Rio Tinto or BHP Billiton breaches this clause 17, the other will be entitled to all remedies available to it under this clause 17 or at Law as if the Related Corporation, officer or employee or professional adviser was a party.

### 17.3 Obligations of confidence

- (a) For the purposes of this clause 17, **Confidential Information** means the terms and conditions of the Transaction Documents and negotiations between Rio Tinto and BHP Billiton in relation to the Transaction Documents.
- (b) Each of Rio Tinto and BHP Billiton undertakes that it will not:
  - (i) disclose Confidential Information to any person or permit or cause any person to do anything that gives rise to or contributes to the creation of a requirement to disclose Confidential Information (other than as permitted by this clause 17 or as required by Law); or
  - (ii) use Confidential Information, except:
    - (iii) with the prior written approval of the other;
    - (iv) for the purposes of the Transaction Documents; or
    - (v) as otherwise permitted by this clause 17.
- (c) Each of Rio Tinto and BHP Billiton undertakes that it will:
  - (i) promptly do anything reasonably required by the other to prevent or restrain a breach or suspected breach of this clause 17 or any infringement or suspected infringement of the other whether by court proceedings or otherwise; and
  - (ii) inform the other immediately if it becomes aware that Confidential Information has been disclosed to an unauthorised third party.

### 17.4 Permitted disclosure

Subject to clauses 17.2, 17.3 and 17.5, each of Rio Tinto and BHP Billiton (each a **Disclosing Party**) may disclose Confidential Information:

- (a) **(Related Corporation)** to any of its Related Corporations;
- (b) **(officers and employees)** to its officers and employees;
- (c) **(professional advisers)** to its professional advisers;
- (d) **(lenders and underwriters)** to a bank or other financial institution (and its professional advisers including legal advisers) in connection with any loan or other financial accommodation or application for a loan or financial accommodation to it or to any of its Related Corporations, or the provision of underwriting for any issue of securities;
- (e) **(potential disposals)** in connection with any potential Disposal, Security Interest or investment;
- (f) **(required Disclosures)** to the extent required under any applicable Law or the rules or regulations of any recognised securities exchange which apply to it or to any of its Related Corporations;
- (g) **(legal proceedings)** if the disclosure is required for the purposes of any legal, administrative or other proceedings involving it or any of its Related Corporations;
- (h) **(duties)** if and to the extent that it may be reasonably necessary in the discharge of its duties and obligations under the Transaction Documents; and

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- (i) (**Authority**) if and to the extent that it may be reasonably necessary or desirable to disclose the information to any Authority in connection with applications for any Authorisations.

### 17.5 Conditions to disclosure

Any disclosure:

- (a) under clause 17.4(d) may only be made if the person to whom disclosure is to be made first agrees with the Disclosing Party, in a form enforceable by:
  - (i) BHP Billiton, where Rio Tinto is the Disclosing Party; or
  - (ii) Rio Tinto, where BHP Billiton is the Disclosing Party, and which is no less onerous than the requirements of this clause 17, that the information concerned must not be disclosed to any other person for any purpose, and such disclosure may only be made for the purposes of satisfying the person to whom disclosure is made as to the value and commercial viability of the proposed transaction; and
- (b) under clauses 17.4(a) to (c) (inclusive) and (i) may only be made if the person to whom disclosure is to be made is informed of the confidential nature of the information and required to, in the case of an Authority, to the extent possible, respect that confidentiality.

### 17.6 Form of Disclosure

To the extent possible without breaching any applicable Law and despite clause 17.1, a Disclosing Party which is required to disclose Confidential Information by Law must not disclose Confidential Information under clause 17.4 by means of a public announcement, public document, stock exchange release or otherwise without first obtaining the other's consent to the form of that announcement, release or other disclosure, which consent must not be unreasonably withheld or delayed.

### 17.7 Other obligations of confidentiality

The confidentiality undertaking contained in this Agreement will be in addition to obligations of the parties under the Confidentiality Agreement and will in no way derogate from the obligations of Rio Tinto and BHP Billiton and the Manager in respect of secret and confidential information at law, in equity or under any statute or trade or professional custom or use.

### 17.8 Termination

This clause 17 will immediately terminate and be of no further force or effect when clause 14 of the Joint Venture Agreement becomes effective. Termination of this clause 17 will be without prejudice to the rights of each of BHP Billiton or Rio Tinto that have arisen prior to its termination.

## 18. GST

### 18.1 Definitions

For the purposes of this clause 18:

- (a) **Adjustment** has the meaning given by the GST Law;
- (b) **Consideration** has the meaning given by the GST Law;
- (c) **Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which the representative member of a GST Group or the Joint Venture Operator of a GST Joint Venture is entitled under GST Law;



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- (d) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply;
- (e) **GST Joint Venture** has the meaning given by the GST Law;
- (f) **Joint Venture Operator** has the meaning given by the GST Law;
- (g) **Tax Invoice** has the meaning given by the GST Law; and
- (h) **Taxable Supply** has the meaning given by the GST Law excluding the reference to Section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 18.2 Recovery of GST

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other Consideration for the Taxable Supply is provided. This clause 18.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

### 18.3 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

### 18.4 Adjustments

If an Adjustment occurs in relation to a Taxable Supply made under, by reference to or in connection with this Agreement, the GST Amount will be recalculated to reflect that Adjustment and an appropriate payment will be made between the parties.

### 18.5 Revenue exclusive of GST

Any reference in this Agreement to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.

### 18.6 Cost exclusive of GST

Any reference in this Agreement (other than in the calculation of Consideration or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of any Input Tax Credit entitlement.

## 19. Termination

In the event that the Iron Ore JV Framework Agreement is terminated under clauses 2.2 or 2.4 of that agreement, each party acknowledges and agrees that this Agreement, other than clauses 1 (Definitions and Interpretation), 17 (Public announcements and confidentiality), 18 (GST), 20 (Iron Ore JV Framework Agreement), 21 Governing law and jurisdiction and 22 (Ancillary Provisions), will immediately terminate and be of no further force or effect. Termination of this Agreement will be without prejudice to the rights of any of the parties that have arisen prior to termination, including any claim under the Iron Ore JV Framework Agreement.

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### 20. Iron Ore JV Framework Agreement

The parties acknowledge that the rights and obligations of the parties under clauses 2 (other than clause 2.1 and clause 2.3), 3, 4 and 5 of the Iron Ore JV Framework Agreement dated 5 June 2009 are not affected by this Agreement.

### 21. Governing law and jurisdiction

#### 21.1 Governing law

- (a) This Agreement is governed by the laws in force in Western Australia.
- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this Agreement on the basis that the courts of Western Australia are not an appropriate forum.

#### 21.2 Final judgment conclusive and enforceable

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this Agreement in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

#### 21.3 Dispute Resolution

- (a) Each of Rio Tinto and BHP Billiton must first seek to resolve any dispute under or in connection with this Agreement by discussions in good faith.
- (b) Rio Tinto or BHP Billiton may, by notice to the other, require any dispute (other than a dispute to be determined in accordance with clauses 3.4(f) and 22.10(b), and item 6 of Schedule 8) arising under or in connection with this Agreement to be referred to the chief executive officers of BHP Billiton and Rio Tinto (the *Chief Executives*). The Chief Executives must meet and seek in good faith to resolve the dispute within 30 days.
- (c) If the Chief Executives are unable to resolve the dispute within 30 days of referral to them, either Rio Tinto or BHP Billiton may refer the dispute to the chairpersons of BHP Billiton and Rio Tinto (the *Chairpersons*), who will meet and seek in good faith to resolve the dispute within 30 days.
- (d) If the Chairpersons are unable to resolve the dispute within 30 days of referral to them, then either Rio Tinto or BHP Billiton may commence proceedings in any court of competent jurisdiction.
- (e) Subject to paragraph (f), a party may not commence court proceedings in relation to any dispute arising out of or in connection with this Agreement until it has complied with the dispute resolution process set out in paragraphs (a) to (d).
- (f) Nothing in this clause 21 prevents Rio Tinto or BHP Billiton seeking appropriate injunctive or interlocutory relief at any time to preserve property or rights or to avoid losses that are not compensable in damages.
- (g) Each of Rio Tinto and BHP Billiton agrees that:
  - (i) it is responsible for its own costs in connection with the dispute resolution process; and
  - (ii) the costs of any suit, action or proceeding commenced under or in connection with this Agreement will be borne as between Rio Tinto and BHP Billiton as determined by the court of competent jurisdiction that hears the suit, action or proceeding.

## Implementation Agreement

### 21.4 Service of process

- (a) Each party agrees that service of all writs, process and summonses in any suit, action or proceeding under or in connection with this Agreement brought in Western Australia may be made on its registered or principal office for the time being in Australia.
- (b) Nothing contained or implied in this Agreement will in any way be taken to limit the ability of a party to:
  - (i) serve any writs, process or summonses; or
  - (ii) obtain jurisdiction over a party in other jurisdictions, in any manner permitted by Law.

## 22. Ancillary provisions

### 22.1 Notices

- (a) Any notice, demand, consent, certificate, approval, nomination, waiver or other similar communication given or made in connection with this Agreement (a **notice**):
  - (i) must be in writing and signed by the sender or a person duly authorised by the sender;
  - (ii) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:

(A) to Rio Tinto:

**Rio Tinto plc**  
2 Eastbourne Terrace  
London W2 6LG  
UNITED KINGDOM  
Attention: Company Secretary  
Fax +44 20 7781 1835

and to

**Rio Tinto Limited**  
Level 33, 120 Collins Street  
Melbourne VIC 3000  
AUSTRALIA  
Attention: Company Secretary  
Fax +61 3 9283 3151

(B) to BHP Billiton:

**BHP Billiton plc**  
Neathouse Place, Victoria  
London SW1V 1B  
UNITED KINGDOM  
Attention: Company Secretary  
Fax +44 20 7802 4111

and to

**BHP Billiton Limited**  
BHP Billiton Centre  
180 Lonsdale Street  
Melbourne VIC 3000  
Attention: Company Secretary  
Fax No: +61 3 9609 3015

## **Implementation Agreement**

- (iii) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

### **22.2 Severability**

If any provision of this Agreement is or becomes invalid, illegal or unenforceable, in whole or in part, under the law of any jurisdiction, the validity, legality or enforceability of such provision or part under the law of any other jurisdiction and the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired. If any provision of this Agreement, or its application to any person or entity or any circumstance, is invalid or unenforceable, each of Rio Tinto and BHP Billiton must make such suitable and equitable provision as is necessary in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

### **22.3 Variation**

No variation, modification or amendment of all or any part of this Agreement, including the schedules to this Agreement, will be effective unless in writing and signed by or on behalf of each of Rio Tinto and BHP Billiton.

### **22.4 No waiver**

No failure of any of the parties to exercise, or delay by it in exercising, any right, power or remedy in connection with this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.

### **22.5 Remedies**

- (a) Except as otherwise provided for in this Agreement, the rights and remedies of the parties are cumulative and not exclusive of rights and remedies provided by Law.
- (b) Without prejudice to any other rights and remedies which any party may have, each party acknowledges and agrees that damages would not be an adequate remedy for any breach by any party of the provisions of this Agreement and any party will be entitled to seek the remedies of injunction, specific performance and other equitable relief (and the parties will not contest the appropriateness or availability thereof), for any threatened or actual breach of any provision of this Agreement by any party and no proof of special damages will be necessary for the enforcement by any party of the rights under this Agreement.

### **22.6 No merger**

The rights and obligations of the parties:

- (a) will not merge on the completion of any transaction contemplated by this Agreement; and
- (b) will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### **22.7 Costs and expenses**

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
- (b) All Stamp Duty (including fines, penalties and interest) payable by a party on or in connection with this Agreement will be borne by that party.

## Implementation Agreement

### 22.8 Entire agreement

Subject to clauses 19 and 20, this Agreement contains the entire agreement between the parties in relation to its subject matter and supersedes all agreements, undertakings, negotiations and discussions, whether oral or written, of the parties.

### 22.9 Further assurances

Each party agrees to do anything necessary or desirable (including executing agreements, deeds, transfers, instruments and documents) to give full effect to this Agreement and the transactions contemplated by it.

### 22.10 Change of Law

(a) If there is a change in law or change in accounting standards that materially affects the operation of the Transaction Documents to the detriment of either Rio Tinto or BHP Billiton or its Related Corporations, then it, by notice to the other, may require the other to enter into good faith negotiations to seek to agree such amendments to the Transaction Documents as may be appropriate to mitigate the detriment, to the extent practicable and reasonable, and in a manner which operates fairly between Rio Tinto and BHP Billiton. A failure to agree amendments is not a dispute that may be referred for resolution in accordance with clause 21.3.

(b) \* \* \*  
(i) \* \* \*  
(ii) \* \* \*  
(iii) \* \* \*  
(iv) \* \* \*  
\* \* \*

### 22.11 Enurement

Except as provided in this Agreement, the provisions of this Agreement will enure for the benefit of, and be binding on, the parties and their respective successors and permitted assigns.

### 22.12 Civil Liability Act 2002

The parties agree that the *Civil Liability Act 2002* (WA) is expressly excluded from application to this Agreement and the Transaction Documents, or any relevant dispute, claim, action or other matter whatsoever arising out of or in connection with this Agreement and the Transaction Documents pursuant to Section 4A of that Act.

### 22.13 Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, each of which will be an original but all of which together will constitute one and the same instrument. This Agreement will not take effect until each party has executed at least one counterpart.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# Implementation Agreement

## Schedule 1

### Definitions and Interpretation

#### 1. Definitions and Interpretation

##### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**1936 Tax Act** means the *Income Tax Assessment Act 1936* (Cth).

**1997 Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

**ACCC** means the Australian Competition and Consumer Commission.

**Accounting Policy** means the accounting policy on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, as amended by the Revised Accounting Policy.

**Additional Capital Project** has the meaning given in clause 6.2(c)(i).

**Adjusters** means \* \* \*.

**Adjustment Amount** means the adjustment amount determined in accordance with item 2.1 of Schedule 8.

**Affiliate** means a Related Corporation, other than a Relevant JV Entity.

**Agreed Interest Rate** has the meaning given in the Funding and Distribution Policy, and also includes the Initial Agreed Interest Rate.

**Agreed Opening Excluded Loans** means:

- (a) any loans:
  - (i) due to Rio Tinto or an Affiliate from the Rio Tinto Issuer or any of its subsidiaries which are Rio Tinto JV Entities or which directly or indirectly hold shares in Rio Tinto JV Entities;
  - (ii) not exceeding, in aggregate, the Maximum Permitted Excluded Loan Balance; and
  - (iii) each of which, other than any loan from an Owner, is subject to a Creditor Deed Poll;
- (b) any loans:
  - (i) due to BHP Billiton or an Affiliate from the BHP Billiton Issuer or any of its subsidiaries which are BHP Billiton JV Entities or which directly or indirectly hold shares in BHP Billiton JV Entities;
  - (ii) not exceeding, in aggregate, the Maximum Permitted Excluded Loan Balance; and
  - (iii) each of which, other than any loan from an Owner, is subject to a Creditor Deed Poll; and
- (c) any Pre-Commencement NCEP Loans.

**Agreed Opening Iron Ore Loans** means:

- (a) the loan provided by Rio Tinto (or an Affiliate) to the Rio Tinto Issuer in the amount of not more than US\$5.8 billion; and

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(b) any other loans that Rio Tinto and BHP Billiton agree should constitute Agreed Opening Iron Ore Loans, each of which, other than any loan from an Owner, is subject to a Creditor Deed Poll.

**Agreed Policy Terms** means the terms and conditions contained in the policy initialled by Rio Tinto and BHP Billiton for the purposes of identification on the date of this Agreement.

**Agreed Practice Standard** means the performance standard specified in clause 4.3(b)(v) of the Joint Venture Agreement.

**Agreed Sole Risk Adjustment** has the meaning given in item 2.6 of Schedule 8.

**Agreed Term** has the meaning given in the Funding and Distribution Policy, and also includes the Initial Agreed Term.

**Approved JV Implementation Costs** means JV Implementation Costs that:

- (a) have been approved by the Implementation Oversight Committee; or
- (b) are otherwise agreed between Rio Tinto and BHP Billiton.

**Assessed Loss** has the meaning given in clause 3.2(c).

**Attributable** means attributed, allocated or apportioned in accordance with the Attribution Principles.

**Attribution Principles** means the principles in item 1.6 of the Funding and Distribution Policy on the assumption they applied during the Relevant Period in relation to Relevant Period Excluded Assets and Relevant Period Assets.

**Audit Committee** has the meaning given in Schedule 10.

**Auditor** has the meaning given in the Joint Venture Agreement.

**AUP** means the set of procedures, agreed by the Implementation Oversight Committee (and each of BHP Billiton's and Rio Tinto's auditors), for the Auditor to undertake the reviews contemplated by Schedule 8.

**Authorisations** means all permissions, licences, authorisations, approvals, consents, rulings, registrations, filings, lodgements, permits, franchises, agreements, notarisations, certificates, approvals, directions, declarations, authorities or exemptions from, by or with any Authority, including as may be required or obtained under the Mining Act or any State Agreement.

**Authority** means any minister, government or representative of a government or any governmental, quasi-governmental, local government, statutory, judicial, administrative, fiscal, tax, competition or regulatory authority, entity or other body, department, concession, tribunal, self-regulatory organisation established pursuant to statute or rules of a recognised stock exchange, instrumentality, agency, statutory corporation or public authority.

**Bank Bill Rate** in relation to any Month, means:

- (a) the average one month Australian bank bill rate by Reuters Monitor Service Page "BBSY" (rounded up, if necessary, to the nearest two decimal places) displayed at about 10:00 am (Melbourne time) on the first Business Day of that Month; or
- (b) if no such rate is displayed for any Month, then the Bank Bill Rate for that month in respect of any unpaid amount will be the rate which is the average (rounded up, if necessary to the nearest two decimal places) of the rates quoted to the person to which the relevant amount is owed by each of

## Implementation Agreement

three Australian banks selected by that person as the relevant bank's buying rate as at 10:00 am (Melbourne time) on the first Business Day of that Month for bank-accepted bills of exchange having a term of 30 days.

**Bao-HI Joint Venture** means the joint venture established by the Bao-HI Ranges Joint Venture Agreement dated 22 June 2002.

**Beasley Joint Venture** means the joint venture to be established pursuant to clause 3.1 of the Beasley River Joint Venture Agreement dated 28 October 2004.

**BHP Billiton Consolidated Group** means the Consolidated Group of which BHPBL is the Head Company.

**BHP Billiton Equalisation Investment** means the estimated BHP Billiton Equalisation Investment determined in accordance with item 1.1 of Schedule 8.

**BHP Billiton Group** means BHPBL, BHPBP and each of their Subsidiaries and BHP Billiton Group entity means an entity in the BHP Billiton Group.

**BHP Billiton Indemnified Parties** has the meaning given in clause 4.4(b).

**BHP Billiton Issuer** means the entity to be incorporated under clause 5.3(a)(ii) in accordance with item 2.1(c) of Part 2 of Schedule 7.

**BHP Billiton JV Entities** means:

- (a) as at the date of this Agreement, the BHP Billiton Issuer and the BHP Billiton Subsidiaries listed in, and which are engaged in the businesses described in, schedule 2 of the Joint Venture Agreement; and
- (b) any other wholly-owned Subsidiary of the BHP Billiton Issuer that subsequently acquires an Iron Ore Asset under clause 2.4(c) of the Joint Venture Agreement.

**BHP Billiton JVs** means:

- (a) the Mt Newman Joint Venture;
- (b) the Goldsworthy Joint Venture;
- (c) the Yandi Joint Venture;
- (d) the Wheelarra Joint Venture;
- (e) the JW4 Joint Venture;
- (f) the POSMAC Joint Venture; and
- (g) any other joint venture that a BHP Billiton JV Entity enters into after the date of the Joint Venture Agreement within the scope of the WA Iron Ore JV.

**BHP Billiton Marketing SPV** means the entity to be incorporated under clause 5.3(a)(ii) in accordance with item 2.1(d) of Part 2 of Schedule 7.

**BHP Billiton Iron Ore Owned R&D IP** has the meaning given in the Intellectual Property Management Agreement.

**BHP Billiton Owner** means the entity to be incorporated under clause 5.3(a)(ii) in accordance with item 2.1(a) of Part 2 of Schedule 7.

**BHP Billiton R&D IP** means the BHP Billiton Iron Ore Owned R&D IP and the BHP Billiton Iron Ore Relevant R&D IP.



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**BHP Billiton Iron Ore Relevant R&D IP** has the meaning given in the Intellectual Property Management Agreement.

**BHP Billiton RP Assets and Liabilities** has the meaning given in item 1.5 of Schedule 8.

**BHP Billiton State Agreements** means:

- (a) the *Iron Ore (Mount Newman) Agreement Act 1964* (WA);
- (b) the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* (WA);
- (c) the *Iron Ore (Goldsworthy-Nimngarra) Agreement Act 1972* (WA);
- (d) the *Iron Ore (Marillana Creek) Agreement Act 1991* (WA); and
- (e) the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1973* (WA).

**BHP Billiton Tax Funding Agreement** means the "BHP Billiton Tax Contribution Deed" dated 28 November 2003.

**Blending Agreement** means the blending agreement to be negotiated by Rio Tinto and BHP Billiton in accordance with clause 3.5(b)(vi), to be signed by the parties to that agreement at Completion.

**Board** means the board of directors of BHP Billiton or Rio Tinto, as applicable.

\* \* \*

**Budget** has the meaning given in the Joint Venture Agreement, and also includes the First Budget.

**Budget Overrun Percentage** has the meaning given in clause 3.10(l)(i) of the Joint Venture Agreement.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**Business Plan** has the meaning given in the Joint Venture Agreement, and also includes the First Business Plan.

**Call Deposits** has the meaning given in the Funding and Distribution Policy.

\* \* \*

\* \* \*

**Capital Projects Notice** has the meaning given in clause 6.2(c).

**Cash** means all cash and cash equivalents within the meaning of the definition of Cash Flows.

**Cash Flows** means, as the case requires, all inflows and outflows of cash and cash equivalents from operating, financing and investing activities, as determined in accordance with IAS 7 and AASB 107. References to **Cash inflows** and **Cash outflows** have a corresponding meaning.

**Cashflow Adjustment Amount** has the meaning given in item 2.2 of Schedule 8.

**CEO** means the chief executive officer of the Manager.

**CFR** has the meaning given in the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce (Incoterms) 2000 Edition, as replaced from time to time.

**Chairpersons** has the meaning given in clause 21.3(c).

**Channar Joint Venture** means the joint venture established by the Channar Mining Joint Venture Agreement dated 16 November 1987.

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## Implementation Agreement

**Chief Executives** has the meaning given in clause 21.3(b).

**Claim** has the meaning given in clause 16.6.

**Claim Recipient** has the meaning given in clause 16.6(a).

**Commissioner of Taxation** means the Australian Federal Commissioner of Taxation.

\* \* \*

**Completion** means completion in accordance with clause 6.2.

**Completion Date** has the meaning given in clause 6.1.

**Completion Documents** means:

- (a) the Joint Venture Agreement, including the Funding and Distribution Policy;
- (b) each Debenture Deed Poll;
- (c) each Management Delegation Agreement;
- (d) each Creditor Deed Poll required in respect of the Agreed Opening Iron Ore Loans and the Agreed Opening Excluded Loans to be executed at or about the Completion Date;
- (e) each Owner Cross Charge;
- (f) the Ore Sales Agreements on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, to be signed by the parties to that agreement at Completion;
- (g) the Infrastructure Sharing Agreement;
- (h) the Blending Agreement;
- (i) the Intellectual Property Management Agreement;
- (j) the ERP Service and Licence Agreement;
- (k) the Transitional Services Agreements;
- (l) the Parent Company Guarantees; and
- (m) the Set-Off Agreement.

**Conditions Precedent** means the conditions precedent referred to in clause 2.

**Confidential Information** has the meaning given in clause 17.3.

**Confidentiality Agreement** means the confidentiality agreement dated 1 July 2009 between Rio Tinto and BHP Billiton.

**Consolidated Group** means a consolidated group as that term is defined in s.995-1(1) of the 1997 Tax Act.

**Core Principles** means the core principles described in schedule 1 of the Iron Ore JV Framework Agreement.

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

**Coupon** has the meaning given in the Funding and Distribution Policy.

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**CPI** means the Australian All Groups Consumer Price Index Number (weighted average of eight capital cities) published by the Australian Bureau of Statistics. In this definition:

- (a) the reference to the Australian All Groups Consumer Price Index Number (weighted average of eight capital cities) means:
  - (i) the same numbers but with different names at any time; and
  - (ii) the same numbers adjusted mathematically to take account of a change at any time in the base year provided that indices of the same base year are used throughout the calculation; and
- (b) the reference to the Australia Bureau of Statistics includes a reference to:
  - (i) the Bureau but with a different name at any time; and
  - (ii) a governmental agency in Australia (in the absence of the Australian Bureau of Statistics) at any time having similar functions.

**Creditor Deed Poll** means each deed poll in the form set out in schedule 13 of the Joint Venture Agreement.

**Cross Charge** means:

- (a) each Owner Cross Charge; and
- (b) any other cross charge substantially in the form of part 2 of schedule 12 of the Joint Venture Agreement granted in accordance with clauses 11.5, 11.6, 11.7 and 11.8 of the Joint Venture Agreement.

\* \* \*

**Debenture** means securities of that name issued or to be issued on the terms and conditions set out in the Debenture Deeds Poll.

**Debenture Deed Poll** means a deed poll entered into by each Issuer in conjunction with the issue of the Debentures on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, to be signed by the relevant Issuer at Completion.

**Deed of Accession** means each deed of accession entered into by a Sole Risk Entity in the form set out in schedule 18 of the Joint Venture Agreement.

**Dispose** means, in relation to any asset, to sell, transfer, assign, declare oneself a trustee of, or part with the benefit of, or otherwise dispose of, the asset (or any interest in it, or any part of it) other than (in each case) by the creation of a Security Interest, and **Disposal** has a corresponding meaning.

**Distributable Earnings** means all reserves that a company may lawfully distribute by way of dividends to its members.

**dmtu** means dry metric tonne units.

**Due Diligence Materials** means all information (in any form) disclosed by:

- (a) BHP Billiton \* \* \* and
- (b) Rio Tinto \* \* \*

each as established and maintained pursuant to the due diligence scope, as agreed by BHP Billiton and Rio Tinto on 6 August 2009 and the due diligence scoping memorandum setting out the materiality threshold

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## Implementation Agreement

for information to be disclosed in the respective data rooms dated 30 July 2009, also as agreed between BHP Billiton and Rio Tinto. For the avoidance of doubt, Due Diligence Material includes any such material provided only to 'core team members' as contemplated in the due diligence scope.

**Effective Date** means 1 July 2009.

**Effective Date Balance Sheets** has the meaning given in item 1.6(a) of Schedule 8.

**End Date** has the meaning given in clause 2.5.

**ERP Service and Licence Agreement** means the service and licence agreement to be entered into on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, to be signed by the parties to that agreement at Completion.

**Escalated** means escalated at a nominal rate of 6.5% per annum, compounded annually, using the following formula:

$$A \times (1 + 0.065)^{(x/365)}$$

where:

A = the amount to be escalated; and

x = the number of days that have lapsed during the period over which the amount is escalated.

**Escalated NCEP Calls** equals the aggregate amount of the NCEP Calls paid by the Proposing Party with each NCEP Call being Escalated between the date on which the NCEP Call was paid and the date for payment of the Receiving Party's Participant Loan under clause 8(c)(iii).

**Estimated Adjusted Cashflows** means the estimated adjusted cash flows of Rio Tinto or BHP Billiton, as applicable, as determined in accordance with item 1.4 of Schedule 8.

**Estimated Cashflow Difference** has the meaning given in item 1.3(c) of Schedule 8.

**Estimated Monthly Difference** has the meaning given in item 1.3(b)(iv) of Schedule 8.

**Event** has the meaning given in clause 3.2(b).

**Excluded Assets** means any assets of any Rio Tinto Group entity or BHP Billiton Group entity from time to time that are not Iron Ore Assets and includes:

- (a) assets used in Iron Ore Marketing Activities and not Iron Ore Production Activities (**Marketing Assets**) including:
  - (i) plant and equipment used in Iron Ore Marketing Activities and not Iron Ore Production Activities;
  - (ii) land (including fixtures) used in Iron Ore Marketing Activities and not Iron Ore Production Activities;
  - (iii) contracts and leases to the extent they relate to Iron Ore Marketing Activities, including contracts for the supply of iron ore produced by Iron Ore Production Activities to customers (other than Ore Sales Agreements);
  - (iv) Cash and receivables arising from Iron Ore Marketing Activities;
  - (v) iron ore to which a Rio Tinto Group entity or BHP Billiton Group entity is entitled that has been loaded on board a ship; and
  - (vi) all other assets of a Rio Tinto Group entity or BHP Billiton Group entity referable to Iron Ore Marketing Activities and not Iron Ore Production Activities;

## Implementation Agreement

- (b) for Rio Tinto, its interests in each of the following companies and their existing and future assets:
  - (i) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
    - (C) \* \* \*
    - (D) \* \* \*
    - (E) \* \* \*
    - (F) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*
  - (v) \* \* \*
  - (vi) \* \* \*
  - (vii) \* \* \*
  - (viii) \* \* \*
  - (ix) \* \* \*
  - (x) \* \* \*
  - (xi) \* \* \*
- (c) for BHP Billiton, its existing and future interests in each of the following:
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
- (d) any Secondary Processing facilities, other than the facilities expressly included in the definition of Iron Ore Assets;
- (e) subject to clause 4.16 of the Joint Venture Agreement and the ERP Service and Licence Agreement, all intellectual property and technology of the Rio Tinto Group and the BHP Billiton Group used in Iron Ore Production Activities;
- (f) any Retained Assets identified pursuant to the process established by clauses 3.6 and 3.7;
- (g) Excluded Cash Flows, Excluded Distributable Earnings and Excluded Asset Surplus;
- (h) Cash arising from Excluded Cash Flows, and any loan or deposit arising from use of such Cash;
- (i) anything which is, or is deemed to be, an Excluded Asset or part of Excluded Assets under, or by operation of, the Transaction Documents; and
- (j) anything that the Owners agree are Excluded Assets,

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## Implementation Agreement

and, for the avoidance of doubt, does not include Sole Risk Assets.

**Excluded Asset Surplus** of an Issuer on an Insolvency Administration has the meaning given in the Funding and Distribution Policy.

**Excluded Cash Flows** means Cash Flows that are not Iron Ore Cash Flows or Sole Risk Cash Flows.

**Excluded Distributable Earnings** means Distributable Earnings that are not Iron Ore Distributable Earnings.

**Excluded Liabilities** means any liabilities of any Rio Tinto Group entity or BHP Billiton Group entity, from time to time, that are not Iron Ore Liabilities or Sole Risk Liabilities and includes:

- (a) any liabilities Attributable to Excluded Assets;
- (b) any liabilities to the extent they arise from the conduct of the Iron Ore Marketing Activities (**Marketing Liabilities**);
- (c) Excluded Loans;
- (d) anything which is, or is deemed to be, an Excluded Liability under, or by operation of, the Transaction Documents; and
- (e) anything that the Owners agree are Excluded Liabilities.

**Excluded Loans** means any loans that are not Iron Ore Loans or Sole Risk Loans, and includes:

- (a) Agreed Opening Excluded Loans; and
- (b) Post-Commencement NCEP Loans.

**Excluded Marketing Operations** means, in relation to a JV Entity, that part of its operations concerning the sale of Iron Ore Product to customers other than pursuant to an Ore Sales Agreement, and a reference to the Excluded Marketing Operations division of a JV Entity has a corresponding meaning.

**Existing JV Arrangement** means the agreements and other arrangements which constitute a Rio Tinto JV or BHP Billiton JV, from time to time, and includes:

- (a) the arrangements between Rio Tinto Group entities and Robe in relation to Pilbara Iron infrastructure sharing and Pilbara Iron corporate shared services and mobile equipment, each as amended from time to time; and
- (b) any terms implied under such agreements and other arrangements and any fiduciary, equitable or other obligation owed in relation to such agreements or other arrangements.

**Existing JV Cross Charge** has the meaning given in the Joint Venture Agreement.

**Existing JV Deposits** means cash held on deposit by a Rio Tinto Group entity or a BHP Billiton group entity, as applicable, under Existing JV Arrangements.

**Expected JV Synergies** means the synergies expected to be realised through the WA Iron Ore JV, as agreed between Rio Tinto and BHP Billiton.

**Expenditure Category Overrun Amount** has the meaning given in the Joint Venture Agreement.

**Feasibility Study** has the meaning given in clause 8.2(h) of the Joint Venture Agreement.

**Final Adjusted Cashflows** means the final adjusted cash flows of Rio Tinto or BHP Billiton, as applicable, as determined in accordance with item 2.4 of Schedule 8.

**Final Adjusted Cashflow Statements** means the final adjusted cashflow statements of Rio Tinto or BHP Billiton, as applicable, to be prepared in accordance with item 5.4 of Schedule 8.

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**Final Cashflow Difference** has the meaning given in item 2.3 of Schedule 8.

**Final Completion Accounts** means the Final Completion Balance Sheets and the Final Adjusted Cashflow Statements.

**Final Completion Balance Sheets** has the meaning given in item 2.5(a) of Schedule 8.

**First Budget** means the first Budget prepared under clause 3.6 and approved under clause 3.7.

**First Business Plan** means the first Business Plan prepared under clause 3.6 and approved under clause 3.7.

\* \* \*

**First Synergies Capture Plan** means the first Synergies Capture Plan prepared under clause 3.6 and approved under clause 3.7.

**FOB** has the meaning given in the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce (Incoterms) 2000 Edition, as replaced from time to time.

**FOB Price** means:

- (a) where Iron Ore Product is sold on an FOB basis, the price (expressed in US\$ per dmtu) for Iron Ore Product the subject of any shipment or sale which is payable by the third party end customer under the applicable FOB sales contract; or
- (b) where Iron Ore Product is sold on a non-FOB basis, \* \* \*
  - (i) \* \* \*
    - \* \* \*
    - \* \* \*
    - \* \* \*
    - \* \* \*
    - \* \* \*
    - \* \* \*
    - \* \* \*
    - \* \* \*
  - (ii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*

For the avoidance of doubt, the purpose of this definition is to allow Rio Tinto and BHP Billiton to determine the realised FOB price equivalent for each shipment or sale of Iron Ore Product and eliminating the non-FOB component of the price paid by the end customer on an arm's length basis.

**Funding and Distribution Policy** means the funding and distribution policy on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement.

**Goldsworthy Joint Venture** means the joint venture carried on under the name "Mt Goldsworthy Mining Associates Joint Venture" as constituted from time to time pursuant to the Restated Mount Goldsworthy Mining Associates Joint Venture agreement dated 7 September 1990.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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**Grossed up for Tax** means that, where either Rio Tinto or BHP Billiton (the **Payer**) is liable to pay an amount to the other party (the **Recipient**) by way of indemnity and that payment increases the Tax payable by Recipient or the Head Company of any Consolidated Group of which the Recipient is a member (collectively the **Recipient Group**), then the payment must be grossed up by such amount as is necessary to ensure that the net amount retained by the Recipient Group after deduction of Tax or payment of the increased income tax equals the amount the Recipient Group would have retained had the Tax not been payable.

**GST** has the meaning given by the GST Law.

**GST Group** has the meaning given by the GST Law.

**GST Law** has the meaning given by the A New Tax System (Goods & Services Tax) Act 1999 (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Guarantee** means an obligation or offer to provide funds (including by subscription or purchase) or otherwise be responsible in respect of an obligation or indebtedness, or the financial condition or solvency, of another person. It includes a guarantee, indemnity, letter of credit or legally binding letter of comfort, or an obligation or offer to purchase an obligation or indebtedness of another person.

**Guidance Materials** means the guidance materials prepared for the purposes of Schedule 8 initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement.

**Half Year** means the six month periods commencing on 1 January and 1 July in each year.

**HBI Beneficiation Plant** means the assets marked purple and green on the aerial photograph in item 2.4 of Part 2 of Schedule 7 (but excluding all liabilities associated with them and arising from circumstances or events occurring prior \* \* \*

**HBI Plant** means all real property, plant and equipment and other assets situated at the hot briquetted iron processing facility at Boodarie, Western Australia (other than the HBI Beneficiation Plant) and all associated liabilities.

**Head Company** has the meaning given by s.995-1(1) of the 1997 Tax Act.

**Hedging Policy** means the policy referred to in clause 3.6(b)(xi), to be adopted on Completion pursuant to an Owners' Council Completion Resolution.

**Hismelt** means all land, buildings, structures, offices, fixed and mobile equipment, roads, wharfs, loading and unloading facilities, stockpiles, storage facilities and associated facilities owned, leased or used by any Rio Tinto Group entity at Kwinana, Western Australia including the facility constructed by certain Rio Tinto Group entities in joint venture with third parties and all Hismelt Technology.

**Hismelt Technology** means technology presently, or in future, owned by, or licensed to, any Rio Tinto Group entity relating to the high intensity direct smelting of iron, or the dimensioning, design, application, manufacture, erection, installation, testing, operation and maintenance of equipment designed or used for that purpose, including patents, know-how and other designs and copyright, technological and technical knowledge, expertise, experience, inventions, data, algorithms, codes, instructions, techniques, processes, drawings, specifications and other unpatented information.

**Historical Iron Ore Asset Information** means, in relation to a JV Entity or a BHP Billiton Group entity or a Rio Tinto Group entity, as applicable, historical operational information that relates to Relevant Period Iron Ore Assets and is or may be relevant to JV Operations (including studies, whether complete or incomplete), excluding:

(a) information in relation to Excluded Assets;

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



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- (b) marketing information; and
- (c) Board or senior management reports (including Iron Ore Executive Committee papers).

For the avoidance of doubt, it does not include any information in relation to, or produced for the purposes of, actual or proposed parent company corporate or merger and acquisition activities, including the proposal to form the WA Iron Ore JV and any proposal for the combination of all or part of the Rio Tinto Group and the BHP Billiton Group.

**Hope Downs Joint Venture** means the joint venture carried on pursuant to the Hope Downs Joint Venture Agreement dated 16 March 2006 as constituted from time to time.

\* \* \*

\* \* \*

**Implementation Management Committee** has the meaning given in clause 3.6.

**Implementation Oversight Committee** has the meaning given in clause 3.7.

**Indemnified Tax Liability** means any Tax Liability of the Rio Tinto Group or the BHP Billiton Group, if and to the extent it is attributable to Relevant Period Iron Ore Assets, that relates to the period before the Effective Date. A Tax Liability will be taken to relate to the period before the Effective Date:

- (a) in the case of income tax (including any Tax under the 1936 Tax Act or the 1997 Tax Act):
  - (i) if it is an amount payable in respect of income tax on taxable income for any income year which ends before the Effective Date; or
  - (ii) if it is an amount payable in respect of income tax on taxable income for that part of any income year ending on or after the Effective Date as comprises the period before the Effective Date, to the extent the income tax is in respect of amounts that do not form part of the cash flow required by item 5 of Schedule 8 to be included in the Interim Adjusted Cashflow Statement or Final Adjusted Cashflow Statement;
- (b) in the case of Stamp Duty, if and to the extent it arises by reason of any act, transaction or event occurring before the Effective Date, or by reason of any revocation or claw-back of Stamp Duty relief granted in respect of any act, transaction or event occurring before the Effective Date;
- (c) in the case of GST, if the GST liability is attributable to a tax period ending before the Effective Date; or
- (d) in the case of any other Tax, if and to the extent it arises by reason of any act, transaction or event occurring before the Effective Date.

**Indemnity-related Tax Asset** means any Tax Asset of the Rio Tinto Group or the BHP Billiton Group, if and to the extent it is attributable to Relevant Period Iron Ore Assets, to the extent it relates to the period before the Effective Date. A Tax Asset will be taken to relate to the period before the Effective Date:

- (a) in the case of income tax (including any Tax under the 1936 Tax Act or the 1997 Tax Act):
  - (i) if it is an amount receivable in respect of income tax on taxable income for any income year which ends before the Effective Date; or

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- (ii) if it is an amount receivable in respect of income tax on taxable income for that part of any income year ending on or after the Effective Date as comprises the period before the Effective Date, to the extent the income tax is in respect of amounts that do not form part of the cash flow that is required by item 5 of Schedule 8 to be included in the Interim Adjusted Cashflow Statement or Final Adjusted Cashflow Statement;
- (b) in the case of Stamp Duty, if and to the extent it arises by reason of any act, transaction or event occurring before the Effective Date, or by reason of any revocation or claw-back of Stamp Duty relief granted on any act, transaction or event occurring before the Effective Date;
- (c) in the case of GST, if the Input Tax Credit entitlement is attributable to a tax period ending before the Effective Date; or
- (d) in the case of any other Tax, if and to the extent it arises by reason of any act, transaction or event occurring before the Effective Date.

**Independent Engineer** means the independent engineer nominated under paragraph (a) of Part 1 of Schedule 5.

**Independent Expert** means a person appointed in accordance with clause 16 of the Joint Venture Agreement.

**Indexed** means:

- (a) prior to 31 December 2009, the relevant amount; and
- (b) during any Half Year subsequent to that referred to in paragraph (a):

*The relevant amount X*

$$\frac{CPI_{t-1}}{CPI_b}$$

where:

$CPI_{t-1}$  means the CPI number for the Quarter most recently published prior to the start of that Half Year; and

$CPI_b$  means the CPI number for the Quarter ending on 30 June 2009.

**Infrastructure and Blending Principles** means the Infrastructure and Blending Principles initialled by BHP Billiton and Rio Tinto for the purposes of identification on the date of this Agreement.

**Infrastructure Sharing Agreement** means the infrastructure sharing agreement to be negotiated by Rio Tinto and BHP Billiton in accordance with clause 3.5(b)(vi), to be signed by the parties to that agreement at Completion.

**Initial Agreed Interest Rate** means the initial Agreed Interest Rate determined under clause 3.6 and approved under clause 3.7.

**Initial Agreed Term** means the initial Agreed Term determined under clause 3.6 and approved under clause 3.7.

**Input Tax Credit** has the meaning given in clause 18.1.

**Insolvency Administration** means, in relation to an Issuer, a winding up of the Issuer, or the appointment of an administrator to the Issuer pursuant to Part 5.3A of the *Corporations Act 2001* (Cth).

**Insurance Protocol** means the insurance protocol on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, to be adopted on Completion pursuant to an Owners' Council Completion Resolution.

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**Intellectual Property Management Agreement** means the intellectual property management agreement on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, to be signed by the parties to that agreement at Completion.

**Interim Adjusted Cashflow Statements** has the meaning given in item 1.6(b)(ii) of Schedule 8.

**Interim Completion Balance Sheets** has the meaning given in item 1.6(b)(i) of Schedule 8.

**Interim Completion Accounts** means the Interim Completion Balance Sheets and the Interim Adjusted Cashflow Statements.

**Intra—group Debt** means any indebtedness in respect of moneys borrowed or raised or other financial accommodation (including in respect of preference shares), whether actual or contingent, owing or payable to an Affiliate.

**Iron Ore Assets** means the right, title or interest (whether directly or indirectly held) of any JV Entity from time to time in:

- (a) plant and equipment and land (including fixtures) used in, or acquired for the purposes of, Iron Ore Production Activities, including mines, water bores, light and heavy mobile equipment, conveyors, processing plant (including crushing, screening, beneficiating, concentrating, washing and drying plant, tailings dams and associated infrastructure), rail infrastructure (including rail track, signalling and control systems), rolling stock (including locomotives, fuel cars and ore cars), communication systems, shipping terminals and port facilities (including stockyards, ore car dumpers, in-load and out-load circuits (including car-dumpers, conveyors, transfer stations, bins, stackers and reclaimers, stockpiles and yards, screening plant, berths, wharves, jetties, tugs)), power facilities (including generation, transmission and distribution networks), other associated infrastructure (such as housing and town infrastructure and pastoral stations, airstrips and associated infrastructure, water utilities, gas pipelines and fuel farms), and maintenance facilities and equipment (including administration offices and workshops);
- (b) the beneficiation plant at Newman, and the HBI Beneficiation Plant to the extent that it is made available pursuant to clause 5.4(a)(ii)(B));
- (c) the Secondary Processing facilities at Tom Price;
- (d) any other Secondary Processing facilities to the extent required to satisfy obligations under a future State Agreement or obligations not yet satisfied under a current State Agreement;
- (e) any Support Assets identified pursuant to the process established by clauses 3.6 and 3.7;
- (f) the JV Tenements;
- (g) the State Agreements, together with the benefits of all associated Authorisations;
- (h) contracts and leases to the extent they relate to Iron Ore Production Activities, other than, on and from the JV Commencement Date, contracts with Affiliates of Rio Tinto or BHP Billiton that have not been approved by the Implementation Oversight Committee or the Owners' Council;
- (i) iron ore produced by Iron Ore Production Activities but not yet loaded on board a ship;
- (j) receivables arising from Iron Ore Production Activities, including any amount payable under the Ore Sales Agreements (but excluding any receivable arising from Iron Ore Marketing Activities);
- (k) Iron Ore Cash Flows, Iron Ore Distributable Earnings and Iron Ore Asset Surplus;
- (l) Cash arising from Iron Ore Cash Flows and any loan or deposit arising from use of such Cash;
- (m) any other assets to the extent that they arise from Iron Ore Production Activities;

## Implementation Agreement

- (n) anything which is, or is deemed to be, an Iron Ore Asset or part of Iron Ore Assets under, or by operation of, the Transaction Documents; and
  - (o) anything that the Owners agree are Iron Ore Assets,
- but excluding any Excluded Assets and Sole Risk Assets.

**Iron Ore Asset Surplus** of an Issuer on an Insolvency Administration has the meaning given in the Funding and Distribution Policy.

**Iron Ore Cash Flows** means Cash Flows Attributable to Iron Ore Assets and Iron Ore Liabilities.

**Iron Ore Distributable Earnings** means Distributable Earnings Attributable to Iron Ore Assets and Iron Ore Liabilities.

**Iron Ore JV Framework Agreement** means the framework agreement dated 5 June 2009 between Rio Tinto and BHP Billiton.

**Iron Ore Liabilities** means:

- (a) any liabilities of any JV Entity from time to time:
    - (i) which are Attributable to Iron Ore Assets;
    - (ii) to the extent they arise from Iron Ore Production Activities; or
    - (iii) which are Iron Ore Loans, and also includes:
  - (b) anything which is, or is deemed to be, an Iron Ore Liability under, or by operation of, the Transaction Documents; and
  - (c) anything that the Owners agree are Iron Ore Liabilities,
- but excluding any Excluded Liabilities and Sole Risk Liabilities.

**Iron Ore Loans** means:

- (a) Agreed Opening Iron Ore Loans;
- (b) Participant Loans;
- (c) NDO Loans; and
- (d) any loan that the Owners agree is an Iron Ore Loan.

**Iron Ore Marketing Activities** means the activities carried on, and transactions entered into, by the Rio Tinto Group and BHP Billiton Group separately (whether before or after the JV Commencement Date) in relation to:

- (a) marketing and selling iron ore produced from Iron Ore Production Activities and related activities (other than sales by JV Entities pursuant to Ore Sales Agreements), including Excluded Marketing Operations; and
- (b) transporting iron ore produced from Iron Ore Production Activities from the ship's rail in Western Australia to customers and related activities.

**Iron Ore Product** means any finished iron ore product recovered, produced or purchased as part of the conduct of JV Operations, including any iron ore recovered, produced or purchased pursuant to an Existing JV Arrangement but does not include Sole Risk Iron Ore Product.

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***Iron Ore Production Activities*** means activities within the permitted scope of the WA Iron Ore JV:

- (a) carried on by the Rio Tinto Group and the BHP Billiton Group separately prior to the JV Commencement Date; or
- (b) carried on by the JV Entities or the Manager as JV Operations on and after the JV Commencement Date.

***Issuer*** means:

- (a) in the case of Rio Tinto, the Rio Tinto Issuer; and
- (b) in the case of BHP Billiton, the BHP Billiton Issuer.

***Issuer JV Subsidiary*** means a JV Entity which is a Subsidiary of an Issuer.

***Joint Venture Agreement*** means the joint venture agreement in respect of the WA Iron Ore JV on the terms set out in Schedule 11, to be signed by the parties to that agreement at Completion.

***JV Cash Costs*** means all cash amounts relating to costs and liabilities of the JV Entities and the Manager payable to any person in connection with the conduct of JV Operations, including capital expenditure, calls made on a JV Entity pursuant to an Existing JV Arrangement and taxes and penalties. It includes all amounts identified in the Transaction Documents as costs of the WA Iron Ore JV and Approved JV Implementation Costs.

***JV Commencement Date*** means the first day of the first Month that commences after Completion.

***JV Employees*** has the meaning given in the Joint Venture Agreement.

***JV Entity*** means:

- (a) in the case of Rio Tinto, a Rio Tinto JV Entity;
- (b) in the case of BHP Billiton, a BHP Billiton JV Entity; and
- (c) any other entity jointly owned by the Owners carrying on JV Operations (other than the Manager).

***JV Financial Information*** has the meaning given in the Accounting Policy.

***JV Formation Costs*** means costs incurred by Rio Tinto or BHP Billiton in progressing the transaction to Completion, including any Stamp Duty imposed on the Transaction Documents or the transactions contemplated in the Transaction Documents and any costs incurred in preparing and agreeing the Transaction Documents and in taking any actions required to satisfy conditions precedent, including obtaining regulatory, government and shareholder approvals.

***JV Implementation Costs*** mean costs incurred by Rio Tinto or BHP Billiton outside the ordinary course of business in contemplation of the establishment of the WA Iron Ore JV, but does not include JV Formation Costs.

***JV New Capital Expansion Project*** means a New Capital Expansion Project that is treated as being within the scope of the WA Iron Ore JV in accordance with clause 8.

***JV Operations*** means all activities conducted by or on behalf of the JV Entities or the Manager within the scope of the WA Iron Ore JV pursuant to the Joint Venture Agreement on and from the JV Commencement Date, excluding, for the avoidance of doubt, Excluded Marketing Operations and any activities conducted in connection with Excluded Assets, and any Sole Risk Development or Sole Risk Opportunity. A reference to the JV Operations division of a JV Entity means that part of its activities which comprise JV Operations.

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**JV Tenement** means a mining lease, exploration licence, retention licence, right of occupancy over temporary reserve, general purposes lease, miscellaneous licence, special lease or easement that:

- (a) is held pursuant to a State Agreement and / or the Mining Act, *Land Act 1933* (WA), *Land Administration Act 1997* (WA), *Port Authorities Act 1999* (WA) or *Jetties Act 1926* (WA); and
- (b) is held by or on behalf of a JV Entity, whether alone or in conjunction with Other JV Participants; and
- (c) does not relate wholly or substantially to an Excluded Asset.

**JW4 Joint Venture** means the joint venture carried on under the name “JFE Western 4 Joint Venture” as constituted from time to time pursuant to the JFE Western 4 Joint Venture Agreement dated 22 July 2005.

**Law** includes statutes, regulations, rules of the common law, principles of equity, regulatory agency policies and guidelines and guidance and security exchange rules.

**Management Delegation Agreement** means each agreement between the Manager and a JV Entity pursuant to which the JV Entity delegates or subcontracts to the Manager certain functions of the JV Entity, or pursuant to which the Manager provides services to the JV Entity, on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, to be signed by the parties to that agreement at Completion.

**Manager** means each entity appointed from time to time to manage the WA Iron Ore JV in accordance with clause 4.1 of the Joint Venture Agreement, being initially the manager incorporated in accordance with clause 5.1.

**Marketing Assets** has the meaning given in the definition of Excluded Assets.

**Marketing Costs** means those expenses incurred in the normal course of marketing, selling and distributing Iron Ore Product during the Relevant Period. For the avoidance of doubt, Marketing Costs do not include capital or other investment in long term marketing or distribution strategies, or other marketing costs incurred during the Relevant Period but not directly related to the sale of Iron Ore Product during the Relevant Period.

**Marketing Liabilities** has the meaning given in the definition of Excluded Liabilities.

**Marketing SPV** means:

- (a) in the case of Rio Tinto or the Rio Tinto Owner, the Rio Tinto Marketing SPV; and
- (b) in the case of BHP Billiton or the BHP Billiton Owner, the BHP Billiton Marketing SPV.

**Maximum Amount**, in relation to a particular Event, means an amount of \* \* \*, or such lesser maximum amount that would be recoverable in respect of that Event under the Agreed Policy Terms, having regard to any applicable Sub-limits (as identified in the Agreed Policy Terms), in excess of the applicable Deductible under clause 3.2(c).

**Maximum Permitted Excluded Loan Balance** has the meaning given to it in the Funding and Distribution Policy.

\* \* \*

**Mining Act** means the *Mining Act 1978* (WA) or the *Mining Act 1904* (WA) or both (as applicable).

**Month** means a calendar month.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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**Mt Newman Joint Venture** means the joint venture carried on under that name as constituted from time to time pursuant to the Mt Newman Joint Venture Agreement dated 1 February 1967.

**NCEP Calls** has the meaning given to it in clause 8(c)(ii)(B).

**NCEP Loans** means the Pre-Commencement NCEP Loans and the Post-Commencement NCEP Loans.

**NDO Loan** has the meaning given in the Joint Venture Agreement.

**Net Accrued Notional Tax** has the meaning given in item 5.5(c) of Schedule 8.

**New Capital Expansion Project** has the meaning given in clause 6.2(c).

**New Opportunity** means \* \* \*

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

\* \* \*

\* \* \*

**Ore Sales Agreements** means:

(a) the ore sales agreement between the Selling Entities and the Rio Tinto Marketing SPV; and

(b) the ore sales agreement between the Selling Entities and the BHP Billiton Marketing SPV,

to be entered into on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, to be signed by the parties to those agreements at Completion, and any other Ore Sales Agreement entered into pursuant to the operation of clause 10 and schedule 10 of the Joint Venture Agreement.

**Ore Sales Price** has the meaning given in the Joint Venture Agreement.

**Other JV Participant** means a participant in a Rio Tinto JV or BHP Billiton JV, whether unincorporated or incorporated, that is not a Related Corporation of Rio Tinto or BHP Billiton.

**Owner** means:

(a) the Rio Tinto Owner; or

(b) the BHP Billiton Owner,

and their respective permitted successors and assignees.

**Owner Cross Charge** means the deeds of cross charge to be granted by each Owner in favour of the other Owner at or about the Completion Date substantially on the terms set out in part 1 of schedule 12 of the Joint Venture Agreement.

**Owner Guarantee** has the meaning given in the Joint Venture Agreement.

**Owner Loan** has the meaning given in the Joint Venture Agreement.

**Owners' Council** means the decision-making body established pursuant to clause 3.1 of the Joint Venture Agreement.

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**Owners' Council Completion Resolutions** means the resolutions set out in Schedule 10 as the same may be supplemented from time to time prior to Completion by the Implementation Oversight Committee in accordance with clause 3.7.

**Parent Company Guarantee** means each of the guarantee to be given by Rio Tinto in respect of certain obligations of the Rio Tinto Owner and the guarantee to be given by BHP Billiton in respect of certain obligations of the BHP Billiton Owner, each in the form set out in schedule 16 to the Joint Venture Agreement, to be signed by the parties to that agreement at Completion.

**Participating Share** means the percentage interest of an Owner in the WA Iron Ore JV initially as set out in clause 2.1(d) of the Joint Venture Agreement as may be varied from time to time pursuant to the terms and conditions of the Joint Venture Agreement.

**Participant Loans** has the meaning given in the Funding and Distribution Policy.

**Permitted Funding Mechanism** means, in relation to the discharge of a liability:

- (a) Rio Tinto or BHP Billiton, as applicable, procuring that assets forming part of Excluded Assets are applied to discharge the liability;
- (b) Rio Tinto or BHP Billiton, as applicable, providing funds by way of subscription for Shares in the Issuer to discharge the liability; or
- (c) Rio Tinto or BHP Billiton, as applicable, providing, or procuring that an Affiliate provides, funds to discharge the liability by way of an Excluded Loan which:
  - (i) is without recourse to Iron Ore Assets or Sole Risk Assets;
  - (ii) unless the loan is provided by an Owner, is subject to a Creditor Deed Poll; and
  - (iii) does not cause the total Excluded Loans of the Issuer, the Subsidiaries of the Issuer which are JV Entities and Subsidiaries of the Issuer which directly or indirectly hold shares in JV Entities, to exceed the Maximum Permitted Excluded Loan Balance.

**Permitted Security Interest** has the meaning given in the Joint Venture Agreement,

**Policies and Protocols** means the policies and protocols referred to in clause 3.13(a) of the Joint Venture Agreement (including the policies and protocols referred to in the Owners' Council Completion Resolutions to be adopted on Completion).

**POSMAC Joint Venture** means the joint venture carried on under that name as constituted from time to time pursuant to the POSMAC Joint Venture Agreement dated 3 April 2002.

**Post-Commencement NCEP Loans** has the meaning given in clause 8(c)(ii)(B).

**Post-Completion Cashflow Amount** has the meaning given in item 7 of Schedule 8.

\* \* \*

**Pre-Commencement NCEP Loans** means any loan provided by Rio Tinto or BHP Billiton, or its Affiliate, to a JV Entity of which it is a Related Corporation to fund cash flows in respect of New Capital Expansion Projects during the Relevant Period.

**Pre-Feasibility Study** has the meaning given in clause 8.2(d) of the Joint Venture Agreement.

**Preliminary Study** has the meaning given in clause 8.2(a) of the Joint Venture Agreement.

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**Private Ruling** means a private ruling as defined in s.995-1(1) of the 1997 Tax Act.

**Proposing Party** has the meaning given in clause 6.2(c).

**Quarter** means a three month period commencing on 1 January, 1 April, 1 July or 1 October.

**Receiving Party** has the meaning given in clause 6.2(c).

**Recoveries** has the meaning given in clause 3.2(c).

**Related Corporation** has the meaning given to “Related Body Corporate” in the Corporations Act but as if “Subsidiary” had the meaning given in this Agreement, and also includes:

- (a) in the case of Rio Tinto, any Rio Tinto Group entity; and
- (b) in the case of BHP Billiton, any BHP Billiton Group entity.

**Relevant JV Entity** means, in relation to each Issuer, the Issuer, its Issuer JV Subsidiaries and the Manager.

**Relevant Period** has the meaning given in item 1.1(a) of Schedule 8.

**Relevant Period Assets** means:

- (a) the Relevant Period Iron Ore Assets; and
- (b) the Marketing Assets.

**Relevant Period Excluded Assets** means the Excluded Assets other than the Marketing Assets and, for the avoidance of doubt, does not include Relevant Period Iron Ore Assets.

**Relevant Period Excluded Liabilities** means the Excluded Liabilities other than the Marketing Liabilities.

**Relevant Period Iron Ore Assets** means:

- (a) the Iron Ore Assets; and
- (b) any assets held by BHP Billiton or Rio Tinto or their respective Affiliates that would constitute an Iron Ore Asset if any right, title or interest (whether direct or indirect) in the assets were held by a JV Entity.

**Relevant Period Liabilities** means:

- (a) the Iron Ore Liabilities;
- (b) the Marketing Liabilities; and
- (c) any liability Attributable to assets held by BHP Billiton or Rio Tinto or their respective Affiliates that would constitute an Iron Ore Asset if any right, title or interest (whether direct or indirect) in the assets were held by a JV Entity.

**Remuneration Committee** has the meaning given in Schedule 10.

**Representative** means a representative of an Owner appointed to the Owners’ Council pursuant to clause 3.2 of the Joint Venture Agreement.

**Reporting Policy** means the reporting policy on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement.

**Responsible Party** has the meaning give in clause 13(g).

**Retained Assets** has the meaning given in clause 3.6(b)(iv)(B).

**Revised Accounting Policy** has the meaning given in clause 3.5(b)(iii)(A).

**RGP3** means Rapid Growth Project 3, as described in the scope overview for the project disclosed in the Due Diligence Materials.

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**RGP4** means Rapid Growth Project 4, as described in the scope overview for that project disclosed in the Due Diligence Materials.

**RGP5** means Rapid Growth Project 5 which is intended to increase the system capacity of BHP Billiton's existing Pilbara iron ore operations to 205 million tonnes per annum, as described in the RGP5 Scope of Work.

\* \* \*

**RGP5 Facilities** means all plant, equipment, facilities and infrastructure and related assets in connection with RGP5 as contemplated by the RGP5 Scope of Work.

**RGP5 Handover** means that stage of RGP5 when:

- (a) all the commissioning tests including construction verification, no-load commissioning and load commissioning which would reasonably be required by a prudent principal to take-over the RGP5 Facilities have been carried out and passed and the RGP5 Facilities are able to be safely operated and maintained by BHP Billiton and are ready to be taken-over, operated and maintained by BHP Billiton;
- (b) the RGP5 Facilities are complete except for minor omissions, defects and modifications requested by BHP Billiton which:
  - (i) do not prevent them from being used for their intended purpose;
  - (ii) do not prejudice their safe operation and maintenance; and
  - (iii) will not prejudice their safe and convenient operation and maintenance, provided the RGP5 Facilities meet the minimum operational and performance standards specified in the RGP5 Scope of Work;
- (c) any marked up 'Red Line' As Built Drawings reasonably required by BHP Billiton have been handed over to BHP Billiton;
- (d) any Vendor Manuals and other documentation necessary for the safe and convenient operation and maintenance of the RGP5 Facilities have been handed over to BHP Billiton;
- (e) all required training of BHP Billiton personnel has been carried out;
- (f) all required operating spares have been received by BHP Billiton; and
- (g) all documents, warranties and other information which BHP Billiton, in its sole discretion, decides are essential for the take-over, operation and maintenance of the RGP5 Facilities have been handed over to BHP Billiton.

\* \* \*

\* \* \*

**Rhodes Ridge Joint Venture** means the joint venture established by the Rhodes Ridge Joint Venture Agreement dated 11 October 1972.

**Ring-Fencing Protocol** means the ring-fencing protocol, on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement.

**Rio Tinto Consolidated Group** means the Consolidated Group of which RTL is the Head Company.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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***Rio Tinto Estimated Adjusted Cashflows*** means the Rio Tinto estimated adjusted cash flows as determined in accordance with item 1.4 of Schedule 8.

***Rio Tinto Group*** means RTL, RTP and each of their Subsidiaries and Rio Tinto Group entity means an entity in the Rio Tinto Group.

***Rio Tinto Indemnified Parties*** has the meaning given in clause 4.4(c).

***Rio Tinto Issuer*** means the entity to be incorporated under clause 5.3(a)(i) in accordance with item 1.1(c) of Part 1 of Schedule 7.

***Rio Tinto JV Entities*** means:

- (a) as at the date of this Agreement, the Rio Tinto Issuer and the Rio Tinto Subsidiaries listed in, and which are engaged in the businesses described in, schedule 2 of the Joint Venture Agreement; and
- (b) any other wholly-owned Subsidiary of the Rio Tinto Issuer that subsequently acquires an Iron Ore Asset under clause 2.4(c) of the Joint Venture Agreement.

***Rio Tinto JVs*** means:

- (a) the Robe Joint Venture;
- (b) the Hope Downs Joint Venture;
- (c) the Channar Joint Venture;
- (d) the Bao-HI Joint Venture;
- (e) the Beasley Joint Venture;
- (f) the Rhodes Ridge Joint Venture; and
- (g) any other joint venture that a Rio Tinto JV Entity enters into after the date of the Joint Venture Agreement within the scope of the WA Iron Ore JV.

***Rio Tinto Marketing SPV*** means the entity to be incorporated under clause 5.3(a)(i) in accordance with item 1.1(d) of Part 1 of Schedule 7.

***Rio Tinto Iron Ore Owned R&D IP*** has the meaning given in the Intellectual Property Management Agreement.

***Rio Tinto Owner*** means the entity to be incorporated under clause 5.3(a)(i) in accordance with item 1.1(b) of Part 1 of Schedule 7.

***Rio Tinto R&D IP*** means the Rio Tinto Iron Ore Owned R&D IP and the Rio Tinto Iron Ore Relevant R&D IP.

***Rio Tinto Iron Ore Relevant R&D IP*** has the meaning given in the Intellectual Property Management Agreement.

***Rio Tinto RP Assets and Liabilities*** has the meaning given in item 1.5 of Schedule 8.

***Rio Tinto State Agreements*** means:

- (a) the *Iron Ore (Hamersley Range) Agreement Act 1963* (WA);
- (b) the *Iron Ore (Hamersley Range) Agreement Act 1968 (Paraburdoo)* (WA);
- (c) the *Iron Ore (Yandicoogina) Agreement Act 1996* (WA);
- (d) the *Iron Ore (Robe River) Agreement Act 1964* (WA);
- (e) the *Iron Ore (Rhodes Ridge) Authorisation Act 1972* (WA);

## Implementation Agreement

- (f) the *Iron Ore (Mt Bruce) Agreement Act 1972 (WA)*;
- (g) the *Iron Ore (Channar Joint Venture) Agreement Act 1987 (WA)*; and
- (h) the *Iron Ore (Hope Downs) Agreement Act 1992 (WA)*.

**Rio Tinto Tax Funding Agreement** means the tax funding agreement of the Rio Tinto Consolidated Group as amended as at 22 December 2005.

**Robe or Robe Joint Venture** means the joint venture carried on under the name 'Robe River Iron Associates' as constituted from time to time pursuant to the Robe River Joint Venture Agreement dated 25 May 1970.

**Scheduling Protocol** means the scheduling protocol, on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement.

**Secondary Processing** means secondary processing of iron ore being the concentration or upgrading of iron ore otherwise than by washing, drying, crushing or screening, or a combination thereof.

**Security Interest** means any mortgage, pledge, lien or charge or any other security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset.

**Selling Entities** means those JV Entities that are able to sell Iron Ore Product to the Marketing SPVs, being as at the date of the Joint Venture Agreement Hamersley Iron Pty Ltd, Hamersley Iron-Yandi Pty Ltd and BHP Billiton Minerals Pty Ltd. \* \* \*

**Senior Executive Team** means each senior executive who reports directly to the CEO, and Senior Executive Team Member has a corresponding meaning.

**Set-Off Agreement** means the set-off agreement to be negotiated by Rio Tinto and BHP Billiton in accordance with clause 3.5 (b)(vii), to be signed by the parties to that agreement at Completion.

**Shareholder Circular** means each of the Rio Tinto shareholder circular (and any supplementary shareholder circular) and the BHP Billiton shareholder circular (and any supplementary shareholder circular), in connection with the WA Iron Ore JV.

**Shareholder Meetings** means the shareholder meetings to be held by BHP Billiton or Rio Tinto (as applicable) for shareholders of BHP Billiton or Rio Tinto, respectively, to vote on the resolutions to approve the WA Iron Ore JV.

**Share** means a share in the capital of an Issuer.

**Sole Funding Party** has the meaning given in clause 8.3(b)(ii) or clause 8.4(g)(ii) of the Joint Venture Agreement, as the context requires.

**Sole Risk Assets** means, in relation to a Sole Funding Party, all assets forming part of its entitlements in respect of the relevant Sole Risk Development or Sole Risk Opportunity pursuant to schedule 4 of the Joint Venture Agreement including any Sole Risk Iron Ore Product, Sole Risk Cash Flows, Sole Risk Receivable or Sole Risk Asset Surplus, and also includes:

- (a) Cash arising from Sole Risk Cash Flows, and any loan or deposit arising from use of such Cash;
- (b) anything which is, or is deemed to be, a Sole Risk Asset under, or by operation of, the Transaction Documents; and
- (c) anything that the Owners agree are Sole Risk Assets.

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**Sole Risk Asset Surplus** of an Issuer on an Insolvency Administration has the meaning in the Funding and Distribution Policy.

**Sole Risk Cash Flows** means Cash Flows attributable to Sole Risk Assets and Sole Risk Liabilities.

**Sole Risk Development** has the meaning given in clause 8.3(b)(ii) of the Joint Venture Agreement.

**Sole Risk Entity** has the meaning given in item 4 of schedule 4 of the Joint Venture Agreement.

**Sole Risk Iron Ore Product** means any finished iron ore product recovered, produced or purchased as part of the conduct of operations of a Sole Risk Development or Sole Risk Opportunity.

**Sole Risk Liabilities** means, in relation to a Sole Funding Party, all liabilities Attributable to Sole Risk Assets including any Sole Risk Loans, and also includes:

- (a) anything which is, or is deemed to be, a Sole Risk Liability under, or by operation of, the Transaction Documents; and
- (b) anything that the Owners agree are Sole Risk Liabilities.

**Sole Risk Loans** means:

- (a) loans made by a Sole Funding Party to an Issuer or the Manager to discharge funding obligations in respect of a Sole Risk Development or Sole Risk Opportunity pursuant to schedule 4 of the Joint Venture Agreement; and
- (b) NCEP Loans which convert to Sole Risk Loans under clause 8(c)(iv).

**Sole Risk New Capital Expansion Project** means a New Capital Expansion Project that is treated as being a Sole Risk Development or a Sole Risk Opportunity.

**Sole Risk Opportunity** has the meaning given in clause 8.4(g)(ii) of the Joint Venture Agreement.

**Sole Risk Receivable** means a debt arising from the sale of Sole Risk Iron Ore Product by an Issuer (or Issuer JV Subsidiary) to, or as directed by, a Sole Funding Party.

**Staff Category Employees** means, subject to any specific exceptions approved by the Implementation Oversight Committee, an employee in a managerial, professional, administrative, technical or supervisory role in respect of whom the Manager will not be bound, upon commencement of employment by the Manager, by an industrial instrument by virtue of the transfer of business provisions in the *Fair Work Act 2009* (Cth) or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth).

**Stamp Duty** means:

- (a) duty that is payable under any of the following (and any additional tax, penalty, fine or interest relating to that duty):
  - (i) the *Duties Act 2008* (WA);
  - (ii) the *Duties Act 1997* (NSW);
  - (iii) the *Stamp Duty Act 1978* (NT);
  - (iv) the *Duties Act 2001* (Qld);
  - (v) the *Duties Act 2000* (Vic);
  - (vi) the *Duties Act 2001* (Tas);
  - (vii) the *Stamp Duties Act 1923* (SA); and
  - (viii) the *Duties Act 1999* (ACT); and

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- (b) amounts payable as a result of the revocation, or assessment or reassessment in relation to, any connected entity exemption or corporate reconstruction relief from duty, additional tax, penalty, fine or interest under (a).

**State Agreement** means each of the BHP Billiton State Agreements, the Rio Tinto State Agreements and any other agreement entered into by the State of Western Australia and an Owner, a JV Entity or their respective nominees from time to time in connection with JV Operations in accordance with the *Government Agreements Act 1979* (WA).

**Subsidiary** has the meaning given in the Corporations Act, provided that:

- (a) an entity will also be deemed to be a Subsidiary of a body corporate if it is controlled (within the meaning of that term provided by Pt 1.2, Div 6 of the Act); and
- (b) a trust may be a Subsidiary (for the purposes of which a unit or other beneficial interest will be deemed to be a share in the capital of a body corporate) and a body corporate or a trust may be a Subsidiary of a trust.

**Subsidiary Member** means has the meaning given by s.995-1(1) of the 1997 Tax Act.

**Support Assets** has the meaning given in clause 3.6(b)(iv)(A).

**Sustainable Development Committee** has the meaning given in Schedule 10.

**Synergies Capture Plan** has the meaning given in the Joint Venture Agreement, and also includes the First Synergies Capture Plan.

**Tax** means any tax, duty, charge or levy imposed now or at any future date under the present or future Laws of Australia or any other country, and also includes any associated penalties, fines or interest.

**Tax Allocation Methodology** has the meaning given in clauses 3.5(b)(iv).

**Tax Asset** means any amount receivable in respect of Tax, including any reduction, refund or reimbursement of Tax, Input Tax Credit entitlement and any amount receivable under a Tax Funding Agreement or Tax Sharing Agreement, and any amount receivable under Division 721 of the 1997 Tax Act or Subdivision 265-A in Schedule 1 of the Taxation Administration Act 1953.

**Tax Funding Agreement** means the BHP Billiton Tax Funding Agreement or the Rio Tinto Tax Funding Agreement (as appropriate).

**Tax Liability** means any amount payable in respect of Tax, including any amount payable to an Authority, any amount payable under a Tax Funding Agreement or Tax Sharing Agreement, and any amount payable under Division 721 of the 1997 Tax Act or Subdivision 265-A in Schedule 1 of the Taxation Administration Act 1953.

**Tax Sharing Agreement** means an agreement contemplated by s.721-25 of the 1997 Tax Act.

**Technical Committee** has the meaning given in Schedule 10.

**Term Deposit** has the meaning given in the Funding and Distribution Policy.

**Terms of Reference** has the meaning given in clause 3.5(a).

\* \* \*

(a) \* \* \*

(b) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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(i) \* \* \*

(ii) \* \* \*

**Transaction Document** means:

- (a) this Agreement;
- (b) the Joint Venture Agreement, including the Funding and Distribution Policy;
- (c) each Debenture Deed Poll;
- (d) each Management Delegation Agreement;
- (e) each Creditor Deed Poll;
- (f) each Parent Company Guarantee;
- (g) each Cross Charge;
- (h) each Ore Sales Agreement;
- (i) the Infrastructure Sharing Agreement;
- (j) the Blending Agreement;
- (k) the Intellectual Property Management Agreement;
- (l) the ERP Service and Licence Agreement;
- (m) the Transitional Services Agreement;
- (n) the Policies and Protocols;
- (o) the Set Off Agreement;
- (p) each Deed of Accession; and
- (q) any other agreements entered into by some or all of the parties in connection with, or to give effect to the requirements of, the documents listed above.

\* \* \*

**Transitional Services Agreement** means the transitional services agreement on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement, as developed by the Implementation Management Committee under clause 3.6(b)(iii), to be signed by the parties to that agreement at Completion.

**Undisclosed Liabilities** means Iron Ore Liabilities, which relate to:

- (a) any claim made by a third party arising from circumstances existing or events occurring on or before the Effective Date; or
- (b) any amount expended, on a voluntary basis, to forestall any such claim, but where the claim is, or is likely to be, US\$50 million or more, only where the Owners' Council has given its prior approval to the amount to be expended, that is made or expended, as the case may be, within 10 years of Completion, but excludes:
- (c) all Iron Ore Liabilities which were disclosed in the Due Diligence Materials; and

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(d) Excluded Liabilities.

**WA Iron Ore JV** means the joint venture to be known as the “West Australian Iron Ore Joint Venture” to be formed in accordance with clause 2.1(a) of the Joint Venture Agreement.

\* \* \*

**Weighing, Sampling and Analysis Protocol** means the weighing, sampling and analysis protocol on the terms initialled by each of Rio Tinto and BHP Billiton for identification on or about the date of this Agreement.

**Wheelarra Joint Venture** means the joint venture carried on under that name as constituted from time to time pursuant to the Wheelarra Joint Venture Agreement dated 28 September 2004.

**Workforce Principles** means the principles to be applied in planning the composition of the WA Iron Ore JV’s workforce, set out in item 1 of Schedule 6.

\* \* \*

**Yandi Joint Venture** means the joint venture carried on under that name as constituted from time to time pursuant to the Yandi Joint Venture Agreement dated 10 June 1991.

### 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, Schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to a party to this Agreement, the Transaction Documents or another agreement or document includes the party’s successors, permitted substitutes and permitted assigns (and, where applicable, the party’s legal personal representatives).
- (h) A reference to legislation or to a provision of legislation means the legislation as amended from time to time and includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to sale or sell includes to procure the sale and a reference to purchase includes to procure the purchase.
- (j) A reference to dollars and \$ is to Australian currency unless otherwise specified.
- (k) A reference to time is a reference to:
  - (i) time in the place in which the relevant event occurs; or

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- (ii) if the relevant event is to occur in more than one place, time in Perth, Western Australia.
- (l) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the immediately succeeding Business Day.
- (m) The meaning of general words is not limited by specific examples introduced by 'including', or 'for example', or similar expressions.
- (n) A reference to a liability incurred by any person includes any claim, loss, liability, cost or expense of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent or otherwise and whether or not it would be shown as a 'liability' under applicable accounting principles and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person.
- (o) A reference to an asset of any person includes any form of real or personal, present or future, tangible or intangible property, any form of legal or equitable right which is not property, and anything of economic value which is not a form of property or legal or equitable right, whether or not the property, right or other thing would be shown as an 'asset' under applicable accounting principles, and whether owned, acquired, held, used or controlled by or for the account of that person alone, or severally or jointly, or jointly and severally, with any other person and whether or not assignable.
- (p) A reference to a loss incurred by any person includes any loss, liability, damage, cost, charge or expense that the person pays, incurs or is liable for and any other diminution of value of any description which the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims.
- (q) Other than in clauses 3.2(a) and 3.2(j), any reference to an asset, liability, revenue, expense or cash flow of a JV Entity will, in relation to any JV Entity that is not wholly owned (directly or indirectly) by Rio Tinto and BHP Billiton, exclude a proportion of that asset, liability, revenue, expense or cash flow, equal to the proportion of that JV Entity owned by third parties.
- (r) Nothing in this Agreement is to be interpreted against a party on the ground that the party put forward this Agreement or a relevant part of it.

### 1.3 Multiple parties

Where this Agreement confers a right or imposes an obligation on Rio Tinto or BHP Billiton (as applicable):

- (a) that right is held by RTL and RTP, or by BHPBL and BHPBP, (as applicable) severally; and
- (b) that obligation is owed by RTL and RTP, or by BHPBL and BHPBP, (as applicable) jointly and severally.

Any reference in this Agreement to Rio Tinto and BHP Billiton is a reference to each of RTL and RTP and BHPBL and BHPBP (as applicable) separately (for example a representation, warranty or undertaking relates to each of them separately).

### 1.4 Consents or approval

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

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### **1.5 Method of payment**

All payments required to be made under this Agreement must be tendered by way of direct transfer of immediately available funds to the bank account nominated in writing by the party to whom the payment is due. Any payment tendered under this Agreement after 4pm in the local time of the bank branch from which payment is made must be taken to have been made on the next succeeding Business Day (the deemed payment date) after the date on which payment is tendered, and if the deemed payment date is after the relevant due date for payment, interest will accrue under item 1.6 accordingly.

### **1.6 Interest on amounts payable**

Unless otherwise specified, interest accrues on each amount which is due and payable, but not paid, by either Rio Tinto or BHP Billiton to the other under or in accordance with this Agreement:

- (a) on a daily basis from the due date up to the date of actual payment;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the rate which is the sum of the Bank Bill Rate plus a margin of 3%, calculated for successive periods of one month, with the first period commencing on the due date of the amount on which interest is payable.

The defaulting party must pay interest accrued under this item 1.6 on written demand by the non-defaulting party or, if no demand is made, on the last day of each month. The interest is payable in the currency of the unpaid amount on which it accrues.

### **1.7 Grossed up for Tax**

Where a payment by way of indemnity is required to be made under this Agreement, it will be Grossed up for Tax if, and to the extent necessary, in order to preserve or restore the recipient's economic position having regard to all relevant matters including:

- (a) the reason that the payment obligation arises;
- (b) the nature of any related Loss or costs incurred by the recipient;
- (c) if the payment is in respect of deprivation of income or profit, or non-receipt of another amount, which would have been subject to Tax;
- (d) if the payment is in respect of a Loss or other event, which results in the recipient, or a Consolidated Group of which it is a member, obtaining a deduction, a reduction in present or future Tax, a Tax rebate or a Tax credit, which offsets any Tax otherwise due on the payment; and
- (e) if the payment is an indemnity in respect of Stamp Duty or other Tax, which duty or other Tax offsets any Tax otherwise due on the payment.

For the avoidance of doubt, a reference to a payment by way of indemnity includes:

- (f) a payment by way of indemnity in relation to Rio Tinto Information or BHP Billiton Information under clause 4.4(b) or (c);
- (g) a payment by way of indemnity in relation to Undisclosed Liabilities under clause 13(g);
- (h) a payment by way of indemnity in relation to Indemnified Tax Liabilities under clause 15(d);
- (i) a payment by way of indemnity in relation to warranties under clause 16.4 or 16.5; and
- (j) a payment under Schedule 6, item 4(g).

## **Implementation Agreement**

For the avoidance of doubt, this item 1.7 does not apply to:

- (k) a payment for the transfer or sale of an asset;
- (l) a payment under clause 3.2(c)(iii)(C) in respect of a BI Loss; or
- (m) a subscription for Debentures.

# Implementation Agreement

## Schedule 2

### Competition Law Conditions Precedent

#### 1.1 (European Commission):

The satisfactory conclusion of the European Commission's pre-completion investigation under Article 101 of the Treaty on the Functioning of the European Union (TFEU) into the WA Iron Ore JV, whether brought about by:

- (a) the European Commission making a decision under Article 10 of Council Regulation 1/2003 that Article 101 TFEU does not apply to the WA Iron Ore JV;
- (b) the European Commission finding that the WA Iron Ore JV infringes Article 101 TFEU but imposing remedies which are acceptable to Rio Tinto and BHP Billiton under clauses 2.3(d) and 1.1 by a decision under Article 7 of Council Regulation 1/2003 indicating that it no longer has grounds for action under Article 101 TFEU;
- (c) the European Commission issuing a decision under Article 9 of Council Regulation 1/2003 in relation to the WA Iron Ore JV on the basis of binding commitments being offered which are acceptable to Rio Tinto and BHP Billiton under clauses 2.3(d) and 1.1; or
- (d) the European Commission otherwise indicating to the parties that it does not intend to pursue an investigation into the WA Iron Ore JV, or that the WA Iron Ore JV is compatible with Article 101 TFEU.

#### 1.2 (Germany):

All filings having been made in relation to the WA Iron Ore JV pursuant to the Gesetz gegen Wettbewerbsbeschränkungen (act against restraints of competition) of 1957 of Germany, and:

- (a) the German Federal Cartel Office has declined its jurisdiction;
- (b) the German Federal Cartel Office has cleared the transaction after a Phase I proceeding (Vorprüfverfahren) by issuing a notice that the transaction will not be prohibited (Mitteilung der Nichtuntersagung) that has been received by the notifying parties, or the transaction is deemed to be cleared because the applicable waiting period pursuant to sec. 41(1) (1) of the German act against restraints of competition has expired without the Federal Cartel Office having opened Phase II proceedings (Hauptprüfverfahren) pursuant to sec. 41(1)(2) of the German act against restraints of competition; or
- (c) the German Federal Cartel Office has cleared the transaction after a Phase II proceeding (Hauptprüfverfahren) by issuing a clearance decision (Freigabeentscheidung) that has been received by the notifying parties, or the transaction is deemed to be cleared because the applicable waiting period pursuant to sec. 41(2)(2) of the German act against restraints of competition (plus potential extensions pursuant to sec. 41 (2) (4) no. 1 of the German act against restraints of competition) has expired without the Federal Cartel Office having prohibited the transaction.

#### 1.3 (ACCC):

Either one of the following having occurred:

- (a) BHP Billiton and Rio Tinto having received notice in writing from the ACCC to the effect that the ACCC does not propose to intervene in or seek to prevent, pursuant to Part IV of the Australian *Trade Practices Act 1974* (Cth), BHP Billiton or Rio Tinto entering into, or giving effect to, the WA Iron Ore JV, or acquiring any rights or interests with respect to the WA Iron Ore JV; or

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- (b) BHP Billiton and Rio Tinto having been granted clearance or authorisation to enter into, or to give effect to, the WA Iron Ore JV or to acquire any rights or interests with respect to the WA Iron Ore JV, by the ACCC or the Australian Competition Tribunal under Part VII of the Australian *Trade Practices Act 1974* (Cth), and no application for review of such clearance or authorisation having been made within the period prescribed by such Act.

### 1.4 (Ministry of Commerce of the People's Republic of China):

- (a) All filings have been made to the relevant Authority of the People's Republic of China in relation to the WA Iron Ore JV pursuant to the requirements of the Anti-Monopoly Law of the People's Republic of China (《中华人民共和国反垄断法》) (*AML*) and relevant regulations with respect to the competition review of joint ventures, and such filings have been accepted by the relevant Authority for examination, and:
  - (i) the relevant Authority has cleared the transaction after a preliminary examination (初步审查) by issuing a notice that the transaction will not be prohibited or a further examination (进一步审查) is not required for the transaction and such notice has been received by the notifying parties pursuant to Article 25 par.1 of the AML, or the transaction is deemed to be cleared because the applicable waiting period for the preliminary examination (初步审查) has expired without the relevant Authority having issued a notice to commence a further examination (进一步审查) pursuant to Article 25 par. 2 of the AML; or
  - (ii) in the event that the relevant Authority requires a further examination (进一步审查) by issuing a notice after the preliminary examination (初步审查), the relevant Authority has cleared the transaction after such further examination (including any extension thereof) by issuing a notice that the transaction will not be prohibited and such notice has been received by the notifying parties pursuant to Article 26 par. 1-2 of the AML, or the transaction is deemed to be cleared because the applicable waiting period for the further examination (进一步审查) (including any extension thereof) has expired without the relevant Authority having rejected the transaction pursuant to Article 26 par. 3 of the AML; and
- (b) No examination of the transaction by a relevant Authority of the People's Republic of China with the legal power and capacity to prevent Completion occurring, or to order Rio Tinto and BHP Billiton not to undertake any obligation under the Joint Venture Agreement, remains in effect, and no relevant Authority of the People's Republic of China with such legal power and capacity has:
  - (i) ordered either Rio Tinto or BHP Billiton not to undertake any conduct it will be obligated to pursuant to the terms of the Joint Venture Agreement; or
  - (ii) imposed any condition,  
other than an order or a condition that is acceptable to Rio Tinto and BHP Billiton under clauses 2.3(d) and 2.4 of this Agreement.

### 1.5 (Korea Fair Trade Commission):

All filings having been made in relation to the WA Iron Ore JV pursuant to the Monopoly Regulation and Fair Trade Law and:

- (a) for the filing under Article 12 of the Monopoly Regulation and Fair Trade Law:
  - (i) the Korea Fair Trade Commission has cleared the transaction without a formal hearing after confirmation of the Secretary General or Vice-chairman of the Korea Fair Trade Commission and BHP Billiton and Rio Tinto have received the official letter of the Korea Fair Trade Commission giving clearance to permit each of BHP Billiton and Rio Tinto to:
    - (A) enter into, or to give effect to, the WA Iron Ore JV; and

## Implementation Agreement

- (B) have a major interest or become a major stakeholder with respect to the WA Iron Ore JV;
- (ii) the Korea Fair Trade Commission has cleared the transaction after a formal hearing conducted by a full bench of commissioners and BHP Billiton and Rio Tinto have received the official letter of the Korea Fair Trade Commission giving clearance to:
  - (A) enter into, or to give effect to, the WA Iron Ore JV; and
  - (B) have a major interest or become a major stakeholder with respect to the WA Iron JV; or
- (iii) the transaction is deemed to be cleared because the applicable review period has expired (without the issuance of disapproval or non-acceptance by the Korea Fair Trade Commission) pursuant to Article 12 of the Monopoly Regulation and Fair Trade Law and Article 18 of the Presidential Decree thereof, and, in each case, those Authorisations remain in force in all respects and there has been no notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew those Authorisations; and
- (b) if a filing is required under Article 19 of the Monopoly Regulation and Fair Trade Law by the Korea Fair Trade Commission, then the Korea Fair Trade Commission has cleared the transaction pursuant to Article 19 of the Monopoly Regulation and Fair Trade Law and BHP Billiton and Rio Tinto have received the official letter of the Korea Fair Trade Commission giving clearance to each of BHP Billiton and Rio Tinto in relation to the WA Iron Ore JV.

### 1.6 (Japan Fair Trade Commission):

- (a) If BHP Billiton and Rio Tinto have applied for prior consultation (jizen sodan) with the Japan Fair Trade Commission in relation to the WA Iron Ore JV pursuant to the Policies Dealing with Prior Consultation Regarding Business Combination Plans (Kigyo Ketsugo Keikaku ni Kansuru Jizen Sodan ni Taisuru Taio Hoshin; December 11, 2002, as amended) and have not withdrawn that application. BHP Billiton and Rio Tinto have received a response from the Japan Fair Trade Commission that the transaction will not substantially restrain competition in relation to the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade of Japan (Shiteki Dokusen no Kinshi Oyobi Kosei Torihiki no Kakuho ni Kansuru Horitsu; Law No. 54 of 1947; (Antimonopoly Act)) as amended; or
- (b) if BHP Billiton and Rio Tinto are required to file a prior formal notification (jizen todokede) in relation to the WA Iron Ore JV pursuant to the Antimonopoly Act, as amended, the Japan Fair Trade Commission is deemed to have cleared the transaction because the Japan Fair Trade Commission has not issued a notice of disapproval or non-acceptance of the WA Iron Ore JV to BHP Billiton or Rio Tinto pursuant to Section 49(5) of the Antimonopoly Act as amended within the applicable time periods; and
- (c) in any event, the Japan Fair Trade Commission has not initiated an administrative investigation (shinsa) that remains open in relation to the WA Iron Ore JV pursuant to Sections 45(2) and 45(4) of the Antimonopoly Act.

### 1.7 (Taiwan Fair Trade Commission):

All filings being made in relation to the WA Iron Ore JV pursuant to the Taiwan Fair Trade Law of 1991, and the regulations and rulings promulgated by the Taiwan Fair Trade Commission, and:

- (a) the Taiwan Fair Trade Commission has declined its jurisdiction over the transaction;

## **Implementation Agreement**

- (b) the Taiwan Fair Trade Commission has cleared the transaction by issuing a notice that the transaction will not be prohibited and such notice has been received by the notifying parties or posted on the website of the Taiwan Fair Trade Commission; or
- (c) the transaction is deemed to be cleared because the applicable waiting period plus potential extensions pursuant to Article 11 of the Taiwan Fair Trade Law has expired without the Taiwan Fair Trade Commission having prohibited the transaction.

# Implementation Agreement

## Schedule 3

### Part 1: Tax Conditions Precedent

#### 1.1 BHP Billiton

BHPBL (as Head Company of the BHP Billiton Consolidated Group) obtaining a Private Ruling from the Commissioner of Taxation to the following effect (and words which have a defined meaning in the 1936 Tax Act or 1997 Tax Act have the same meaning below):

- (a) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
- (c) \* \* \*

#### 1.2 Rio Tinto

RTL (as Head Company of the Rio Tinto Consolidated Group) obtaining a Private Ruling from the Commissioner of Taxation to the following effect (and words which have a defined meaning in the 1936 Tax Act or 1997 Tax Act have the same meaning below):

- (a) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
- (c) \* \* \*

#### 1.3 Joint BHP Billiton/Rio Tinto Condition Precedent

\* \* \*

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



# Implementation Agreement

## Part 2: Stamp Duty Conditions Precedent

### 1.1 Rio Tinto Stamp Duty ruling

\* \* \*

(a) \* \* \*

(i) \* \* \*

(A) \* \* \*

(B) \* \* \*

(C) \* \* \*

\* \* \*

(ii) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(B) \* \* \*

(b) \* \* \*

(i) \* \* \*

(A) \* \* \*

(B) \* \* \*

\* \* \*

(ii) \* \* \*

(c) \* \* \*

(i) \* \* \*

(A) \* \* \*

(B) \* \* \*

\* \* \*

(ii) \* \* \*

(d) \* \* \*

### 1.2 \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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### 1.3 \* \* \*

\* \* \*

(a) \* \* \*

(i) \* \* \*

(A) \* \* \*

\* \* \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(B) \* \* \*

(b) \* \* \*

(i) \* \* \*

(A) \* \* \*

(B) \* \* \*

\* \* \*

(ii) \* \* \*

(c) \* \* \*

(d) \* \* \*

### 1.4 \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# Implementation Agreement

## Schedule 4

### Identified Expansion Capital Projects

#### 1.1 Rio Tinto Identified Projects

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- (h) \* \* \*
- (i) \* \* \*

#### 1.2 BHP Billiton Identified Projects

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## Implementation Agreement

### Schedule 5

#### Part 1: RGP5 Handover Verification Process

- (a) Within 5 days of achieving RGP5 Handover, BHP Billiton and Rio Tinto must jointly appoint an Independent Engineer, nominated by the President of the Institute of Engineers, Australia unless Rio Tinto and BHP Billiton agree otherwise, to prepare and deliver to Rio Tinto the RGP5 Handover Verification Report. The Independent Engineer must:
  - (i) have appropriate qualifications and experience; and
  - (ii) not have any interest which conflicts or may conflict with his or her appointment as an expert in relation to the dispute.
- (b) If Rio Tinto does not agree with all or any part of the RGP5 Handover Verification Report, Rio Tinto may, within 30 days of receipt of that report, serve a dispute notice on BHP Billiton. If a dispute notice is served, Rio Tinto and BHP Billiton must consult in good faith with each other and the Independent Engineer, to attempt to resolve the dispute. If the dispute cannot be resolved by consultation within one month (or such other time as Rio Tinto and BHP Billiton may agree) after service of the dispute notice, the dispute will be resolved by an Independent Expert.
- (c) For the purposes of paragraph (a), the Independent Engineer must be an engineer appointed by agreement between Rio Tinto and BHP Billiton or, in the absence of agreement, appointed by the President of the Institute of Engineers, Australia.
- (d) For the purposes of paragraph (b), the Independent Expert must:
  - (i) have appropriate qualifications, including experience in the subject matter of the dispute or deadlock; and
  - (ii) not have any interest which conflicts or may conflict with his or her appointment as an expert in relation to this dispute.
- (e) The Independent Expert must determine whether the conclusion reached in the RGP5 Handover Verification Report is in accordance with the requirements and intention of clause 3.4(a) and Schedule 5 Part 2.
- (f) If the Independent Expert determines that the conclusion reached in RGP5 Handover Verification Report is not in accordance with the requirements and intention of clause 3.4(a) and Schedule 5 Part 2, then for the purposes of clause 3.4(b), RGP5 Handover will be deemed not to have taken place.
- (g) For the purposes of clause 3.4:
  - (i) the Independent Expert will accept oral and written submissions from Rio Tinto and BHP Billiton and make a written determination in relation to the matters in dispute within 28 days of his or her appointment unless the Independent Expert certifies that the matter is complex in which case the period will be extended to 60 days;
  - (ii) the Independent Expert will keep all information received in connection with its appointment under this Agreement confidential;
  - (iii) in the absence of manifest error, the decision of the Independent Expert made under this Schedule will be final and binding on Rio Tinto and BHP Billiton; and
  - (iv) the costs of the Independent Expert will be borne equally between Rio Tinto and BHP Billiton.

## Implementation Agreement

\* \* \*

\* \* \*

(a) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(b) \* \* \*

(c) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(c) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(d) \* \* \*

(e) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(f) \* \* \*

(g) \* \* \*

(h) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# Implementation Agreement

## Schedule 6

### Employees

#### 1. Workforce Principles

The following principles are to be applied in planning the composition of the WA Iron Ore JV's workforce:

- (a) The Senior Executive Team is to be sourced approximately 50:50 from each of Rio Tinto and BHP Billiton on a "best person for the job" basis.
- (b) As at the JV Commencement Date:
  - (i) the Manager will be the employer of the CEO, the Senior Executive Team and Staff Category Employees;
  - (ii) subject to any Existing JV Arrangements and to any specific transitional arrangements approved by the Implementation Oversight Committee, other JV Employees will be employed by the Manager or a JV Entity; and
  - (iii) where employees are to change employer to the Manager consistent with the intention described in item 2(d), or to another JV Entity consistent with item 1(b)(ii), such change of employer will be subject to a prior confirmatory decision of the Implementation Oversight Committee, made taking into account all matters set out in item 2(d).

There will be no secondments into the WA Iron Ore JV, and neither BHP Billiton or Rio Tinto nor their respective Owners has rights of appointment to any position.

- (c) Following the JV Commencement Date, \* \* \*, made taking into account the matters set out in item 2(d).
- (d) Employees engaged after the JV Commencement Date \* \* \* will be employed by the Manager unless otherwise approved by the Owners' Council.
- (e) \* \* \*
- (f) Except where otherwise specified in this Schedule, \* \* \* and any costs associated with the JV Employees will be:
  - (i) in respect of the Relevant Period, taken into account in the Interim Adjusted Cashflow Statement and the Final Adjusted Cashflow Statement; and
  - (ii) in respect of the period on and from the JV Commencement Date, a cost of the WA Iron Ore JV.
- (g) \* \* \* costs associated with the establishment of the WA Iron Ore JV will be:
  - (i) taken into account in the Interim Adjusted Cashflow Statement and the Final Adjusted Cashflow Statement if paid during the Relevant Period; and
  - (ii) a cost of the WA Iron Ore JV if paid on or after the JV Commencement Date.
- (h) The WA Iron Ore JV must adopt an owner/operator model, using employees in preference to contractors in long-term operating roles, with a progressive transition to that model from current arrangements.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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### 2. Selection processes and recruitment

- (a) Employees must be selected for roles in the WA Iron Ore JV's organisation structures from amongst the available workforces of each of Rio Tinto and BHP Billiton and their relevant JV Entities, and from external sources as appropriate, by consistent application of objective merit-based criteria, including the expertise and experience of each candidate in light of the expertise and experience required of the role.
- (b) In the case of Senior Executive Team roles, and any other particular roles specified by the Implementation Oversight Committee, an assessment of candidates by an independent third party should be obtained.
- (c) Appointments of:
  - (i) the CEO and the Senior Executive Team will be subject to the approval of the Owners' Council in accordance with the Joint Venture Agreement; and
  - (ii) other employees apart from the CEO and the Senior Executive Team, must be approved by the employee's manager one-removed taking into account the recommendation of the employee's immediate manager.
- (d) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*\* \* \*
- (e) The costs associated with item 2(d) will be:
  - (i) taken into account in the Interim Adjusted Cashflow Statement and the Final Adjusted Cashflow Statement if paid during the Relevant Period; and
  - (ii) a cost of the WA Iron Ore JV if paid on or after the JV Commencement Date.

### 3. Remuneration and other benefits

- (a) Remuneration and benefit principles must be developed and applied consistently for employees in comparable functions and at comparable levels taking into account:
  - (i) any constraints under employment legislation; and
  - (ii) any risks or costs associated with a particular proposal.
- (b) \* \* \*
- (c) The following matters will be recognised by the Manager or the JV Entity and accepted as a cost of the WA Iron Ore JV:
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*

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## Implementation Agreement

\* \* \*

- (d) \* \* \* However, the cost of the payment will be:
  - (i) taken into account in the Interim Adjusted Cashflow Statement and the Final Adjusted Cashflow Statement if paid during the Relevant Period; and
  - (ii) a cost of the WA Iron Ore JV if paid on or after the JV Commencement Date.
- (e) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) if granted after the JV Commencement Date, will be a cost of the WA Iron Ore JV.
- (f) \* \* \* unless otherwise approved by the Implementation Oversight Committee or the Owners' Council (as applicable), their cost will be:
  - (i) taken into account in the Interim Adjusted Cashflow Statement and the Final Adjusted Cashflow Statement to the extent that and pro rata with \* \* \* the Relevant Period; and
  - (ii) a cost of the WA Iron Ore JV if paid on or after the JV Commencement Date, but will otherwise be the responsibility of Rio Tinto or BHP Billiton as applicable.
- (g) Long-term incentive arrangements for eligible members of the WA Iron Ore JV workforce must be designed:
  - (i) to operate from the JV Commencement Date;
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*

### 4. Superannuation

- (a) Defined contribution superannuation arrangements must be established, or made available, for all employees.
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) Any benefit accrual \* \* \* will be:
  - (i) in respect of the Relevant Period, taken into account in the Interim Adjusted Cashflow Statement and the Final Adjusted Cashflow Statement; and
  - (ii) in respect of the period on and from the JV Commencement Date, a cost of the WA Iron Ore JV.BHP Billiton or Rio Tinto, as applicable, will be responsible for the funding of benefits accrued \* \* \* up to the Effective Date.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



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\* \* \*

\* \* \*

(iii) \* \* \*

(iv) \* \* \*

- (f) For the avoidance of doubt, any funding liability relating to superannuation benefits \* \* \* for service prior to the Effective Date will be borne wholly by BHP Billiton or Rio Tinto, as applicable. Any funding liability relating to service after the Effective Date will be:
- (i) in respect of the Relevant Period, taken into account in the Interim Adjusted Cashflow Statement and the Final Adjusted Cashflow Statement; and
  - (ii) in respect of the period on and from the JV Commencement Date, a cost of the WA Iron Ore JV.
- (g) The actuarial cost to the employer of the benefit accrual \* \* \* between the Effective Date and the JV Commencement Date will be reimbursed by the Manager to the BHP Billiton entity or the Rio Tinto entity as the case may require as soon as practicable after the JV Commencement Date to the extent that the Manager has not otherwise met that cost by making contributions at the required level \* \* \*.

### 5. Workers' compensation

- (a) Independent workers' compensation insurance arrangements must be established.
- (b) Workers' compensation liabilities and claims management costs \* \* \* will be the responsibility of the relevant employer.

### 6. Contractors

- (a) Contractor personnel considered for employment by the WA Iron Ore JV will be subject to the processes set out in item 2 above.
- (b) The transition of contractor personnel to direct employment by the Manager (or a JV Entity) must be planned and undertaken so as to minimise cost and disruption to operations, and must take into account the potential for application at law of transferred industrial instruments.
- (c) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*arising from the transition of the contractor personnel to direct employment by the Manager (or JV Entity). Any such costs, including any termination of employment entitlements and the payment of accrued leave entitlements, will remain the cost of the contractor.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# Implementation Agreement

## Schedule 7

### Reorganisation Steps

#### 1. Part 1—Rio Tinto’s reorganisation steps

##### 1.1 Pre-Completion reorganisation steps

Rio Tinto must implement and complete the following reorganisation steps in the following order in accordance with clause 5.3 (a)(i):

- (a) the incorporation of a company limited by shares, all of which are held by RTL (*Rio Tinto HoldCo*);
- (b) the incorporation of an Australian incorporated company limited by shares, all of which are held by Rio Tinto HoldCo (*Rio Tinto Owner*);
- (c) the incorporation of an Australian incorporated company limited by shares \* \* \*, all of which are held by RTL (*Rio Tinto Issuer*);
- (d) the incorporation of a company limited by shares, all of which are held by Rio Tinto HoldCo (*Rio Tinto Marketing SPV*);
- (e) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
- (f) \* \* \*
- (g) \* \* \*

##### 1.2 Other reorganisation steps

Rio Tinto must \* \* \* in accordance with clause 5.4(a)(i):

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- (h) \* \* \*
- (i) \* \* \*
- (j) \* \* \*
- (k) \* \* \*
- (l) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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(m) \* \* \*

(n) \* \* \*

(o) \* \* \*

(p) \* \* \*

(q) \* \* \*

(r) \* \* \*

(s) \* \* \*

(t) \* \* \*

(u) \* \* \*

(v) \* \* \*

(w) \* \* \*

(x) \* \* \*

(y) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(iv) \* \* \*

(v) \* \* \*

(vi) \* \* \*

(vii) \* \* \*

(viii) \* \* \*

\* \* \*

### 1.3 Diagrams

Diagram 1

\* \* \*

Diagram 2

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## Implementation Agreement

### 2. Part 2—BHP Billiton's reorganisation steps

#### 2.1 Pre-Completion reorganisation steps

BHP Billiton must implement and complete the following reorganisation steps in accordance with clause 5.3(a)(ii):

- (a) the incorporation of a company limited by shares (*BHP Billiton HoldCo*), all of which are held by BHPBL;
- (b) the incorporation of an Australian incorporated company limited by shares (*BHP Billiton Owner*), all of which are held by BHP Billiton HoldCo;
- (c) the incorporation of an Australian incorporated company limited by shares \* \* \* (*BHP Billiton Issuer*), all of which are held by BHPBL;
- (d) the incorporation of a company limited by shares (*BHP Billiton Marketing SPV*), all of which are held by BHP Billiton HoldCo;
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*

#### 2.2 Other reorganisation steps

- (a) BHP Billiton must, in accordance with clause 5.4(a)(ii)(A), procure:

- (i) \* \* \*
- (ii) \* \* \*
  - (A) \* \* \*
  - (B) \* \* \*
  - (C) \* \* \*

- (iii) \* \* \*
- (iv) \* \* \*

- (b) BHP Billiton must \* \* \* in accordance with clause 5.4(a)(ii)(A):

- (i) \* \* \*
- (ii) \* \* \*
- (iii) \* \* \*
- (iv) \* \* \*
- (v) \* \* \*
  - (A) \* \* \*

\* \* \*

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(c) BHP Billiton must deal in accordance with clause 5.4(a)(ii)(B) with:

(i) \* \* \*

(ii) \* \* \*

### 2.3 Diagrams

Diagram 1

\* \* \*

Diagram 2

\* \* \*

### 2.4 Aerial photograph

\* \* \*

### 2.5 Map

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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## Schedule 8

### Financial Adjustment Mechanism

#### 1. Determination of BHP Billiton Equalisation Investment

##### General principles

##### 1.1 BHP Billiton Equalisation Investment

The BHP Billiton Equalisation Investment will equal:

- (a) US\$5.8 billion (Escalated from 1 July 2009 until Completion); plus
- (b) one half of the Estimated Cashflow Difference (which may be a positive or negative number), determined in accordance with item 1.3; plus
- (c) an amount equal to one half of the net present value (discounted at a 3% discount rate (nominal and pre-tax) to Completion) of the post-JV Commencement Date payments (principal, interest and fees) payable by any BHP Billiton Group entity under \* \* \* expressed as a positive number.

##### 1.2 Credit to notional franking account

- (a) The Manager must credit the account of franking credits available to frank Coupons payable on the Debentures held by the BHP Billiton Owner in the Rio Tinto Issuer (as provided in item 9 of the Funding and Distribution Policy) with an amount agreed between BHP Billiton and Rio Tinto.
- (b) The amount referred to in paragraph (a) will be determined having regard to the difference between the Australian income tax paid on the pre-tax profits of the Rio Tinto JV Entities and the BHP Billiton JV Entities included in the Rio Tinto Final Cashflows and the BHP Billiton Final Adjusted Cashflows. Where the Estimated Adjusted Cashflows indicate with sufficient certainty a minimum amount that should be credited to the account, that minimum amount will be credited at Completion, and any necessary adjustments arising from the Final Adjusted Cashflows will be made when they are finalised.
- (c) As provided in the Funding and Distribution Policy, the franking credits referred to in paragraph (b) will be retained by Rio Tinto Limited in its franking account for application to Coupons paid to the BHP Billiton Owner.
- (d) Rio Tinto and BHP Billiton will enter into good faith negotiations after the JV Commencement Date to agree arrangements for payment of Coupons or other frankable distributions to which the franking credits referred to in paragraph (b) will be attached so as to enable BHP Billiton Limited's franking account to be credited with those amounts.

##### 1.3 Estimated Cashflow Difference

- (a) The Estimated Cashflow Difference will be determined in accordance with paragraphs (b) and (c).
- (b) For each Month during the period from and including the Effective Date to and including the day prior to the JV Commencement Date (the **Relevant Period**) an Estimated Monthly Difference will be calculated by:
  - (i) determining the Rio Tinto Estimated Adjusted Cashflows in US dollars in accordance with item 1.4(a);

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- (ii) determining the BHP Billiton Estimated Adjusted Cashflows in US dollars in accordance with item 1.4(b);
  - (iii) subtracting the Rio Tinto Estimated Adjusted Cashflows from the BHP Billiton Estimated Adjusted Cashflows; and
  - (iv) the resulting difference (which may be a positive or negative amount) being Escalated between the last day of the Month concerned and the date of Completion, so as to determine the Estimated Monthly Difference (the *Estimated Monthly Difference*).
- (c) The Estimated Monthly Differences for each Month in the Relevant Period will be summed, and the adjustment made for the Net Accrued Notional Tax for the Relevant Period, determined in accordance with item 5.5(c), to determine the Estimated Cashflow Difference (which may be a positive or negative amount) (the *Estimated Cashflow Difference*).

### 1.4 Estimated Adjusted Cashflows

- (a) The Rio Tinto Estimated Adjusted Cashflow in respect of any Month during the Relevant Period will be the net cash flow shown in the Rio Tinto Interim Adjusted Cashflow Statement for that Month prepared in accordance with item 1.5(b):
- (i) excluding, for the avoidance of doubt, any cash flows (other than study costs) associated with a Rio Tinto Group New Capital Expansion Project; and
  - (ii) excluding, for the avoidance of doubt, any cash flows associated with research and development in relation to Rio Tinto R&D IP (whether incurred by a JV Entity or an Affiliate of Rio Tinto).
- (b) The BHP Billiton Estimated Adjusted Cashflow in respect of any Month during the Relevant Period will be the net cash flow shown in the BHP Billiton Interim Adjusted Cashflow Statement for that Month prepared in accordance with item 1.5(b):
- (i) excluding, for the avoidance of doubt, any cash flows (other than study costs) associated with a BHP Billiton Group New Capital Expansion Project; and
  - (ii) excluding, for the avoidance of doubt, any cash flows associated with research and development in relation to BHP Billiton R&D IP (whether incurred by a JV Entity or an Affiliate of BHP Billiton).

### 1.5 Interim Completion Accounts

- (a) Each of Rio Tinto and BHP Billiton (as applicable) must, as soon as practicable and in any event not less than 20 Business Days prior to Completion, prepare notional stand-alone consolidated balance sheets as at the Effective Date for:
- (i) the Relevant Period Assets and the Relevant Period Liabilities of the Rio Tinto Group, (the *Rio Tinto RP Assets and Liabilities*) with balances adjusted in accordance with the principles set out in item 5, prepared consistently with the Guidance Materials and in accordance with:
    - (A) the accounting policies of Rio Tinto; and
    - (B) the principles set out in item 4, and reviewed in accordance with the AUP by the auditor of Rio Tinto, whose review work must be available for inspection by the Auditor once appointed under clauses 3.6(b)(viii) and 3.7(b); and

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- (ii) the Relevant Period Assets and the Relevant Period Liabilities of the BHP Billiton Group, (the ***BHP Billiton RP Assets and Liabilities***), with balances adjusted in accordance with the principles set out in item 5, prepared consistently with the Guidance Materials and in accordance with:
  - (A) the accounting policies of BHP Billiton; and
  - (B) the principles set out in item 4, and reviewed in accordance with the AUP by the auditor of BHP Billiton, whose review work must be available for inspection by the Auditor once appointed under clause 3.6(b) (viii) and 3.7(b)(the ***Effective Date Balance Sheets***).
- (b) Each of Rio Tinto and BHP Billiton must prepare:
  - (i) an estimated notional stand-alone consolidated balance sheet as at the day prior to the JV Commencement Date for the Rio Tinto RP Assets and Liabilities and the BHP Billiton RP Assets and Liabilities (as applicable) with balances adjusted in accordance with the principles set out in item 5 (the ***Interim Completion Balance Sheets***) prepared consistently with, and in the same form as, the Effective Date Balance Sheets; and
  - (ii) notional stand-alone consolidated adjusted cash flow statements for each Month in the Relevant Period for the Rio Tinto RP Assets and Liabilities and the BHP Billiton RP Assets and Liabilities (as applicable) with balances adjusted in accordance with the principles set out in item 5 (the ***Interim Adjusted Cashflow Statements***). The Interim Adjusted Cashflow Statement for any Month in the Relevant Period ending after 15 Business Days prior to Completion will be an estimate. Each Interim Adjusted Cashflow Statement must be prepared in accordance with the methodology adopted under item 1.6 of the Funding and Distribution Policy, on the assumption that it applied from the Effective Date and all Relevant Period Assets and Relevant Period Liabilities are assets and liabilities of the JV Entities, and consistently with the Guidance Materials.
- (c) Rio Tinto and BHP Billiton must provide each other with their respective Interim Completion Balance Sheets and Interim Adjusted Cashflow Statements not less than 15 Business Days prior to Completion.
- (d) Each of Rio Tinto and BHP Billiton must also provide to the other:
  - (i) by no later than 31 January 2010, an estimate of the Rio Tinto or BHP Billiton Estimated Adjusted Cashflows (as applicable) for each complete full Month in the Relevant Period prior to that date and a separate statement of the total expenditure in that Month associated with Rio Tinto Group New Capital Expansion Projects or BHP Billiton Group New Capital Expansion Projects (as applicable); and
  - (ii) thereafter, within 10 Business Days after the end of each Month in the Relevant Period (but not later than 15 Business Days prior to Completion) an estimate of the Rio Tinto or BHP Billiton Estimated Adjusted Cashflows (as applicable) for that Month and a separate statement of the total expenditure in that month associated with Rio Tinto Group New Capital Expansion Projects or BHP Billiton Group New Capital Expansion Projects (as applicable).
- (e) Where an Interim Completion Balance Sheet or an Interim Adjusted Cashflow Statement must be prepared on an estimated basis, that estimate must be prepared in good faith and on a fair and reasonable basis.



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### 2. Determination of Adjustment Amount

#### 2.1 Adjustment Amount

The Adjustment Amount will equal:

- (a) one half of the Cashflow Adjustment Amount determined under item 2.2;
- (b) plus any Agreed Sole Risk Adjustment for a Sole Risk Development undertaken by Rio Tinto under item 2.6; and
- (c) minus any Agreed Sole Risk Adjustment for a Sole Risk Development undertaken by BHP Billiton under item 2.6, and;
- (d) if positive, the Rio Tinto Owner will subscribe for Debentures in the BHP Billiton Issuer in that amount; and
- (e) if negative, the BHP Billiton Owner will subscribe for Debentures in the Rio Tinto Issuer in that amount.

#### 2.2 Cashflow Adjustment Amount

- (a) Subject to paragraph (c), the **Cashflow Adjustment Amount** will equal the difference between the Estimated Cashflow Difference and the Final Cashflow Difference, determined in accordance with item 2.3, Escalated from Completion until the date for subscription of the Adjustment Amount.
- (b) Subject to paragraph (c), for the purposes of this item 2.2, the Cashflow Adjustment Amount will be:
  - (i) positive and payable by Rio Tinto if the subscription price payable by BHP Billiton at Completion would have been lower had the Final Cashflow Difference been used in calculating that subscription price rather than the Estimated Cashflow Difference; or
  - (ii) negative and payable by BHP Billiton if the subscription price payable by BHP Billiton at Completion would have been higher had the Final Cashflow Difference been used in calculating that subscription price rather than the Estimated Cashflow Difference.
- (c) Each of BHP Billiton and Rio Tinto must procure that the Auditor reviews the Escalation of the Cashflow Adjustment Amount and the Adjustment Amount to ensure that it has been calculated in accordance with this Agreement.

#### 2.3 Final Cashflow Difference

The **Final Cashflow Difference** will be determined in the same manner as the Estimated Cashflow Difference under item 1.3 including Escalation of cash flows to Completion (including cash flows associated with a Rio Tinto Group JV New Capital Expansion Project or a BHP Billiton Group JV New Capital Expansion Project and cash flows referred to in items 2.4(a)(ii) and 2.4(b)(ii)) and the adjustment made for Net Accrued Notional Tax for the Relevant Period, determined in accordance with item 5.5(e), except that:

- (a) references to Estimated Adjusted Cashflows determined in accordance with item 1.4 will be read as references to Final Adjusted Cashflows determined in accordance with item 2.4; and
- (b) references to the Estimated Cashflow Difference will be read as references to the Final Cashflow Difference.

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### 2.4 Final Adjusted Cashflows

- (a) Rio Tinto's Final Adjusted Cashflow in respect of any Month during the Relevant Period will be the net cash flows shown in the Rio Tinto Final Adjusted Cashflow Statement for that Month prepared in accordance with item 2.5(a):
  - (i) including any cash flows associated with a Rio Tinto Group JV New Capital Expansion Project and excluding any cash flows (other than the study costs) associated with a Rio Tinto Group Sole Risk New Capital Expansion Project or other Rio Tinto Group New Capital Expansion Project; and
  - (ii) if, before the earlier of:
    - (A) expiry of the period referred to in clause 8(c)(i) during which the Receiving Party may make an election; and
    - (B) the date when all such elections have been made, (the ***Expiry or Election Date***), the Manager has recommended, and the Owners' Council has approved, the development of Rio Tinto R&D IP for use in the WA Iron Ore JV and the continuation of research and development in relation to that Rio Tinto R&D IP in accordance with clause 8 of the Intellectual Property Management Agreement, including any cash flows associated with research and development in relation to that Rio Tinto R&D IP (whether incurred by a JV Entity or an Affiliate of Rio Tinto) to the same extent that ongoing research and development is agreed to be funded by the WA Iron Ore JV, provided that:
    - (C) all claimed expenses are properly attributed to Iron Ore Production Activities; and
    - (D) no mark-up or margin is applied to those costs by Rio Tinto.
- (b) BHP Billiton's Final Adjusted Cashflow in respect of any Month during the Relevant Period will be the net cash flows shown in the BHP Billiton Final Adjusted Cashflow Statement for that Month prepared in accordance with item 2.5(a):
  - (i) including any cash flows associated with a BHP Billiton Group JV New Capital Expansion Project and excluding any cash flows (other than the study costs) associated with a BHP Billiton Group Sole Risk New Capital Expansion Project or other BHP Billiton Group New Capital Expansion Project; and
  - (ii) if, by the Expiry or Election Date, the Manager has recommended, and the Owners' Council has approved, the development of BHP Billiton R&D IP for use in the WA Iron Ore JV and the continuation of research and development in relation to that BHP Billiton R&D IP in accordance with clause 8 of the Intellectual Property Management Agreement, including any cash flows associated with research and development in relation to that BHP Billiton R&D IP (whether incurred by a JV Entity or an Affiliate of BHP Billiton) to the same extent that ongoing research and development is agreed to be funded by the WA Iron Ore JV, provided that:
    - (A) all claimed expenses are properly attributed to Iron Ore Production Activities; and
    - (B) no mark-up or margin is applied to those costs by BHP Billiton.

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### 2.5 Final Completion Accounts

- (a) Each of Rio Tinto and BHP Billiton must:
  - (i) as soon as reasonably practicable and, in any case, in sufficient time for the Auditor to comply with paragraph (b), prepare a final version of the Interim Completion Balance Sheets (***Final Completion Balance Sheets***) and Interim Adjusted Cashflow Statements (***Final Adjusted Cashflow Statements***) that had been prepared on an estimated basis under item 1.5(b). The final versions will be prepared on the same basis, in respect of the same date or period and, in the same form as, the interim versions (which were prepared consistently with the Guidance Materials) except that:
    - (A) actual amounts will replace any estimates; and
    - (B) the Final Adjusted Cashflow Statements will be prepared in accordance with item 5.4; and
  - (ii) procure that the Auditor undertakes a review in accordance with the AUP in respect of the Final Completion Balance Sheets and Final Adjusted Cashflow Statements, including making the adjustments referred to in paragraph (b).
- (b) In carrying out its review in accordance with the AUP, the Auditor will be instructed to:
  - (i) ensure that the Final Completion Balance Sheets and Final Adjusted Cashflow Statements have been prepared in accordance with the requirements of this Agreement;
  - (ii) ensure that the Final Completion Balance Sheets and Final Adjusted Cashflow Statements have been prepared in a consistent manner as between Rio Tinto and BHP Billiton, including in relation to approaches and levels of materiality;
  - (iii) where in the Auditor's opinion the Final Completion Balance Sheets or Final Adjusted Cashflow Statements (or both) have not been prepared in accordance with this Agreement or have not been prepared in a consistent manner, then the Auditor must propose such adjustments to the Final Completion Balance Sheets and Final Adjusted Cashflow Statements as the Auditor reasonably determines best reflect the requirements and intentions of this Schedule;
  - (iv) provide Rio Tinto and BHP Billiton with a draft of the AUP review report, including a statement of any adjustments that the Auditor proposes pursuant to paragraph (iii) and give both Rio Tinto and BHP Billiton a reasonable opportunity to provide comments in writing to the Auditor on the draft report. Any written comments provided by either Rio Tinto or BHP Billiton to the Auditor must be provided to the other at the same time, and the Auditor must consider the comments and, if either Rio Tinto or BHP Billiton so requests, meet with Rio Tinto and BHP Billiton to discuss the Auditor's proposed response to the comments before finalising the AUP report;
  - (v) address its AUP review report to both Rio Tinto and BHP Billiton; and
  - (vi) complete the AUP review reports by no later than 210 days after Completion.

The Final Completion Balance Sheets or Final Adjusted Cashflow Statements, adjusted as proposed by the Auditor, will be final and binding on Rio Tinto and BHP Billiton, unless either Rio Tinto or BHP Billiton disputes them in accordance with item 6.

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### 2.6 Agreed Sole Risk Adjustment

For the purposes of clause 8(c)(i) and item 2.1 of this Schedule:

- (a) if, before the fifth Business Day after finalisation of the Final Completion Accounts, Rio Tinto and BHP Billiton have agreed the fair market value for a Sole Risk Development undertaken by Rio Tinto or BHP Billiton (as applicable) under clause 8.3(c) and item 1(b) of schedule 4 of the Joint Venture Agreement, then the Agreed Sole Risk Adjustment will be the other Owner's Participating Share of that fair market value; or
- (b) if not, then on determination of the fair market value under clause 8.(c) and item 1(b) of schedule 4 of the Joint Venture Agreement in accordance with item 1 of schedule 9 of the Joint Venture Agreement, the party undertaking the Sole Risk Development will instead subscribe for further Debentures in the other Owner's Participating Share of that fair market value in accordance with clause 7.5, within 5 Business Days of that determination.

### 3. JV Commencement Date Balance Sheets

The Manager must, in accordance with clause 4.3(f) of the Joint Venture Agreement, as soon as practicable after the JV Commencement Date, and in any event within 90 days, prepare:

- (a) a notional stand-alone consolidated balance sheet, as at the JV Commencement Date, for the Iron Ore Assets and Iron Ore Liabilities (without adjustment under item 5) in accordance with the methodology adopted under the Funding and Distribution Policy (*JV Commencement Date Balance Sheet*), prepared in accordance with the Accounting Policy and reviewed by the Auditor in accordance with the AUP.
- (b) a JV Commencement Date Balance Sheet, prepared in accordance with the accounting policy of Rio Tinto and reviewed in accordance with the AUP by the Auditor; and
- (c) a JV Commencement Date Balance Sheet, prepared in accordance with the accounting policy of BHP Billiton and reviewed in accordance with the AUP by the Auditor.

Each JV Commencement Date Balance Sheet must be prepared in accordance with International Financial Reporting Standards as adopted by the European Union.

### 4. Other Balance Sheets

The Effective Date Balance Sheets, the Interim Completion Balance Sheets and the Final Completion Balance Sheets (the *Balance Sheets*) must be prepared in accordance with International Financial Reporting Standards as adopted by the European Union, adjusted in accordance with the following principles:

- (a) the Balance Sheets will be prepared in accordance with the methodology adopted under item 1.6 of the Funding and Distribution Policy, on the assumption that it applied from the Effective Date and all Relevant Period Assets and Relevant Period Liabilities are assets and liabilities of the JV Entities;
- (b) the Balance Sheets will be prepared on the assumption that all loans and deposits from Affiliates or third parties are Relevant Period Excluded Assets, except for any loans or deposits that Rio Tinto and BHP Billiton agree form part of Relevant Period Assets; and
- (c) the Balance Sheets will be calculated and prepared in US dollars. Where the functional currency of a Rio Tinto JV Entity or BHP Billiton JV Entity is not US dollars, the Balance Sheets must be prepared in the functional currency of that Rio Tinto JV Entity or BHP Billiton JV Entity (as applicable) and then converted into US dollars in accordance with International Financial Reporting Standards as adopted by the European Union. The exchange rates used for this purpose should be disclosed in the Balance Sheets.

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### **5. Adjusted Cashflow Statements**

#### **5.1 Interim Adjusted Cashflow Statements**

Subject to item 1.4, each Interim Adjusted Cashflow Statement must show the net cash flow (on a notional stand-alone consolidated basis) for the relevant Month for the Rio Tinto RP Assets and Liabilities or the BHP Billiton RP Assets and Liabilities (as applicable) adjusted in accordance with principles set out in this item 5. For the avoidance of doubt, cash flows will (unless otherwise stated in this Schedule 8) be reflected in the Interim Adjusted Cashflow Statements based on the time of receipt or payment as applicable.

#### **5.2 Included cash flows**

##### **(a) For the avoidance of doubt inclusions**

Subject to items 5.2(b) and (c) and items 5.3(b) and (c), the following cash flows will (for the avoidance of doubt) be included in the net cash flows shown in each Interim Adjusted Cashflow Statement:

- (i) capital expenditure in respect of, and proceeds from sale of, Relevant Period Iron Ore Assets in that Month;
- (ii) exploration and evaluation expenditure in relation to Relevant Period Iron Ore Assets in that Month;
- (iii) dividends received from associates relating to Relevant Period Iron Ore Assets in that Month (except where the cash flows of the associates are included in the notional consolidation of the cash flow statement);
- (iv) any cash flows referred to in items 1(f)(i), 1(g)(i), 2(e)(i), 3(d)(i), 3(f)(i), 4(e)(i) and 4(f)(i) of Schedule 6 as being taken into account in the Interim Adjusted Cashflow Statement or Final Adjusted Cashflow Statement (as applicable), in that Month;
- (v) iron ore production costs expended in that Month;
- (vi) expenditure during that Month (whether by a JV Entity or an Affiliate, as applicable) relating to the reinstatement, repair or replacement of Relevant Period Iron Ore Assets (other than construction projects in progress) damaged or destroyed, in accordance with clause 1.1;
- (vii) include costs in that Month that have been directly incurred, in the ordinary course, by a JV Entity or an Affiliate in relation to Patented BHP Billiton IP, Non-Patented BHP Billiton IP, Patented Rio Tinto IP or Non-Patented Rio Tinto IP (each as defined in the Intellectual Property Management Agreement), including costs incurred in respect of licences for, maintenance of, or the creation of Improvements (as defined in the Intellectual Property Management Agreement) to Patented BHP Billiton IP, Non-Patented BHP Billiton IP, Patented Rio Tinto IP or Non-Patented Rio Tinto IP, where those costs are Attributable to the BHP Billiton Group or Rio Tinto Group Iron Ore Production Activities;
- (viii) any Recoveries by a JV Entity in respect of an Event received during that Month; and
- (ix) non-product revenue from Relevant Period Iron Ore Assets received during that Month.

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### (b) Specific Relevant Period inclusions

Subject to item 5.2(c) and items 5.3(b) and (c), net cash flows for the period included in the Interim Adjusted Cashflow Statement will:

- (i) include receipts from the sale of iron ore in that Month, including receipts from the sale of iron ore on hand as at the Effective Date, calculated, notwithstanding that the WA Iron Ore JV excludes marketing activities from its operations, on the basis that receipts from the sale of iron ore must be adjusted to reflect the FOB Price paid by the end customer to any Rio Tinto Group entity or BHP Billiton Group entity;
- (ii) include actual demurrage costs associated with contracts for the sale of iron ore in that Month;
- (iii) include Marketing Costs in that Month;
- (iv) be adjusted to ensure that any cash flows associated with a transaction with an Affiliate (including both the supply of goods or services to, and the acquisition of goods or services from, an Affiliate):
  - (A) are recorded at cost and do not include any mark-ups, management fees, licence fees or royalties paid to Affiliates; and
  - (B) include the same types of costs and are calculated consistently with the allocation keys in the Guidance Materials and otherwise on the same basis in relation to both Rio Tinto and BHP Billiton.

Any transactions with Affiliates that remain in the Interim Adjusted Cashflow Statement must be clearly disclosed, including the name of the Affiliate, the nature of the goods or services supplied and the basis of the charge;

- (v) include cash flows during that Month associated with short-term incentive cash payments of a Transferring Employee contemplated by item 3(f) of Schedule 6, to the extent that and pro rata with so much of, the applicable incentive period as falls within the Relevant Period;
- (vi) subject to item 5.3(d), include any Cash outflows or Cash inflows in respect of any Taxes (in or out of Australia) for the Month to the extent that they relate to acts, transactions or events that are reflected in the BHP Billiton Estimated Adjusted Cashflows or the Rio Tinto Estimated Adjusted Cashflows (as applicable). In this paragraph, references to Taxes include PAYG instalment payments, final company tax payments, amounts paid or received under amended assessments, and like payments or receipts under foreign income tax laws (and, for the avoidance of doubt, in the case of members of the BHP Billiton Consolidated Group or the Rio Tinto Consolidated Group, also include amounts payable or receivable under a Tax Funding Agreement or Tax Sharing Agreement, with such adjustments as are necessary to prevent double counting); and
- (vii) include any other items specifically agreed in writing by both Rio Tinto and BHP Billiton to be included.

### (c) Timing inclusions

Subject to items 5.3(b) and (c):

- (i) the net cash flows shown in each Interim Adjusted Cashflow Statement will include any items specifically agreed in writing by both Rio Tinto and BHP Billiton to be included; and
- (ii) the Interim Adjusted Cashflow Statement will show as a cash outgoing the value of any goods or services received in that Month that have been pre-paid as at the Effective Date and will

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show as a cash receipt the value of any goods or services supplied in that Month that have been pre-paid as at the Effective Date. The amount of the adjustment will equal the amount that is shown in the Effective Date Balance Sheet as a prepayment as at the Effective Date.

If the amount of any cash flow referred to in this item 5.2 relates to more than one Month, then that amount will be allocated pro rata so that the proportion of the amount relating to the relevant Month is included in the Interim Adjusted Cashflow Statement for that Month.

### 5.3 Excluded Cashflows

#### (a) For the avoidance of doubt exclusions

Subject to items 5.2(b) and (c) and items 5.3(b) and (c), the following cash flows will (for the avoidance of doubt) be excluded from the net cash flows shown in each Interim Adjusted Cashflow Statement:

- (i) all cash flows attributable to Relevant Period Excluded Assets and Relevant Period Excluded Liabilities (as determined in accordance with the methodology adopted under item 1.6 of the Funding and Distribution Policy, on the assumption that it applied from the Effective Date and all Relevant Period Assets and Relevant Period Liabilities are assets and liabilities of the JV Entities) and any other cash flows not attributable to Relevant Period Assets or Relevant Period Liabilities (as determined in accordance with the methodology adopted under item 1.6 of the Funding and Distribution Policy, on the assumption that it applied from the Effective Date and all Relevant Period Assets and Relevant Period Liabilities are assets and liabilities of the JV Entities) received or paid in that Month;
- (ii) all amounts received during that Month that relate to sales of iron ore invoiced to an Owner or its Related Corporations by an Other JV Participant pursuant to an arrangement referred to in clause 6.7 of the Joint Venture Agreement; and
- (iii) JV Formation Costs and any JV Implementation Costs, other than Approved JV Implementation Costs paid in that Month.

#### (b) Specific Relevant Period exclusions

Subject to items 5.2(b) and (c) and item 5.3(c), the following cash flows will be excluded from the net cash flows shown in each Interim Adjusted Cashflow Statement:

- (i) gains or losses realised during that Month from hedging activities;
- (ii) premia in respect of any insurance policy and associated insurance planning and administration costs;
- (iii) actual shipping costs during that Month associated with contracts for the sale of iron ore;
- (iv) the payments (principal, interest and fees) under the \* \* \* paid by BHP Billiton Iron Ore Pty Limited during that Month;
- (v) costs (excluding RGP5 study costs) of procuring the completion of design, construction and commissioning of RGP5 in accordance with the RGP5 scope of Work and achieving RGP5 Handover above \$4.8 billion (85% BHP Billiton share) paid by BHP Billiton during that Month;
- (vi) costs paid during that Month that item 4 of Schedule 6 provides are to be borne by either Rio Tinto or BHP Billiton;

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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- (vii) costs paid by either party during that Month in relation to workers' compensation liabilities and claims management costs associated with \* \* \* item 5(b) of Schedule 6.
- (viii) cash flows during that Month associated with incentive entitlements of an employee that do not fall within item 5.2(b)(v);
- (ix) any receipts during that Month under any public liability insurance policy (including in connection with contract works) or contract works insurance policy relating to a party's Relevant Period Iron Ore Assets, and any other recoveries received during that Month in connection with a public liability claim (including in connection with contract works) or the reinstatement, repair or replacement of a construction project;
- (x) any expenditure during that Month relating to a public liability claim (including in connection with contract works), including expenditure in making any recoveries in connection with such a claim;
- (xi) any expenditure during that Month relating to the reinstatement, repair or replacement of construction projects in progress that have been damaged or destroyed, in accordance with clause 3.2(j);
- (xii) any receipts during that Month under any property damage and business interruption insurance policy relating to a party's Relevant Period Iron Ore Assets, where the applicable deductible under the relevant insurance policy is less than the applicable Deductible under clause 3.2(c), and to the extent that the receipts, when aggregated with receipts in any previous Month relating to the same Event under any property damage and business interruption insurance policy do not exceed the difference between the applicable deductible under the relevant insurance policy and the applicable Deductible under clause 3.2(c);
- (xiii) any receipts during that Month under any property damage and business interruption insurance policy relating to a party's Relevant Period Iron Ore Assets, to the extent that the receipts (when aggregated with any prior receipts in relation to the same Event), exceed the lesser of the Assessed Loss and the Maximum Amount;
- (xiv) any Recoveries by an Affiliate in respect of an Event received during that Month; and
- (xv) any other items specifically agreed in writing by both Rio Tinto and BHP Billiton to be excluded, and:
- (xvi) the Interim Adjusted Cashflow Statement will only take into account cash flows arising from the operating and investing activities of the relevant Rio Tinto JV Entities and BHP Billiton JV Entities attributable to Relevant Period Assets and Relevant Period Liabilities during the Relevant Period, as determined in accordance with International Accounting Standard 7 "Statement of Cash Flows" (**IAS 7**), and will not take into account cash flows associated with their financing activities, as determined in accordance with IAS 7, (whether by way of shareholder equity, debt or otherwise), including:
  - (A) interest payments and receipts;
  - (B) dividend payments and capital distributions;
  - (C) loan repayments and draw-downs, and debt waivers, assumptions and novations and like transactions;

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



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- (D) advances and loans to or from a Rio Tinto Group entity or BHP Billiton Group entity (as applicable);
- (E) equity issues and repurchases;
- (F) payments on finance leases; and

(xvii) any Cash outflows or Cash inflows in respect of any Taxes (in or out of Australia) for the Month to the extent that item 5.2(b)(vi) does not apply to them. In this paragraph, references to Taxes include PAYG instalment payments, final company tax payments, amounts paid or received under amended assessments, and like payments or receipts under foreign income tax laws (and, for the avoidance of doubt, also include amounts payable or receivable under a Tax Funding Agreement or Tax Sharing Agreement).

### (c) Timing exclusions

Subject to items 5.2(b) and (c), the following cash flows will be excluded from the net cash flows shown in each Interim Adjusted Cashflow Statement:

- (i) all amounts received during that Month that relate to sales that were invoiced and delivered (even if invoiced at a provisional amount) prior to the Effective Date. The amount of the adjustment will equal the actual cash received, regardless of the amount shown in the Effective Date Balance Sheet;
- (ii) all amounts paid during that Month that relate to purchases of goods or services that were received prior to the Effective Date. The amount of the adjustment will equal the actual cash paid regardless of the amount shown in the Effective Date Balance Sheet. This adjustment will apply irrespective of whether the purchase related to an operating or capital item;
- (iii) proceeds of any insurance claim in that Month relating to events that occurred prior to the Effective Date;
- (iv) royalty payments paid and/or received during that Month in relation to ore sales before the Effective Date; and
- (v) any other items specifically agreed in writing by both Rio Tinto and BHP Billiton to be excluded.

If the amount of any cash flow referred to in this item 5.3 relates to more than one Month, then that amount will be allocated pro rata so that the proportion of the amount relating to the relevant Month is included in the Interim Adjusted Cashflow Statement for that Month.

### (d) GST

For the avoidance of doubt, the cash flows shown in each Interim Adjusted Cashflow Statement will exclude:

- (i) GST payable to the Australian Taxation Office on supplies;
- (ii) amounts payable to suppliers for GST on acquisitions for which an Input Tax Credit arises; and
- (iii) equivalent liabilities and credits for goods and services tax, value added tax or like taxes in other jurisdictions.

## 5.4 Final Adjusted Cashflow Statements

The Final Adjusted Cashflow Statements will also be prepared in accordance with the requirements of items 5.1 to 5.3 (inclusive), except that:

- (a) cash flows attributable to JV New Capital Expansion Projects will be included;

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- (b) cash flows (other than the study costs) attributable to Sole Risk New Capital Expansion Projects or other New Capital Expansion Projects will be excluded;
- (c) if, by the Expiry or Election Date, the Manager has recommended, and the Owners' Council has approved, the development of BHP Billiton R&D IP or Rio Tinto R&D IP (as applicable) for use in the WA Iron Ore JV and the continuation of research and development in relation to that BHP Billiton R&D IP or Rio Tinto R&D IP (as applicable) in accordance with clause 8 of the Intellectual Property Management Agreement, any cash flows associated with research and development in relation to that BHP Billiton R&D IP or Rio Tinto R&D IP (as applicable) (whether incurred by a JV Entity or an Affiliate of BHP Billiton or Rio Tinto, as applicable) will be included to the same extent that ongoing research and development is agreed to be funded by the WA Iron Ore JV, provided that:
  - (i) all claimed expenses are properly attributed to Iron Ore Production Activities; and
  - (ii) no mark-up or margin is applied to those costs by BHP Billiton or Rio Tinto (as applicable); and
- (d) any cash flows associated with research and development in relation to BHP Billiton R&D IP or Rio Tinto R&D IP not referred to in paragraph (c) will be excluded.

### 5.5 General provisions

- (a) The Interim Adjusted Cashflow Statements and Final Adjusted Cashflow Statements must be calculated and prepared in US dollars. Where the functional currency of the relevant entity is not US dollars, the Interim Adjusted Cashflow Statements and Final Adjusted Cashflow Statements must be prepared in the functional currency of that entity and then converted into US dollars using an average of the applicable daily Bloomberg Fix exchange rate (code: BFIX) reported by Bloomberg at 4pm (Sydney time) for the relevant Month. The exchange rates used for this purpose must be disclosed in the Interim Completion Accounts and the Final Completion Accounts.
- (b) The Interim Adjusted Cashflow Statements and Final Adjusted Cashflow Statements must be prepared in the same form as the standardised templates set out in the Guidance Materials.
- (c) The net accrued notional tax (***Net Accrued Notional Tax***) for the Relevant Period will be calculated by subtracting accrued notional tax in respect of total BHP Billiton Estimated Adjusted Cashflows from accrued notional tax in respect of total Rio Tinto Estimated Adjusted Cashflows (which may be a positive or negative number).
- (d) For the purposes of item (c), accrued notional tax relates to amounts payable or receivable in respect of income tax and is calculated on the basis of the following principles:
  - (i) accrued notional tax will be calculated on an accruals basis, such that the relevant entity need not have actually paid, or become liable to pay, the income tax (including making a payment under a Tax Funding Agreement or Tax Sharing Agreement) in the Relevant Period;
  - (ii) accrued notional tax will take into account the income tax consequences for the Relevant Period arising from acts, transactions or events that are reflected in the BHP Billiton Estimated Adjusted Cashflows or the Rio Tinto Estimated Adjusted Cashflows (as applicable), but will be calculated net of any Cash outflows or Cash inflows in respect of income tax (in or out of Australia) already taken into account under item 5.2(b)(vi), and, in the case of members of the BHP Billiton Consolidated Group or the Rio Tinto Consolidated Group will take into account amounts payable or receivable under a Tax Funding Agreement or Tax Sharing Agreement, or by the Head Company, with such adjustments as are necessary to prevent double counting;
  - (iii) accrued notional tax will be calculated on the basis that all entities with Cash Flows included in the BHP Billiton Estimated Adjusted Cashflows or the Rio Tinto Estimated Adjusted Cashflows (as applicable) are residents of Australia for Australian income tax purposes;

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- (iv) accrued notional tax will be calculated in relation to acts, transactions or events that are reflected in the BHP Billiton Estimated Adjusted Cashflows or the Rio Tinto Estimated Adjusted Cashflows (as applicable) in accordance with all applicable Australian income tax laws, and, for the avoidance of doubt, will take into account depreciation in relation to Relevant Period Iron Ore Assets, and expenditure in relation to Relevant Period Iron Ore Assets paid or incurred before the Effective Date that is deductible for the purposes of the 1936 Act or the 1997 Act after the Effective Date (determined on a fair and reasonable basis); and
- (v) accrued notional tax will be calculated at the Australian statutory company tax rate (currently 30%) that would apply to the Head Company of the BHP Billiton Consolidated Group or the Rio Tinto Consolidated Group (as applicable) during the Relevant Period.
- (e) Net Accrued Notional Tax in respect of the Final Adjusted Cashflow Statements will be calculated in the same way as set out in items 5.5(c) and 5.5(d), with Net Accrued Notional Tax calculated in relation to acts, transactions or events that are reflected in the BHP Billiton Final Adjusted Cashflows or the Rio Tinto Final Adjusted Cashflows (as applicable) using the same tax treatment (including tax rates) that was adopted in relation to the Cash Flows referred to in item 5.5(c).

### 5.6 Guidance Materials

In the event of an inconsistency between this Schedule and the Guidance Materials, this Schedule will prevail to the extent of the inconsistency.

## 6. Disputes

- (a) Either Rio Tinto or BHP Billiton may, within 30 days of receipt of the Final Completion Accounts, serve a dispute notice on the other. If a dispute notice is served, the dispute must be resolved by an Independent Expert and subject to paragraph (b), the provisions of clauses 16.2 and 16.3 of the Joint Venture Agreement will apply.
- (b) The Independent Expert must determine whether the Final Completion Accounts and the Adjustment Amount have been determined in accordance with the requirements and intention of clause 1 and this Schedule.
- (c) If the Independent Expert determines that an adjustment must be made to the Adjustment Amount, then that adjustment will be effected by the Rio Tinto Owner or the BHP Billiton Owner subscribing for further Debentures for the amount of that adjustment in accordance with clause 7.5 within 5 Business Days of that determination.

## 7. Post-JV Commencement Date cash flows

- (a) Within 90 days after the end of each six month period (**Cashflow Period**), with the first such Cashflow Period commencing on the JV Commencement Date, Rio Tinto and BHP Billiton must provide to one another a statement reviewed by the auditor of Rio Tinto or the auditor of BHP Billiton (as applicable) in accordance with the AUP setting out:
  - (i) as a positive number all amounts received during that Cashflow Period that relate to sales of iron ore that were invoiced and delivered (even if invoiced at a provisional amount) in the Relevant Period. The amount, in relation to sales of iron ore, must be calculated on the same basis specified in item 5.2(a);

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- (ii) as a negative number:
    - (A) all amounts paid during that Cashflow Period that relate to purchases of goods or services that were received in the Relevant Period (irrespective of whether the purchase related to an operating or capital item); and
    - (B) an amount equal to the value of any iron ore supplied to customers in that Cashflow Period that was pre-paid in the Relevant Period, as recorded in the Final Completion Balance Sheets; and
  - (iii) such reductions in respect of accrued tax as are appropriate to ensure the cash flows covered by this item 7 are reduced by accrued tax basis, consistently with the methodology in item 5.5; and
  - (iv) the net sum of the above amounts (*Post-Completion Cashflow Amount*).
- (b) If, in relation to a Cashflow Period one Owner has a lower Post-Completion Cashflow Amount than Owner will, as soon as practicable after the provision of both statements under item 7(a), be entitled to receive a franked Coupon in an amount equal to the after-Tax amount of one half of the difference between the two Owner's Post-Completion Cashflow Amounts.
- (c) After the second Cashflow Period, and (if no settlement is reached under this item 7(c)) each subsequent Cashflow Period, Rio Tinto and BHP Billiton must negotiate in good faith to agree a settlement of any such amounts still outstanding. If such a settlement is reached, the provisions of this item 7 will no longer apply.

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### Schedule 9 Warranties

In this Schedule:

- (1) references to the “**Warrantor**” and “**Warrantor Group**” are:
  - (a) where BHP Billiton is giving the warranties—to BHP Billiton and the BHP Billiton Group, respectively; and
  - (b) where Rio Tinto is giving the warranties—to Rio Tinto and the Rio Tinto Group, respectively; and
- (2) references to JV Entities are:
  - (a) where BHP Billiton is giving the warranties—to the BHP Billiton JV Entities; and
  - (b) where Rio Tinto is giving the warranties—to the Rio Tinto JV Entities; and
- (3) references to “**the other party**” are:
  - (a) where the Warrantor is BHP Billiton, to Rio Tinto; and
  - (b) where the Warrantor is Rio Tinto, to BHP Billiton.

#### Part 1—Warranties given by each Warrantor

- (1) Except as disclosed in the Due Diligence Materials or otherwise in writing to the other party, the Relevant Period Iron Ore Assets of the Warrantor are owned by the Warrantor Group and are not subject to any Security Interest, other than:
  - (a) a Permitted Security Interest; or
  - (b) an Existing JV Cross Charge.
- (2) The Due Diligence Materials provided by or on behalf of a member of the Warrantor Group to the other party were provided in good faith and, to the best of the knowledge and belief of the Warrantor, were true, accurate and, except to the extent that disclosure has been withheld as required by contractual obligations of confidentiality to third parties, or by antitrust Laws, complete in all material respects at the time they were provided.

#### Part 2—Warranty given by Rio Tinto

- (1) Diagram 1 and Diagram 2 set out in item 1.3 of Part 1 of Schedule 7 shows all the Rio Tinto JV Entities in yellow shaded boxes and is a complete and accurate depiction of the ownership interests in and held by Rio Tinto JV Entities.

#### Part 3—Warranty given by BHP Billiton

- (1) Diagram 1 set out in item 2.3 of Part 2 of Schedule 7 identifies as “JV Entity” all the BHP Billiton JV Entities and is a complete and accurate depiction of the ownership interests in and held by BHP Billiton JV Entities.

## Implementation Agreement

### Schedule 10

#### Owners' Council Completion Resolutions

##### Resolution1: Powers of Owners' Council to approve, amend and replace additional policies

**Resolved** that, pursuant to clause 3.3(a)(iv) of the Joint Venture Agreement, the following policies are necessary and desirable:

- (a) an insurance protocol; and
- (b) a hedging policy.

**Further Resolved** that, pursuant to clause 3.3(a)(iv) of the Joint Venture Agreement, the following policies (in the form tabled at the meeting) be approved and take effect from the JV Commencement Date:

- (a) the Insurance Protocol; and
- (b) the Hedging Policy.

##### Resolution2: Meetings of the Owners' Council

**Resolved** that the following Owners' Council meeting procedures be adopted pursuant to clause 3.5 of the Joint Venture Agreement:

At least 14 days' prior notice of each meeting of the Owners' Council, together with notice of the agenda for the meeting, will be given to each Representative by the Manager or the Owner calling the meeting. Notice of any meeting or of the agenda for the meeting, or both, may be waived by all the Representatives. Additional items may be added to the agenda by the Manager or any Owner by notice to each Representative not less than 5 days prior to the scheduled date of the meeting. If notice of an agenda has not been waived in accordance with this paragraph, only items on the agenda may be the subject of decision at an Owners' Council meeting, unless otherwise agreed by the Owners' Council.

##### Resolution3: Establishment of the Audit, Remuneration, Technical and Sustainable Development Committees of the Owners' Council

**Resolved** that, pursuant to clause 3.9 of the Joint Venture Agreement, with effect from the JV Commencement Date, the following standing committees be established, with the following functions and responsibilities:

- (a) an audit committee (***Audit Committee***), which will make recommendations, and report and provide advice, to the Owners' Council, based on its review of relevant material, including:
  - (i) the financial information that will be provided to the Owners and the public;
  - (ii) the systems and internal controls that the Owners' Council and the Manager will establish; and
  - (iii) the audit, accounting and financial reporting processes of the WA Iron Ore JV;
- (b) a remuneration committee (***Remuneration Committee***), which will report and provide advice to the Owners' Council in relation to the remuneration of the CEO and Senior Executive Team members; and
- (c) a technical committee (***Technical Committee***), whose function will be to:
  - (i) report and provide advice to the Owners' Council, based on pertinent reports and technical information relating to the operations and development and expansion activities of the WA Iron Ore JV; and
  - (ii) report and provide advice to the Owners' Council based on the Owners' Business Plans and Budgets and studies provided to the Owners pursuant to clause 8 of the Joint Venture Agreement.

## Implementation Agreement

- (d) a sustainable development committee (*Sustainable Development Committee*), whose function will be to report and provide advice to the Owners' Council in relation to its oversight of matters relating to health, safety, environment, community and sustainable development, including:
  - (i) the WA Iron Ore JV's compliance with applicable legal and regulatory requirements; and
  - (ii) the approach to be taken by the Manager in relation to these matters.

Each of the Committees will meet at least Quarterly (or more frequently as may be desirable) and will regulate the conduct of their meetings as they see fit.

### Resolution4: Appointment of initial Auditor

**Resolved** that [*insert name*], recommended by the Implementation Management Committee in accordance with clause 3.6(b) (viii) of the Implementation Agreement for appointment as the initial Auditor, be appointed as the initial Auditor and that such appointment take effect on and from the JV Commencement Date.

**Further Resolved** that [*insert name*] recommended by the Implementation Management Committee in accordance with clause 3.6(b)(viii) of the Implementation Agreement for appointment as the internal auditor, be appointed as the internal auditor and that such appointment take effect on and from the JV Commencement Date.

### Resolution5: Revised Accounting Policy

**Resolved** that, pursuant to clause 3.13 of the Joint Venture Agreement, the Revised Accounting Policy (in the form tabled at the meeting) be adopted as the Accounting Policy and have effect from the JV Commencement Date.

### Resolution6: Limitations on Manager's expenditure

**Resolved** that for the purposes of clause 3.10(l) of the Joint Venture Agreement:

- (a) the Budget Overrun Percentage is \* \* \* of the total expense specified in the relevant Budget;
- (b) the Expenditure Category Overrun Amount is \* \* \* of the expense specified in the relevant Budget for each of the following categories of aggregated expenditure:
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - \* \* \*
- (c) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# **Implementation Agreement**

## **Schedule 11**

### **Joint Venture Agreement**



**West Australian Iron Ore  
Production Joint Venture  
Agreement**

Rio Tinto Limited

Rio Tinto plc

BHP Billiton Limited

BHP Billiton plc

[Rio Tinto Owner]

[BHP Billiton Owner]

[Rio Tinto Marketing SPV]

[BHP Billiton Marketing SPV]

[The Manager]

An agreement to establish a production joint venture  
by Rio Tinto and BHP Billiton

# West Australian Iron Ore Production Joint Venture Agreement

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# West Australian Iron Ore Production Joint Venture Agreement

Date

2009

## Parties

1. **Rio Tinto Limited** (ACN 004 458 404), a company incorporated in Australia, of Level 33, 120 Collins Street, Melbourne, Victoria, Australia (**RTL**).
2. **Rio Tinto plc** (registration number 00719885), a company incorporated in England and Wales, of 2 Eastbourne Terrace, London, United Kingdom (**RTP** and, together with RTL, **Rio Tinto**).
3. **BHP Billiton Limited** (ACN 004 028 077), a company incorporated in Australia, of 180 Lonsdale Street, Melbourne, Victoria, Australia (**BHPBL**).
4. **BHP Billiton plc** (registration number 3196209), a company incorporated in England and Wales, of Neathouse Place, London, United Kingdom (**BHPBP** and, together with BHPBL, **BHP Billiton**).
5. [\*] (**Rio Tinto Owner**).
6. [\*] (**BHP Billiton Owner**).
7. [\*] (**Rio Tinto Marketing SPV**).
8. [\*] (**BHP Billiton Marketing SPV**).
9. [\*] (the **Manager**).

## Recitals

- A Rio Tinto and BHP Billiton each carry on iron ore operations in Western Australia.
- B Rio Tinto Owner and BHP Billiton Owner own shares and debentures in *[names of debenture issuers to be inserted]*.
- C Rio Tinto Owner and BHP Billiton Owner have determined that their respective interests as shareholders and debenture holders will be enhanced if the following arrangements (to be known collectively as the “West Australian Iron Ore Joint Venture”) are entered into:
- (a) each JV Entity contracts to have its Iron Ore Assets managed by the Manager;
  - (b) each relevant JV Entity enters contracts to allow its infrastructure to be used by the other JV Entities;
  - (c) each relevant JV Entity enters contracts to sell agreed proportions of its annual production to Rio Tinto Marketing SPV and BHP Billiton Marketing SPV, for separate
  - (d) Rio Tinto Owner and BHP Billiton Owner agree to share in equal proportions the cost of funding the respective iron ore operations of the JV Entities,
- on the terms and conditions of this Agreement and the other Transaction Documents, subject to the terms of any Existing JV Arrangements.
- D The objectives of the West Australian Iron Ore Production Joint Venture are to manage, develop and expand, on a unified basis, the respective iron ore assets of the JV Entities in Western Australia, realise the significant synergy opportunities available to them and facilitate increased supply to the global marketplace.



# **West Australian Iron Ore Production Joint Venture Agreement**

It is agreed as follows.

## **1. Definitions and Interpretation**

### **1.1 Definitions**

In this Agreement, unless the subject matter or context requires otherwise, the terms defined in item 1.1 of schedule 1 have the meaning given to them in that schedule.

### **1.2 Interpretation**

The interpretation provisions in items 1.2 to 1.7 of schedule 1 apply to the interpretation of this Agreement.

## **2. WA Iron Ore Production Joint Venture Overview**

### **2.1 Formation of WA Iron Ore Production Joint Venture**

- (a) Subject to paragraph (b), on and from the JV Commencement Date, a joint venture to be known as the “West Australian Iron Ore Joint Venture” will be formed in accordance with the terms of the Transaction Documents (***WA Iron Ore JV***).
- (b) The Owners acknowledge that formation of the WA Iron Ore JV will only occur after the BHP Billiton Owner has subscribed for Debentures issued by the Rio Tinto Issuer and the Rio Tinto Owner has subscribed for Debentures issued by the BHP Billiton Issuer, and that continued participation in the WA Iron Ore JV will require the Owners (or their Related Corporations) to continue to hold such Debentures.
- (c) The holding of such Debentures does not confer on the Debenture Holder any legal or equitable rights other than the rights of an unsecured creditor and the economic interest conferred by participation in the WA Iron Ore JV. For the avoidance of doubt, it is expressly declared and acknowledged that:
  - (i) a Debenture does not confer any proprietary interest in law or equity of any kind whatsoever in:
    - (A) any of the assets or cash flows of the Shareholder, the Issuer or any of their Related Corporations; or
    - (B) any income, profits or gains of the Shareholder, the Issuer or any of their Related Corporations; and
  - (ii) the Shareholder, the Issuer and their Related Corporations do not, by reason of the execution of this Agreement or the Debenture Deeds Poll, or the issue of the Debentures, hold any of their assets, cash flows, income, profits or gains on any trust (actual or constructive) of any kind whatsoever for the Debenture Holders, or have any fiduciary relationship of any kind whatsoever with the Debenture Holders,except that certain amounts received by a Shareholder or a Debenture Holder (or their Related Corporations) in excess of their entitlements under the Funding and Distribution Policy will be held on trust pursuant to clauses 4.6, 6.3, 10.3 and 11.9 of that policy.
- (d) On the JV Commencement Date, the Participating Shares in the WA Iron Ore JV will be:
  - (i) Rio Tinto Owner 50%; and
  - (ii) BHP Billiton Owner 50%.

## **West Australian Iron Ore Production Joint Venture Agreement**

### **2.2 Scope of WA Iron Ore JV**

- (a) The permitted scope of the WA Iron Ore JV is:
  - (i) the production of Iron Ore Product in Western Australia and delivery of that Iron Ore Product at the ship's rail, including:
    - (A) mining, processing and blending iron ore, and operating associated rail, port, power and other infrastructure in Western Australia, including the Secondary Processing facilities at Tom Price and Newman and the HBI Beneficiation Plant;
    - (B) maintaining, constructing, upgrading and expanding iron ore mines and infrastructure in Western Australia;
    - (C) any proposal, development or activity required to satisfy Secondary Processing obligations under any current or future State Agreements; and
    - (D) any Secondary Processing that the Owners agree is economically feasible or necessary having regard to the projected life of operations and the quality of the iron ore reserves and resources available to the WA Iron Ore JV;
  - (ii) further business development activities associated with the business referred to in paragraph (i) above, including exploration for iron ore in Western Australia and the acquisition of additional iron ore assets in Western Australia; and
  - (iii) all other activities reasonably necessary or incidental to the above.

It is intended that (except as contemplated by this Agreement or any other Transaction Document, or required by Existing JV Arrangements), the activities of the Rio Tinto Group and the BHP Billiton Group falling within this scope should be conducted only through the WA Iron Ore JV.

- (b) The following are excluded from the permitted scope of the WA Iron Ore JV:
  - (i) the sale and marketing of Iron Ore Product (which will be carried on by each Owner and its Related Corporations separately);
  - (ii) HBI Plant and HIs melt (and any associated liabilities);
  - (iii) any other Secondary Processing except as contemplated by paragraph (a);
  - (iv) exploration, whether in Western Australia or elsewhere, for non-iron ore mineral products;
  - (v) any Excluded Asset; and
  - (vi) iron ore business development activities outside Western Australia.
- (c) Except as required under the terms of this Agreement and the other Transaction Documents, each Owner Parent must not, and must procure that its Affiliates do not, explore for iron ore resources and reserves in Western Australia other than in connection with:
  - (i) a New Opportunity that the Manager cannot operate and maintain due to any contractual constraints existing at the time the New Opportunity is acquired, but only to the extent of such contractual constraints; and
  - (ii) any Target Iron Ore Assets that will not form part of the WA Iron Ore JV pursuant to clause 8.6(d).

## West Australian Iron Ore Production Joint Venture Agreement

- (d) If there is a discovery of prospective iron ore resources in Western Australia (a **Discovery**) as a consequence of exploration activities for other minerals on a tenement in which an Owner (the **Finder Owner**) or any of its Affiliates (the **Finder**) holds or is entitled to acquire an interest, whether direct or indirect (the **Interest**), then the Finder Owner must notify the Manager and the other Owner as soon as practicable. Upon receipt of such notification, the Manager must decide whether it wishes to take up the opportunity on behalf of the WA Iron Ore JV. If the Manager decides that it does not wish to take up the opportunity on behalf of the WA Iron Ore JV, it must refer the matter to the Owners' Council. If the Owners' Council declines the opportunity, the Finder Owner will be free to pursue the Interest as a Sole Risk Opportunity in accordance with item 2 of schedule 4, unless the Representatives of the Finder Owner voted against (or abstained from voting on) the opportunity at the Owners' Council meeting at which the opportunity was declined.
- (e) If either the Manager or the Owners' Council decides to take up the opportunity as part of the WA Iron Ore JV under paragraph (d), the Manager and the Finder Owner will, subject to this paragraph (e), agree an arrangement (a **Transfer Arrangement**) for making the Interest available to a JV Entity that is a wholly owned Subsidiary of the Finder Owner. Any such Transfer Arrangement:
  - (i) must include a reimbursement of the costs incurred by the Finder Owner or Finder (as applicable) in making the Discovery and all transfer costs incurred by the Finder Owner or Finder (as applicable) in making the relevant tenure available to the JV Entity (which amounts will be treated as costs of the WA Iron Ore JV): and
  - (ii) will be conditional on:
    - (A) the satisfaction of all legal and regulatory constraints in relation to the Transfer Arrangement; and
    - (B) \* \* \*

The Finder Owner must use, and where applicable must procure that the Finder uses, all reasonable endeavours to ensure that such constraints are overcome \* \* \*

- (f) If the conditions to a Transfer Arrangement can be satisfied, the Finder Owner and the relevant Owner Parent must procure compliance by the Finder with the terms of the Transfer Arrangement.
- (g) If the conditions to a Transfer Arrangement cannot be satisfied, and either the Manager or the Owners' Council has decided to take up the opportunity as part of the WA Iron Ore JV, then the Finder Owner must use all reasonable endeavours to confer, to the extent practicable, on the other Owner an economic interest in the Discovery equal to the other Owner's Participating Share of the Finder Owner's Interest, subject to that other Owner paying a reimbursement of that other Owner's Participating Share of the costs referred to in paragraph (e)(i).

### 2.3 Objectives of the WA Iron Ore JV

The objectives of the WA Iron Ore JV are to:

- (a) manage and develop, on a unified basis, each JV Entity's respective Iron Ore Assets and Western Australian iron ore production operations, including all activities required to produce finished Iron Ore Product for delivery to the Marketing SPVs and the Non-Selling Entities;
- (b) achieve substantial cost and capital reductions and other efficiencies from operational integration, including infrastructure sharing and ore blending;

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

- (c) facilitate resource optimisation and utilisation through ore blending and integrated mine planning;
- (d) explore for iron ore resources and reserves, expand existing iron ore production operations and acquire additional iron ore assets in Western Australia;
- (e) improve expansion potential, facilitating increased supply to the global marketplace; and
- (f) otherwise realise synergies including through the combined management of the Iron Ore Assets by the Manager.

### 2.4 JV Entities

- (a) \* \* \*
  - (i) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
    - \* \* \*
  - (ii) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
    - (C) \* \* \*
    - (D) \* \* \*
    - (E) \* \* \*
      - (1) \* \* \*
      - (2) \* \* \*
      - \* \* \*
    - (F) \* \* \*
      - (1) \* \* \*
      - (2) \* \* \*
      - \* \* \*
    - (G) \* \* \*
      - (1) \* \* \*
      - (2) \* \* \*
      - \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# West Australian Iron Ore Production Joint Venture Agreement

(H) \* \* \*

(I) \* \* \*

(1) \* \* \*

(2) \* \* \*

\* \* \*

(J) \* \* \*

(K) \* \* \*

\* \* \*

(iii) \* \* \*

(iv) \* \* \*

(c) \* \* \*

(i) \* \* \*

(A) \* \* \*

(B) \* \* \*

(C) \* \* \*

(1) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(B) \* \* \*

(iii) \* \* \*

(d) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(e) \* \* \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(iv) \* \* \*

(A) \* \* \*

(B) \* \* \*

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## **West Australian Iron Ore Production Joint Venture Agreement**

### **2.5 Term of the WA Iron Ore JV**

The WA Iron Ore JV will commence on the JV Commencement Date and continue until the earlier of when:

- (a) all assets referred to in the definition of “Iron Ore Assets” are completely depleted or disposed of, and all liabilities in respect of the Iron Ore Assets of the JV Entities (including rehabilitation and closure costs associated with the Iron Ore Assets) have been discharged, including under the State Agreements, and the winding up of all JV Operations is complete; and
  - (b) only one Owner continues to hold a Participating Interest,
- and, in either case, no Sole Risk Development or Sole Risk Opportunity continues to be undertaken by a party to this Agreement. The WA Iron Ore JV and this Agreement cannot be terminated in any other circumstances.

## **3. Governance of WA Iron Ore JV**

### **3.1 Establishment of the Owners’ Council**

- (a) With effect from the JV Commencement Date, a non-executive Owners’ Council is established to represent the Owners and oversee JV Operations.
- (b) The Owners’ Council is the ultimate governance body of the WA Iron Ore JV.
- (c) The CEO will report to the Owners’ Council.

### **3.2 Representation on Owners’ Council**

- (a) Each Owner may appoint up to four Representatives to the Owners’ Council.
- (b) The Representatives appointed by an Owner will collectively have one vote.
- (c) Subject to paragraph (d), one Representative will be appointed as JV Chairperson and will hold office for a one year period (or until resignation, dismissal, incapacity or death).
- (d) The first JV Chairperson will be appointed by Rio Tinto and will remain in the position for a four year period from the JV Commencement Date, unless the appointee:
  - (i) resigns, becomes incapacitated or dies before the expiration of that period; or
  - (ii) is removed by the agreement of both Owners,in which case Rio Tinto may (after consultation with BHP Billiton) appoint a replacement for the balance of that four year period. Subject to clause 3.8(e)(iii), after the initial four year period expires, BHP Billiton will appoint the JV Chairperson for the next one year period, with the right to appoint subsequent JV Chairpersons rotating between each Owner each year thereafter.
- (e) The JV Chairperson will not have a casting vote.
- (f) The primary roles of the JV Chairperson are to:
  - (i) provide leadership to the Owners’ Council and ensure the efficient organisation and conduct of the Owners’ Council and its activities;
  - (ii) in consultation with the CEO:
    - (A) set the agenda for and convene Owners’ Council meetings;
    - (B) agree a forward programme for Owners’ Council meetings, to be approved by the Owners’ Council;

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- (iii) facilitate the effective contribution of the Representatives and the work of the Owners' Council at its meetings;
- (iv) be responsible for ensuring that principles and processes of the Owners' Council are maintained (including between meetings) in fulfilling the Owners' Council's governance role; and
- (v) promote constructive and respectful relations among the Representatives in the fulfilment of their governance role.

The role conferred on the JV Chairperson does not extend to any involvement in the day to day management of JV Operations.

- (g) The Owners' Council will monitor the decisions and actions of the CEO and the performance of the WA Iron Ore JV to gain assurance that progress is being made towards the objectives of the WA Iron Ore JV set out in clause 2.3.
- (h) Between meetings of the Owners' Council, the JV Chairperson will ensure that the CEO provides information relating to proposed significant decisions and actions and the basis for them to the Owners' Council in a timely manner.
- (i) The Owners' Council may appoint a JV Employee as Owners' Council secretary to support the Owners' Council. The Owners' Council secretary will report to the JV Chairperson on matters relating to the Owners' Council.

### **3.3 Owners' Council Powers and Functions**

The Owners' Council has the following powers and functions:

- (a) the power to approve the following high level policies regulating the conduct of JV Operations:
  - (i) business conduct;
  - (ii) health, safety and environment;
  - (iii) communities, including towns and indigenous groups; and
  - (iv) such other policies as the Owners' Council determines are necessary or desirable;
- (b) the power to review the conduct of the JV Operations;
- (c) the power to give general direction as to the manner in which the Manager manages the JV Operations;
- (d) the following powers and functions:
  - (i) approving Business Plans, Budgets and Synergies Capture Plans in accordance with clause 3.10;
  - (ii) approving contracts with a value exceeding US\$250 million (Indexed);
  - (iii) reviewing performance against Business Plans and Budgets (including integration synergy capture);
  - (iv) approving capital projects exceeding US\$250 million (Indexed);
  - (v) approving studies for projects with a capital cost exceeding US\$250 million (Indexed);
  - (vi) approving mine closures;

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- (vii) approving Iron Ore Asset disposals and acquisitions (whether of shares or assets or by entry into of joint venture arrangements or otherwise) exceeding US\$100 million (Indexed) or the relinquishment of tenure having a strategic value;
- (viii) approving strategy for dealing with third party access requests;
- (ix) approving product types, volumes and specifications;
- (x) reviewing the performance of the CEO and Senior Executive Team members and fixing the remuneration of the CEO and Senior Executive Team members;
- (xi) approving related party transactions (including transactions with either Owner or their Affiliates);
- (xii) subject to item 14.3 of the Reporting Policy, approving the commencement or settlement of litigation involving a potential liability or claim exceeding US\$100 million (Indexed);
- (xiii) approving the encumbrance of Iron Ore Assets, other than Permitted Security Interests;
- (xiv) approving entry into new State Agreements or material amendments to existing State Agreements;
- (xv) appointing and removing the CEO;
- (xvi) approving the appointment of Senior Executive Team members pursuant to clause 4.5;
- (xvii) ensuring the management of intellectual property in accordance with the Intellectual Property Management Agreement (distinguishing between patented and unpatented intellectual property);
- (xviii) approving the exercise by the Manager of enforcement powers under any Cross Charge granted to the Manager;
- (xix) such other powers and functions as are specifically conferred on the Owners' Council by a Transaction Document; and
- (xx) such other powers and functions that the Owners' Council resolves are necessary or desirable. Any such resolution will be effective only if and when the resolution is initialled by a duly authorised representative of each Owner.

Notwithstanding any other provision of this Agreement, until the second anniversary of the JV Commencement Date, the CEO's approval limit will not exceed US\$125 million (Indexed), unless the Owners' Council otherwise agrees following a review to be conducted after the first anniversary of the JV Commencement Date. The references in paragraphs (d)(ii), (iv) and (v) to US\$250 million (Indexed) will be taken to be references to US\$125 million (Indexed) until the second anniversary of the JV Commencement Date or any earlier date the Owners' Council otherwise agrees.

The Owners' Council may amend or replace the policies referred to in paragraph (a) by passing a resolution adopting the amended or replaced policy and providing a copy of that amended or replaced policy to the Owners and the Manager.

### **3.4 Manager's Authority**

- (a) Subject to clause 3.3 and to Existing JV Arrangements, the Manager (at the direction of the CEO) will have clear authority to manage the JV Operations and the Owners will not interfere with the day-to-day management of the JV Operations as carried out by the JV Entities. The CEO will be required to act in accordance with the governance arrangements. The separate references to the CEO are not intended to suggest otherwise.



## **West Australian Iron Ore Production Joint Venture Agreement**

- (b) Subject to clause 3.10(i)(iii), the Manager may not act in respect of any matter falling within the functions and powers of the Owners' Council except with the authority of a decision:
  - (i) made by the Owners' Council; or
  - (ii) arrived at through the deadlock resolution procedures set out in clauses 3.7 and 3.8.

Where no decision is made by the Owners' Council in respect of any matter falling within a function or power referred to in clauses 3.3(a), 3.3(d)(i), 3.3(d)(ix), 3.10(l), 4.7(a), 4.7(c) or 4.15(a) in respect of a particular period, the Manager must continue to act in accordance with the most recent decision of the Owners' Council in relation to that matter.

### **3.5 Meetings**

- (a) The Owners' Council will meet at least Quarterly at meetings convened in accordance with clause 3.2(f)(ii) and additional meetings may be called by either Owner or the Manager. Each Owner may add additional points to the agenda for any Owners' Council Meeting in accordance with any meeting procedures approved by the Owners' Council.
- (b) Owners' Council meetings will be held in Perth, Western Australia (or such other place as the Owners agree in writing), or by contemporaneously linking together of Representatives by instantaneous communication devices.
- (c) The Owners' Council may by resolution establish procedures regulating the convening and conduct of Owners' Council Resolutions. The Owners' Council must comply with any such resolution.
- (d) Subject to clause 9.1(a)(iii), a quorum of the Owners' Council will be constituted by a Representative from each Owner. If a quorum is not present the Owners' Council meeting will be postponed for 7 days. If a quorum is not present at the first postponed meeting, the Owners' Council meeting will be postponed for a further 7 days. At the second postponed meeting, a quorum will be formed by one Representative of the Owner who was represented at the two earlier meetings. The only items that may be considered at any postponed meetings are items that were included in the agenda provided in relation to the first meeting. The date and time for each postponed meeting will be notified to each Representative by the Manager or the Owner whose Representative was present at the relevant postponed meeting as soon as practicable after the time the relevant meeting is adjourned.
- (e) The Manager must be separately represented at each meeting of the Owners' Council, unless the Owners otherwise agree, but will have no right to vote.
- (f) Duly passed resolutions of the Owners' Council within the scope of its functions will be contractually binding on the Manager from the time passed, and the Manager must act on the basis of those resolutions, even if it has not received minutes of the meeting signed by the JV Chairperson (provided that, if the Manager is not present at the meeting, it has been notified of the resolution). In the event of an inconsistency between this Agreement and the Policies and Protocols, the policies referred to in clause 3.3(a) or an Owners' Council resolution, this Agreement will prevail to the extent of that inconsistency.
- (g) A resolution in writing signed by all the Representatives is valid and effectual as if it had been passed at a duly convened meeting of the Owners' Council. The written resolution may consist of one or several documents in the same terms.

### **3.6 Voting**

- (a) All matters considered at Owners' Council meetings will be decided by unanimity of the votes cast.

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- (b) If a unanimous vote cannot be obtained, the deadlock resolution procedure provided in clauses 3.7 and 3.8 will apply.

### 3.7 Deadlock general principles

- (a) If the Owners' Council does not reach agreement on a matter, then either Owner may refer the dispute to the chief executive officers of the ultimate holding companies of the Owners (the **Chief Executives**), who will meet and seek to resolve the matter in good faith within 30 days.
- (b) If the Chief Executives are unable to resolve the matter within 30 days of referral to them, either Owner may refer the dispute to the chairpersons of the ultimate holding companies of the Owners (the **Owners' Chairpersons**), who will meet and seek to resolve the matter in good faith within 30 days.
- (c) If the Owners' Chairpersons are unable to resolve the matter within 30 days of referral to them, then:
  - (i) if the matter is of a type referred to in clause 3.8, the dispute will be resolved in accordance with the provisions of clause 3.8; and
  - (ii) if the matter is not of a type referred to in clause 3.8, clause 3.4(b) will apply.

### 3.8 Deadlock resolution for specific matters

#### *Deadlocks in relation to communities and other issues*

- (a) If the Owners' Chairpersons have been unable to resolve a dispute about a proposal or expenditure put forward by an Owner or the Manager in relation to:
  - (i) communities or towns;
  - (ii) indigenous groups;
  - (iii) environmental issues; or
  - (iv) occupational health and safety,any Owner may refer the dispute to an Independent Expert for prompt resolution under clause 16.
- (b) The Independent Expert will be required to determine whether or not the proposal or expenditure in relation to the relevant matter in paragraph (a) is being put forward in whole or in part for a collateral purpose, or for other reasons that are not wholly connected with the WA Iron Ore JV.
- (c) If the Independent Expert reaches the view that:
  - (i) the proposal or expenditure is being put forward for one of the reasons in paragraph (b), then the Owners' Council will be deemed to have rejected that proposal or expenditure, and the Manager will not be authorised to implement it; or
  - (ii) the proposal or expenditure is not being put forward for one of the reasons in paragraph (b), then the Owners' Council will be deemed to have approved that proposal or expenditure and the Manager will be authorised and required to implement it.

#### *Deadlocks in relation to Government obligations*

- (d) If the Owners' Chairpersons have been unable to resolve a dispute in relation to a proposal put forward by an Owner or the Manager:
  - (i) for the satisfaction of a Secondary Processing obligation under a current or future State Agreement;

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- (ii) to assume, perform, amend or satisfy any other obligation imposed by an Authority (including under a current or future State Agreement or imposed as a condition to any Authorisation); or
- (iii) that relates to the preservation of a JV Tenement, an Owner may refer the dispute to an Independent Expert for resolution under clause 16. In making the determination, the Independent Expert must determine what is in the best interests of the WA Iron Ore JV, having regard to:
- (iv) in the case of paragraph (i), the alternatives available to satisfy the Secondary Processing obligations and the costs and consequences of failing to do so;
- (v) in the case of paragraph (ii), the alternatives available and the costs and consequences of failing to assume, perform, amend or satisfy the obligation concerned; or
- (vi) in the case of paragraph (iii), the obligations applying in relation to the JV Tenement and the strategic or economic value of the JV Tenement.

### *Deadlocks in relation to CEO appointment*

- (e) If the Owners' Chairpersons have been unable to resolve a dispute in relation to the appointment of the CEO, then unless paragraph (f) applies:
  - (i) the CEO who is then holding office will continue to act as CEO;
  - (ii) the Owners' Council must conduct a Quarterly review of the CEO's appointment until a CEO agreed by the Owners Council (other than on a temporary basis) is appointed; and
  - (iii) if the JV Chairperson has been appointed by Rio Tinto under clause 3.2(d) during the first four year period from the JV Commencement Date, then that JV Chairperson will continue in office and Rio Tinto will continue to be entitled to appoint the JV Chairperson until a CEO agreed by the Owners' Council (other than on a temporary basis) is appointed.
- (f) If the Owners' Chairpersons have been unable to resolve a dispute in relation to the appointment of the CEO and the CEO who is then holding office:
  - (i) does not wish to continue to act;
  - (ii) resigns, becomes incapacitated or dies; or
  - (iii) has been removed from the position,and the Owners disagree in relation to a replacement, the JV Chairperson will appoint a temporary CEO from the Senior Executive Team. That temporary appointment, and any proposals for an alternative CEO, will be reviewed each Quarter until such time as the Owners' Council agrees on the appointment of a replacement CEO. If the JV Chairperson has been appointed by Rio Tinto under clause 3.2(d) during the first four year period from the JV Commencement Date, then that JV Chairperson will continue in office and Rio Tinto will continue to be entitled to appoint the JV Chairperson until a CEO agreed by the Owners' Council (other than on a temporary basis) is appointed.

### **3.9 Owners' Council Committees**

- (a) From time to time the Owners' Council may, by resolution, establish standing and ad hoc committees (*Committees*). The function of such Committees will be to report and provide advice to the Owners' Council in relation to the exercise of powers conferred on the Owners' Council by this Agreement.

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- (b) Each Owner will be entitled to nominate an equal number of representatives to be members of each Committee. The members of each Committee must be Owners' Council Representatives, except that an Owner may nominate one Committee member who is not an Owners' Council Representative provided that person is of group management committee or executive committee seniority. Each Owner is entitled to have advisors (internal and external) attend Committee meetings on a specific needs basis in order to ensure that an Owner has access to requisite advice in the context of a particular matter or project.
- (c) The chairperson of each Committee must be an Owners' Council Representative. The Owners will divide between them the first Committee Chairs of the audit and remuneration committees. The Owners will also divide between them the first Committee Chairs of the technical and sustainable development committees. Committee chairpersons will serve two years and their appointment will alternate between each Owner.
- (d) The Committees will meet together, adjourn and otherwise regulate their meetings as directed by the Committee chairperson and otherwise as they see fit.
- (e) The Owners acknowledge and agree that on Completion the following standing Committees will be established:
  - (i) an audit committee;
  - (ii) a remuneration committee;
  - (iii) a sustainable development committee; and
  - (iv) a technical committee,in each case with the functions contemplated by resolutions of the Owners' Council required to be made pursuant to clause 6.2(f) of the Implementation Agreement.
- (f) The audit committee and remuneration committee established at Completion will remain in place unless a subsequent Owners' Council resolution abolishes them. The sustainable development committee and the technical committee established at Completion will remain in place until the fourth anniversary of the JV Commencement Date, unless a subsequent Owners' Council resolution extends their existence. Any other standing or ad hoc committee will remain in place for the period set by the Owners' Council when establishing that Committee.

### **3.10 Business Plans, Budgets and Synergies Capture Plans**

- (a) The Manager must prepare each Business Plan and each Budget in accordance with this clause 3.10 and submit them to the Owners' Council. The Manager must submit:
  - (i) each Business Plan to the Owners' Council at least 6 months (or such other period as the Owners' Council may agree) prior to the commencement of each Half Year; and
  - (ii) each Budget (including the Synergies Capture Plan as a discrete component) to the Owners' Council at least 90 days (or such other period as the Owners' Council may agree) prior to the commencement of each Half Year.
- (b) The first Business Plan and the first Budget will be prepared and approved in accordance with clauses 3.6(b)(v) and (vi) and 3.7 of the Implementation Agreement.
- (c) Rio Tinto and BHP Billiton are committed to identifying synergies between their respective Iron Ore Assets and associated iron ore production operations and implementing appropriate arrangements to reduce costs and maximise efficiencies in a manner that operates fairly between the Owners and their respective Related Corporations that are parties to the Transaction Documents.

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- (d) The first Synergies Capture Plan will be prepared and approved in accordance with clauses 3.6(b)(vii) and 3.7 of the Implementation Agreement and will include details of the synergies the WA Iron Ore JV is expected to achieve, which will form a baseline against which synergy capture can be measured.
- (e) The capture of synergies will be a key business initiative as outlined in the initial Business Plan and Budget. Each Synergies Capture Plan must:
  - (i) be consistent with the objectives set out in paragraph (c);
  - (ii) identify and describe the synergies the Manager expects the WA Iron Ore JV to realise in each Quarter for the forthcoming year and include indicative estimates for any synergies to be realised after the forthcoming year, including the synergies specified as the baseline synergies in the first Synergies Capture Plan and any synergies identified in any subsequent Synergies Capture Plan;
  - (iii) provide indicative estimates of the costs and expenses to be incurred by the Manager and each Owner to capture the synergies/implement the Synergies Capture Plan;
  - (iv) include a reconciliation of planned and actual progress in the delivery of the synergies compared against both the previous Synergies Capture Plan and the baseline contained in the first Synergies Capture Plan;
  - (v) detail the specific information and actions the Manager requires from the Owners to implement the Synergies Capture Plan; and
  - (vi) otherwise comply with the Reporting Policy.
- (f) The Manager's obligation to prepare and submit a Synergies Capture Plan (and any associated reporting) pursuant to this clause 3.10 will continue until such time as is agreed by the Owners' Council.
- (g) In preparing each Business Plan and each Budget, the Manager must:
  - (i) ensure the requirements of any Existing JV Arrangements of which the Manager is aware are met; and
  - (ii) subject to satisfying paragraph (i);
    - (A) provide for the achievement of Pilbara System Capacity and present options for improvements; and
    - (B) ensure that JV Operations are conducted at minimum efficient cost, subject to system safety and integrity.
- (h) Each Business Plan and each Budget must:
  - (i) cover the forthcoming 5 year period and set out all information on a monthly basis for the first 2 years and on a Quarterly basis for the final three years;
  - (ii) be prepared on the assumption that the WA Iron Ore JV will operate at full capacity, based on the Manager's forecast of capacity over the next 5 years based on the existing assets and approved expansions;
  - (iii) be reported in Australian dollars. An Owner may require the Manager to also prepare a Business Plan and a Budget for that Owner in another currency, in accordance with the Reporting Policy and the Accounting Policy;

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- (iv) include estimates of production, capital and operating expenditure, funds required from the Owners and proposed cash distributions;
  - (v) include an explanation and reconciliation against performance projected in the previous Business Plan or previous Budget;
  - (vi) in the case of the Budget, be consistent with, and include an explanation and reconciliation against, the then-current Business Plan; and
  - (vii) include all details, estimates and forecasts required under, and be prepared in accordance with, the Reporting Policy and the Accounting Policy.
- (i) If the Owners' Council:
- (i) approves a Business Plan or a Budget submitted to it, that Business Plan or that Budget will apply for the relevant Half Year;
  - (ii) agrees amendments to a Business Plan or a Budget, that Business Plan or that Budget as amended will apply for the relevant Half Year; or
  - (iii) rejects a Business Plan or a Budget or fails to make a decision, the Manager must prepare a revised Business Plan or a revised Budget within 30 days of the relevant Owners' Council meeting for reconsideration by the Owners' Council. In doing so, the Manager must have regard to the views, if any, expressed by the Owners' Council. This paragraph (i) will then apply in relation to the revised Business Plan or the revised Budget, except that, subject to paragraph (j) below:
    - (A) if the Owners' Council rejects the Manager's revised Business Plan or the revised Budget or fails to make a decision within 30 days from the date on which such revised Business Plan or Budget is presented, the Manager's revised Business Plan or Budget will apply for the relevant Half Year (except to the extent that paragraph (B) applies); or
    - (B) if the Synergies Capture Plan reflected in the Budget is rejected (or a decision is not made within 30 days from presentation of a revised Synergies Capture Plan), the previous approved Synergies Capture Plan will continue in force.
- (j) Where any component of the revised Business Plan or the revised Budget relates to a matter within the authority of the Owners' Council under clause 3.3, that component must be consistent with:
- (i) any decisions of the Owners' Council; or
  - (ii) the resolution of any deadlock in accordance with clauses 3.7 and 3.8. Where the deadlock has not been resolved for whatever reason, the relevant component of the Business Plan or the Budget will be consistent with the position, if any, applying to that component for the immediately preceding Half Year as set out or reflected in the Business Plan or the Budget for that Half Year.
- (k) The Manager may prepare supplementary Business Plans and supplementary Budgets from time to time. Any supplementary Business Plan or Budget will require approval of the Owners' Council pursuant to clause 3.3(d)(i).
- (l) Subject to paragraph (m), the Manager must not incur:
- (i) expenses in excess of a percentage of the total expense specified in the relevant Budget, which percentage will be determined by the Owners' Council from time to time (the **Budget Overrun Percentage**); or

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- (ii) expenses in excess of the amount determined by the Owners' Council from time to time in relation to categories of expenditure in the Budget as determined by the Owners' Council from time to time (the ***Expenditure Category Overrun Amount***),

without preparing and obtaining approval from the Owners' Council to a supplementary Budget pursuant to paragraph (k). The Manager must promptly notify the Owners of any reasonably anticipated expenses in excess of the amounts specified in this paragraph (l) and the reasons for such excess.

- (m) Despite any Business Plan or Budget, the Manager may take any action that is reasonably necessary from time to time in an emergency situation to:
  - (i) prevent or mitigate:
    - (A) any risk to the health or safety of any persons in circumstances where they may be at risk; or
    - (B) any risk of any material damage to the environment or to any Iron Ore Asset or any other property of any person (including maintenance of all Authorisations and tenure in good standing); or
  - (ii) repair any material damage to the environment, any Iron Ore Asset or any other property of any person on a temporary basis,and to incur all reasonable costs in so doing. Such expenditure must be reported to the next meeting of the Owners' Council and must, in the first instance, be funded out of Called Sums on hand to the Manager and not then immediately required for JV Operations, and to the extent of any remaining deficit, will be requested as additional Called Sums pursuant to clause 3.11(a).
- (n) Once the Synergies Capture Plan is approved, the Manager and the JV Entities will be required to implement it in accordance with its terms and to take whatever action is reasonably necessary for its implementation.
- (o) The Manager must report to the Owners' Council on a Quarterly basis identifying the synergies outstanding, the steps required to achieve the synergies and the progress of the Manager against the then applicable Synergies Capture Plan in accordance with the Reporting Policy.

### 3.11 Called Sums

- (a) The Manager may at any time send a notice (a ***Call Notice***) to the Owners requiring them to contribute funds in accordance with item 2 of the Funding and Distribution Policy in proportion to their respective Participating Shares to meet JV Cash Costs that the Manager estimates are to be paid during the period to which the Call Notice relates (each a ***Called Sum***).
- (b) A Call Notice must specify:
  - (i) the amount (and currency of the amount if in a currency other than Australian dollars) of the Called Sums in respect of each Owner;
  - (ii) a reconciliation of the amount of the Called Sums to the then current Business Plan and Budget (including a reconciliation to any undrawn Called Sums in the previous months);
  - (iii) a reconciliation of the amount of the Called Sums to the current cash on hand balance;
  - (iv) that part of the Called Sums for an Owner that relates to working capital requirements and that part of the Called Sums for an Owner that relates to capital expenditure requirements;

## West Australian Iron Ore Production Joint Venture Agreement

- (v) the amount of the Called Sums for an Owner to be paid to each Issuer and/or the Manager;
  - (vi) which entity or entities the funds are to be lent or contributed to;
  - (vii) relevant banking details for the transfer of funds; and
  - (viii) an estimate of the Called Sums that are likely to be called by the Manager in the subsequent month.
- (c) The Manager must issue a monthly notice (***Monthly Cash Requirements Notice***) on or before the 10th day of each month specifying:
- (i) an indicative estimate of the total amount of funds that the Manager will require for the following month;
  - (ii) the dates during that month on which Called Sums will be payable (***Called Sum Payment Dates***), which dates must be at intervals of no less than one week; and
  - (iii) an indicative estimate of the amount of funds the Manager will require on each of the Called Sum Payment Dates.
- (d) The Manager must issue Call Notices at least 1 Business Day prior to each Called Sum Payment Date specifying the actual amount of funds that the Manager requires to be paid on that date.
- (e) The Manager may also issue Call Notices at any other time with respect to any additional funds required during the period to which a Call Notice issued under paragraph (d) relates.
- (f) The Owners' Council may from time to time resolve to make such alterations to the arrangements described in paragraphs (b), (c), (d) and (e) as the Owners' Council considers appropriate.
- (g) Subject to paragraph (i) and paragraph (o), each Owner must pay the Called Sums by way of loans or equity contributions to the Issuers or the Manager in the proportions specified in the Call Notice to an account or accounts nominated by the Manager:
- (i) in the case of a Call Notice referred to in paragraph (d), on the relevant Called Sum Payment Dates and in the amounts specified in the Call Notice; and
  - (ii) in the case of a Call Notice referred to in paragraph (e), within 10 days of the date of the Call Notice.
- Such loans or equity contributions will be transferred to bank accounts established in the name of an Issuer, accounts established in the name of the Manager acting as the agent of an Issuer, or accounts established in the name of the Manager as appropriate (***JV Bank Accounts***). The amount of any Called Sum will be payable by way of loan or equity contribution in Australian dollars unless any JV Cash Costs are incurred in another currency and the Call Notice requires the relevant part of the Called Sum to be paid in that other currency.
- (h) The Manager must ensure that the funds transferred to the JV Bank Accounts pursuant to paragraph (g) are on the same day placed on deposit in equal shares with the Owners or their Designated Finance Companies, by transferring the funds to bank accounts nominated by the Owners (***Owners Bank Accounts***). As funds are required by the Manager, the Manager must provide a request for the funds on 24 hours notice to the Owners and the Owners must transfer, or procure that their Designated Finance Companies transfer, the funds to the JV Bank Accounts nominated by the Manager.
- (i) If a JV Entity or the Manager has incurred a Substantial Liability as a result of a third party claim, other than a liability to which clauses 13 or 15 of the Implementation Agreement applies, then the



## West Australian Iron Ore Production Joint Venture Agreement

Owners' Council may determine whether or not to cease funding that JV Entity or the Manager. If at an Owners' Council meeting the Owners cannot reach an agreement on whether or not to cease funding such JV Entity or the Manager, then the Owners' Council will be deemed to have determined not to fund that JV Entity or the Manager.

- (j) Unless the Funding and Distribution Policy requires that all or part of any funding be by way of equity, or paragraph (o) applies, Called Sums paid by an Owner by way of loan to an Issuer or the Manager will be treated as Participant Loans on the terms set out in the Funding and Distribution Policy. Where equity funding is required, it will be on the terms agreed by the Owners pursuant to the Funding and Distribution Policy.
- (k) Where payment of a Called Sum is made by way of loan or equity contribution to an account in the name of the Manager, the funds in that account must be held by the Manager for or on behalf of that Issuer for the purpose of being expended in accordance with this Agreement.
- (l) The Owners acknowledge that the WA Iron Ore JV is intended to operate on a minimum cash balance. Unless otherwise approved by the Owners' Council, or paragraph (o) applies the WA Iron Ore JV will be funded entirely by way of loans or equity contributions from the Owners as contemplated by this clause 3.11 and not by way of third party debt. For these purposes third party debt:
  - (i) includes any project financing of a JV Entity, trade debt, working capital facility and long term lease of heavy mobile equipment \* \* \*;
  - (ii) does not include:
    - (A) ordinary course debt such as purchases on credit terms and capital leases for activities that are incidental to JV Operations such as leases of office equipment and motor vehicles and short term leases of heavy mobile equipment; or
    - (B) indebtedness in respect of an indemnity, guarantee or similar undertaking issued by a bank or other provider of financial accommodation, which relates to JV Operations.

For the avoidance of doubt, this paragraph (i) does not preclude project financing by an Owner in compliance with clause 11.

- (m) The amount of any Called Sum properly called by the Manager in accordance with this Agreement constitutes a funding obligation due and payable to the Issuers or the Manager (as applicable) by the Owners (in proportion to their Participating Shares) and will be enforceable by the Manager, or by the Issuers directly if the Manager does not take action, in accordance with this Agreement.
- (n) Any amounts payable under a contract for the supply of goods or services between a JV Entity and an Affiliate of an Owner (other than under a Transaction Document) will be excluded in determining JV Cash Costs and JV Accounting Costs and any such amounts must be borne by the Owner concerned unless the contract has been approved by the Owners' Council (whether or not the contract was entered into prior to the JV Commencement Date).
- (o) The Owners acknowledge that funds may also be contributed by way of indemnity pursuant to item 2.19 of the Funding and Distribution Policy, and references in this Agreement to Called Sums include amounts called under the indemnity arrangements in item 2.19.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## **West Australian Iron Ore Production Joint Venture Agreement**

### **3.12 Funding and Distribution Policy**

- (a) The Owners, the Manager and the Marketing SPVs must, and must procure that each of their Related Corporations, comply with the Funding and Distribution Policy and the Debenture Deeds Poll.
- (b) The Owners, the Manager and the Marketing SPVs agree that the application of funds, and all payments and repayments of loans and deposits, and all settlements of receivables, pursuant to the Funding and Distribution Policy will have the characteristics and status described in the Funding and Distribution Policy.

### **3.13 Policies and Protocols**

- (a) As at the date of this Agreement, the Owners have agreed:
  - (i) the Accounting Policy;
  - (ii) the Reporting Policy;
  - (iii) the Ring-Fencing Protocol;
  - (iv) the Scheduling Protocol; and
  - (v) the Weighing, Sampling and Analysis Protocol,(the *Policies and Protocols*).
- (b) The Policies and Protocols may be amended or replaced by the Owners' Council passing a resolution adopting the amended or replaced policy or protocol and a representative of each Owner initialling the amended or replaced policy or protocol.
- (c) The Funding and Distribution Policy and each of the Policies and Protocols, including as amended or replaced in accordance with paragraph (b), will be legally binding on the parties to this Agreement as if set out in full in this Agreement.

## **4. Management of WA Iron Ore JV**

### **4.1 Appointment and removal of Manager**

- (a) The Owners appoint the Manager to manage the JV Operations as carried out by the JV Entities on the terms set out in this Agreement.
- (b) The Manager will at all times be owned by Hamersley Holdings Ltd and BHP Billiton Minerals Pty Ltd in equal shares.
- (c) At Completion, the Manager's constitution will be in the form agreed by Rio Tinto and BHP Billiton and may only be amended with the agreement of the Owners.
- (d) The Manager:
  - (i) may be removed by a resolution of the Owners' Council; and
  - (ii) will be automatically removed if the Manager becomes an externally administered body corporate (as defined in the Corporations Act), unless the Owners' Council resolves that the Manager not be so removed.

Where the Manager is removed, the Owners' Council must appoint a replacement Manager which will be owned by Hamersley Holdings Ltd and BHP Billiton Minerals Pty Ltd in equal shares.

## West Australian Iron Ore Production Joint Venture Agreement

### 4.2 Liability

#### *Manager's Liability and Indemnity*

- (a) Subject to paragraphs (b), (c), (d) and (e), if an Owner (or its Affiliates) sustains or incurs any Loss as a result (whether directly or indirectly) of any breach by the Manager of its obligations under this Agreement or under any other Transaction Document then the other Owner (the **Paying Owner**) must pay an amount to that Owner (the **Receiving Owner**) equal to the Paying Owner's Participating Share of the Loss (subject to adjustment under paragraph (e)).
- (b) An Owner will not be liable under paragraph (a) in relation to a breach by the Manager that results in a Loss or Losses totalling less than A\$10 million.
- (c) An Owner may not recover a Loss under paragraph (a) where the Manager's breach has caused the Owners (or their Affiliates) to sustain the same type of Loss and the quantum of the Owners' (and their Affiliates') Loss is in proportion to their respective Participating Shares.
- (d) If an Owner wishes to make a claim under paragraph (a), it must provide a notice to the other Owner, with a copy to the Manager, setting out in reasonable detail the basis of the claim and the amount claimed. The Owners must meet and seek in good faith to agree whether an amount is payable under paragraph (a) and, if so, the amount payable. If the Owners are unable to reach agreement, then either Owner may refer the matter to the Chief Executives, who will meet and seek to resolve the matter in good faith within 30 days. If the Chief Executives are unable to resolve the matter within 30 days of referral to them, then either Owner may refer the dispute to the Owner's Chairpersons, who will meet and seek to resolve the matter within 30 days and, failing resolution, the matter will be referred to the Independent Expert in accordance with clause 16. If the Owners agree or an Independent Expert determines that an amount is payable under paragraph (a), the Paying Owner must pay that amount to the Receiving Owner within 10 Business Days.
- (e) If a breach by the Manager of its obligations under this Agreement or under any other Transaction Documents results in one Owner (or its Affiliates) incurring Losses and the other Owner (or its Affiliates) receiving profits or other financial benefits, then:
  - (i) the Paying Owner must pay the Receiving Owner the full amount of the Losses of the Receiving Owner, up to a maximum amount equal to the profits or other financial benefits received by the Paying Owner as a consequence of that breach; and
  - (ii) if the amount required to be paid by the Paying Owner under paragraph (e)(i) is less than the Receiving Owner's Loss, the Paying Owner must also pay to the Receiving Owner the Paying Owner's Participating Share of the unpaid balance of the Loss.

#### *Owner Proceedings*

- (f) If a third party commences legal, administrative or other proceedings against an Owner or any Owner's Affiliated Corporation and those proceedings relate to, or arose from, JV Operations (**Owner Proceedings**), except where those proceedings relate to a liability to which clauses 13 or 15 of the Implementation Agreement applies or as otherwise provided in clause 3.2 of the Implementation Agreement, then the other Owner must indemnify that Owner or its Affiliates against any Loss arising from those proceedings to the extent the Loss relates to, or arose from, JV Operations, and is not covered by item 8 of the Funding and Distribution Policy in proportion to the other Owner's Participating Share.

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- (g) An Owner or an Affiliate of an Owner against whom Owner Proceedings are brought:
  - (i) must notify the other Owner and the Manager as soon as practicable after it becomes aware of any such Owner Proceedings;
  - (ii) subject to paragraph (h) and item 14.3(b) of the Reporting Policy, is responsible for conducting, defending, negotiating or settling Owner Proceedings as it sees fit; and
  - (iii) may require the Manager and the other Owner to provide such assistance in defending the Owner Proceedings as it reasonably requests, including providing documents and making employees available as witnesses.
- (h) An Owner or an Affiliate of an Owner against whom Owner Proceedings are brought may require the Manager to conduct those Owner Proceedings on its behalf, subject to such limitations and discretions agreed between the Manager and the Owner. The Owners must:
  - (i) cooperate and consult with each other in relation to the conduct, negotiation, defence or settlement of those Owner Proceedings; and
  - (ii) provide such assistance in relation to those Owner Proceedings as the Manager or an Owner reasonably requests.
- (i) Where an Owner or an Affiliate of an Owner incurs reasonable costs under paragraphs (f) to (h), in relation to Owner Proceedings (to the extent those proceedings relate to, or arose from, JV Operations) the other Owner must pay an amount to that Owner equal to the paying Owner's Participating Share of those reasonable costs within 10 Business Days of demand. Where the Manager incurs reasonable costs under paragraphs (f) to (h), in relation to Owner Proceedings (to the extent those proceedings relate to, or arose from, JV Operations) those costs will be costs of the WA Iron Ore JV borne and funded by the Owners in proportion to their respective Participating Shares in accordance with clause 3.11.

### ***Obligation to Provide Support for Owner Loans and Guarantees***

- (j) If a member of the BHP Billiton Group or Rio Tinto Group (as applicable), which is not a JV Entity (the ***Relevant Group Member***) has provided or is obliged under any Existing JV Arrangement to provide any Owner Loans or Owner Guarantees, then the relevant Owner must procure that:
  - (i) the Owner Parent that is not a Related Corporation of the Relevant Group Member; or
  - (ii) an entity nominated by that Owner Parent that:
    - (A) is a Related Corporation of that Owner Parent (other than the Manager); and
    - (B) where an Owner Guarantee has been provided, has a credit rating of at least an "A" (as reported by Standard and Poor's) at the date of such nomination; or
  - (iii) such other entity as may be agreed with the other Owner,(in each of paragraphs (j)(i), (ii) and (iii), the ***Supporting Entity***) provides support, commensurate with the Participating Share of the relevant Owner, in respect of the Owner Loan or Owner Guarantee, in accordance with schedule 3.
- (k) Before providing any new Owner Loan or Owner Guarantee, the relevant Owner must first consult with the other Owner. Any Owner Loans or Owner Guarantees entered into after the JV Commencement Date, other than pursuant to an obligation under an Existing JV Arrangement or with the agreement of the Owners' Council, will be Excluded Liabilities.

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### **4.3 Manager Duties**

- (a) The Manager must at all times act in accordance with:
  - (i) the Transaction Documents;
  - (ii) the Policies and Protocols; and
  - (iii) any policies that are approved by the Owners' Council pursuant to clause 3.3(a), which policies will be legally binding on the Manager.
- (b) The Manager and the CEO will have fiduciary obligations to the Owners. The Manager and the CEO must:
  - (i) ensure JV Operations are conducted safely at all times;
  - (ii) act equitably and fairly and give each of the Owners due and equal treatment;
  - (iii) subject to any obligations in respect of any Existing JV Arrangements, or any other legally binding obligation on an Owner or a Related Corporation of an Owner, manage the Iron Ore Assets for the benefit of the Owners and their respective Related Corporations in a manner that is consistent with the approved Business Plans and Budgets;
  - (iv) act in accordance with applicable Laws and consistently with any Authorisations held by the Manager or a JV Entity (including in respect of occupational health and safety, carriage of hazardous goods and the environment); and
  - (v) perform any obligation or provide any service in a good, workmanlike and commercially reasonable manner and in accordance with the most suitable engineering, construction, operating, mining, transportation and processing methods and with a standard of skill, diligence and care normally applied or exercised in respect of comparable mine or infrastructure operations.

For the avoidance of doubt, no JV Entity will have fiduciary obligations to the Owners, and the Owners will not have fiduciary obligations to each other, except for the trusts expressly referred to in clause 2.1(c).

- (c) The Manager and the CEO must not take or omit to take any action if the result would be to cause any JV Entity to breach any agreement to which it is a party and the relevant terms of which have been disclosed to the Manager (including any Existing JV Arrangement or any other infrastructure arrangement or a State Agreement).
- (d) Except to the extent permitted by this Agreement, or with the approval of the Owners' Council, the Manager must not undertake any business or engage in any other activity not expressly contemplated by this Agreement.
- (e) Subject to clauses 3.10(l) and (m), the Manager must implement the Business Plan and the Budget (including the Synergies Capture Plan).
- (f) The Manager must comply with any obligation expressly imposed on the Manager in the Implementation Agreement.

### **4.4 Board of Manager**

The board of directors of the Manager will be appointed in accordance with the constitution of the Manager.

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### **4.5 Appointment and Removal of CEO and Senior Executive Team**

- (a) Subject to paragraph (b), the CEO of the Manager will be appointed by the Owners' Council with effect on and from the JV Commencement Date or the expiry of the previous term of the former CEO (as the case may be). The CEO will be the executive head of the WA Iron Ore JV.
- (b) The first CEO will be appointed by BHP Billiton and will remain in the position for a four year period from the JV Commencement Date, unless the appointee:
  - (i) resigns, becomes incapacitated or dies before the expiration of that period; or
  - (ii) is removed by the agreement of both Owners (including, for the avoidance of doubt, by resolution of the Owners' Council pursuant to this Agreement),

in which case BHP Billiton may (after consultation with Rio Tinto) appoint a replacement for the balance of that four year period. On the expiry of the abovementioned four year period each CEO will be appointed for a four year period and paragraph (a) will reapply on the expiry of each such four year period. In appointing a CEO under paragraph (a), the Owners' Council will take into account the importance of continuity.

- (c) The contract of employment for the CEO will be approved by the Owners' Council and will provide that the CEO will have the same duties as the Manager as set out in clause 4.3 and will be consistent with this clause 4.5.
- (d) The CEO can appoint or dismiss any employee of the Manager, except that the appointment of a Senior Executive Team member requires the approval of the Owners' Council.
- (e) It is the intention of Rio Tinto and BHP Billiton that the Senior Executive Team be sourced initially approximately 50:50 from Rio Tinto and BHP Billiton on a 'best person for the job' basis. This 50:50 balance is to be maintained for the first 3 years after the JV Commencement Date.
- (f) Where the CEO:
  - (i) engages in serious misconduct, such conduct being inconsistent with the due and faithful discharge of duties; or
  - (ii) is grossly neglectful in their duties,then (unless clause 4.5(g) applies) the Owners' Council must consider in good faith removing the CEO pursuant to clause 3.3(d)(xv).
- (g) Where the CEO is disqualified from managing corporations under Part 2D.6 of the Corporations Act, the CEO must be removed from office by the Owners' Council under clause 3.3(d)(xv) unless:
  - (i) the Owners' Council decides otherwise; and
  - (ii) the CEO obtains leave from the court to manage the Manager under Part 2D.6 of the Corporations Act.
- (h) If the CEO is removed pursuant to paragraphs (f) or (g), a replacement CEO will be appointed pursuant to clause 3.3(d)(xv) and, where applicable, clauses 3.8(e) and (f).
- (i) Where an Owner is not satisfied, on reasonable grounds, with the performance of the CEO in achieving the objectives of the Business Plan (including in relation to the Synergies Capture Plan), then that Owner may request, by notice to the other Owner, that the Owners' Council conduct an assessment of the performance of the CEO in relation to the each relevant Business Plan within 30 days of the notice.

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- (j) An assessment of the CEO's performance by the Owners' Council pursuant to paragraph (i) must consider the CEO's performance in relation to:
  - (i) each relevant Business Plan;
  - (ii) each relevant Synergies Capture Plan, including:
    - (A) the realisation of synergies pursuant to the Synergies Capture Plan;
    - (B) the engagement by the Manager with Authorities and third parties required to achieve the synergies referred to in those plans; and
    - (C) all prior reports by the Manager to the Owners' Council in relation to the synergies referred to in those plans; and
  - (iii) each relevant Budget.
- (k) Where, following the assessment pursuant to paragraph (j), either Owner or both Owners are dissatisfied, on reasonable grounds, with the performance of the CEO the Owners' Council must consider in good faith removing the CEO pursuant to clause 3.3(d)(xv).

### **4.6 Employees of Manager**

- (a) All JV Employees, including the CEO and members of the Senior Executive Team, will be remunerated in a manner that is consistent with the WA Iron Ore JV's objectives, subject to:
  - (i) the value of pre-existing entitlements of employees that are to be transferred to the Manager being preserved; and
  - (ii) the WA Iron Ore JV meeting those pre-existing entitlements and paying any redundancy costs.
- (b) Each Owner and the Manager must ensure that:
  - (i) the CEO and each member of the Senior Executive Team:
    - (A) is employed on an exclusive basis by the Manager and is not employed by, or seconded from, an Owner or its Affiliates;
    - (B) during the period of such employment:
      - (1) is not an Officer, and does not sit on any committee, council or other oversight group, of an Owner or its Affiliates; and
      - (2) does not report, or provide information, to one Owner or its Affiliates, but not the other Owner or its Affiliates, except as required under this Agreement or the Ring-Fencing Protocol; and
    - (C) is not engaged through any relationship of employment, consultancy or other arrangement by either Owner Parent or its Affiliates within 18 months of ceasing to hold their position of CEO or Senior Executive Team member, without the approval of the Owners' Council; and
  - (ii) the Manager's principal place of business and that of any JV Entity is in a building that is not occupied by any part of the global iron ore business of either Owner, or branded with the name of either Owner.
- (c) No Owner has the right to second employees to the WA Iron Ore JV or appoint persons to specific positions within the WA Iron Ore JV.

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- (d) The Owners and their Affiliates must not provide any commitment, reassurance or representation of employment or re-employment of any JV Employee who is a member of the Senior Executive Team or a direct report of the Senior Executive Team either as part of the process of engagement for employment by the Manager or during the period of employment by the Manager of any such JV Employee.
- (e) The Owners and their Affiliates must not offer to employ, or seek to employ, a JV Employee who is a member of the Senior Executive Team or a direct report of the Senior Executive Team, without the prior approval of the Owners' Council.

### **4.7 WA Iron Ore JV systems, standards and procedures**

- (a) The CEO will have the mandate to make the WA Iron Ore JV operationally stand-alone as soon as practicably possible without any services being provided to the WA Iron Ore JV by any Owner except:
  - (i) as contemplated in the Transitional Services Agreement, the Intellectual Property Management Agreement or the ERP Service and Licence Agreement; or
  - (ii) as specifically agreed by the Owners' Council.
- (b) The WA Iron Ore JV will initially source systems, standards and procedures from the Owners, selected in accordance with clauses 3.6(b)(ii) and 3.7 of the Implementation Agreement, and thereafter the WA Iron Ore JV will maintain, improve or replace those systems, standards and procedures subject to clause 4.7(a).
- (c) The WA Iron Ore JV will put in place procurement arrangements initially in accordance with clauses 3.6(b)(iii) and 3.6(b)(x) and 3.7 of the Implementation Agreement. The Manager may recommend to the Owners' Council, and the Owners' Council may approve, changes to these procurement arrangements. Subject to compliance with competition laws, the procurement arrangements may include:
  - (i) the WA Iron Ore JV having its own stand alone procurement arrangements;
  - (ii) the WA Iron Ore JV utilising the procurement arrangements of the Owners, in a manner that is fair between the Owners;
  - (iii) the Owners utilising the WA Iron Ore JV's procurement arrangements, in a manner that is fair between the Owners; or
  - (iv) any combination of the above.
- (d) The Manager will adopt the principle of an owner operator model for the WA Iron Ore JV so that it utilises employees in preference to contractors in long term operating roles with the WA Iron Ore JV. To the extent that current operations involve contractors in long term operating roles, the Manager will progressively shift those operations to the owner operator model.

### **4.8 Revenue Based Royalties**

#### ***Payment of Revenue Based Royalties by the Manager***

- (a) The Manager will include in each monthly Call Notice its estimate of any Revenue Based Royalties that are payable by a JV Entity in the relevant month. The Manager may also make such additional calls as are required in order to discharge its obligations under paragraph (b).
- (b) The Manager must ensure that each JV Entity pays, or the Manager must on behalf of each of the relevant JV Entities pay, the Revenue Based Royalties as and when they fall due. The Revenue Based



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Royalties will be costs of the WA Iron Ore JV borne by the Owners in their Participating Shares. For the avoidance of doubt, any royalties payable in connection with a Sole Risk Development or Sole Risk Opportunity will be borne entirely by the Sole Funding Party.

- (c) The Manager must appoint an independent third party to assist it to:
- (i) estimate the Revenue Based Royalties for the purposes of paragraph (a);
  - (ii) pay, or procure the payment by the JV Entities of, the Revenue Based Royalties pursuant to paragraph (b); and
  - (iii) calculate the Owner Royalty Allocation and the Royalty Allocation Adjustment pursuant to paragraphs (d) to (f).

Each Owner must provide to the independent third party (but not to the Manager or to the other Owner) any information the independent third party reasonably requires in order to assist the Manager pursuant to this paragraph (c), including such information in relation to the price at which Iron Ore Product is sold. Such information will be dealt with by the independent third party in accordance with the Ring-Fencing Protocol.

### Calculation of Royalty Allocation Adjustment

- (d)      \* \* \*
- \* \* \*
- \* \* \*
- (i)        \* \* \*
- (ii)       \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- (e)        \* \* \*
- (f)        \* \* \*
- (g)        \* \* \*
- (h) Any dispute arising under this clause 4.8 (including any dispute about a determination or other act of the independent third party) may be referred by either Owner to the Independent Expert for determination pursuant to clause 16.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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### **4.9 JV Entities' and Manager's accounts and records**

- (a) The Manager and the JV Entities will keep accounts and records to enable financial reporting, and the measurement of financial performance, for a Financial Year with a 30 June year end and a Financial Year with a 31 December year end and otherwise as required in accordance with the Accounting Policy and Reporting Policy.
- (b) Subject to paragraph (c), the Manager will keep comprehensive records and accounts in Australian dollars in respect of the Iron Ore Assets owned by, and the JV Operations of, the JV Entities and the Manager in accordance with the Accounting Policy and the Reporting Policy on a consistent basis and subject to the terms of any Existing JV Arrangements. The Manager will also keep records and accounts in such other currencies as are required to enable it to comply with its obligations under the Reporting Policy and the Accounting Policy.
- (c) The records and accounts kept by the Manager in respect of:
  - (i) a JV Entity that owns Excluded Assets will be prepared for the JV Operations and Iron Ore Assets only on a stand alone basis and not include costs, expenses and liabilities relating to the Excluded Assets or any Excluded Marketing Operations; and
  - (ii) a JV Entity that is a Non-Selling Entity will not include records and accounts relating to its Excluded Marketing Operations and the sale of production (and all costs, expenses and liabilities directly incurred in the sale of production) of that Non-Selling Entity.

Each Owner will be responsible on behalf of each such JV Entity that is a Related Corporation of that Owner for keeping all relevant records and accounts relating to its Excluded Assets or Excluded Marketing Operations. Preparation of the relevant consolidated and individual entity financial records and accounts for such a JV Entity will be the responsibility of each Owner, provided that the Manager will be responsible for providing all necessary financial information in respect of the Iron Ore Assets and JV Operations, as provided in the Accounting Policy.

- (d) Each Owner and the Manager will provide each other (and their respective auditors) with access to such of their records and accounts as are reasonably required by them to perform their functions under the Transaction Documents and their statutory responsibilities, as provided in the Accounting Policy, including to verify costs and revenues allocated to a JV Entity that owns Excluded Assets or that is a Non-Selling Entity or otherwise conducts Excluded Marketing Operations and to confirm that distributions, loan repayments and other payments have been made in accordance with the Funding and Distribution Policy.
- (e) The records and accounts referred to in paragraph (b) must:
  - (i) include records and accounts enabling the Manager to comply with all obligations under the Transaction Documents (including the Funding and Distribution Policy) including determining and verifying:
    - (A) the Ore Sales Price payable pursuant to the Ore Sales Agreements; and
    - (B) the distributions, loan repayments and other payments have been made in accordance with the Funding and Distribution Policy and Debenture Deeds Poll;
  - (ii) be sufficient to provide the information required to enable an Owner:
    - (A) to complete a tax return or deal with any tax enquiry, tax audit or tax litigation (including any information required for the purposes of a consolidated group tax return or business activity statement, or any information required to be provided pursuant to any relevant tax funding agreement, tax sharing agreement or other contractual agreement providing for preparation of stand alone notional tax returns and like documents);

## **West Australian Iron Ore Production Joint Venture Agreement**

- (B) to complete statutory accounts and other financial statements (including consolidated group and individual entity financial statements) or any corporate or other regulatory filings of any kind that the Owner or its Related Corporations are required by Law to make; or
  - (C) to otherwise comply with any of its obligations under any tax or other Law; and
- (iii) be sufficient to provide the information required to enable all Existing JV Arrangements to be complied with.
- (f) In addition to maintaining the records and accounts referred to in this clause 4.9, the Manager will also be responsible, on behalf of each JV Entity which owns only Iron Ore Assets and has no Excluded Marketing Operations, for the preparation of the statutory accounts and other regulatory filings of any kind that are required by Law to be prepared or filed, or are otherwise required to comply with any obligations of such a JV Entity under any tax or other Law, provided however that the Owner that is a Related Corporation of any such JV Entity will remain responsible for procuring that any such statutory accounts or regulatory filings are finalised and lodged or filed.

### **4.10 Accounting systems**

- (a) The Accounting Policy must include (in conjunction with the Funding and Distribution Policy) rules, systems and procedures for:
  - (i) allocating liabilities to the Iron Ore Assets and the Excluded Assets;
  - (ii) attributing cash flows to the Iron Ore Assets and the Excluded Assets; and
  - (iii) preparing stand-alone cash flow statements, profit and loss statements and balance sheets for the Iron Ore Assets.Where there are Sole Risk Assets, liabilities will be allocated, cash flows attributed and statements and balance sheets prepared according to the same methodology.
- (b) The Owners and the Manager must, in relation to the accounting matters for which they are respectively responsible under clause 4.9, establish and maintain accounting systems that operate at all times:
  - (i) to allocate liabilities and attribute cash flows to Iron Ore Assets and Excluded Assets (and, where applicable, Sole Risk Assets) in accordance with the Accounting Policy;
  - (ii) to generate stand-alone cash flow statements, profit and loss statements and balance sheets for the Iron Ore Assets and the Excluded Assets (and, where applicable, Sole Risk Assets) in accordance with the Accounting Policy;
  - (iii) to calculate the Net Iron Ore Cash Surplus (as defined in the Funding and Distribution Policy) in accordance with the Funding and Distribution Policy;
  - (iv) to calculate all Dividends and Coupons (each as defined in the Funding and Distribution Policy) payable in accordance with the Debenture Deeds Poll and the Funding and Distribution Policy; and
  - (v) to otherwise demonstrate full compliance with the Debenture Deeds Poll, the Funding and Distribution Policy and the other Transaction Documents.
- (c) An Owner may (at its own cost) from time to time conduct a detailed review of the WA Iron Ore JV accounting systems, and to the extent necessary, the other Owner's accounting systems, for the

## West Australian Iron Ore Production Joint Venture Agreement

purposes of satisfying the Owner that those systems are in compliance with paragraph (b), and following such review the Owners must consult in good faith to determine such adjustments, if any, as may need to be made to the systems so as to ensure that they are compliant.

- (d) Subject to clause 12 of the Implementation Agreement, the cost of making any adjustments to the accounting systems agreed by the parties following a review will be borne:
  - (i) if the deficiency is in the systems of an Owner, by that Owner; or
  - (ii) if the deficiency is in the systems of the Manager, by the Owners in proportion to their respective Participating Shares.
- (e) If the data generated by the WA Iron Ore JV accounting systems, or an Owner's accounting systems, or the application of the Accounting Policy using those systems:
  - (i) gives rise to an error, as a result of which an Owner receives any amount in excess of its entitlement under the Funding and Distribution Policy, it will hold the excess on trust pursuant to clause 4.6, 6.3, 10.3 and 11.9 (as applicable) of that Policy; or
  - (ii) gives rise to an allocation of distributions between the Owners which is inconsistent with the intention of the Funding and Distribution Policy, the parties will meet to discuss in good faith, and will make such arrangements as are appropriate to rectify the inconsistency (which may include amending the Accounting Policy, the Funding and Distribution Policy or the accounting systems, and may also include making reconciliation payments between Owners).

### 4.11 Audit

- (a) An auditor will be appointed in respect of the Manager and the WA Iron Ore JV (the **Auditor**). An internal auditor will also be appointed in respect of the Manager and the WA Iron Ore JV. The appointment and removal of the Auditor and the internal auditor will be subject to approval of the Owners' Council, following receipt of a recommendation from the Audit Committee. Subject to the appointment of the initial Auditor and initial internal Auditor pursuant to clauses 3.6(b) (viii), 3.7 and 6.2(f) of the Implementation Agreement, the Auditor will be appointed following a tender process overseen by the Audit Committee. The internal auditor will be appointed in accordance with the resourcing model for the internal auditor determined by the Owners' Council and following such selection process as the Owners' Council agrees (which may include a tender process).
- (b) At the times required by, and otherwise in accordance with, the Accounting Policy, the Manager must:
  - (i) procure that the accounts referred to in clause 4.9 (the **Accounts**) are audited by the Auditor, including confirming that the Accounts have been prepared in accordance with any Laws applicable to one or more of the Owners;
  - (ii) procure that the Auditor provides confirmation to the Owners that all payments, distributions and dividends during the relevant period were calculated and applied in accordance with the terms of the Funding and Distribution Policy, the Debentures and any other relevant Transaction Documents;
  - (iii) agree the scope of the audit with both Owners; and
  - (iv) provide a copy of the audit report and confirmation to each Owner.

The costs of each audit will be deemed to be a cost of the WA Iron Ore JV.

## **West Australian Iron Ore Production Joint Venture Agreement**

- (c) Either Owner or the Owners' Council may, by notice in writing to the Manager, request that:
  - (i) an audit address particular records and accounts of the Manager where the Owner has a reasonable concern that any payment, distribution or dividend paid or received by it in the relevant period has not been calculated or applied in accordance with the terms of the Funding and Distribution Policy, the Debentures or any other relevant Transaction Documents;
  - (ii) an audit be undertaken to ensure that the Synergies Capture Plan and reports in relation to the achievement of synergies, including any reconciliation to the baseline specified in the first Synergies Capture Plan, and any synergies forecasts, are audited in accordance with agreed upon procedures (to be conducted either by an external auditor or an internal auditor as requested by the Owner or the Owners' Council as the case may be); or
  - (iii) such other audits as an Owner or the Owners' Council may reasonably request be conducted (either by an external auditor or an internal auditor as requested by the Owner or the Owners' Council, as the case may be), including in relation to items such as occupational health and safety, communities or towns, environmental or indigenous issues and internal systems and procedures.
- (d) For the purposes of carrying out the audit, the Manager and the Owners will, and will procure that the JV Entities, provide the Auditor with access to such of their accounting records as are reasonably required by the Auditor to carry out its functions. The Auditor may also liaise with any auditor appointed by an Owner for the purposes of enabling the Auditor to carry out any audit required under paragraphs (b) or (c).
- (e) The Manager and the Owners will procure that any adjustments required by the Auditor will be made no later than 10 Business Days after they receive notice of any incorrect payment, distribution or dividend, or other non-compliance with the terms of the Funding and Distribution Policy and the Debentures or other relevant Transaction Document and a request from the Auditor to make such adjustments to rectify the error or remedy any non-compliance.

### **4.12 Reporting Policy and Accounting Policy**

The Manager must prepare its estimates, forecasts, actual results and other data and report to the Owners' Council in accordance with the Reporting Policy and the Accounting Policy.

### **4.13 Access to Information**

- (a) The Manager, any Owner whose Affiliates provide ERP Services and each JV Entity must ensure that each Owner:
  - (i) has equal access to information; and
  - (ii) receives equal treatment.
- (b) The Manager and each JV Entity must promptly satisfy any request made by an Owner for:
  - (i) accounts, records or other documents of the Manager or any JV Entity;
  - (ii) explanation or information in relation to JV Operations (including future prospects and expansions under review), the Manager or any JV Entity; or
  - (iii) any information required for the purposes of any tax enquiry, tax audit or tax litigation, or a consolidated group tax return or business activity statement, or any information required pursuant to any relevant tax funding agreement, tax sharing agreement or other contractual agreement providing for preparation of stand alone notional tax returns and like documents.

## **West Australian Iron Ore Production Joint Venture Agreement**

- (c) The Manager must ensure that any document or information it provides to an Owner in response to any request under paragraph (b) is also provided to the other Owner, unless:
  - (i) that request is made for the purposes of:
    - (A) a corporate or other commercially sensitive proposal that has not been announced to the market or is not otherwise in the public domain; or
    - (B) a tax or other regulatory audit or investigation of an Owner or of its Related Corporations; and
  - (ii) the Owner making the request provides notice to the Manager and/or JV Entity (as applicable) at the time of making the request that the document or information is being requested for one of the purposes described in paragraph (c)(i).
- (d) The Manager will utilise systems that:
  - (i) enable the Manager to manage JV Operations independently on a stand alone basis (other than on a transitional basis or as otherwise agreed by the Owners' Council); and
  - (ii) comply with the requirements of the Ring-Fencing Protocol.
- (e) The Manager and each Owner acknowledge that the reporting and information requirements of the Owners' Council and each Owner may differ and, accordingly, that:
  - (i) an Owner may require the Manager to provide any report or information referred to in the Reporting Policy to be given to that Owner in the form, format and medium required by that Owner from time to time (including data in electronic format that aligns with, and can be incorporated into, that Owner's systems, processes, standards and policies); and
  - (ii) the Owners' Council may require the Manager to provide any report or information referred to in the Reporting Policy to be given to the Owners' Council in a form, format or medium required by the Owners' Council from time to time.

In either case, the Owners' Council or Owner (as applicable) may provide to the Manager a template that sets out the format to be used by the Manager for preparing and providing any particular report or information.

- (f) The Manager must establish with each Owner a system interface between each Owner's system and the WA Iron Ore JV ERP and other information systems. The system interfaces established with both Owners must (unless the Owners otherwise agree in writing) be equivalent in all respects, including with respect to functionality, efficiency, process and access to data. The system interface must be acceptable to, and meet the requirements of, each individual Owner. The costs of establishing and managing such interfaces will be costs of the WA Iron Ore JV.
- (g) Each Owner may:
  - (i) independently access the WA Iron Ore JV ERP and other information systems (including access to all underlying data);
  - (ii) independently generate reports and use data sets and associated analytical tools (including query tools and report writing tools) that the WA Iron Ore JV ERP (and other information systems) are configured to provide; and

## West Australian Iron Ore Production Joint Venture Agreement

- (iii) require the WA Iron Ore JV ERP (and other information systems) be reconfigured to provide the ability for an Owner to independently generate reports and use data sets and associated analytical tools which the WA Iron Ore JV ERP is not configured to provide, subject to:
  - (A) the Manager being able to raise concerns about any such requirement that it considers unreasonable for consideration by the Owners at a meeting of the Owners' Council in accordance with item 4.1(h) of the Reporting Policy (as if it was a request to which that clause applies); and
  - (B) clause 13.1(b) and schedule 3 of the ERP Service and Licence Agreement.
- (h) Each Owner, through its authorised representatives, delegates, employees and invitees, at its own risk and expense at all reasonable times, will have:
  - (i) access to all offices, facilities and sites of the WA Iron Ore JV, the JV Entities and the Manager, including for the purposes of investor, analyst and media visits; and
  - (ii) the right to examine and make copies of any accounts, records and other documents of or in respect of, the WA Iron Ore JV, the JV Entities or the Manager.
- (i) The rights and obligations under this clause 4.13 are subject to the terms of the Ring-Fencing Protocol and all obligations of confidence binding on a JV Entity or the Manager.
- (j) Nothing in this clause 4.13, prevents the Manager from raising concerns for consideration by the Owners at a meeting of the Owners' Council in accordance with clause 4.1(h) of the Reporting Policy.

### 4.14 Weighing, Sampling and Analysis Protocol

- (a) The Owners, the Manager and the Marketing SPVs must, and must procure that each of their Related Corporations, comply with the provisions of the Weighing, Sampling and Analysis Protocol.
- (b) All costs incurred in connection with compliance with the Weighing, Sampling and Analysis Protocol pursuant to paragraph (a) will be costs of the WA Iron Ore JV.

### 4.15 Insurance

#### *Manager Insurances Responsibilities*

- (a) The Manager must effect, maintain and administer insurances in accordance with the insurance protocol approved by the Owners' Council pursuant to clause 6.2(f) of the Implementation Agreement as amended or replaced by the Owners' Council from time to time in accordance with the process set out in clause 3.3 (the ***Insurance Protocol***).
- (b) Each Owner will provide such information and assistance as is necessary to enable the Manager to effect, maintain, administer and comply with any insurances referred to in paragraph (a), including providing any information referred to in the Reporting Policy.
- (c) The Manager agrees to co-operate, provide access to information and systems in accordance with this Agreement and the Reporting Policy and to do all other things reasonably necessary to:
  - (i) enable an Owner to obtain insurance as contemplated in clauses 4.15(e) and 4.15(f), including providing engineers, surveyors, risk assessors and other consultants engaged by an Owner or an agent or insurer of the Owner with access to property and Accounts; and
  - (ii) provide cost or claim consultants or assessors engaged by an Owner or insurer of an Owner with access to property and Accounts for the purposes of determining the quantum, scale and scope of any claim or potential claim to be made in relation to the JV Operations.

## **West Australian Iron Ore Production Joint Venture Agreement**

### ***Owner Insurance Responsibilities***

- (d) Each Owner, for its own account, will be responsible for effecting, maintaining and administering all insurances required to be effected, maintained and administered by it pursuant to the Insurance Protocol and paragraph (f).
- (e) An Owner may at its own cost effect, maintain and administer insurances in relation to its interest in the WA Iron Ore JV and the sale of Iron Ore Product, including in relation to:
  - (i) material damage and business interruption insurance;
  - (ii) liability insurance;
  - (iii) marine insurance;
  - (iv) contract works; and
  - (v) any other insurance that an Owner wishes to effect.
- (f) Each Owner will be responsible for effecting, maintaining and administering any insurance that is required in respect of the interests of the Other JV Participants pursuant to an Existing JV Arrangement or any other infrastructure arrangement to which the Owner or its Related Corporations is a party.
- (g) Where there is insurance cover available in respect to an occurrence that occurred prior to the JV Commencement Date that gives rise to a liability to a third party in connection with an Iron Ore Asset after the JV Commencement Date, the insurance proceeds will be made available to the relevant JV Entity and any residual uninsured liability will be shared by the Owners as costs of the WA Iron Ore JV.
- (h) The Owner, or Related Corporation of the Owner, who is insured under an insurance policy in respect of the liability referred to in (g) above, must use all reasonable endeavours to recover diligently the maximum amount possible from its insurers. All unrecovered costs reasonably incurred by the Owner or Related Corporation of the Owner in obtaining the insurance proceeds from the insurers will be shared by the Owners as costs of the WA Iron Ore JV.
- (i) Where an Iron Ore Asset is damaged after the JV Commencement Date and a decision is made to repair, reinstate and/or replace that Iron Ore Asset, any costs of undertaking such repair, reinstatement and/or replacement will be shared by the Owners as costs of the WA Iron Ore JV (regardless of what insurance arrangements, if any, an Owner may have in respect of the relevant Iron Ore Asset and, in particular, an Owner will not be entitled to defer payment of its share of such costs pending recovery under any applicable insurance policy).
- (j) If the Insurance Protocol requires an Owner to take out insurances in respect of employees who are employed by a JV Entity which is a Subsidiary of the Owner and the employees are engaged in JV Operations, the costs of the Owner in effecting, maintaining and administering such insurances will be a cost of the WA Iron Ore JV.

### **4.16 Intellectual property**

Each Owner must procure that certain intellectual property is made available to the Manager, the JV Entities and, in certain circumstances, the other Owner pursuant to the Intellectual Property Management Agreement.



## **West Australian Iron Ore Production Joint Venture Agreement**

### **4.17 Maintenance of tenements**

Subject to the Existing JV Arrangements, the Manager on behalf of the Owners and the JV Entities must ensure that the JV Entities:

- (a) maintain the JV Tenements in good standing;
- (b) comply with the requirements of the State Agreements;
- (c) secure any ancillary tenements or other titles necessary for the operation of the WA Iron Ore JV; and
- (d) monitor and take appropriate actions in relation to any applications made by third parties over JV Tenements or areas which might reasonably be expected to be required for future JV Operations. Subject to any Existing JV Arrangements or any other infrastructure arrangements, the Manager will be authorised on behalf of the Owners and the JV Entities to conduct any negotiations with those third parties as to the terms of access to any JV Tenements.

### **4.18 Environmental compliance and rehabilitation**

Subject to clause 3.11(g), the Manager must ensure that sufficient funds are called from the Owners in order to meet all Rehabilitation Costs of the WA Iron Ore JV. The Manager may only call funds as required to pay Rehabilitation Costs as, and when, they fall due.

### **4.19 Ownership of WA Iron Ore JV Property**

- (a) All property held, developed, constructed or acquired by the Manager on behalf of the WA Iron Ore JV under this Agreement will be Iron Ore Assets.
- (b) Except for assets acquired by the Manager on its own account, the Manager will not have any beneficial interest in the Iron Ore Assets of the JV Entities or in any moneys paid to, collected or received by the Manager for or on behalf of the Owners, or the JV Entities or any of them.

### **4.20 Manager not empowered to create Encumbrances**

Except as expressly provided in this Agreement or any of the Transaction Documents to which the Manager is a party (and except for Permitted Security Interests), the Manager will not have any right or power to encumber any part of the Iron Ore Assets.

### **4.21 Assignment, subcontracting and delegation**

The Manager may not assign, subcontract or delegate all or any part of its rights, duties and obligations under this Agreement to any party without the prior written approval of the Owners' Council.

**5.** \* \* \*

**5.1** \* \* \*

\* \* \*

**5.2** \* \* \*

(a) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

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### 6. Supply of Iron Ore Product

#### 6.1 General principles

The parties' intention is that each Owner should be entitled to have its Marketing SPV purchase that Owner's Participating Share of JV Production for each Product Type. The parties recognise, however, that Existing JV Arrangements and Pre-existing Customer Contracts mean that variations to such proportionate entitlement to purchase each Product Type will be necessary, as provided in this clause 6.

#### 6.2 Ore Sales Agreements

- (a) To give effect to clause 6.1:
  - (i) the Selling Entities (severally, as sellers) must deliver and sell to the Marketing SPVs the quantity of Iron Ore Product determined in accordance with clause 6.3 on the terms set out in their respective Ore Sales Agreements; and
  - (ii) each Marketing SPV (as purchaser) must pay to the Selling Entities the purchase price for Iron Ore Product, as determined in accordance with clause 6.4, on the terms set out in the relevant Ore Sales Agreement, unless and until otherwise agreed between the Owners.
- (b) If a JV Entity ceases to be a Non-Selling Entity and becomes a Selling Entity (either in whole or only in respect of certain Iron Ore Product), that JV Entity must to that extent become a party to each Ore Sales Agreement as a Seller.
- (c) An Owner may nominate third parties to enter into Ore Sales Agreements (as purchasers) in addition to, or instead of, that Owner's Marketing SPV. The Owner's Marketing SPV must guarantee payment of the Ore Sales Price by any such nominee.
- (d) In making nominations and exercising rights under clauses 6.3 and 6.4, an Owner does so in respect of its Marketing SPVs and its Non-Selling Entities.
- (e) References in this clause 6 to an Owner being entitled to receive Iron Ore Product mean (as the case requires) being entitled to have its Marketing SPV or its nominee purchase the product, or its Non-Selling Entities obtain such product in accordance with Existing JV Arrangements.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# West Australian Iron Ore Production Joint Venture Agreement

## 6.3 Quantity

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

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### ***Scheduling***

- (s) Each Owner must, and must procure that its relevant Affiliates, co-operate with the Manager, and the Manager must cooperate with each Owner (and its relevant Affiliates), so as to ensure co-ordinated scheduling of the WA Iron Ore JV production and each Owner's shipping activities.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

- (t) Each Owner must, and must procure that its relevant Affiliates, comply with the Scheduling Protocol. The Manager must comply with the Scheduling Protocol.

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### *Dispute Resolution*

- (v) Any dispute arising under this clause 6.3 may be referred by either Owner to an Independent Expert for determination pursuant to clause 16.

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- (w) \* \* \*

## 6.4 Price

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



## West Australian Iron Ore Production Joint Venture Agreement

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\* \* \*

### ***Dispute Resolution***

(h) Any dispute arising under this clause 6.4 (including any dispute about a determination or other act of the independent third party) may be referred by either Owner to the Independent Expert for determination pursuant to clause 16.

\* \* \*

(i) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

### 6.5 Minimising need for Adjustments

\* \* \*

- (a) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- \* \* \*
- (h) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
- (i) \* \* \*

### 6.6 Separate Marketing

- (a) The Owners will continue to cause Iron Ore Product to be marketed separately from, and in competition with, each other.
- (b) Each Owner and its Related Corporations will have no knowledge of the marketing strategy or terms of the other Owner and its Related Corporations.
- (c) The Manager will have no knowledge of the marketing strategy of either Owner or their Related Corporations. The Manager has no powers or functions in relation to the marketing of Iron Ore Product by the Owners or their Related Corporations.
- (d) The Manager and each Owner must, and must procure that its Related Corporations, comply with the Ring-Fencing Protocol.
- (e) Each Owner and its Related Corporations will satisfy their respective product sale commitments arising from their respective Existing JV Arrangements with customers from that Owner's Total

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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Allocation. At the date of this Agreement, those arrangements are BHP Billiton's Wheelarra Joint Venture, JW 4 Joint Venture and POSMAC Joint Venture, and Rio Tinto's Bao-HI Joint Venture and Channar Joint Venture.

- (f) Where Existing JV Arrangements oblige an Owner or its Related Corporations to market the volume entitlements of the Other JV Participants, then the Owner or its Related Corporations will retain those commitments and they will not form part of the WA Iron Ore JV.

### 6.7 \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

\* \* \*

(c) \* \* \*

(d) \* \* \*

## 7. Other marketing arrangements

### 7.1 Product standardisation

(a) \* \* \*

(b) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(c) Clause 6.3(j) will not apply to any new Product Type introduced as a result of product standardisation.

(d) Nothing in this clause 7 will cause Rio Tinto, BHP Billiton or their respective Related Corporations to discuss or coordinate market strategy or contract negotiation either directly as between their respective Iron Ore Marketing Businesses or through the JV Manager or Owners' Council.

### 7.2 Pre-existing Customer Contracts

\* \* \*

## 8. Expansions and New Opportunities

### 8.1 Owners Forward Demand Forecasts

- (a) \* \* \*, each Owner must notify the Manager of its indicative non-binding rolling \* \* \* demand forecasts (***Demand Forecast***) for Iron Ore Product, by Product Type, to be delivered to them at the ship's rail, \* \* \* covered by that Demand Forecast.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

- (b) An Owner must not provide its Demand Forecast to the other Owner and the Manager must not provide one Owner's Demand Forecast to the other Owner, provided however that the Owners may exchange and discuss that part (but only that part) of their respective Demand Forecasts which relate to production requirements from JV Operations beyond \* \*, but only for the purposes of reaching a consolidated view of capacity expansions for the purposes of this clause 8 in accordance with the Ring-Fencing Protocol.
- (c) The Manager may use an Owner's Demand Forecast only for the purposes of this clause 8.

### 8.2 Development Studies

#### *Preliminary Studies*

- (a) The Manager will be responsible for conducting studies that consider alternate development paths available to the WA Iron Ore JV either in order to meet the consolidated Demand Forecast or as required by an Owner in accordance with paragraph (b) or in accordance with an approved Business Plan and/or Budget (each a *Preliminary Study*). Each Preliminary Study will:
  - (i) examine a range of possible mines and infrastructure developments, including the expansion or reconfiguration of existing mines and infrastructure to increase capacity and/or production, including any proposal made by an Owner under paragraph (b)(ii) and progressed by the Manager in accordance with paragraph (b);
  - (ii) include a high level indicative analysis of technical and regulatory issues associated with each development option, such analysis to include high level preliminary capital cost estimates and associated economic analysis; and
  - (iii) will provide a recommendation of the scope and scale on which it proposes to conduct a Pre-Feasibility Study (*Contemplated Project*).
- (b) If:
  - (i) in any two consecutive Half Years, the sum of Demand Forecasts referred to in clause 8.1 exceeds the expected JV Capacity for the relevant period(s), either in total or in relation to a particular Product Type; or
  - (ii) an Owner proposes by notice to the Manager and the other Owner that the Manager investigate:
    - (A) a mine development (either as an additional mine or as a replacement to an existing mine that is nearing the end of its mine life); or
    - (B) expansion of an existing mine,and associated infrastructure, for a certain quantity, the Manager may (and will, if directed by an Owner) \* \* \* provide to the Owners' Council for review a Preliminary Study which must, where applicable, include a proposal made by an Owner pursuant to paragraph (b)(ii).
- (c) \* \* \*, the Manager and the Owner which has not proposed the Contemplated Project can propose that additional or alternative expansions be reviewed by the Manager as part of the Preliminary Study.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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### *Pre-Feasibility Studies*

- (d) Unless both Owners have agreed not to proceed to investigate the feasibility of the Contemplated Project \* \* \*, the Manager will expeditiously commence, and complete \* \* \*, a pre-feasibility study for the purposes of evaluating the Contemplated Project and associated capital estimates (*Pre-Feasibility Study*). If the Owners' Council cannot agree the scale and scope of the Contemplated Project for the purposes of conducting a Pre-Feasibility Study from the options considered in the Preliminary Study \* \* \*, the Manager must prepare the Pre-Feasibility Study based on the scale and scope that it reasonably expects will deliver the highest Net Present Value to the Owners (as determined by the Manager based on the assumptions referred to in schedule 5 or in any guidelines or protocols determined by the Owners' Council from time to time) when compared against the same Base Case. The Pre-Feasibility Study will be prepared in accordance with the guidelines set out in item 1 of schedule 5 as amended or replaced by any guidelines or protocols determined by the Owners' Council from time to time.
- (e) Once a Pre-Feasibility Study is required to be commenced by the Manager pursuant to paragraph (d), the Manager must (unless otherwise directed by both Owners) progress that Pre-Feasibility Study and any consequential Feasibility Study in respect of the Contemplated Project selected from that Pre-Feasibility Study in priority to all other Preliminary Studies that would overlap with the Pre-Feasibility Study. For the avoidance of doubt, if there is more than one Pre-Feasibility Study or Feasibility Study that the Manager is required to progress pursuant to this clause 8.2, the Manager must progress the first such study in priority to all other studies (unless otherwise directed by both Owners).
- (f) The Manager will promptly provide a copy of the completed Pre-Feasibility Study to the Owners for review and comment.

### *Feasibility Studies*

- (g) If the Pre-Feasibility Study contains more than one option for a Contemplated Project and the Owners' Council has not agreed on the option to pursue, the option which has the highest Net Present Value to the Owners (as determined by the Manager based on the assumptions referred to in schedule 5 or in any guidelines or protocols determined by the Owners' Council from time to time) when compared against the same Base Case, will be selected (the agreed or selected expansion or development referred to as the *Project*).
- (h) Based on the outcome of the Pre-Feasibility Study and any comments received from the Owners, the Manager may (and will if directed by an Owner) expeditiously conduct (and, where directed by an Owner, complete \* \* \* a study to evaluate the full economic value of a single development or expansion scenario considered by the Pre-Feasibility Study, including a review of all costs and capital estimates (*Feasibility Study*). The Feasibility Study will be prepared in accordance with the guidelines set out in item 3 of schedule 5 as amended or replaced by any guidelines or protocols determined by the Owners' Council from time to time.
- (i) The Manager will promptly provide to the Owners a copy of the completed Feasibility Study, and a recommendation of the Manager, together with the financial model, study reports and supporting information that were generated by the Manager in connection with the Feasibility Study.

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### *Reporting*

- (j) The Manager must provide detailed reports on the progress of any studies undertaken pursuant to this clause 8.2 as part of its reporting obligations under the Reporting Policy.

### *Costs*

- (k) All costs incurred by the Manager in connection with any Preliminary Study, Pre-feasibility Study or Feasibility Study will be costs of the WA Iron Ore JV. Each Owner will be entitled to retain all information (including copies of the relevant studies and all supporting documentation) irrespective of whether the Project contemplated by a Pre-Feasibility Study or Feasibility Study proceeds as a Sole Risk Development or otherwise.

## 8.3 Owners' Council Decisions on Projects

- (a) \* \* \* an Owners' Council meeting will be convened to determine whether the Project the subject of that Feasibility Study will proceed as part of the WA Iron Ore JV. \* \* \*
- (b) If:
  - (i) the Owners' Council votes in favour of proceeding with the Project, paragraph (d) will apply; or
  - (ii) the Owners' Council does not vote in favour of proceeding with the Project, and the Project involves capital expenditure in excess of US\$250 million (Indexed), then an Owner that voted in favour of proceeding with the Project, (the ***Sole Funding Party***) may \* \* \* elect by written notice to the other Owner and to the Manager to proceed with the Project outside the WA Iron Ore JV (a ***Sole Risk Development***).
- (c) \* \* \*, the Owner receiving that notice may elect by written notice to the other Owner and to the Manager to participate in the Project as part of the WA Iron Ore JV, in which case paragraph (d) will apply. If no such notice is given, the Sole Funding Party:
  - (i) may proceed with the Project as a Sole Risk Development and the applicable provisions of schedule 4 will apply; and
  - (ii) for the avoidance of doubt, will not be obliged to proceed with the Project as a Sole Risk Development.
- (d) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*
  - (v) \* \* \*
  - (vi) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

- (e) Despite any provision of this clause 8 or the Implementation Agreement, each Owner must contribute its Participating Share of the costs of any development or expansion of an Iron Ore Asset or a Secondary Processing facility or alternative proposal, and cannot opt out of any such development or expansion, without the consent of the other Owner, if:
  - (i) \* \* \*; or
  - (ii) the Owners have otherwise agreed that this paragraph (e) applies to that development or expansion.

### 8.4 New Opportunities

- (a) If an Owner or the Manager becomes aware of a potential New Opportunity, it must provide as soon as reasonably practicable notice to:
  - (i) in the case of a New Opportunity in respect of which an Owner has provided notice, the Manager and the other Owner; or
  - (ii) in the case of a New Opportunity in respect of which the Manager has provided notice, each Owner.
- (b) The Manager must progress the proposal to acquire that New Opportunity (including negotiating the terms of that proposal with third parties) \* \* \*
- (c) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*, an Owners' Council meeting will be convened to determine whether the New Opportunity the subject of the New Opportunity Notice will proceed as part of WA Iron Ore JV. \* \* \*
- (g) If:
  - (i) the Owners' Council votes in favour of proceeding with the New Opportunity, paragraph (i) will apply; or
  - (ii) the Owners' Council does not vote in favour of proceeding with the New Opportunity, the New Opportunity will not proceed as part of the WA Iron Ore JV, and the Owner that voted in favour of proceeding with the New Opportunity (the ***Sole Funding Party***) \* \* \* elect by notice to the other Owner and to the Manager to proceed with the New Opportunity outside the WA Iron Ore JV (a ***Sole Risk Opportunity***).
- (h) \* \* \*
  - (i) \* \* \*

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## West Australian Iron Ore Production Joint Venture Agreement

(ii) \* \* \*

\* \* \*

(iii) \* \* \*

(iv) \* \* \*

\* \* \*

(i) If the Owners' Council agrees to proceed with the New Opportunity as part of the WA Iron Ore JV:

(i) the New Opportunity will proceed as part of the WA Iron Ore JV;

(ii) \* \* \*

(iii) \* \* \*

(iv) \* \* \*

(v) \* \* \*

(vi) \* \* \*

(vii) \* \* \*

(j) \* \* \*

(i) \* \* \*

(ii) \* \* \*

### 8.5 General provisions

(a) \* \* \*

(i) \* \* \*

(ii) \* \* \*

\* \* \*

(b) Any Project, New Opportunity, Sole Risk Development or Sole Risk Opportunity will be conditional on obtaining all necessary Authorisations.

(c) An Owner may elect to fund the costs of a Project, New Opportunity, Sole Risk Development or Sole Risk Opportunity on a project finance basis in accordance with clause 11.4.

### 8.6 Incidental acquisitions

(a) If an Owner or its Affiliate (*Acquirer*) acquires \* \* \* a Non-Iron Ore Target, then the Owner will procure that the Acquirer will, \* \* \* provide written notice to the other Owner and the Manager.

(b) \* \* \*

(i) \* \* \*

(ii) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



## West Australian Iron Ore Production Joint Venture Agreement

- (iii) \* \* \*
- (iv) \* \* \*
- (v) \* \* \*
- (c) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*
- (d) \* \* \* the other Owner may, subject to paragraph (e), elect to purchase its Participating Share of the Target Iron Ore Assets. If the other Owner:
  - (i) elects to purchase its Participating Share of the Target Iron Ore Assets then, subject to paragraph (e), it will pay the fair market value determined under paragraph (c) to the Acquirer and the Acquirer will transfer the other Owner's Participating Share of the Target Iron Ore Assets to the other Owner or its nominee and the Target Iron Ore Assets will form part of the WA Iron Ore JV and will become Iron Ore Assets; or
  - (ii) elects not to purchase its Participating Share of the Target Iron Ore Assets, then:
    - (A) the Acquirer is free to own (directly or indirectly) or otherwise deal with the Target Iron Ore Assets outside the WA Iron Ore JV; and
    - (B) if the Acquirer is the Owner or a Subsidiary of the Owner, the applicable provisions of schedule 4 will apply to the Target Iron Ore Assets as if they were a Sole Risk Opportunity.
- (e) \* \* \*

## 9. Default and Dilution

### 9.1 Suspension of voting rights

- (a) If an Owner (**Defaulting Owner**) fails to provide an amount in respect of a Called Sum that it is required to pay pursuant to clause 3.11 of this Agreement and the Funding and Distribution Policy, being either a failure to pay a Called Sum or a failure to transfer funds or procure the transfer of funds to the JV Bank Accounts in response to a notice by the Manager to the Owner (the **Unpaid Amount**) within 30 days of the due date for payment, then:
  - (i) the Defaulting Owner's voting rights in relation to the WA Iron Ore JV and the Manager will be suspended with effect from the **Default Date** (being the date falling 30 days after the due date for payment) until:
    - (A) the default has been fully remedied in accordance with clause 9.4;

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- (B) the Participating Interest of the Defaulting Owner has been purchased by the Non-Defaulting Owner in accordance with clause 9.6; or
- (C) the Participating Share of the Defaulting Owner has been diluted in accordance with clause 9.7;
- (ii) no vote taken or matter decided without the Defaulting Owner's vote during the period in which the Defaulting Owner was not entitled to vote pursuant to paragraph (a)(i) will be invalid for want of the Defaulting Owner's vote;
- (iii) notwithstanding paragraphs (i) and (ii) a Defaulting Owner's Representatives may attend, but may not vote at, a meeting of the Owners' Council. A Representative of the Defaulting Owner will not be required in order to constitute a quorum of the Owners' Council; and
- (iv) the Manager will provide notice to each Owner of the default.
- (b) Where the suspension of voting rights in respect of any Owners' Council decision would, in the reasonable opinion of the Manager or the Defaulting Owner, \* \* \* notwithstanding any ongoing default by the Defaulting Owner.
- (c) A notice by the Manager or the Defaulting Owner under paragraph (b) must be provided to all Owners and the Manager and provide sufficient details of the Material Adverse JV Effect and the decisions that would be affected by any suspension of voting rights.

### 9.2 Liability for Unpaid Amounts and Associated Amounts

- (a) Each Unpaid Amount, together with the amounts referred to in paragraph (b), will:
  - (i) constitute a funding obligation due and payable to the Issuers or the Manager (as applicable) by the Defaulting Owner; and
  - (ii) be enforceable by the Manager or by the Issuers directly if the Manager does not take action, in accordance with this Agreement (without prejudice to any other means of enforcement available to the Manager or to the other Owner).
- (b) The total amount due and payable by the Defaulting Owner will also include:
  - (i) interest on the Unpaid Amount calculated pursuant to item 1.5 of schedule 1 (**Default Interest**); and
  - (ii) any costs of enforcement or recovery, or attempted enforcement or recovery, incurred by the Manager or the other Owner as a consequence of the default (**Default Costs**),(together with the Unpaid Amount, the **Default Amount**).

### 9.3 Payment by Non-Defaulting Owner

- (a) Following receipt of the notice given pursuant to clause 9.1(a)(iii) and provided the other Owner is not also a Defaulting Owner (the **Non-Defaulting Owner**), the Non-Defaulting Owner may elect to fund all or any part of the Unpaid Amount. The Non-Defaulting Owner must provide the funding by way of loan in the manner provided for by the relevant Call Notice (**NDO Loan**).

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## **West Australian Iron Ore Production Joint Venture Agreement**

- (b) The Defaulting Owner must on demand by the Non-Defaulting Owner purchase the NDO Loan for an amount equal to the face value of the loan plus interest calculated under paragraph (c), and that aggregate amount:
  - (i) will be a debt due and payable by the Defaulting Owner to the Non-Defaulting Owner; and
  - (ii) without limiting any other right of recovery, can be deducted from the price at which the Purchase Option described in clause 9.4 may be exercised by the Non-Defaulting Owner.
- (c) Interest accrues on each amount which is due and payable by the Defaulting Owner to the Non-Defaulting Owner calculated pursuant to item 1.5 of schedule 1.
- (d) Interest paid pursuant to paragraph (c) will not be considered as having been paid on account of the principal of the Unpaid Amount in respect of which the Defaulting Owner is in default.

### **9.4 Remedy of Default**

- (a) A default by the Defaulting Owner under clause 9.1 will not be regarded as remedied unless and until:
  - (i) the Default Amount has been paid to the Issuers or the Manager (as applicable); or
  - (ii) if the Non-Defaulting Owner has funded all or any part of the Unpaid Amount pursuant to clause 9.3:
    - (A) all amounts due to the Non-Defaulting Owner under clause 9.3 have been paid;
    - (B) all Default Interest and Default Costs due to, or incurred by, the Non-Defaulting Owner have been paid;
    - (C) the Default Amount (less the amount the Non-Defaulting Owner has funded and less any amount that is payable to the Non-Defaulting Owner under paragraph (ii)(B)) has been paid to the Issuers or the Manager (as applicable); and
  - (iii) any interest owing by the Defaulting Owner in respect of any of the foregoing have been paid.
- (b) Where the Defaulting Owner cures the default by purchasing the NDO Loan, such NDO Loan will be deemed to become a Participant Loan. However, if the Called Sum required funding by way of equity contribution or an indemnity under clause 3.11(o), then the Defaulting Owner will discharge the NDO Loan by converting it to equity.
- (c) Where there is more than one default subsisting in respect of a Defaulting Owner, the Non-Defaulting Owner may exercise its remedies under the Transaction Documents in respect of each default within the periods that apply to each such default.

### **9.5 Non-Defaulting Owner's Election**

- (a) If clause 9.1 applies, and the default is not remedied in accordance with clause 9.4 within 120 days of receipt of a notice given under clause 9.1(a)(iii), then the Non-Defaulting Owner may give to the Manager and to the Defaulting Owner a notice requiring:
  - (i) the fair market value of the Participating Interest of the Defaulting Owner and the Iron Ore Assets of the Defaulting Owner and its Related Corporations; and
  - (ii) the fair market value of the entire WA Iron Ore JV,to be determined in accordance with schedule 9. That notice must be given within 60 days of the expiration of the 120 day cure period referred to in this paragraph (a), failing which the Purchase Option will lapse.

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- (b) The Non-Defaulting Owner may, within 30 days of finalisation of the fair market values referred to in paragraph (a), elect by providing written notice to the Manager and the Defaulting Owner either to:
  - (i) exercise the Purchase Option in accordance with clause 9.6; or
  - (ii) exercise the Dilution Option in accordance with clause 9.7.If no notice of election is provided within the 30 day period referred to above, the right to exercise the Purchase Option or Dilution Option will lapse.
- (c) Unless and until all Owners have:
  - (i) met the Sufficient Asset Test; and
  - (ii) procured the grant of the Cross Charges to be procured by them pursuant to clause 11.8(b), the Non-Defaulting Owner may only exercise the Purchase Option by purchasing the Iron Ore Assets of the Defaulting Owner and its Related Corporations directly (and not, for the avoidance of doubt, by acquiring Securities in the Issuer or the JV Entities that are Related Corporations of the Defaulting Owner).
- (d) If the condition in paragraph (c) has not been satisfied at the time the right to exercise a Purchase Option would otherwise arise in favour of the Non-Defaulting Owner, then:
  - (i) the notice provided by the Non-Defaulting Owner under paragraph (a) will only require the fair market value of the entire WA Iron Ore JV to be valued in accordance with schedule 9; and
  - (ii) any notice provided by the Non-Defaulting Owner under paragraph (b) may only be for the exercise of the Dilution Option in accordance with clause 9.7.
- (e) If the condition in paragraph (c) has been satisfied, then unless and until:
  - (i) all Owners have met the Issuer Share Security Test; and
  - (ii) the Cross Charges have been extended to cover all shares in the Issuers pursuant to clause 11.8(g), the Non-Defaulting Owner may not exercise the Purchase Option by acquiring Securities in the Issuer that is a Related Corporation of the Defaulting Owner, but may exercise the Purchase Option by purchasing the Iron Ore Assets of the Defaulting Owner and its Related Corporations directly or by acquiring Securities the other JV Entities that are Related Corporations of the Defaulting Owner.
- (f) The parties acknowledge that the Purchase Option or Dilution Option may be exercised in accordance with this clause 9, irrespective of whether the relevant default or defaults have been remedied after the giving of the notice by the Non-Defaulting Owner pursuant to paragraph (a).

### 9.6 Purchase Option

- (a) Subject to clause 9.5(c) and (e), if the Non-Defaulting Owner exercises the Purchase Option under clause 9.5(b)(i), the Non-Defaulting Owner may purchase all of:
  - (i) the Defaulting Owner's Participating Interest, including the Participant Loans and Debentures; and
  - (ii) the Iron Ore Assets of the Defaulting Owner and its Related Corporations, either directly or by the acquisition of Securities in the JV Entities that are Related Corporations of the Defaulting Owner at the election of the Non-Defaulting Owner,(the **Purchase Option**) at a price (the **Purchase Option Price**) which is equal to the fair market value determined in accordance with item 1 of schedule 9.

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- (b) Item 2 of schedule 9 will apply to the exercise and implementation of the Purchase Option pursuant to this clause 9.6.
- (c) If the Purchase Option lapses pursuant to item 2.5 of schedule 9, the Non-Defaulting Owner may within 30 days of the date the Purchase Option lapsed elect by providing written notice to the Manager and the Defaulting Owner to exercise the Dilution Option in accordance with clause 9.7.

### 9.7 Dilution Option

- (a) If the Non-Defaulting Owner exercises the Dilution Option under clause 9.5(b)(ii) or clause 9.6(c), the Participating Share of the Defaulting Owner will be diluted in accordance with the following formula, with retrospective effect on and from the Default Date (the ***Dilution Option***):

$$NPS = \frac{MV}{MV + CS} \times PS$$

Where:

***NPS*** is the new Participating Share of the Defaulting Owner after the application of the formula;

***PS*** is the Participating Share of the Defaulting Owner before the application of the formula;

***MV*** is the fair market value of the entire WA Iron Ore JV determined pursuant to clause 9.5(a)(ii) in accordance with item 1 of schedule 9 at the Default Date (excluding the Non-Defaulting Owner's share of the Called Sum in respect of which the dilution notice has been issued (the ***Relevant Called Sum***) and any subsequent Called Sum); and

***CS*** is the sum of:

- (i) the total amounts paid by the Non-Defaulting Owner in relation to its share of the Relevant Called Sum and any subsequent Called Sum; and
  - (ii) the Defaulting Owner's Unpaid Amount.
- (b) The Participating Share of the Non-Defaulting Owner will be increased by the reduction in the Participating Share of the Defaulting Owner (being PS less NPS for the Defaulting Owner as determined in accordance with the formula in paragraph (a)), with retrospective effect on and from the Default Date.
- (c) If the Defaulting Owner's Participating Interest is diluted in accordance with this clause 9.7, then:
    - (i) the Non-Defaulting Owner must, if it has not already done so, fund the Defaulting Owner's Unpaid Amount in accordance with clause 9.3;
    - (ii) the Defaulting Owner will be taken to have satisfied its obligation to fund that amount and its obligation to reimburse the Non-Defaulting Owner the amount the Non-Defaulting Owner has funded under clause 9.3; and
    - (iii) if the Non-Defaulting Owner has made an NDO Loan, the NDO Loan is deemed to become a Participant Loan.
- (d) The cost of any stamp duty or equivalent duty arising in connection with dilution and any associated assignment of property must be paid by the Non-Defaulting Owner.
- (e) Any reduction or increase in Participating Share required by this clause 9.7 and any associated assignments contemplated by clause 9.8 will be conditional on obtaining all necessary Authorisations. Pending obtaining any such Authorisations, the Defaulting Owner will hold on trust and for the sole benefit of and at the expense of the Non-Defaulting Owner the appropriate portion of their Participating Interest (subject to any necessary Authorisations having been obtained for such arrangements).

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- (f) If, during the period between the Default Date and determination of the relevant new Participating Share, any calls, dividends, distributions or loan repayments have been made on the basis of the pre-dilution Participating Shares (except for dividends and distributions relating to a period prior to the Default Date), once the new Participating Shares have been determined pursuant to this clause 9.7, the Owners will discuss and seek to agree, or failing agreement, and on referral by any Owner, will have determined by the Valuers in accordance with item 1 of schedule 9, the appropriate adjustments to be made to give retrospective effect to the new Participating Shares and the Owners will make all necessary payments and take all other necessary steps in order to give effect to the adjustments determined by the Owners or the Valuers (as applicable).

### **9.8 Implementation of Dilution**

- (a) Following the exercise of the Dilution Option, the Manager must as soon as practicable calculate the revised Participating Shares in accordance with clause 9.7 and notify each Owner of the Participating Shares so calculated.
- (b) Following recalculation by the Manager of the Participating Shares of the Owners under paragraph (a), the Owners must contribute funds to all further Called Sums in proportion to their recalculated Participating Shares.
- (c) In order to give effect to the exercise of the Dilution Option:
  - (i) the Defaulting Owner must:
    - (A) assign to the Non-Defaulting Owner a proportion of its Participating Interest of any Iron Ore Assets owned directly by the Owners pursuant to clause 2.4(c)(ii)(B), prorata with the reduction in its Participating Share; and
    - (B) assign to the Non-Defaulting Owner a proportion of its Participant Loans prorata with the reduction in its Participating Share; and
  - (ii) the Manager must:
    - (A) prepare any appropriate forms of assignment to effect the assignments referred to in paragraph (c)(i) and submit them to the Owners for approval (which may not be unreasonably withheld or delayed) and execution; and
    - (B) seek on behalf of the Owners all necessary Authorisations;
  - (iii) each of the Owners must as soon as practicable do everything necessary or appropriate to ensure that all such assignments are promptly and fully effected, including obtaining any necessary Authorisations.
- (d) For the avoidance of doubt, it is not intended that any Debentures be assigned in order to effect dilution under clause 9.7.

### **9.9 Cross Charges**

Nothing in this clause 9 affects the ability of any Owner to enforce its rights under any Cross Charge in addition to, or as an alternative to, any remedy provided for in this clause 9 in respect of any default by another Owner.

## West Australian Iron Ore Production Joint Venture Agreement

### 10. Disposals

#### 10.1 No restriction on disposals

An Owner may Dispose of the whole or a proportionate part of its Participating Interest to any person \* \* \* Any such Disposal will not give rise to any purchase option or pre-emption right \* \* \*

#### 10.2 Underlying assets

- (a) Neither an Owner nor the Manager may Dispose of all or any Iron Ore Assets or any Securities in any JV Entity which owns any Iron Ore Assets, and the Owners must procure that no JV Entity disposes of all or any Iron Ore Assets \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*
  - (v) \* \* \*
  - (vi) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*

#### 10.3 \* \* \*

- (a) If an Owner Disposes of any proportionate part of its Participating Interest, then for the purposes of this Agreement:
    - (i) \* \* \*
      - (A) \* \* \*:
        - (1) \* \* \*
        - (2) \* \* \*
      - (B) \* \* \*
        - (1) \* \* \*
        - (2) \* \* \*
- \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

- (ii) the **Majority Owner** \* \* \* is:
  - (A) the Owner \* \* \* whose Participating Share is greater than 25%; or
  - (B) where the Participating Shares of a group of Related Corporations are in aggregate greater than 25%, the Owner designated by that group from time to time;
- (iii) a **Substantial Owner** is an Owner \* \* \* whose Participating Share is 17% or greater, but not greater than 25%;
- (iv) a **Minority Owner** is an Owner \* \* \* whose Participating Share is less than 17%;
- (v) \* \* \*
- (vi) \* \* \*
- (vii) the Participating Share of an Owner will be aggregated with any Participating Shares of Related Corporations of the Owner for the purposes of determining whether the Owner is a Majority Owner, Substantial Owner or Minority Owner \* \* \*
- (viii) \* \* \*
- (b) Except as provided for in this clause 10:
  - (i) the Majority Owner \* \* \* will be entitled and obliged to exercise all rights conferred, and perform all obligations imposed, on an Owner under the Transaction Documents \* \* \*; and
  - (ii) the exercise of such rights, and the performance of such obligations, will be binding on the other Owners \* \* \* and may be relied upon by the \* \* \* other Owner \* \* \*.
- (c) \* \* \*

### 10.4 Minority Owners (less than 17%)

A Minority Owner will:

- (a) not be entitled to exercise any rights of an Owner \* \* \*; and
- (b) be reliant on the Majority Owner \* \* \* for the exercise of rights and the performance of obligations \* \* \*,  
\* \* \*

### 10.5 Substantial Owner (17% or greater, but not greater than 25%)

- (a) Subject to paragraph (b), a Substantial Owner will:
  - (i) not be entitled to exercise any rights of an Owner \* \* \*; and
  - (ii) be reliant on the Majority Owner \* \* \* for the exercise of rights and the performance of obligations \* \* \*,  
\* \* \*
- (b) A Substantial Owner will be entitled to purchase or have its Marketing SPV purchase JV Production and exercise all other rights of an Owner under clause 6.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



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### 10.6 New Majority Owner (Third Party or Existing Owner)

If a Disposing Owner wishes to Dispose of a Participating Share greater than 25% to an Acquiring Owner or an Acquiring Owner otherwise wishes to acquire a Participating Share greater than 25% \* \* \*

- (a) then upon such Disposal:
  - (i) the Acquiring Owner will become the Majority Owner \* \* \* (the *New Majority Owner*);
  - (ii) the Disposing Owner will become a Minority Owner or a Substantial Owner (as applicable) if it has not Disposed of its entire Participating Share;
  - (iii) \* \* \*
  - (iv) \* \* \*
  - (v) \* \* \*
- (b) it will be a condition precedent to such Disposal that the Acquiring Owner acquires a majority ownership of the Iron Ore Assets of the Disposing Owner and its Related Corporations, \* \* \*

### 10.7 No Majority Owner \* \* \*

If as a result of a Disposal, there is no Owner \* \* \* whose Participating Share is greater than 25%, the following provisions will apply for so long as that continues to be the case \* \* \*:

- (a) \* \* \* will be Minority Owners or Substantial Owners (as applicable) and \* \* \* will exercise all the rights and obligations of an Owner referable to their respective Participating Interests;
- (b) the right to vote on the Owners' Council may only be exercised by an Owner \* \* \* that has a Participating Share of more than 25%, except that any related party transaction (including transactions with an Owner or its Affiliates) will require the consent of Owners holding, in aggregate, Participating Shares of 75% or more;
- (c) if there is no Owner \* \* \* that has a Participating Share of more than 25%, the right to vote on the Owners' Council will be exercised by each Owner in proportion to their respective Participating Shares, except that any related party transaction (including transactions with an Owner or its Related Corporations) will require the consent of Owners holding, in aggregate, Participating Shares of 75% or more;
- (d) \* \* \*
- (e) \* \* \*

### 10.8 Requirements for all Disposals to third parties

Unless otherwise agreed in writing by the Owners, the following provisions will apply in relation to any Disposal of a Participating Interest to an Acquiring Owner that is a third party:

- (a) \* \* \*
  - (i) \* \* \*
    - (A) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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- (B) \* \* \*
- (ii) \* \* \*
- (A) \* \* \*
- (B) \* \* \*
- (iii) \* \* \*
- (iv) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- (h) \* \* \*

### 10.9 Requirements for Disposals from one Owner to another Owner

Unless otherwise agreed in writing by the Owners, the following provisions will apply in relation to any Disposal of a Participating Interest by a Disposing Owner to an Acquiring Owner that is an existing Owner:

- (a) \* \* \*
- (i) \* \* \*
- (ii) \* \* \*
- (A) \* \* \*
- (B) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*

### 10.10 \* \* \*

- \* \* \*
- (a) \* \* \*
- (i) \* \* \*
- (ii) \* \* \*
- \* \* \*
- \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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- (b) \* \* \*
- (i) \* \* \*
- (ii) \* \* \*
- \* \* \*

- (c) \* \* \*
- (i) \* \* \*
- (ii) \* \* \*
- \* \* \*

\* \* \*

- (d) \* \* \*
- (i) \* \* \*
- (ii) \* \* \*

- (e) \* \* \*
- (i) \* \* \*
- (ii) \* \* \*
- \* \* \*

### 11. Security Structure

#### 11.1 Single purpose undertaking—Owners

An Owner may not carry on any business or other activity other than:

- (a) the ownership of its Participating Interest;
- (b) the exercise of its rights and performance of its obligations under the Transaction Documents; and
- (c) any incidental activities.

#### 11.2 Funding undertaking—Owners

An Owner must not:

- (a) fund the acquisition or holding of its Participating Interest by any means other than non-redeemable share capital; or
- (b) incur any Finance Debt other than by way of a Guarantee in respect of Finance Debt of a Related Corporation.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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### **11.3 Security Interests—Owners**

An Owner may not create a Security Interest or permit a Security Interest to subsist over any of its assets other than:

- (a) a Cross Charge;
- (b) any Permitted Security Interest; and
- (c) any other Security Interest over any or all of its assets, as long as the chargee under that Security Interest has entered into an Intercreditor Deed in favour of the other Owner.

### **11.4 Security Interests—Issuers, shareholders of JV Entities and JV Entities**

Each Owner must procure that each of its Related Corporations which is:

- (a) a JV Entity; or
- (b) the holder of shares in, or other Securities issued by, the Manager or a JV Entity, does not create a Security Interest or permit a Security Interest to subsist over the whole or any part of:
- (c) its shares or other Securities in the Manager or a JV Entity; or
- (d) any Iron Ore Assets or JV Operations, other than:
- (e) any Permitted Security Interest;
- (f) any Existing JV Cross Charge; and
- (g) any Sole Risk Assets, as long as the chargee under that Security Interest has entered into an Intercreditor Deed in favour of the Manager on behalf of each other party to this Agreement.

For the avoidance of doubt, this clause does not prevent the creation or subsistence of a Security Interest over any Excluded Assets.

### **11.5 Cross Charges—Owners**

- (a) **(Initial Owners)** Each of RTL and BHPBL undertakes to procure that the Rio Tinto Owner and the BHP Billiton Owner, respectively, grants a Cross Charge:
  - (i) over its Participating Interest and all its other assets and undertaking, but excluding its shares in the relevant Issuer, on or about the date of Completion; and
  - (ii) on terms that it will extend to its shares in the relevant Issuer, in accordance with the procedures set out in clause 11.7 and 11.8.
- (b) **(Subsequent Owners)** It is a condition of any Disposal under clause 10.8(c) that any new Owner grants a Cross Charge over its Participating Interest and all its other assets and undertaking (but, in the case of any shares in an Issuer, only as required in accordance with the procedures set out in clauses 11.7 and 11.8).

### **11.6 Cross Charges—Issuers and JV Entities—general requirement**

- (a) **(Initial Owners)** Each of the Rio Tinto Owner and the BHP Billiton Owner undertakes to procure that:
  - (i) the Issuer that is its Subsidiary; and

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- (ii) each JV Entity that is its wholly-owned subsidiary (as defined in the Corporations Act), grants a Cross Charge over any shares it holds in another JV Entity and all its other assets and undertaking, other than any Excluded Assets or Sole Risk Assets, in accordance with the procedure set out in clauses 11.7 and 11.8.
- (b) **(Subsequent Owners)** It is a condition of any Disposal under clause 10.8(c) that any new Owner procures that:
  - (i) any Issuer that is its Subsidiary; and
  - (ii) any JV Entity that is its wholly-owned subsidiary (as defined in the Corporations Act), grants a Cross Charge over all its assets and undertaking to the extent required in accordance with the procedures set out in clauses 11.7 and 11.8.

### 11.7 Agreed Reorganisation and removal of Agreed Impediments

- (a) **(Sufficient Asset Test and Issuer Share Security Test)**
  - (i) Each of the Rio Tinto Owner and the BHP Billiton Owner will be taken to have met the *Sufficient Asset Test* and the *Issuer Share Security Test* when it has implemented such parts of its Agreed Reorganisation, and obtained consents, waivers or amendments to overcome such of its Agreed Impediments, as the Owners have agreed are required to be implemented and overcome in order to enable the relevant test to be met.
  - (ii) A new Owner will be taken to have met the *Sufficient Asset Test* and the *Issuer Share Security Test*:
    - (A) \* \* \*
    - (B) \* \* \*
- (b) **(Obligation to use reasonable endeavours)** Subject to paragraph (c), each Owner must, and must procure that its Related Corporations will:
  - (i) **(Sufficient Asset Test)** use its reasonable endeavours to implement such parts of its Agreed Reorganisation and obtain consents, waivers or amendments to overcome such of its Agreed Impediments as are required to be implemented and overcome in order to enable the Sufficient Asset Test to be met \* \* \*;
  - (ii) **(Issuer Share Security Test)** if:
    - (A) all Owners have met the Sufficient Asset Test; and
    - (B) the Owners have agreed that they wish to endeavour to meet the Issuer Share Security Test, having regard to the desirability of extending the Cross Charge to the Shares and to any risk of liability associated with doing so, use its reasonable endeavours to implement such parts of its Agreed Reorganisation and obtain consents, waivers or amendments to overcome such of its Agreed Impediments as are required to be implemented and overcome in order to enable the Issuer Share Security Test to be met, \* \* \*; and

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- (iii) (**other**) use its reasonable endeavours to implement any other parts of its Agreed Reorganisation and obtain consents, waivers or amendments to overcome any other of its Agreed Impediments, \* \* \*
- (c) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
- (d) (\* \* \* **Indemnity**) Each Owner (an **Indemnifying Owner**) must indemnify each other Owner and its Related Corporations (an **Indemnified Party**) for \* \* \*:
  - (i) caused by the implementation of the Indemnifying Owner's Agreed Reorganisation; or
  - (ii) \* \* \*
  - (iii) \* \* \*

Notwithstanding any other provision of a Transaction Document an Owner and its Affiliates will not be obliged to implement an Agreed Reorganisation \* \* \* if doing so may trigger the indemnity under this paragraph (d). For the avoidance of doubt, if the circumstances contemplated by this paragraph apply, Rio Tinto or BHP Billiton may discharge and extinguish or convert to equity all or part of their respective Agreed Opening Iron Ore Loans.

The indemnity in this paragraph (d) will not apply if \* \* \*

  - (iv) \* \* \*
  - (v) \* \* \*

\* \* \*
- (e) (**Information requirements**) Each Owner must keep the other Owners informed of the progress of its endeavours under paragraph (b), and must notify the other Owners when it has met the Sufficient Asset Test or the Issuer Share Security Test.

### 11.8 Procedure for granting Cross Charges

- (a) (**Effect of Agreed Impediments**) A party is not required to procure the grant of a Cross Charge over:
  - (i) Shares; or
  - (ii) any part of the assets or undertaking of an Issuer or JV Entity,

if and to the extent that the grant of the Cross Charge is prohibited or prevented by an Agreed Impediment.
- (b) (**Obligation to procure asset Cross Charge when Sufficient Asset Test met**)
 

An Owner must procure that any Issuer that is its Subsidiary, and any JV Entity that is its wholly-owned subsidiary, grants a Cross Charge over any shares it holds in another JV Entity and all its other assets and undertaking, other than:

  - (i) any Excluded Assets or Sole Risk Assets; and

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- (ii) any assets that continue to be subject to an Agreed Impediment, either:
  - (iii) in the case of a new Owner that already meets the Sufficient Asset Test, on becoming an Owner, or
  - (iv) otherwise, within 30 days after the Owner meets the Sufficient Asset Test,unless the Owner is permitted and elects to defer the grant of that charge under paragraph (e).
- (c) **(Parent Company Guarantee)** Each of Rio Tinto (in the case of the RTL Owner) and BHP Billiton (in the case of the BHP Billiton Owner) must give a Parent Company Guarantee including provisions relating to Called Sums on or before Completion.
- (d) **(Release of Parent Company Guarantee on provision of Cross Charge)** Upon an Owner that has provided a Parent Company Guarantee in relation to Called Sums under paragraph (c) meeting the Sufficient Asset Test, and procuring the grant of the relevant Cross Charges in accordance with paragraph (b), the Parent Company Guarantee will be released to the extent it relates to Called Sums.
- (e) **(Election to defer Cross Charge where only one Owner meets Sufficient Asset Test)** If an Owner has met the Sufficient Asset Test but another Owner has not, the Owner that has met the test may elect to defer the grant of the Cross Charges required under paragraph (b) until each other Owner has also met the Sufficient Asset Test. The Owner may subsequently elect to procure the grant of the Cross Charges at any time even if another Owner has still not met the Sufficient Asset Test. If it does so, the Parent Company Guarantee will be released to the extent it relates to Called Sums.
- (f) **(Grant of Cross Charge when both Owners meet Sufficient Asset Test)** If all Owners have met the Sufficient Asset Test, all Cross Charges must be granted as required by paragraph (b).
- (g) **(Obligation to extend Cross Charge if Issuer Share Security Test met)** If it has been agreed under clause 11.7(b)(ii) that the owners are to endeavour to meet the Issuer Share Security Test, the Cross Charges granted by each Owner under clause 11.6 must extend to cover all shares held by the Owner in an Issuer within 30 days after all Owners have met the Issuer Share Security Test.
- (h) **(Continued reasonable endeavours)** An Owner's obligations under clause 11.7 will continue until its Agreed Reorganisation has been completed and all its Agreed Impediments have been overcome, even if the relevant Cross Charges have been granted under paragraph (b) and the relevant Parent Company Guarantee has been released and even after the date mentioned in clause 11.7(b)(i). If an Agreed Impediment is overcome in respect of an asset after the relevant Cross Charge has been granted, the relevant Owner must procure that an additional Cross Charge is granted in respect of the relevant asset within 30 days of the Agreed Impediment being overcome.

### 11.9 \* \* \*

- (a) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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(c) \* \* \*

**12. \* \* \***

**12.1 \* \* \***

\* \* \*

**12.2 \* \* \***

\* \* \*

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

**12.3 \* \* \***

\* \* \*

(a) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(b) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) \* \* \*

## **13. Public Announcements and External Relations**

### **13.1 Public Announcements**

- (a) The Owner Parents must use all reasonable endeavours to agree the wording and timing of all public announcements and statements by either of them relating to the WA Iron Ore JV (including any disclosure to any stock exchange or other Authorities and statements to shareholders, whether in annual reports or otherwise) before any announcement or statement is made.
- (b) The Manager must consult and agree with the Owners the wording and timing of all public announcements and statements made by it on behalf of the WA Iron Ore JV.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



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- (c) If agreement cannot be reached by the time that any announcement or statement must be made:
  - (i) in the case of paragraph (a), the Owner Parent in question will nevertheless be free to make the relevant announcement or statement, but in doing so must have due regard to the interest of the other Owner Parent and disclose only the information which in its good faith opinion it believes is necessary in the particular circumstances; and
  - (ii) in the case of paragraph (b), the Manager will nevertheless be free to make the relevant announcement or statement in respect of operational matters affecting health, safety or the environment.
- (d) Copies of any public announcement or statement:
  - (i) made by an Owner Parent must be given to the other Owner Parent and the Manager; or
  - (ii) made by the Manager must be given to the Owner Parents, in the most expeditious manner reasonably available.

### **13.2 Continuous Disclosure**

The Owners and the Manager will establish a protocol for the referral of material information by the Manager to the Owners to enable the Owner Parents to comply with their regulatory obligations.

### **13.3 External Relations**

The Owner Parents and the Manager will also establish a protocol for consultation and coordination of communications with:

- (a) Commonwealth and Western Australian State Authorities;
- (b) the media (and analysts); and
- (c) communities,

in relation to all matters affecting the WA Iron Ore JV.

## **14. Confidentiality**

### **14.1 Confidential Information not to be disclosed**

- (a) For the purposes of this clause 14, *Confidential Information* means:
  - (i) the terms and conditions of the Transaction Documents;
  - (ii) the terms and conditions on which the WA Iron Ore JV supplies or acquires goods and/or services;
  - (iii) any information that cannot be disclosed by reason of an Existing JV Arrangement;
  - (iv) any proposals or studies that are commercially sensitive and that have not been announced to the market;
  - (v) any communications between Owners or between an Owner and the Manager that are commercially sensitive and that are identified as being Confidential Information for the purposes of this clause 14.1 at the time of the communication; and
  - (vi) such other categories of information as are determined by the Owners' Council from time to time.

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It does not include information:

- (vii) which is in or comes into the public domain otherwise than by disclosure in breach of a Transaction Document;
  - (viii) (other than in respect of the terms and conditions of the Transaction Documents) already known to the person at the date of disclosure;
  - (ix) acquired from a third party who is entitled to disclose it;
  - (x) which is independently developed by the person receiving that information otherwise than by disclosure in breach of a Transaction Document;
  - (xi) disclosed pursuant to the Intellectual Property Management Agreement, the confidentiality of which is governed by that agreement; and
  - (xii) other than information disclosed pursuant to the Intellectual Property Management Agreement, which is confidential and commercially sensitive to Rio Tinto, BHP Billiton or their respective Related Corporations and which does not specifically relate to JV Operations (including extracts of those entities' Board minutes or documents prepared for submission to investment or evaluation committees) (an ***Owner Confidential Information***).
- (b) Each party undertakes that it will not, and will procure that its Related Corporations will not:
- (i) disclose Confidential Information, including Confidential Information of any other Owner (the ***Protected Party***), to any person; or
  - (ii) use Confidential Information of the Protected Party,
- except either:
- (iii) with the prior written approval of the Protected Party; or
  - (iv) for the purposes of the Transaction Documents or as otherwise permitted by this clause 14.
- (c) Each party undertakes that it will:
- (i) promptly do anything reasonably required by another party to prevent or restrain a breach or suspected breach of this clause 14.1 or any infringement or suspected infringement whether by court proceedings or otherwise; and
  - (ii) inform each other party immediately if it becomes aware that Confidential Information has been disclosed to an unauthorised third party.

### 14.2 Permitted disclosure

- (a) Subject to clause 14.3, an Owner and each Related Corporation of an Owner which is a party to this Agreement may disclose Confidential Information:
- (i) **(Related Corporation)** to any of its Related Corporations;
  - (ii) **(officers and employees)** to its directors, employees, officers and agents or of any of its Related Corporations;
  - (iii) **(professional advisers)** to its professional advisers (including legal advisers) and consultants;
  - (iv) **(lenders)** to a bank or other financial institution (and its professional advisers including legal advisers) in connection with any loan or other financial accommodation or application for a loan or financial accommodation to it or to any of its Related Corporations or the provision of underwriting for any issue of Securities;

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- (v) **(potential disposals)** in connection with any potential Disposal, Security Interest or investment;
  - (vi) **(disposals)** to a third party to whom an Owner has Disposed of a proportionate part of its Participating Interest or who has otherwise acquired an economic interest in part of an Owner's Participating Interest or to a third party to whom an Owner or a Related Corporation of an Owner has granted a Security Interest;
  - (vii) **(required Disclosures)** to the extent required under any applicable Law or the rules or regulations of any recognised securities exchange which apply to it or to any of its Related Corporations;
  - (viii) **(legal proceedings)** if the disclosure is required for the purposes of any legal, administrative or other proceedings involving it or any of its Related Corporations;
  - (ix) **(Duties)** if and to the extent that it may be reasonably necessary in the discharge of its duties and obligations under the Transaction Documents;
  - (x) **(Authority)** if and to the extent that it may be reasonably necessary or desirable to disclose the information to any Authority in connection with applications for any Authorisations; and
  - (xi) **(Customers)** to an existing or potential customer of Iron Ore Product in connection with the sale of Iron Ore Product or other arrangements for the supply of Iron Ore Product to that customer.
- (b) The Manager may disclose Confidential Information:
- (i) **(Related Corporations)** to any of its Related Corporations;
  - (ii) **(Other JV Participants)** to Other JV Participants, to the extent required by Existing JV Arrangements;
  - (iii) **(officers and employees)** to its directors, employees, officers and agents or any of its Related Corporations;
  - (iv) **(professional advisers)** to its professional advisers (including legal advisers) and consultants;
  - (v) **(legal proceedings)** if the disclosure is required for the purposes of any legal, administrative or other proceedings involving it or any of its Related Corporations;
  - (vi) **(Duties)** if and to the extent that it may be reasonably necessary or desirable in the discharge of its duties and obligations under the Transaction Documents; and
  - (vii) **(Authority)** to the extent required under any applicable Law or if and to the extent that it may be reasonably necessary or desirable to disclose the information to any Authority in connection with applications for any Authorisations.

### 14.3 Conditions to disclosure

- (a) Any disclosure:
- (i) under clause 14.2(a)(iv), (v) or (vi) may only be made if the person to whom disclosure is to be made first agrees with the Owner disclosing the information, in a form enforceable by the Protected Party and which is no less onerous than the requirements of this clause 14, that the information concerned must not be disclosed to any other person for any purpose, and such disclosure may only be made for the purposes of satisfying the person to whom disclosure is made as to the value and commercial viability of the proposed transaction; and

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- (ii) under clause 14.2(a)(i) to (iii), (ix) and (x) and under clause 14.2(b)(i) to (iii) and (v) may only be made if the person to whom disclosure is to be made is informed of the confidential nature of the information and required to, in the case of an Authority, to the extent possible, respect that confidentiality.
- (b) Any Confidential Information that is required to be disclosed in legal, administrative or other proceedings (other than between the Owners, or an Owner and the Manager) pursuant to clause 14.2(a)(viii) or clause 14.2(b)(v) may not be disclosed to any person unless:
  - (i) prior to that disclosure, the Owner intending to disclose the Confidential Information (*Disclosing Party*) notifies the other Owner giving full details of:
    - (A) the legal, administrative or other proceedings in relation to which disclosure is required, including to the maximum extent permitted by Law, copies of documents filed in those legal, administrative or other proceedings; and
    - (B) the Confidential Information intended to be disclosed;
  - (ii) to the maximum extent permitted by Law, the Disclosing Party gives the other Owner a reasonable opportunity in a court of law or other appropriate body or forum to:
    - (A) challenge whether the proposed disclosure is in accordance with the terms of this clause 14;
    - (B) challenge the obligation of the Disclosing Party or any other person to make that disclosure; or
    - (C) secure an order or ruling (including, where appropriate, an order or ruling that the disclosure should only be made on a confidential basis) to protect or preserve the confidentiality of the relevant information;
  - (iii) the Disclosing party takes all reasonable steps to preserve the Confidential Information to be disclosed, including, where appropriate, by doing all things necessary to obtain an order that the Confidential Information be disclosed in accordance with an appropriate confidentiality regime; and
  - (iv) the other requirements of this clause 14 applicable to that disclosure are satisfied.

### 14.4 Owner's Confidential Information

- (a) The Owners and the Manager acknowledge that nothing in a Transaction Document will require an Owner to disclose any of its Owner's Confidential Information.
- (b) If notwithstanding paragraph (a), an Owner or the Manager obtains Owner Confidential Information of another Owner, it:
  - (i) undertakes that it will not, and will procure that its Related Corporations will not:
    - (A) disclose that information; or
    - (B) use that information; and
  - (ii) will (directly or on behalf of its Related Corporations) destroy that information (or expunge it from any device in the case of electronic information) as soon as practicable after receipt of a request from the other Owner.

## **West Australian Iron Ore Production Joint Venture Agreement**

### **14.5 Law of confidentiality**

The confidentiality undertaking contained in this Agreement will be in addition to and will in no way derogate from the obligations of the Owners and the Manager in respect of secret and confidential information at law, in equity or under any statute or trade or professional custom or use.

### **14.6 Former party bound**

This clause 14 will continue to bind a party after it ceases to be a party to this Agreement.

## **15. Relationship of the Parties**

### **15.1 No partnership or proprietary interests**

Nothing in this Agreement or any other Transaction Documents implies that the Owners or any of the JV Entities are:

- (a) forming a partnership, agency or a similar relationship between the Owners or any of the JV Entities; or
- (b) otherwise carrying on business in common with a view to profit, within the meaning of any partnership or limited partnership legislation in any jurisdiction; or
- (c) otherwise creates any fiduciary relationship between the Owners or any of the JV Entities.

### **15.2 Liability**

The liabilities and obligations of the Owners arising out of or in connection with the JV Operations will be several and not joint or joint and several and must be borne by them severally in their respective Participating Shares.

## **16. Independent Expert**

### **16.1 Referral to Independent Expert**

This clause 16 will apply to the appointment and conduct of an Independent Expert appointed under this Agreement (but, will not apply in relation to the Valuers appointed pursuant to item 1 of schedule 9).

### **16.2 Appointment of Independent Expert**

- (a) The Independent Expert will be appointed by agreement between the parties to the dispute or deadlock. If the parties cannot agree on appointment of an Independent Expert, the appointment will be made by:
  - (i) for technical matters—the President of the Institute of Engineers, Australia;
  - (ii) for financial and valuation matters—the President of the Institute of Chartered Accountants, Australia.
- (b) The Independent Expert will:
  - (i) have appropriate qualifications, including experience in the subject matter of the dispute or deadlock; and
  - (ii) not have any interest which conflicts or may conflict with his or her appointment as an expert in relation to the dispute.

## West Australian Iron Ore Production Joint Venture Agreement

### 16.3 Conduct of Independent Expert

- (a) The Independent Expert will accept oral and written submissions from the parties to the dispute or deadlock and make a written determination in relation to the matters in dispute within 28 days of his or her appointment unless the Independent Expert certifies that the matter is complex in which case the period will be extended to 60 days.
- (b) The Independent Expert will keep all information received in connection with its appointment under this Agreement confidential.
- (c) In the absence of manifest error, the decision of the Independent Expert made under this clause will be final and binding on the parties to the dispute and all other parties to this Agreement.
- (d) The costs of the Independent Expert will be borne equally between the parties in dispute.

### 17. Prohibition on partition

- (a) Unless otherwise agreed unanimously by the Owners, no Owner or the Manager and no person claiming through an Owner or the Manager may seek partition or the establishment of a trust for sale or take any action (whether by any court order or otherwise) for partition or sale in lieu of partition (and each Owner and the Manager waives any rights it may have under any applicable Law to seek and do any acts and things as stated above) in respect of any Iron Ore Assets or Securities in a JV Entity during the term of this Agreement.
- (b) Nothing in this clause 17 will in any way affect the right of each Owner:
  - (i) to purchase (or nominate a nominee to purchase) product under the Ore Sales Agreements pursuant to clause 6; or
  - (ii) to Dispose of its Participating Interest or make any other Disposal of assets as contemplated by clause 10, or to grant a Security Interest or permit a Security Interest to subsist as contemplated by clause 11.

### 18. Force Majeure

#### 18.1 Event of Force Majeure

For the purposes of this clause 18, an *Event of Force Majeure* means an event beyond the reasonable control of a party, including:

- (a) act of God, lightning, storm, flood, cyclone, tidal wave, landslide, fire, earthquake or explosion;
- (b) strike, lockout or stoppage or ban or limitation on work or restraint of labour, whether at a mine or mines, railway, port or otherwise;
- (c) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic;
- (d) any act, inaction, demand, order, restraint, restriction, requirement, prevention, frustration or hindrance by or of any government or other competent authority;
- (e) embargo or boycott, unavailability of essential equipment, materials or facilities, unavailability of qualified employees or contractors, power or water shortages or lack of transportation; or
- (f) any other cause, whether specifically referred to above or otherwise which is not within its reasonable control.

## **West Australian Iron Ore Production Joint Venture Agreement**

### **18.2 No liability during an Event of Force Majeure**

A party will not be liable for any delay in or failure of performance (or for any delay in procuring performance or failure to procure performance by a JV Entity pursuant to clause 2.4(b)(ii)) (other than a delay in or failure to make payment of a Called Sum or any other amount payable under this Agreement) if:

- (a) that delay or failure arises from an Event of Force Majeure;
- (b) it has taken (or, in the case of a procurement obligation pursuant to clause 2.4(b)(ii), has procured that the relevant JV Entity has taken) all proper precautions, due care and reasonable alternative measures with the object and intent of avoiding the delay or failure and of carrying out its obligations under this Agreement (including, to the extent possible, its procurement obligations under clause 2.4(b)(ii)); and
- (c) as soon as practicable after the beginning of the event of Force Majeure which affects the ability of the party claiming under this clause 18.2 to observe or perform any of its obligations under this Agreement, the claiming party gives notice to each other party, subject to the Ring-Fencing Protocol:
  - (i) fully describing the Event of Force Majeure and, as far as possible, estimating its duration;
  - (ii) identifying the specific obligations affected by that Event of Force Majeure and the possible extent to which the claiming party (or the JV Entity in respect of which the claiming party has procurement obligations under clause 2.4(b)(ii)) will be unable to perform those obligations; and
  - (iii) specifying the measures proposed to be adopted to remedy or abate the Event of Force Majeure.

### **18.3 Suspension of obligations**

While an Event of Force Majeure continues, the obligations which cannot be performed because of the Event of Force Majeure (other than a delay in or failure to make payment of a Called Sum or any other amount payable under this Agreement) will be suspended.

### **18.4 Remedy of Force Majeure**

The party that is prevented from carrying out its obligations under this Agreement (including its procurement obligations under clause 2.4(b)(ii)) as a result of an Event of Force Majeure will remedy (or, as the case may be, procure the remedy of) the Event of Force Majeure to the extent reasonably practicable, keep the other parties regularly informed on the progress of remedying the Event of Force Majeure and resume the performance of its obligations (including its procurement obligations under clause 2.4(b)(ii)) as soon as reasonably possible.

### **18.5 Mitigation**

The party that is prevented from carrying out its obligations under this Agreement as a result of an Event of Force Majeure and the Manager must take (or procure the taking by a relevant JV Entity) all action reasonably practicable to mitigate any loss suffered by a party or a third party as a result of that party's failure to carry out its obligations under this Agreement (including its procurement obligations under clause 2.4(b)(ii)).

### **18.6 No requirement to settle labour dispute**

A party is not required, under clause 18.4 or 18.5, to settle any labour dispute against its will.

## West Australian Iron Ore Production Joint Venture Agreement

### 18.7 \* \* \*

- (a) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- (h) \* \* \*

### 19. GST

#### 19.1 Definitions

For the purposes of this clause 19:

- (a) **Adjustment** has the meaning given by the GST Law;
- (b) **Consideration** has the meaning given by the GST Law;
- (c) **Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but which the representative member of a GST Group or the Joint Venture Operator of a GST Joint Venture is entitled under GST Law;
- (d) **GST** has the meaning given by the GST Law;
- (e) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply;
- (f) **GST Group** has the meaning given by the GST Law;
- (g) **GST Joint Venture** has the meaning given by the GST Law.
- (h) **GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (i) **Joint Venture Operator** has the meaning given by the GST Law.
- (j) **Tax Invoice** has the meaning given by the GST Law; and
- (k) **Taxable Supply** has the meaning given by the GST Law excluding the reference to Section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



## **West Australian Iron Ore Production Joint Venture Agreement**

### **19.2 Recovery of GST**

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other Consideration for the Taxable Supply is provided. This clause 19.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

### **19.3 Liability net of GST**

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

### **19.4 Adjustments**

If an Adjustment occurs in relation to a Taxable Supply made under, by reference to or in connection with this Agreement, the GST Amount will be recalculated to reflect that Adjustment and an appropriate payment will be made between the parties.

### **19.5 Revenue exclusive of GST**

Any reference in this Agreement to price, value, sales, revenue or a similar amount (*Revenue*), is a reference to that Revenue exclusive of GST.

### **19.6 Cost exclusive of GST**

Any reference in this Agreement (other than in the calculation of Consideration or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount (*Cost*), is a reference to that Cost exclusive of any Input Tax Credit entitlement.

### **19.7 GST obligations to survive termination**

This clause 19 will continue to apply after expiration or termination of this Agreement.

## **20. Governing Law and Jurisdiction**

### **20.1 Governing Law**

- (a) This Agreement and the other Transaction Documents are governed by the laws of Western Australia, Australia.
- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this Agreement or the other Transaction Documents on the basis that the courts of Western Australia are not an appropriate forum.

## **West Australian Iron Ore Production Joint Venture Agreement**

### **20.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this Agreement or the other Transaction Documents in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

### **20.3 Dispute Resolution**

- (a) The parties will first seek to resolve any dispute under or in connection with this Agreement or the other Transaction Documents by discussions in good faith.
- (b) Any party may, by notice to the other parties, require any dispute (other than a dispute or deadlock to which the deadlock resolution procedure set out in clauses 3.7 and 3.8 applies

or which is otherwise expressly to be referred to an Independent Expert pursuant to clause 16 or a Valuer pursuant to item 1 of schedule 9 or which is to be determined pursuant to an alternative process under the Implementation Agreement) arising under or in connection with this Agreement or the other Transaction Documents to be referred to the Chief Executives. The Chief Executives will meet and seek in good faith to resolve the dispute within 30 days.

- (c) If the Chief Executives are unable to resolve the dispute within 30 days of referral to them, any party may refer the dispute to the Owners' Chairpersons, who will meet and seek in good faith to resolve the dispute within 30 days.
- (d) If the Owners' Chairpersons are unable to resolve the dispute within 30 days of referral to them, then any party may commence proceedings in any court of competent jurisdiction.
- (e) Subject to paragraph (f), a party may not commence court proceedings in relation to any dispute arising out of or in connection with this Agreement or the other Transaction Documents until it has complied with the dispute resolution process set out in paragraphs (a) to (d).
- (f) Nothing in this clause 20 prevents a party seeking appropriate injunctive or interlocutory relief at any time to preserve property or rights or to avoid losses that are not compensable in damages.
- (g) Each party agrees that:
  - (i) it is responsible for its own costs in connection with the dispute resolution process; and
  - (ii) the costs of any suit, action or proceeding commenced under or in connection with this Agreement or the other Transaction Documents will be borne as between the parties as determined by the court of competent jurisdiction that hears the suit, action or proceeding.

### **20.4 Service of Process**

- (a) Each party agrees that service of all writs, process and summonses in any suit, action or proceeding under or in connection with this Agreement or the other Transaction Documents brought in Western Australia may be made on its registered or principal office for the time being in Australia.
- (b) Nothing contained or implied in this Agreement or the other Transaction Documents will in any way be taken to limit the ability of a party to:
  - (i) serve any writs, process or summonses; or
  - (ii) obtain jurisdiction over a party in other jurisdictions,

in any manner permitted by Law.

## West Australian Iron Ore Production Joint Venture Agreement

### 21. Ancillary Provisions

#### 21.1 Notices

- (a) Subject to paragraph (b), any notice, demand, consent, certificate, approval, nomination, waiver or other similar communication given or made in connection with this Agreement (a **notice**):
- (i) will be in writing and signed by the sender or a person duly authorised by the sender;
  - (ii) will be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:
    - (A) to Rio Tinto and the Rio Tinto Owner:

**Rio Tinto plc**  
2 Eastbourne Terrace  
London W2 6LG  
UNITED KINGDOM  
Attention: Company Secretary  
Fax +44 20 7781 1835

and to  
**Rio Tinto Limited**  
Level 33, 120 Collins Street  
Melbourne VIC 3000  
AUSTRALIA  
Attention: Company Secretary  
Fax +61 3 9283 3151
    - (B) to BHP Billiton and the BHP Billiton Owner:

**BHP Billiton plc**  
Neathouse Place, Victoria  
London SW1V 1B  
UNITED KINGDOM  
Attention: Company Secretary  
Fax +44 20 7802 4111

and to  
**BHP Billiton Limited**  
BHP Billiton Centre  
180 Lonsdale Street  
Melbourne VIC 3000  
Attention: Company Secretary  
Fax No: +61 3 9609 3015
    - (C) to the Manager: **[#]**
  - (iii) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.
- (b) Any notice relating to a matter that is agreed by the Owners' Council to be a routine operational communication may be made by electronic email to the email addresses provided by the Owners and the Manager from time to time. Where a notice is permitted to be sent by email pursuant to this paragraph, the notice will be taken to have been received by the party upon the earlier of the sender receiving either an automatic delivery receipt or other confirmation of delivery and otherwise be made in accordance with paragraphs (a)(i) and (iii).

## **West Australian Iron Ore Production Joint Venture Agreement**

### **21.2 Severability**

If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable, in whole or in part, under the law of any jurisdiction, the validity, legality or enforceability of such provision or part under the law of any other jurisdiction and the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired. If any provision of this Agreement, or its application to any person or entity or any circumstance, is invalid or unenforceable, the parties will make such suitable and equitable provision as is necessary in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

### **21.3 Variation**

No variation, modification or amendment of all or any part of this Agreement, including the schedules to this Agreement, will be effective unless in writing and signed by or on behalf of each party other than the Manager. The Manager agrees that it will be bound by any variation, modification or amendment of this Agreement, including the schedules to this Agreement, that is in writing and signed by or on behalf of each party other than the Manager.

### **21.4 No Waiver**

No failure of any of the parties to exercise, or delay by it in exercising, any right, power or remedy in connection with this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.

### **21.5 Remedies**

- (a) Except as otherwise provided for in this Agreement, the rights and remedies of the parties are cumulative and not exclusive of rights and remedies provided by Law.
- (b) Without prejudice to any other rights and remedies which any party may have, each party acknowledges and agrees that damages would not be an adequate remedy for any breach by any party of the provisions of this Agreement and any party will be entitled to seek the remedies of injunction, specific performance and other equitable relief (and the parties will not contest the appropriateness or availability thereof), for any threatened or actual breach of any provision of this Agreement by any party and no proof of special damages will be necessary for the enforcement by any party of the rights under this Agreement.

### **21.6 No Merger**

The rights and obligations of the parties:

- (a) will not merge on the completion of any transaction contemplated by this Agreement; and
- (b) will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### **21.7 Costs and Expenses**

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
- (b) All stamp duty (including fines, penalties and interest) payable by a party on or in connection with this Agreement will be borne by that party.

## West Australian Iron Ore Production Joint Venture Agreement

### 21.8 Entire Agreement

This Agreement contains the entire agreement between the parties in relation to its subject matter and supersedes all agreements, undertakings, negotiations and discussions, whether oral or written, of the parties.

### 21.9 Further Assurances

Each party agrees to do anything necessary or desirable (including executing agreements, deeds, transfers, instruments and documents) to give full effect to this Agreement and the transactions contemplated by it.

### 21.10 Change of Law

- (a) If there is a change in law or change in accounting standards that materially affects the operation of the Transaction Documents to the detriment of an Owner or its Related Corporations, then that Owner by notice to the other Owner may require the other Owner to enter into good faith negotiations to seek to agree such amendments to the Transaction Documents as may be appropriate to mitigate the detriment, to the extent practicable and reasonable, and in a manner which operates fairly between the Owners. A failure to agree amendments is not a dispute that may be referred for resolution in accordance with clause 20.3.
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
  - (iv) \* \* \*\* \* \*

### 21.11 Enurement

Except as provided in this Agreement, the provisions of this Agreement will enure for the benefit of, and be binding on, the parties and their respective successors and permitted assigns.

### 21.12 Civil Liability Act 2002

The parties agree that the *Civil Liability Act 2002* (WA) is expressly excluded from application to this Agreement and the Transaction Documents, or any relevant dispute, claim, action or other matter whatsoever arising out of or in connection with this Agreement and the Transaction Documents pursuant to Section 4A of that Act.

### 21.13 Counterparts

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts, each of which will be an original but all of which together will constitute one and the same instrument. This Agreement will not take effect until each party has executed at least one counterpart.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# West Australian Iron Ore Production Joint Venture Agreement

## Schedule 1

### Definitions and Interpretation

#### 1. Definitions and Interpretation

##### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**1997 Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

**AAO Issuer** has the meaning given in clause 12.3(b)(ii).

**Accounting Policy** means the accounting policy on the terms initialled by Rio Tinto and BHP Billiton for identification on or about the date of the Implementation Agreement, as amended by the Revised Accounting Policy, in either case as amended or replaced from time to time in accordance with clause 3.13(b).

**Accounts** has the meaning given in clause 4.11(b)(i).

**Acquiring Owner**, for the purposes of clause 10, means the entity (which may be a third party or an existing Owner) that is acquiring a Participating Interest from a Disposing Owner.

**Additional Tonnes** has the meaning given in item 1(c) of schedule 4.

**Adjustment Reversion Notice** has the meaning given in clause 18.7(f).

**Adjustment Termination Notice** has the meaning given in clause 18.7(f).

**Affiliate** means a Related Corporation that is not a JV Entity or the Manager.

**Agreed Impediment** means each impediment to be overcome for the purposes of clause 11, as agreed between Rio Tinto and BHP Billiton on or about the date of the Implementation Agreement.

**Agreed Reorganisation** means the reorganisation steps agreed between Rio Tinto and BHP Billiton on or about the date of the Implementation Agreement.

**Attributable** means attributed, allocated or apportioned in accordance with the Attribution Principles.

**Attribution Principles** means the principles in item 1.6 of the Funding and Distribution Policy.

**Audit Committee** means the audit committee to be established pursuant to clause 3.9(e)(i).

**Auditor** has the meaning given in clause 4.11(a).

**Authorisations** means all permissions, licences, authorisations, approvals, consents, rulings, registrations, filings, lodgements, permits, franchises, agreements, notarisations, certificates, licences, approvals, directions, declarations, authorities or exemptions from, by or with any Authority, including as may be required or obtained under the Mining Act or any State Agreement.

**Authority** means any minister, government or representative of a government or any governmental, quasi-governmental, local government, statutory, judicial, administrative, fiscal, tax, competition or regulatory authority, entity or other body, department, concession, tribunal, self-regulatory organisation established pursuant to statute or rules of a recognised stock exchange, instrumentality, agency, statutory corporation or public authority.

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

**BHP Billiton Group** means BHPBL, BHPBP and each of their Subsidiaries and BHP Billiton Group entity means an entity in the BHP Billiton Group.

**BHP Billiton Issuer** has the meaning given in the Implementation Agreement.

**BHP Billiton JV Entities** means:

- (a) as at the date of this Agreement, the BHP Billiton Issuer and the BHP Billiton Subsidiaries listed in, and which are engaged in the businesses described in, schedule 2; and
- (b) any other wholly-owned Subsidiary of the BHP Billiton Issuer that subsequently acquires Iron Ore Assets for the purposes of the WA Iron Ore JV.

**BHP Billiton JVs** means:

- (a) the Mt Newman Joint Venture;
- (b) the Goldsworthy Joint Venture;
- (c) the Yandi Joint Venture;
- (d) the Wheelarra Joint Venture;
- (e) the JW4 Joint Venture;
- (f) the POSMAC Joint Venture; and
- (g) any other joint venture that a BHP Billiton JV Entity enters into after the date of this Agreement within the scope of the WA Iron Ore JV.

**BHP Billiton Owner** means the entity that is:

- (a) the holder of Debentures issued by the Rio Tinto Issuer from time to time; and
- (b) the holder of Shares issued by the BHP Billiton Issuer from time to time.

\* \* \*

**BHP Billiton State Agreements** means:

- (a) the *Iron Ore (Mount Newman) Agreement Act 1964 (WA)*;
- (b) the *Iron Ore (Mount Goldsworthy) Agreement Act 1964 (WA)*;
- (c) the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972 (WA)*;
- (d) the *Iron Ore (Marillana Creek) Agreement Act 1991 (WA)*; and
- (e) the *Iron Ore (McCamey's Monster) Agreement Authorisation Act 1973 (WA)*.

**Bank Bill Rate** in relation to any calendar month, means:

- (a) the average one month Australian bank bill rate by Reuters Monitor Service Page "BBSY" (rounded up, if necessary, to the nearest two decimal places) displayed at about 10:00 am (Melbourne time) on the first Business Day of that calendar month; or
- (b) if no such rate is displayed for any calendar month, then the Bank Bill Rate for that month in respect of any unpaid amount, will be the rate which is the average (rounded up, if necessary to the nearest two decimal places) of the rates quoted to the person to which the relevant amount is owed by each of three Australian banks selected by that person as the relevant bank's buying rate as at 10:00 am (Melbourne time) on the first Business Day of that calendar month for bank-accepted bills of exchange having a term of 30 days.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

**Bao-HI Joint Venture** means the joint venture established by the Bao-HI Ranges Joint Venture Agreement dated 22 June 2002.

**Base Case** is the Net Present Value (as determined by the Manager based on the assumptions referred to in schedule 5) of the existing operations prior to any Contemplated Project being assessed.

**Beasley Joint Venture** means the joint venture to be established pursuant to clause 3.1 of the Beasley River Joint Venture Agreement dated 28 October 2004.

**Blending Agreement** means the blending agreement to be entered into by [#] pursuant to clause 3.5(a)(vi) and 6.2(a) of the Implementation Agreement.

**Budget** means, in respect of the WA Iron Ore JV, a document that describes, consistent with the Business Plan, the business activities, the associated resource requirements and the expected financial outcomes, as:

- (a) prepared by the Manager pursuant to clauses 3.10(a), (i)(iii) or (k); and
- (b) approved by the Owners' Council pursuant to clause 3.10(i)(i) or (ii) or applied by operation of clause 3.10(i)(iii) and also includes the First Budget (as defined in the Implementation Agreement).

**Budget Overrun Percentage** has the meaning given in clause 3.10(l)(i).

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**Business Plan** means a document that summarises the operational and financial objectives of the WA Iron Ore JV, its strategy to achieve these objectives, the key initiatives that will enable this strategy to be implemented and the key indicators by which the performance of the WA Iron Ore JV against these objectives can be assessed, as:

- (a) prepared by the Manager pursuant to clauses 3.10(a), (i)(iii) or (k); and
- (b) approved by the Owners' Council pursuant to clause 3.10(i)(i) or (ii) or applied by operation of clause 3.10(i)(iii) and also includes the First Business Plan (as defined in the Implementation Agreement).

**CEO** means the chief executive officer of the Manager.

**CFR** has the meaning given in the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce (Incoterms) 2000 Edition, as replaced from time to time.

**CPI** means the Australian All Groups Consumer Price Index Number (weighted average of eight capital cities) published by the Australian Bureau of Statistics. In this definition:

- (a) the reference to the Australian All Groups Consumer Price Index Number (weighted average of eight capital cities) means:
  - (i) the same numbers but with different names at any time; and
  - (ii) the same numbers adjusted mathematically to take account of a change at any time in the base year provided that indices of the same base year are used throughout the calculation; and
- (b) the reference to the Australia Bureau of Statistics includes a reference to:
  - (i) the Bureau but with a different name at any time; and
  - (ii) a governmental agency in Australia (in the absence of the Australian Bureau of Statistics) at any time having similar functions.



## West Australian Iron Ore Production Joint Venture Agreement

**Call Deposits** has the meaning given in the Funding and Distribution Policy.

**Call Notice** means a notice given pursuant to clause 3.11(a).

**Called Sum** has the meaning given in clause 3.11(a).

**Called Sum Payment Dates** has the meaning given in clause 3.11(c)(ii).

\* \* \*

\* \* \*

**Cash** means all cash and cash equivalents within the meaning of the definition of Cash Flows.

**Cash Flows** means, as the case requires, all inflows and outflows of cash and cash equivalents from operating, financing and investing activities, as determined in accordance with IAS 7 and AASB 107. References to **Cash inflows** and **Cash outflows** have a corresponding meaning.

**Channar Joint Venture** means the joint venture established by the Channar Mining Joint Venture Agreement dated 16 November 1987.

**Chief Executives** has the meaning given in clause 3.7(a).

**Commissioner of Taxation** means the Australian Federal Commissioner of Taxation.

**Committees** has the meaning given in clause 3.9(a).

**Completion** has the meaning given in the Implementation Agreement.

**Confidential Information** has the meaning given in clause 14.1.

**Consolidated Group** means a consolidated group as that term is defined in s.995-1 (1) of the 1997 Tax Act.

**Contemplated Project** has the meaning given in clause 8.2(a).

**Contract Quantity** has the meaning given in clause 6.5(b)(ii)(A).

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

**Creditor Deed Poll** means a deed in the form of schedule 13.

**Cross Charge** means a cross charge in the form of schedule 12.

**dmtu** means dry metric tonne units.

**Debenture** means securities of that name issued or to be issued on the terms and conditions set out in the Debenture Deeds Poll.

**Debenture Deed Poll** means a deed poll entered into by each Issuer in conjunction with the issue of the Debentures on or about the date of this Agreement.

**Debenture Holder** has the meaning given in the Debenture Deeds Poll.

**Deed of Accession** means each deed of accession entered into by a Sole Risk Entity in the form set out in schedule 18.

**Default Amount** has the meaning given in clause 9.2(b).

**Default Costs** has the meaning given in clause 9.2(b)(ii).

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

**Default Date** has the meaning given in clause 9.1(a)(i).

**Default Interest** has the meaning given in clause 9.2(b)(i).

**Defaulting Owner** has the meaning given in clause 9.1(a).

**Demand Forecast** has the meaning given in clause 8.1(a).

**Designated Finance Company** has the meaning given in the Funding and Distribution Policy.

**Dilution Option** has the meaning given in clause 9.7(a).

**Discovery** has the meaning given in clause 2.2(d).

**Dispose** means, in relation to any asset, to sell, transfer, assign, declare oneself a trustee of, or part with the benefit of, or otherwise dispose of, the asset (or any interest in it, or any part of it) other than (in each case) by the creation of a Security Interest, and **Disposal** has a corresponding meaning.

**Disposing Owner**, for the purposes of clause 10, means an Owner (either alone or together with its Related Corporations) that is making a Disposal of any proportionate part of its Participating Interest.

**ERP Service and Licence Agreement** means the Service and Licence Agreement entered into by [#] on or about the date of this Agreement.

**ERP Services** has the meaning given in the ERP Service and Licence Agreement.

**Effective Date** means 1 July 2009.

**Escalated** means escalated at a nominal rate of 6.5% per annum, compounded annually, using the following formula:

$$A \times (1 + 0.065)^{(x/365)}$$

Where:

A = the amount to be escalated; and

x = the number of days that have lapsed during the period over which the amount is escalated.

**Excluded Assets** means any assets of any Rio Tinto Group entity or BHP Billiton Group entity from time to time that are not Iron Ore Assets and includes:

- (a) assets used in Iron Ore Marketing Activities and not Iron Ore Production Activities (**Marketing Assets**) including:
  - (i) plant and equipment used in Iron Ore Marketing Activities and not Iron Ore Production Activities;
  - (ii) land (including fixtures) used in Iron Ore Marketing Activities and not Iron Ore Production Activities;
  - (iii) contracts and leases to the extent they relate to Iron Ore Marketing Activities, including contracts for the supply of iron ore produced by Iron Ore Production Activities to customers (other than Ore Sales Agreements);
  - (iv) Cash and receivables arising from Iron Ore Marketing Activities;
  - (v) iron ore to which a Rio Tinto Group entity or BHP Billiton Group entity is entitled that has been loaded on board a ship; and
  - (vi) all other assets of a Rio Tinto Group entity or BHP Billiton Group entity referable to Iron Ore Marketing Activities and not Iron Ore Production Activities;

## West Australian Iron Ore Production Joint Venture Agreement

- (b) for Rio Tinto, its interests in each of the following companies and their existing and future assets:
    - (i) \* \* \*
      - (A) \* \* \*
      - (B) \* \* \*
      - (C) \* \* \*
      - (D) \* \* \*
      - (E) \* \* \*
      - (F) \* \* \*
    - (ii) \* \* \*
    - (iii) \* \* \*
    - (iv) \* \* \*
    - (v) \* \* \*
    - (vi) \* \* \*
    - (vii) \* \* \*
    - (viii) \* \* \*
    - (ix) \* \* \*
    - (x) \* \* \*
    - (xi) \* \* \*
  - (c) for BHP Billiton, its interests in each of the following:
    - (i) \* \* \*
    - (ii) \* \* \*
    - (iii) \* \* \*
  - (d) any Secondary Processing facilities, other than the facilities expressly included in the definition of Iron Ore Assets;
  - (e) subject to clause 4.16 and the ERP Service and Licence Agreement, all intellectual property and technology of the Rio Tinto Group and the BHP Billiton Group used in Iron Ore Production Activities;
  - (f) any Retained Assets;
  - (g) Excluded Cash Flows, Excluded Distributable Earnings and Excluded Asset Surplus;
  - (h) Cash arising from Excluded Cash Flows, and any loan or deposit arising from use of such Cash;
  - (i) anything which is, or is deemed to be, an Excluded Asset or part of Excluded Assets under, or by operation of, the Transaction Documents; and
  - (j) anything that the Owners agree are Excluded Assets,
- and, for the avoidance of doubt, does not include Sole Risk Assets.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

**Excluded Asset Surplus** of an Issuer on an Insolvency Administration has the meaning given in the Funding and Distribution Policy.

**Excluded Cash Flows** means Cash Flows that are not Iron Ore Cash Flows or Sole Risk Cash Flows.

**Excluded Distributable Earnings** means Distributable Earnings that are not Iron Ore Distributable Earnings.

**Excluded Liabilities** means any liabilities of any Rio Tinto Group entity or BHP Billiton Group entity, from time to time, that are not Iron Ore Liabilities or Sole Risk Liabilities and includes:

- (a) any liabilities Attributable to Excluded Assets;
- (b) any liabilities to the extent they arise from the conduct of the Iron Ore Marketing Activities (**Marketing Liabilities**);
- (c) Excluded Loans;
- (d) anything which is, or is deemed to be, an Excluded Liability under, or by operation of, the Transaction Documents; and
- (e) anything that the Owners agree are Excluded Liabilities.

**Excluded Loans** means any loans that are not Iron Ore Loans or Sole Risk Loans, and includes:

- (a) Agreed Opening Excluded Loans (as defined in the Implementation Agreement); and
- (b) Post-Commencement NCEP Loans (as defined in the Implementation Agreement).

**Excluded Marketing Operations** means, in relation to a JV Entity, that part of its operations concerning the sale of Iron Ore Product to customers other than pursuant to an Ore Sales Agreement, and a reference to the Excluded Marketing Operations division of a JV Entity has a corresponding meaning.

**Existing JV** means a Rio Tinto JV or a BHP Billiton JV.

**Existing JV Arrangements** means the agreements and other arrangements which constitute a Rio Tinto JV or BHP Billiton JV, from time to time, and includes:

- (a) the arrangements between Rio Tinto Group entities and Robe in relation to Pilbara Iron infrastructure sharing and Pilbara Iron corporate shared services and mobile equipment, each as amended from time to time; and
- (b) any terms implied under such arrangements and any fiduciary, equitable or other obligation owed in relation to such agreements or other arrangements.

**Existing JV Cross Charge** means a Security Interest mentioned in schedule 14.

**Expenditure Category Overrun Amount** has the meaning given in clause 3.10(1)(ii).

**Expiring Contract** has the meaning given in clause 6.5(a).

**Finance Debt** means indebtedness (whether actual or contingent) in respect of money borrowed or raised or other financial accommodation. It includes indebtedness under or in respect of:

- (a) a Guarantee of Finance Debt or a Guarantee given to a financier;
- (b) a finance lease;
- (c) a swap, option, hedge, forward, futures or similar transaction;
- (d) an acceptance, endorsement or discounting arrangement;

## West Australian Iron Ore Production Joint Venture Agreement

- (e) a redeemable share or redeemable stock; or
- (f) the deferred purchase price (for more than 90 days) of an asset or service, or an obligation to deliver assets or services paid for in advance by a financier or otherwise relating to a financing transaction.

**Financial Year** means a period of 12 months commencing on 1 January in each year and a period of 12 months commencing on 1 July each year.

**Finder** has the meaning given in clause 2.2(d).

**Finder Owner** has the meaning given in clause 2.2(d).

**Feasibility Study** has the meaning given in clause 8.2(h).

**FOB** has the meaning given in the International Rules for the Interpretation of Trade Terms of the International Chamber of Commerce (Incoterms) 2000 Edition.

**FOB Price** means:

- (a) where Iron Ore Product is sold on an FOB basis, the price (expressed in US\$ per dmtu) for Iron Ore Product the subject of any shipment or sale which is payable by the third party end customer under the applicable FOB sales contract; or
- (b) where Iron Ore Product is sold on a non-FOB basis \* \* \*
  - (i) \* \* \*  
\* \* \*  
\* \* \*  
\* \* \*  
\* \* \*  
\* \* \*  
\* \* \*  
\* \* \*  
\* \* \*
  - (ii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*

For the avoidance of doubt, the purpose of this definition is to allow the parties to determine the realised FOB price equivalent for each shipment or sale of Iron Ore Product and eliminating the non-FOB component of the price paid by the end customer on an arm's length basis.

**Funding and Distribution Policy** means the funding and distribution policy initialled by BHP Billiton and Rio Tinto on or about the date of the Implementation Agreement, as amended or replaced from time to time in accordance with clause 21.3.

**Goldsworthy Joint Venture** means the joint venture carried on under the name "Mt Goldsworthy Mining Associates Joint Venture" as constituted from time to time pursuant to the Restated Mount Goldsworthy Mining Associates Joint Venture agreement dated 7 September 1990.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

**Guarantee** means an obligation or offer to provide funds (including by subscription or purchase) or otherwise be responsible in respect of an obligation or indebtedness, or the financial condition or solvency, of another person. It includes a guarantee, indemnity, letter of credit or legally binding letter of comfort, or an obligation or offer to purchase an obligation or indebtedness of another person.

**Grossed up for Tax** means that, where one party (the **Payer**) is liable to pay an amount to another party (the **Recipient**) and that payment increases the Tax payable by the Recipient or the Head Company of any Consolidated Group of which the Recipient is a member (collectively the **Recipient Group**), then the payment must be grossed up by such amount as is necessary to ensure that the net amount retained by the Recipient Group after deduction of Tax or payment of the increased income tax equals the amount the Recipient Group would have retained had the Tax not been payable.

**Half Year** means the 6 month periods commencing on 1 January and 1 July in each year (and includes the period from the JV Commencement Date until the following 30 June or 31 December whichever is the earlier).

\* \* \*

**HBI Beneficiation Plant** means the assets marked red and green on the aerial photograph in item 2.4 of Part 2 of Schedule 7 of the Implementation Agreement (but excluding all liabilities associated with them and arising from circumstances or events occurring prior to \* \* \* to clause 5.4(a) to (b) of the Implementation Agreement).

**HBI Plant** means all real property, plant and equipment and other assets situated at the hot briquetted iron processing facility at Boodarie, Western Australia (other than the HBI Beneficiation Plant) and all associated liabilities.

**Head Company** has the meaning given by s.995-1(1) of the 1997 Tax Act.

**Hismelt** means all land, buildings, structures, offices, fixed and mobile equipment, roads, wharfs, loading and unloading facilities, stockpiles, storage facilities and associated facilities owned, leased or used by any member of the Rio Tinto Group at Kwinana, Western Australia including the facility constructed by certain members of the Rio Tinto Group in joint venture with third parties and all Hismelt Technology.

**Hismelt Technology** means technology presently, or in future, owned by, or licensed to, any member of the Rio Tinto Group relating to the high intensity direct smelting of iron, or the dimensioning, design, application, manufacture, erection, installation, testing, operation and maintenance of equipment designed or used for that purpose, including patents, know-how and other designs and copyright, technological and technical knowledge, expertise, experience, inventions, data, algorithms, codes, instructions, techniques, processes, drawings, specifications and other unpatented information.

**Hope Downs Joint Venture** means the joint venture carried on pursuant to the Hope Downs Joint Venture Agreement dated 16 March 2006 as constituted from time to time.

**Implementation Agreement** means the implementation agreement entered into by Rio Tinto Limited, Rio Tinto plc, BHP Billiton Limited and BHP Billiton plc on 5 December 2009.

**Implementation Management Committee** has the meaning given in the Implementation Agreement.

**Implementation Oversight Committee** has the meaning given in the Implementation Agreement.

**Independent Expert** means a person appointed in accordance with clause 16.

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## West Australian Iron Ore Production Joint Venture Agreement

**Indexed** means:

- (a) prior to 31 December 2009, the relevant amount; and
- (b) during any Half Year subsequent to that referred to in paragraph (a):

CPIt-1  
*The relevant amount X*  
CPIb

where:

**CPIt-1** means the CPI number for the Quarter most recently published prior to the start of that Half Year; and

**CPIb** means the CPI number for the Quarter ending on 30 June 2009.

**Infrastructure and Blending Principles** means the Infrastructure and Blending Principles initialled by Rio Tinto and BHP Billiton for the purposes of identification on or about the date of the Implementation Agreement.

**Infrastructure Sharing Agreement** means the Infrastructure Sharing Agreement to be entered into by [#] pursuant to clauses 3.5(a)(vi) and 6.2(a) of the Implementation Agreement.

\* \* \*

**Insolvency Administration** means, in relation to an Issuer, a winding up of the Issuer, or the appointment of an administrator to the Issuer pursuant to Part 5.3A of the *Corporations Act 2001* (Cth).

**Insurance Protocol** has the meaning given in clause 4.15(a).

\* \* \*

**Intellectual Property Management Agreement** means the intellectual property management agreement entered into by [#] on or about the date of this Agreement.

\* \* \*

**Iron Ore Assets** means the right, title or interest (whether directly or indirectly held) of any JV Entity from time to time in:

- (a) plant and equipment and land (including fixtures) used in, or acquired for the purposes of, Iron Ore Production Activities, including mines, water bores, light and heavy mobile equipment, conveyors, processing plant (including crushing, screening, beneficiating, concentrating, washing and drying plant, tailings dams and associated infrastructure), rail infrastructure (including rail track, signalling and control systems), rolling stock (including locomotives, fuel cars and ore cars), communication systems, shipping terminals and port facilities (including stockyards, ore car dumpers, in-load and out-load circuits (including car-dumpers, conveyors, transfer stations, bins, stackers and reclaimers, stockpiles and yards, screening plant, berths, wharves, jetties, tugs), power facilities (including generation, transmission and distribution networks), other associated infrastructure (such as housing and town infrastructure and pastoral stations, airstrips and associated infrastructure, water utilities, gas pipelines and fuel farms), and maintenance facilities and equipment (including administration offices and workshops);
- (b) the beneficiation plant at Newman, and the HBI Beneficiation Plant to the extent that it is made available pursuant to clause 5.4(a)(ii)(B) of the Implementation Agreement);

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## **West Australian Iron Ore Production Joint Venture Agreement**

- (c) the Secondary Processing facilities at Tom Price;
- (d) any other Secondary Processing facilities to the extent required to satisfy obligations under a future State Agreement or obligations not yet satisfied under a current State Agreement;
- (e) any Support Assets;
- (f) the JV Tenements;
- (g) the State Agreements, together with the benefits of all associated Authorisations;
- (h) contracts and leases to the extent they relate to Iron Ore Production Activities, other than, on and from the JV Commencement Date, contracts with Affiliates of Rio Tinto or BHP Billiton that have not been approved by the Implementation Oversight Committee or the Owners' Council;
- (i) iron ore produced by Iron Ore Production Activities but not yet loaded on board a ship;
- (j) receivables arising from Iron Ore Production Activities, including any amount payable under the Ore Sales Agreements (but excluding any receivable arising from Iron Ore Marketing Activities);
- (k) Iron Ore Cash Flows, Iron Ore Distributable Earnings and Iron Ore Asset Surplus;
- (l) Cash arising from Iron Ore Cash Flows and any loan or deposit arising from use of such Cash;
- (m) any other assets to the extent that they arise from Iron Ore Production Activities
- (p) anything which is, or is deemed to be, an Iron Ore Asset or part of Iron Ore Assets under, or by operation of, the Transaction Documents; and
- (q) anything that the Owners agree are Iron Ore Assets,  
but excluding any Excluded Assets and Sole Risk Assets.

***Iron Ore Asset Surplus*** of an Issuer on an Insolvency Administration has the meaning given in the Funding and Distribution Policy.

***Iron Ore Cash Flows*** means Cash Flows Attributable to Iron Ore Assets and Iron Ore Liabilities.

***Iron Ore Distributable Earnings*** means Distributable Earnings Attributable to Iron Ore Assets and Iron Ore Liabilities.

***Iron Ore Liabilities*** means:

- (a) any liabilities of any JV Entity from time to time:
  - (i) which are Attributable to Iron Ore Assets;
  - (ii) to the extent they arise from Iron Ore Production Activities; or
  - (iii) which are Iron Ore Loans,and also includes:
- (b) anything which is, or is deemed to be, an Iron Ore Liability under, or by operation of, the Transaction Documents; and
- (c) anything that the Owners agree are Iron Ore Liabilities,  
but excluding any Excluded Liabilities and Sole Risk Liabilities.

***Iron Ore Loans*** means:

- (a) Agreed Opening Iron Ore Loans (as defined in the Implementation Agreement);



## West Australian Iron Ore Production Joint Venture Agreement

- (b) Participant Loans;
- (c) NDO Loans; and
- (d) any loan that the Owners agree is an Iron Ore Loan.

**Iron Ore Marketing Activities** means the activities carried on, and transactions entered into, by the Rio Tinto Group and BHP Billiton Group separately (whether before or after the JV Commencement Date) in relation to:

- (a) marketing and selling iron ore produced from Iron Ore Production Activities and related activities (other than sales by JV Entities pursuant to Ore Sales Agreements), including Excluded Marketing Operations; and
- (b) transporting iron ore produced from Iron Ore Production Activities from the ship's rail in Western Australia to customers and related activities.

**Iron Ore Product** means any finished iron ore product recovered, produced or purchased as part of the conduct of JV Operations, including any iron ore recovered, produced or purchased pursuant to an Existing JV Arrangement but does not include Sole Risk Iron Ore Product.

**Iron Ore Production Activities** means activities within the permitted scope of the WA Iron Ore JV:

- (a) carried on by the Rio Tinto Group and the BHP Billiton Group separately prior to the JV Commencement Date; and
- (b) carried on by the JV Entities or the Manager as JV Operations on and after the JV Commencement Date.

**Issuer** means:

- (a) in the case of Rio Tinto, the Rio Tinto Issuer; and
- (b) in the case of BHP Billiton, the BHP Billiton Issuer.

**Issuer JV Subsidiary** means a JV Entity which is a Subsidiary of an Issuer.

**Issuer Share Security Test** has the meaning given in clause 11.7(a).

**JV Accounting Policy** means the accounting policies adopted pursuant to the Accounting Policy for the preparation of JV Financial Information.

**JV Bank Accounts** has the meaning given in clause 3.11(g).

\* \* \*

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*

\* \* \*

**JV Cash Costs** means all cash amounts relating to costs and liabilities of the JV Entities and the Manager payable to any person in connection with the conduct of JV Operations, including capital expenditure, calls

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## West Australian Iron Ore Production Joint Venture Agreement

made on a JV Entity pursuant to an Existing JV Arrangement and taxes and penalties. It includes all amounts identified in the Transaction Documents as costs of the WA Iron Ore JV and Approved JV Implementation Costs (as defined in the Implementation Agreement).

**JV Chairperson** means the chairperson of the Owners' Council appointed or replaced in accordance with clause 3.2.

**JV Commencement Date** means the first day of the first month that commences after Completion.

**JV Employees** means all employees of the Manager and all employees of the JV Entity employed in connection with JV Operations, including the CEO and the members of the Senior Executive Team.

**JV Entity** means:

- (a) in the case of Rio Tinto, a Rio Tinto JV Entity;
- (b) in the case of BHP Billiton, a BHP Billiton JV Entity; and
- (c) any other entity jointly owned by the Owners carrying on JV Operations (other than the Manager).

**JV Financial Information** has the meaning given in the Accounting Policy.

**JV Operations** means all activities conducted by or on behalf of the JV Entities or the Manager within the scope of the WA Iron Ore JV pursuant to this Agreement on and from the JV Commencement Date, excluding, for the avoidance of doubt, Excluded Marketing Operations and any activities conducted in connection with Excluded Assets, a Sole Risk Development or Sole Risk Opportunity. A reference to the JV Operations division of a JV Entity means that part of its activities which comprise JV Operations.

**JV Production** means:

- (a) the amount of Iron Ore Product actually recovered, produced or purchased by the JV Entities in the conduct of JV Operations and able to be loaded onto a vessel \* \* \*;
- (b) but does not include the amount of any Iron Ore Product to which the Other JV Participants are entitled (including a proportion of any production by a JV Entity that is not wholly owned by an Owner equal to the proportion of that entity owned by an Other JV Participant),

in each case expressed in WMT of Iron Ore Product (unless the context requires otherwise).

**JV Production Accounting Costs** means costs determined in accordance with clause 6.4(a).

**JV Tenements** means all mining leases, general purposes leases, miscellaneous licences, special leases and easements held pursuant to a State Agreement and / or the *Mining Act, Land Act 1933* (WA), *Land Administration Act 1997* (WA), *Port Authorities Act 1999* (WA) or *Jetties Act 1926* (WA) held by or on behalf of a JV Entity \* \* \* except to the extent it relates wholly or substantially to an Excluded Asset.

**JW4 Joint Venture** means the joint venture carried on under the name "JFE Western 4 Joint Venture" as constituted from time to time pursuant to the JFE Western 4 Joint Venture Agreement dated 22 July 2005.

\* \* \*

(a) \* \* \*

(b) \* \* \*

**Law** includes statutes, regulations, rules of the common law, principles of equity, regulatory agency policies and guidelines and security exchange rules.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

**Losses** means demands, claims, actions or proceedings made or brought by or against a person and losses (including loss of profits), liabilities, costs or expenses of any kind and however arising.

**Majority Owner** has the meaning given in clause 10.3(a)(ii).

**Management Delegation Agreement** means each agreement between the Manager and a JV Entity pursuant to which the JV Entity delegates or subcontracts to the Manager certain functions of the JV Entity, or pursuant to which the Manager provides services to the JV Entity, entered into on or about the date of this Agreement.

**Manager** means each entity appointed from time to time to manage the WA Iron Ore JV in accordance with clause 4.1, being initially the manager incorporated in accordance with clause 5.1 of the Implementation Agreement.

**Manager Duties** means the duties imposed on the Manager pursuant to clause 4.3.

**Marginal Profit** has the meaning given in item 1(n) of schedule 4.

**Marketing Assets** has the meaning given in the definition of Excluded Assets.

**Marketing Liabilities** has the meaning given in the definition of Excluded Liabilities.

**Marketing SPV** means:

- (a) in the case of Rio Tinto or the Rio Tinto Owner, the Rio Tinto Marketing SPV; and
- (b) in the case of BHP Billiton or the BHP Billiton Owner, the BHP Billiton Marketing SPV.

\* \* \*

**Maximum Permitted Excluded Loan Balance** has the meaning given in the Funding and Distribution Policy.

**Mining Act** means the *Mining Act 1978* (WA) or the *Mining Act 1904* (WA) or both (as applicable).

**Minority Owner** has the meaning given in clause 10.3(a)(iv).

**Monthly Cash Requirement Notice** has the meaning given in clause 3.11(c).

\* \* \*

**Mt Newman Joint Venture** means the joint venture carried on under that name as constituted from time to time pursuant to the Mt Newman Joint Venture Agreement dated 1 February 1967.

**NDO Loan** has the meaning given in clause 9.3(a).

\* \* \*

**Net Present Value** means the sum of the expected future ungeared cash flows over the life of a project, discounted to reflect the time value of money and investment risk.

\* \* \*

**New Majority Owner** has the meaning given in clause 10.6(a).

**New Opportunity** means \* \* \*

- (a) \* \* \*
- (b) \* \* \*

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## West Australian Iron Ore Production Joint Venture Agreement

(c) \* \* \*

(d) \* \* \*

\* \* \*

**New Opportunity Notice** has the meaning given in clause 8.4(c).

\* \* \*

\* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

**Non-Defaulting Owner** has the meaning given in clause 9.3(a).

**Non-Iron Ore Target** means \* \* \*

**Non-Selling Entities** means those JV Entities that sell Iron Ore Product, but that are not able to sell Iron Ore Product to the Marketing SPVs by reason of Existing JV Arrangements, being as at the date of this Agreement in relation to Rio Tinto, Channar Mining Pty Ltd, North Mining Limited, RRMC and Hamersley WA Pty Ltd.

**Officer** means, in relation to an entity, its directors, officers and employees.

**Operational Completion** is that stage in the design, construction and commissioning of any works under this Agreement when:

- (a) the works are complete and fit for all of the intended purposes except for minor omissions and minor defects which do not prevent the works from being reasonably capable of being safely and lawfully used for their intended purposes; and
- (b) those tests which a competent, prudent and experienced contractor or construction manager would reasonably carry out and pass, before the works reach operational completion, have been carried out and passed.

**Operational Implementation Plan** has the meaning given in item 3(b)(vi) of schedule 5.

**Opt-in Owner** has the meaning given in items 1(k) or 2(i) of schedule 4 (as applicable).

**Ore Loan Balance** means the amount in tonnes of Iron Ore Product received by an Owner as a result of an adjustment to the Owner's Capacity Percentage made pursuant to clause 6.3(d)(iii), less any amount set off pursuant to clause 6.3(e) or returned pursuant to clause 6.3(f).

**Ore Sales Agreements** means:

- (a) the ore sales agreement between the Selling Entities and the Rio Tinto Marketing SPV; and
- (b) the ore sales agreement between the Selling Entities and the BHP Billiton Marketing SPV,

entered into on or about the date of this Agreement, and any other Ore Sales Agreement entered into pursuant to the operation of clause 10 and schedule 10, as amended or replaced from time to time.

**Ore Sales Price** means the price paid by each Marketing Entity to the Selling Entities pursuant to the relevant Ore Sales Agreement, determined in accordance with clause 6.4.

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## West Australian Iron Ore Production Joint Venture Agreement

**Other JV Participant** means a participant in a Rio Tinto JV or BHP Billiton JV, whether unincorporated or incorporated, that is not a Related Corporation of Rio Tinto or BHP Billiton.

**Owner** means:

- (a) the Rio Tinto Owner; or
  - (b) the BHP Billiton Owner,
- and their respective permitted successors and assignees.

\* \* \*

\* \* \*

**Owner Confidential Information** has the meaning given in clause 14.1(a)(xii).

**Owner Guarantee** means a Guarantee to:

- (a) a person other than a JV Entity; or
- (b) a consortium, partnership, limited partnership, incorporated or unincorporated joint venture, syndicate or other group in which a JV Entity is a participant (each a **Business Association**), and in each case in respect of either:
- (c) a JV Entity, including in connection with its participation in a Business Association; or
- (d) an entity from whom assets were transferred to a JV Entity as part of any re-organisation undertaken by an Owner in connection with the WA Iron Ore JV,

and which relates to the funding of, or is otherwise provided in connection with, the operations of a JV Entity.

**Owner Loan** means a financial loan or other form of financial accommodation or obligation to:

- (a) a person other than a JV Entity; or
- (b) a consortium, partnership, limited partnership, incorporated or unincorporated joint venture, syndicate or other group in which a JV Entity is a participant (each a **Business Association**), and in each case in respect of either:
- (c) a JV Entity, including in connection with its participation in a Business Association; or
- (d) an entity from whom assets were transferred to a JV Entity as part of any re-organisation undertaken by an Owner in connection with the WA Iron Ore JV,

and which relates to the funding of, or is otherwise provided in connection with, the operations of a JV Entity.

**Owner Parent** means, in relation to the Rio Tinto Owner, Rio Tinto and, in relation to the BHP Billiton Owner, BHP Billiton.

**Owner Proceedings** has the meaning given in clause 4.2(f).

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

**Owners Bank Accounts** has the meaning given in clause 3.11(h).

**Owners' Chairpersons** has the meaning given in clause 3.7(b)

**Owners' Council** means the decision-making body established pursuant to clause 3.1.

\* \* \*

\* \* \*

**Parent Assumption Deed** means a deed in the form of schedule 17.

**Parent Company Guarantee** means a guarantee in the form of schedule 16.

**Participant Loans** has the meaning given in the Funding and Distribution Policy.

**Participating Interest**, in relation to an Owner, means that Owner's Participating Share in relation to the WA Iron Ore JV as constituted by the following rights, benefits, liabilities and obligations from time to time under this Agreement and the other Transaction Documents, including:

- (a) any shares or Debentures held by the Owner in an Issuer;
- (b) any Participant Loans made by the Owner;
- (c) the obligation of the Owner, subject to the terms of this Agreement and the other Transaction Documents, to fund all JV Cash Costs; and
- (d) all other rights, benefits, liabilities and obligations accruing to or incurred by or on behalf of an Owner under, or arising out of, the Transaction Documents.

**Participating Share** means the percentage interest of an Owner in the WA Iron Ore JV initially as set out in clause 2.1(d) as may be varied from time to time pursuant to the terms and conditions of this Agreement.

**Permitted Security Interest** means any of the following:

- (a) any lien arising by operation of Law in the ordinary course of business and not securing debt incurred for financing purposes, where the amount secured is paid when due, unless being contested in good faith;
- (b) any charge or lien arising in favour of an Authority by operation of statute, where the amount secured is paid when due, unless being contested in good faith;
- (c) any deposit of cash, securities or other assets under a foreign exchange or interest rate hedging arrangement, entered into in the ordinary course of business;
- (d) any deposit of cash, securities or other assets to secure any bid, tender, contract (other than a contract in respect of debt incurred for financing purposes), lease, statutory obligation or other similar obligation arising in the ordinary course of business;
- (e) any Security Interest existing over any asset when the asset is acquired so long as the amount secured is not increased and the Security Interest was not created in contemplation of the acquisition of the asset; or
- (f) any other Security Interest to which all Owners have given their consent.

**Pilbara Integrated System** means:

- (a) all Iron Ore Assets;

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

- (b) the interests of Other JV Participants in assets held under Existing JV Arrangements; and
- (c) all Sole Risk Assets,

but only to the extent such assets are located in the Pilbara region of Western Australia and are connected to infrastructure forming part of the Iron Ore Assets.

**Pilbara System Capacity** means the quantity of iron ore that the Pilbara Integrated System can deliver at the ship's rail in a period, expressed in WMT, having regard to:

- (a) the design and physical characteristics of the Pilbara Integrated System; and
- (b) good operating practice applicable to the Pilbara Integrated System,

in each case considered on a whole of system basis.

**Policies and Protocols** has the meaning given in clause 3.13(a).

**POSMAC Joint Venture** means the joint venture carried on under that name as constituted from time to time pursuant to the POSMAC Joint Venture Agreement dated 3 April 2002.

\* \* \*

\* \* \*

**Pre-Feasibility Study** has the meaning given in clause 8.2(d).

**Preliminary Study** has the meaning given in clause 8.2(a).

**Production Percentage** has the meaning given in clause 6.3(i).

**Product Type** means each type of Iron Ore Product produced by the West Australian Iron Ore Joint Venture from time to time, expected to be at JV Commencement, the Product Types described in schedule 15.

\* \* \*

\* \* \*

**Project** has the meaning given in clause 8.2(g) and includes a Project arising from a Subsequent Sole Risk Development Proposal pursuant to item 3 of schedule 4.

**Proposed Activities** has the meaning given in item 5(a) of schedule 4.

**Protected Party** has the meaning given in clause 14.1(b).

**Purchase Option** has the meaning given in clause 9.6(a).

**Purchase Option Price** has the meaning given in clause 9.6(a).

**Purchased Tonnes** has the meaning given in item 1(b) of schedule 4.

**Purchasing Owner** has the meaning given in item 3(c) of schedule 4.

**Quarter** means the 3 month periods commencing on 1 January, 1 April, 1 July and 1 October.

\* \* \*

**RRMC** means Robe River Mining Co. Pty Ltd.

**Rail and Port Expansion Costs** has the meaning given in items 1(e)(i)(B)(1) or (e)(ii)(A) of schedule 4, as the context requires.

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## West Australian Iron Ore Production Joint Venture Agreement

**Rail and Port Operating Costs** has the meaning given in items 1(e)(i)(B)(2) or (e)(ii)(B) of schedule 4, as the context requires.

\* \* \*

**Reimbursing Owner** has the meaning given in clause 6.3(p)(iii).

**Related Corporation** has the meaning given to “Related Body Corporate” in the Corporations Act but as if “Subsidiary” had the meaning given in this Agreement, and also includes:

- (a) in the case of Rio Tinto, any member of the Rio Tinto Group; and
- (b) in the case of BHP Billiton, any member of the BHP Billiton Group.

**Relevant Group Member** has the meaning given in clause 4.2(j).

\* \* \*

**Representative** means a representative of an Owner appointed to the Owners’ Council pursuant to clause 3.2.

**Reporting Policy** means the reporting policy initialled by BHP Billiton and Rio Tinto for the purposes of identification on or about the date of the Implementation Agreement, as amended or replaced from time to time in accordance with clause 3.13(b).

**Retained Assets** has the meaning given in the Implementation Agreement.

**Revenue Based Royalties** means any royalty that is payable in connection with the sale of Iron Ore Product that is based on the actual or notional price at which such Iron Ore Product is sold, including revenue based royalties payable under State Agreements, private royalties agreements with third parties and native title agreements, but does not include any royalty that is payable in connection with production from a Sole Risk Development or Sole Risk Opportunity.

**Revised Accounting Policy** has the meaning given in the Implementation Agreement.

\* \* \*

**Rhodes Ridge Joint Venture** means the joint venture established by the Rhodes Ridge Joint Venture Agreement dated 11 October 1972.

**Ring-Fencing Protocol** means the ring-fencing protocol initialled by BHP Billiton and Rio Tinto for the purposes of identification on or about the date of the Implementation Agreement, as amended or replaced from time to time in accordance with clause 3.13(b).

**Rio Tinto Group** means RTL, RTP and each of their Subsidiaries and Rio Tinto Group Entity means an entity in the Rio Tinto Group.

**Rio Tinto Issuer** has the meaning given in the Implementation Agreement.

**Rio Tinto JV Entities** means:

- (a) as at the date of this Agreement, the Rio Tinto Issuer and the Rio Tinto Subsidiaries listed in, and which are engaged in the businesses described in, schedule 2; and
- (b) any other wholly-owned Subsidiary of the Rio Tinto Issuer that subsequently acquires Iron Ore Assets for the purposes of the WA Iron Ore JV.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



## West Australian Iron Ore Production Joint Venture Agreement

**Rio Tinto JVs** means:

- (a) the Robe Joint Venture;
- (b) the Hope Downs Joint Venture;
- (c) the Channar Joint Venture;
- (d) the Bao-HI Joint Venture;
- (e) the Beasley Joint Venture;
- (f) the Rhodes Ridge Joint Venture; and
- (g) any other joint venture that a Rio Tinto JV Entity enters into after the date of this Agreement within the scope of the WA Iron Ore JV.

**Rio Tinto Owner** means the entity that is:

- (a) the holder of Debentures issued by the BHP Billiton Issuer from time to time; and
- (b) the holder of Shares issued by the Rio Tinto Issuer from time to time.

\* \* \*

**Rio Tinto State Agreements** means:

- (a) the *Iron Ore (Hamersley Range) Agreement Act 1963* (WA);
- (b) the *Iron Ore (Hamersley Range) Agreement Act 1968 (Paraburdoo)* (WA);
- (c) the *Iron Ore (Yandicoogina) Agreement Act 1996* (WA);
- (d) the *Iron Ore (Robe River) Agreement Act 1964* (WA);
- (e) the *Iron Ore (Rhodes Ridge) Authorisation Act 1972* (WA);
- (f) the *Iron Ore (Mt Bruce) Agreement Act 1972* (WA);
- (g) the *Iron Ore (Channar Joint Venture) Agreement Act 1987* (WA); and
- (h) the *Iron Ore (Hope Downs) Agreement Act 1992* (WA).

**Robe or Robe Joint Venture** means the joint venture carried on under the name 'Robe River Iron Associates' as constituted from time to time pursuant to the Robe River Joint Venture Agreement dated 25 May 1970.

**Rollover Tonnes** has the meaning given in clause 6.3(o).

**Royalty Allocation Adjustment** has the meaning given in clause 4.8(e).

**Scheduling Protocol** means the scheduling protocol initialled by BHP Billiton and Rio Tinto on or about the date of the Implementation Agreement, as amended or replaced from time to time in accordance with clause 3.13(b).

**Secondary Processing** means secondary processing of iron ore being the concentration or upgrading of iron ore otherwise than by washing, drying, crushing or screening, or a combination thereof.

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## West Australian Iron Ore Production Joint Venture Agreement

**Security** means any debt or equity entitlement of any kind, whether or not constituted or evidenced by a written instrument, and includes any form of share, stock, option, convertible note, bond, debenture, certificate of entitlement, bill of exchange, promissory note, deposit, secured or unsecured loan, or financing arrangement, and for the avoidance of doubt includes a Share or a Debenture.

**Security Interest** means any mortgage, pledge, lien or charge or any other security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset.

**Selling Entities** means those JV Entities that are able to sell Iron Ore Product to the Marketing SPVs, being as at the date of this Agreement Hamersley Iron Pty Ltd, Hamersley Iron-Yandi Pty Ltd and BHP Billiton Minerals Pty Ltd. \* \* \*

**Senior Executive Team** means each senior executive who reports directly to the CEO and Senior Executive Team Member has a corresponding meaning.

**Set-Off Agreement** has the meaning given in the Implementation Agreement.

**Share** means a share in the capital of an Issuer.

**Shareholder** means:

- (a) in relation to Rio Tinto Issuer, the holder of Shares issued by Rio Tinto Issuer from time to time; and
- (b) in relation to BHP Billiton Issuer, the holder of Shares issued by BHP Billiton Issuer from time to time.

**Sole Funding Party** has the meaning given in clause 8.3(b)(ii) or clause 8.4(g)(ii) as the context requires.

**Sole Risk Assets** means, in relation to a Sole Funding Party, all assets forming part of their entitlements in respect of the relevant Sole Risk Development or Sole Risk Opportunity pursuant to schedule 4, including any Sole Risk Iron Ore Product, Sole Risk Cash Flows, Sole Risk Receivable or Sole Risk Asset Surplus, and also includes:

- (a) Cash arising from Sole Risk Cash Flows, and any loan or deposit arising from use of such Cash;
- (b) anything which is, or is deemed to be, a Sole Risk Asset under, or by operation of, the Transaction Documents; and
- (c) anything that the Owners agree are Sole Risk Assets.

**Sole Risk Asset Surplus** of an Issuer on an Insolvency Administration has the meaning given in the Funding and Distribution Policy.

**Sole Risk Capacity** means the aggregate amount of Sole Risk Iron Ore Product that can be delivered at the ship's rail in a period, expressed in WMT having regard to:

- (a) the design and physical characteristics of the Sole Risk Assets; and
- (b) good operating practice applicable to the Sole Risk Assets and, to the extent applicable, the Pilbara Integrated System considered on a whole of system basis.

**Sole Risk Cash Flows** means Cash Flows attributable to Sole Risk Assets and Sole Risk Liabilities.

**Sole Risk Development** has the meaning given in clause 8.3(b)(ii).

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## West Australian Iron Ore Production Joint Venture Agreement

**Sole Risk Entity** has the meaning given in item 4(a) of schedule 4.

**Sole Risk Liabilities** means, in relation to a Sole Funding Party, all liabilities Attributable to Sole Risk Assets including any Sole Risk Loans, and also includes:

- (a) anything which is, or is deemed to be, a Sole Risk Liability under, or by operation of, the Transaction Documents; and
- (b) anything that the Owners agree are Sole Risk Liabilities.

**Sole Risk Loans** means loans made by a Sole Funding Party to an Issuer or the Manager to discharge funding obligations in respect of a Sole Risk Development or Sole Risk Opportunity pursuant to schedule 4.

**Sole Risk Receivable** means a debt arising from the sale of Sole Risk Iron Ore Product by an Issuer (or Issuer JV Subsidiary) to, or as directed by, a Sole Funding Party.

**Sole Risk Iron Ore Product** means any finished iron ore product recovered, produced or purchased as part of the conduct of operations of a Sole Risk Development or Sole Risk Opportunity.

**Sole Risk Opportunity** has the meaning given in clause 8.4(g)(ii).

**Sole Risk Opportunity Development** has the meaning given in item 2(b) of schedule 4.

\* \* \*

**State Agreement** means the BHP Billiton State Agreements, the Rio Tinto State Agreements and any other agreement entered into by the State of Western Australia and an Owner, a JV Entity or their respective nominees from time to time in connection with JV Operations in accordance with the *Government Agreements Act 1979* (WA).

**Subsequent Sole Risk Development Proposal** has the meaning given in item 3(a) of schedule 4.

**Subsidiary** has the meaning given in the Corporations Act, provided that:

- (a) an entity will also be deemed to be a Subsidiary of a body corporate if it is controlled (within the meaning of that term provided by Pt 1.2, Div 6 of the Act); and
- (b) a trust may be a Subsidiary (for the purposes of which a unit or other beneficial interest will be deemed to be a share in the capital of a body corporate) and a body corporate or a trust may be a Subsidiary of a trust.

**Substantial Liability** means \* \* \*:

- (a) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
- (b) \* \* \*

\* \* \*

**Substantial Owner** has the meaning given in clause 10.3(a)(iii).

**Sufficient Asset Test** has the meaning given in clause 11.7(a).

**Support Assets** has the meaning given in clause 3.6(b)(iv)(A) of the Implementation Agreement.

**Supporting Entity** has the meaning given in clause 4.2(j).

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## West Australian Iron Ore Production Joint Venture Agreement

**Synergies Capture Plan** means a document that describes and measures the progress of a business initiative to identify and capture the efficiencies and other cost benefits associated with the creation of the WA Iron Ore JV, as:

- (a) prepared by the Manager pursuant to clauses 3.10(a), (i)(iii) or (k); and
- (b) approved by the Owners' Council pursuant to clause 3.10(i)(i) or (ii) or applied by operation of clause 3.10(i)(iii).

**Target Iron Ore Assets** has the meaning given in clause 8.6(b).

**Tax** means any tax, duty, charge or levy imposed now or at any future date under the present or future Laws of Australia or any other country, and also includes any associated penalties, fines or interest.

**Term Deposit** has the meaning given in the Funding and Distribution Policy.

\* \* \*

**Transaction Document** means:

- (a) the Implementation Agreement;
- (b) this Agreement, including the Funding and Distribution Policy;
- (c) each Debenture Deed Poll;
- (d) each Management Delegation Agreement;
- (e) each Creditor Deed Poll;
- (f) each Parent Company Guarantee;
- (g) each Cross Charge;
- (h) each Ore Sales Agreement;
- (i) the Infrastructure Sharing Agreement;
- (j) the Blending Agreement;
- (k) the Intellectual Property Management Agreement;
- (l) the ERP Service and Licence Agreement;
- (m) the Transitional Services Agreement;
- (n) the Policies and Protocols;
- (o) the Set-Off Agreement;
- (p) \* \* \*
- (q) each Parent Assumption Deed;
- (r) each New Owner's Assumption Deed;
- (s) each Owner Guarantee—Deed of Indemnity;
- (t) each Deed of Accession; and
- (u) such other agreements entered into by some or all of the parties to give effect to the requirements of the above Transaction Documents.

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## West Australian Iron Ore Production Joint Venture Agreement

**Transfer Arrangement** has the meaning given in clause 2.2(e).

**Transitional Services Agreement** means the transitional services agreement on the terms initialled by BHP Billiton and Rio Tinto for identification on or about the date of the Implementation Agreement, as developed by the Implementation Management Committee under clause 3.6(b)(iii) of the Implementation Agreement, to be signed by the parties thereto at Completion.

**Ultimate Holding Company** has the meaning given in the Corporations Act, but as if “subsidiary” had the meaning given in this Agreement.

**Unpaid Amount** has the meaning given in clause 9.1(a).

\* \* \*

\* \* \*

**Valuer** has the meaning given in item 1.2(b) of schedule 9.

**WA Iron Ore JV** means the joint venture to be known as the West Australian Iron Ore Joint Venture to be formed in accordance with clause 2.1(a).

**WA Iron Ore JV Rail and Port Expansion Costs** has the meaning given in item 2(b)(i)(B)(1) or (b)(ii)(A) of schedule 4, as the context requires.

**WA Iron Ore JV Rail and Port Operating Costs** has the meaning given in item 2(b)(i)(B)(2) or (b)(ii)(B) of schedule 4, as the context requires.

**WMT** means wet metric tonnes.

**Weighing, Sampling and Analysis Protocol** means the weighing, sampling and analysis protocol initialled by BHP Billiton and Rio Tinto for the purposes of identification on or about the date of the Implementation Agreement, as amended or replaced from time to time in accordance with clause 3.13(b).

**Wheellarra Joint Venture** means the joint venture carried on under that name as constituted from time to time pursuant to the Wheellarra Joint Venture Agreement dated 28 September 2004.

**Yandi Joint Venture** means the joint venture carried on under that name as constituted from time to time pursuant to the Yandi Joint Venture Agreement dated 10 June 1991.

### 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## **West Australian Iron Ore Production Joint Venture Agreement**

- (f) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- (g) A reference to a party to this Agreement, the Transaction Documents or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to sale or sell includes to procure the sale and a reference to purchase includes to procure the purchase.
- (j) A reference to dollars and \$ is to Australian currency.
- (k) A reference to time is a reference to:
  - (i) time in the place in which the relevant event occurs; or
  - (ii) if the relevant event is to occur in more than one place, time in Perth, Western Australia.
- (l) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the immediately succeeding Business Day.
- (m) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (n) A reference to a liability incurred by any person includes any claim, loss, liability, cost or expense, of that person arising from or in connection with any obligation (including indemnities and all other obligations owed as principal or guarantor) whether liquidated or not, whether present, prospective or contingent or otherwise and whether or not it would be shown as a 'liability' under applicable accounting principles and whether owed, incurred or imposed by or to or on account of or for the account of that person alone, severally or jointly or jointly and severally with any other person.
- (o) A reference to an asset of any person includes any form of real or personal, present or future, tangible or intangible property, any form of legal or equitable right which is not property, and anything of economic value which is not in the form of property or legal or equitable right, whether or not the property, right or other thing would be shown as an "asset" under applicable accounting principles, and whether owned, acquired, held, used or controlled by it for the account of that person alone, or severally or jointly, or jointly and severally, with any other person and whether or not assignable.
- (p) A reference to a loss incurred by any person includes any loss, liability, damage, cost, charge or expense that the person pays, incurs or is liable for and any other diminution of value of any description which the person suffers, including all liabilities on account of taxes or duties, all interest, penalties, fines and other amounts payable to third parties and all reasonable legal expenses and other expenses in connection with investigating or defending any claim, action, demand or proceeding, whether or not resulting in any liability, and all amounts paid in settlement of any such claims.
- (q) Nothing in this Agreement is to be interpreted against a party on the ground that the party put forward this Agreement or a relevant part of it.
- (r) A reference to a JV operating committee includes a reference to a management or other committee howsoever described, which is responsible for making decisions in respect of a joint venture to which either Owner or a Related Corporation of an Owner is a party.

## **West Australian Iron Ore Production Joint Venture Agreement**

- (s) Unless expressly provided otherwise in this Agreement, any reference to an asset, liability, revenue, expense or cashflow of a JV Entity will, in relation to any JV Entity that is not wholly owned (directly or indirectly) by Rio Tinto or BHP Billiton, excludes a proportion of that asset, liability, revenue, expense or cashflow, equal to the proportion of that JV Entity owned by third parties.

### **1.3 Consents or approval**

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

### **1.4 Method of payment**

All payments required to be made under this Agreement must be tendered by way of direct transfer of immediately available funds to the bank account nominated in writing by the party to whom the payment is due. Any payment tendered under this Agreement after 4pm in the local time of the bank branch from which payment is made must be taken to have been made on the next succeeding Business Day (the deemed payment date) after the date on which payment is tendered, and if the deemed payment date is after the relevant due date for payment, interest will accrue under item 1.5 accordingly.

### **1.5 Interest on amounts payable**

Interest accrues on each amount which is due and payable, but not paid, by one party to another under or in accordance with this Agreement:

- (a) on a daily basis from the due date up to the date of actual payment;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the rate which is the sum of the Bank Bill Rate plus a margin of 3%, calculated for successive periods of one month, with the first period commencing on the due date of the amount on which interest is payable.

The defaulting party must pay interest accrued under this item 1.5 on written demand by the non-defaulting party or, if no demand is made, on the last day of each month. The interest is payable in the currency of the unpaid amount on which it accrues.

### **1.6 Multiple parties**

Where this Agreement confers a right or imposes an obligation on Rio Tinto or BHP Billiton:

- (a) that right is held by RTL and RTP, and by BHPBL and BHPBP, (as applicable) severally; and
- (b) that obligation is owed by RTL and RTP, and by BHPBL and BHPBP, (as applicable) jointly and severally.

Any reference in this Agreement to Rio Tinto and BHP Billiton is a reference to each of RTL and RTP and BHPBL and BHPBP (as applicable) separately (for example a representation, warranty or undertaking relates to each of them separately).

### **1.7 Grossed up for tax**

Where a payment by way of indemnity, compensation or reimbursement is required to be made under this Agreement, it will be Grossed up for Tax if, and to the extent necessary, in order to preserve or restore the recipient's economic position having regard to all relevant matters including:

- (a) the reason that the payment obligation arises;

## **West Australian Iron Ore Production Joint Venture Agreement**

- (b) the nature of any related Loss or costs incurred by the recipient;
- (c) if the payment is in respect of deprivation of income or profit, or non-receipt of another amount, which would have been subject to Tax;
- (d) if the payment is in respect of a Loss or other event, which results in the recipient or a Consolidated Group of which it is a member, obtaining a deduction, a reduction in present or future Tax, a Tax rebate or a Tax credit, which offsets any Tax otherwise due on the payment;
- (e) if the payment is an indemnity in respect of stamp duty or other Tax, which duty or other Tax offsets any Tax otherwise due on the payment.

For the avoidance of doubt, a reference to a payment by way of indemnity, compensation or reimbursement includes:

- (f) a reimbursement of costs under clause 2.2(e) or clause 2.2(g) in respect of a Discovery (but not for tax on any gain on a transfer of the Discovery derived by the transferor);
- (g) indemnity for Loss due to Manager default under clauses 4.2(a) and 4.2(e);
- (h) indemnity for Loss and costs in respect of Owner Proceedings under clauses 4.2(f) and (h);
- (i) reimbursement of costs and loss of profit under clause 6.3(p)(iii) on failure to take delivery of sufficient Iron Ore Product;
- (j) reimbursement of loss of profit caused by Sole Risk Projects under item 1(n) of schedule 4;
- (k) the indemnity for Loss due to Manager default or Sole Funding Party default under items 5(b) and 5(c) of schedule 4;
- (l) the indemnity for stamp duty in clauses 11.7;
- (m) the indemnities in respect of excess amounts received by a Shareholder, Debenture Holder or Affiliate under items 4.6, 6.3(c), 10.3(b) and 11.9(f) of the Funding and Distribution Policy;
- (n) the indemnities under items 6.3(a), 6.4(a), 7.3, 11.9(d) and 11.9(e) of the Funding and Distribution Policy.

For the avoidance of doubt this item 1.7 does not apply to:

- (o) a payment for the transfer or sale of an asset;
- (p) a payment for purchase of a Participating Interest;
- (q) a payment in respect of reserves from a Sole Funding Party to the other Owner pursuant to item 1(a) of schedule 4;
- (r) a payment by an Opt-in Owner under item 1(k) or item 2(i) of schedule 4;
- (s) a payment by a Purchasing Owner under item 3(c) of schedule 4;
- (t) a payment in respect of a New Opportunity under clause 8.4(h);
- (u) a payment in respect of Target Iron Ore Assets under clause 8.6(d);
- (v) an indemnity payment for a major property damage event pursuant to clause 3.11(o);
- (w) the royalty allocation adjustment under clause 4.8(d);
- (x) Coupons paid under clause 6.4(e).



# West Australian Iron Ore Production Joint Venture Agreement

## Schedule 2

### List of JV Entities

#### 1. Rio Tinto JV Entities

JV Entity	Business of JV Entity
Baume Pty Limited	Holder of interests in the Channar Partnership.
Beasley River Management Pty Limited	Manager of the Beasley River Joint Venture.
Beasley River Mining Pty Limited	Holder of interests in the Beasley River Joint Venture. JV Operations division only.
Channar Finance Limited	Provision of finance to the participants in the Channar Mining Joint Venture.
Channar Financial Services Pty Ltd	Calculates and coordinates payments under the Channar Partnership documents.
Channar Investment Nominee Pty Limited	Operator of the Channar Partnership.
Channar Management Services Pty Limited	Manager of the Channar Mining Joint Venture.
Channar Mining Pty Limited	Holder of interests in the Channar Mining Joint Venture. JV Operations division only.
Channar Security Pty Limited	Holds securities over Channar Joint Venture and other assets for the benefit of Channar Partnership entities.
Gumala Advisory Co Pty Ltd	Acts as advisory trustee in respect of the General Gumala Foundation and the Elderly Foundation.
Hamersley Associated Investments Pty Limited	Holder of interests in the Channar Partnership.
Hamersley Exploration Pty Limited	Holder of iron ore exploration tenements.
Hamersley HMS Pty Ltd	Manager of the Hope Downs Joint Venture.
Hamersley Holdings Limited	Holding company of investments in corporations involved in the mining, transport and export of iron ore and the exploration for mineral deposits in Western Australia.
Hamersley Iron Pty Limited	Mining. Holder of certain commercial tenancies. Provision of services to the Hope Downs, Bao-HI and Channar Joint Ventures. JV Operations division only.
Hamersley Iron-Yandi Pty Limited	Mining. Holder of Yandicoogina mineral leases. JV Operations division only.
Hamersley Resources Limited	Holder of interests in and manager of the Rhodes Ridge Joint Venture.
Hamersley WA Pty Ltd	Holder of interests in the Hope Downs Joint Venture. JV Operations division only.

## West Australian Iron Ore Production Joint Venture Agreement

JV Entity	Business of JV Entity
Juna Station Pty Ltd	Operates Juna Downs pastoral station.
Mount Bruce Mining Pty Limited	Holder of mineral lease under the Mount Bruce State Agreement and associated mining interests.
North Mining Limited	Holder of interests in the Robe River Iron Associates Joint Venture, covering mining including rail and port operations. JV Operations division only.
Pandrew Pty Ltd	Held the benefit of certain rights under the Channar project security structure on behalf of certain Japanese debt financiers (now repaid). Currently dormant.
Pilbara Iron Company (Services) Pty Ltd	Provides mining and other corporate services to Hamersley Iron Pty Limited and the Robe River Iron Associates Joint Venture.
Pilbara Iron Pty Ltd	Provides port, rail, power and infrastructure services to Hamersley Iron Pty Limited and the Robe River Iron Associates Joint Venture.
Ranges Management Company Pty Ltd	Manager of the Bao-HI Joint Venture.
Ranges Mining Pty Ltd	Holder of interests in the Bao-HI Joint Venture.
Robe River Limited	Holder of shares in Robe River Mining Co Pty Ltd and the holder of the Robe State Agreement Mining Lease.
Robe River Mining Co. Pty Ltd	Holder of interests in the Robe River Iron Associates Joint Venture, covering mining including rail and port operations. JV Operations division only.
Robe Fair Value	Notional entity in which accounting costs associated with the step up in value arising from Rio Tinto's acquisition of North Limited (to the extent they relate to Iron Ore Assets) are recorded. Included only for the purpose of calculating JV Accounting Costs.
Rocklea Station Pty Ltd	Operates Rocklea pastoral station.
Vostin Pty Limited	Holder of interests in the Channar Partnership.
Yalleen Pastoral Co Pty Ltd	Operates Yalleen Pastoral station.

## West Australian Iron Ore Production Joint Venture Agreement

### 2. BHP Billiton JV Entities

JV Entity	Business of JV Entity
BHP Billiton Iron Ore Pty Ltd	Manager of iron ore operations (including mining, rail and port).
BHP Billiton Minerals Pty Ltd	Holder of interests in mining joint ventures, covering mining including rail and tug operations; holder of exploration tenements.
BHP Billiton Mount Newman SPV	Holder of iron ore exploration tenements.
BHP Billiton WAIO Pty Ltd	Employs staff and provides their services to BHP Billiton Iron Ore Pty Ltd, for a service fee. Formerly called BHP Iron Pty Limited—name changed 23 April 2009.
BHP Iron Ore (Jimblebar) Pty Ltd	Mining.
BHPB SPV (IO Newco)	Subsidiary of the BHP Billiton Issuer to be formed to hold all the shares in BHP Billiton Minerals Pty Ltd.

# West Australian Iron Ore Production Joint Venture Agreement

## Schedule 3

### Support for Owner Loans and Owner Guarantees

#### 1. Support for Owner Loans and Owner Guarantees

##### 1.1 Method of Providing Support

The Supporting Entity must provide support:

- (a) in the case of an Owner Loan, by making a cash deposit (which, for the avoidance of doubt, is not a Cash Flow under the Funding and Distribution Policy) with the Relevant Group Member in an amount equal to its Participating Share of the amount of the Owner Loan from time to time; or
- (b) in the case of an Owner Guarantee, by providing an indemnity in the form set out in schedule 6 (or as otherwise agreed by the Owners to Relevant Group Member for a proportion of the relevant Liability under that Owner Guarantee equal to its Participating Share,

or (in any case) in any other manner agreed in writing between the Owners.

##### 1.2 Time for Providing Support

The support to be provided by the Supporting Entity under this schedule 3 must be provided:

- (a) in the case of Owner Loans and Owner Guarantees notified by one Owner to the other prior to Completion, upon Completion; and
- (b) in the case of any other Owner Loan or Owner Guarantee, promptly upon receipt of notification by the relevant Owner to the other.

##### 1.3 Application of Cash Deposit Support

Where a cash deposit is made pursuant to item 1.1(a):

- (a) prior to, or contemporaneously with, the Owner Loan arising, the cash deposit must be applied by the Relevant Group Member to fund the Owner Loan; or
- (b) in subsequent reimbursement of an existing Owner Loan, the cash deposit can be dealt with at the Relevant Group Member's discretion (again, for the avoidance of doubt, not being a Cash Flow under the Funding and Distribution Policy).

##### 1.4 Acknowledgement of Cash Deposit

Where a cash deposit is made pursuant to item 1.1(a) with a Relevant Group Member other than the Owner, the relevant Owner must procure that the Relevant Group Member delivers an acknowledgement of deposit to the Supporting Entity, in the form of a deed poll in favour of the Supporting Entity, in the following terms:

‘[Name of Relevant Group Member]:

- (a) acknowledges receipt of a deposit of \$[amount] from [name of Supporting Entity] (the **Supporting Entity**) in respect of [description of Owner Loan] (the **Owner Loan**);
- (b) undertakes to repay and make other payments in respect of that deposit as and when required by schedule 3 of the West Australian Iron Ore Production Joint Venture Agreement dated [date]; and
- (c) will hold any amount that it receives in respect of the Owner Loan and is required to pay to the Supporting Entity under paragraph (b) on trust for the Supporting Entity, and will account to it accordingly.’

## **West Australian Iron Ore Production Joint Venture Agreement**

### **1.5 Accounting for Repayments and Other Receipts**

If the Relevant Group Member receives any interest or other return on, or any repayment, reimbursement or other recovery in respect of, any Owner Loan or Owner Guarantee in respect of which a Supporting Entity has:

- (a) provided support as required under this item 1; and
- (b) complied with its indemnity or other obligations under the support provided,

the Owner that is a Related Corporation of the Relevant Group Member must procure that the Relevant Group Member (after all amounts owing as at the date of Completion in respect of the relevant Owner Loan or Owner Guarantee have been repaid to that Relevant Group Member) accounts to the Supporting Entity for their Participating Share of the net amount received. No Relevant Group Member will be required to reimburse or compensate a Supporting Entity for any withholding tax or other deduction required to be made from any amount received by the Relevant Group Member, or from any amount to be paid to a Supporting Entity under this item 1.5.

### **1.6 Release of Support**

Where the relevant Owner Loan or Owner Guarantee provided by a Relevant Group Member is cancelled, released or reduced the Relevant Group Member will:

- (a) in the case of an Owner Guarantee, promptly release and return all, or the relevant part of, the Supporting Entity's support for that Owner Guarantee; and
- (b) in the case of an Owner Loan, promptly return the Supporting Entity's proportionate interest (commensurate with its participating Share) of the undrawn amount of that Owner Loan (if any) (again, for the avoidance of doubt, not being a Cash Flow under the Funding and Distribution Policy).

### **1.7 Adjusting Support to Reflect Changes in Participating Shares**

Where a Supporting Entity provides support in accordance with item 1 and subsequently has its Participating Share varied:

- (a) where its Participating Share has increased, it is required within 30 days to increase the support provided in accordance with this item 1 to reflect its new Participating Share; or
- (b) where its Participating Share has decreased, on the later of 30 days after the decrease or when all relevant Supporting Entity's which contemporaneously increased their Participating Share have provided the required support in accordance with paragraph (a), the Relevant Group Member will:
  - (i) in the case of an Owner Guarantee, promptly release and return a proportion of the Supporting Entity's support for that Owner Guarantee reflecting the reduction in its Participating Share; and
  - (ii) in the case of an Owner Loan, promptly return a proportion of the Supporting Entity's interest (reflecting the reduction in its Participating Share) of the undrawn amount of that Owner Loan (if any) (again, for the avoidance of doubt, not being a Cash Flow under the Funding and Distribution Policy).

# West Australian Iron Ore Production Joint Venture Agreement

## Schedule 4

### Sole Risk Developments and Sole Risk Opportunities

#### 1. Sole Risk Development

- (a) If a Sole Funding Party wishes to proceed with a Sole Risk Development pursuant to clause 8.3, the Sole Funding Party must pay in accordance with the Funding and Distribution Policy an amount equal to the other Owner's Participating Share of the fair market value of the scheduled reserves and resources referred to in paragraph (b). A Sole Funding Party may not proceed with a Sole Risk Development until such time as the relevant payment has been made.
- (b) The fair market value will be agreed by the Owners or, failing agreement, will be determined by the Valuers in accordance with item 1 of schedule 9:
  - (i) based on the fact that the scheduled reserves and resources will be developed using the infrastructure assets available to the WA Iron Ore JV;
  - (ii) based on the quantity of scheduled reserves and resources that the applicable Feasibility Study identifies as being scheduled for delivery to the Sole Funding Party as part of the Sole Risk Development and the timing for delivery of those tonnes in accordance with the delivery schedule set out in the applicable Feasibility Study, (the **Purchased Tonnes**); and
  - (iii) otherwise applying the principles set out in item 1 of schedule 9.
- (c) If the existence of additional reserves or resources is established in the area the subject of a Sole Risk Development through further exploration (**Additional Tonnes**), the Manager will notify the Owners as soon as reasonably practicable. For the avoidance of doubt, any such Additional Tonnes will be Iron Ore Assets for the purposes of this Agreement.
- (d) If the Sole Funding Party elects to proceed with the Sole Risk Development, the Sole Funding Party must:
  - (i) unless otherwise agreed by the Owners' Council and subject to paragraph (g)(ii), develop the Sole Risk Development in all material respects in accordance with the final scope and delivery schedule set out in the relevant Feasibility Study and Operational Implementation Plan or as otherwise voted on in the relevant Owners' Council meeting; and
  - (ii) develop the Sole Risk Development so that it results in total system capacity, that is, mine, infrastructure and associated capacity, sufficient to meet the requirements of the Sole Risk Development.
- (e) If the Sole Risk Development:
  - (i) \* \* \*
    - (A) the Sole Risk Development may proceed only if, and to the extent, the use or expansion of that infrastructure by the Sole Funding Party can proceed \* \* \*; and
    - (B) if such use or expansion can proceed, the Sole Funding Party:
      - (1) may expand that infrastructure in all material respects in accordance with the final scope set out in the relevant Feasibility Study and must fund the capital costs of such expansion (**Rail and Port Expansion Costs**); and

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## West Australian Iron Ore Production Joint Venture Agreement

- (2) may use that infrastructure \* \* \* and must pay a charge referable to the costs of operating the infrastructure (***Rail and Port Operating Costs***),  
  
in accordance with the terms set out in the Infrastructure Sharing Agreement (or if an Infrastructure Sharing Agreement has not been agreed on the basis of the principles set out in Part A of the Infrastructure and Blending Principles); and
- (ii) would require the use or expansion of rail and port infrastructure that is wholly owned by a JV Entity, the Sole Funding Party:
  - (A) may expand that infrastructure in accordance with the final scope set out in the relevant Feasibility Study and must fund the capital costs of such expansion (***Rail and Port Expansion Costs***); and
  - (B) may use that infrastructure \* \* \* and must pay a charge referable to the costs of operating the infrastructure (***Rail and Port Operating Costs***),  
  
in accordance with the terms set out in the Infrastructure Sharing Agreement (or if an Infrastructure Sharing Agreement has not been agreed on the basis of the principles set out in Part A of the Infrastructure and Blending Principles).
- (f) The Sole Funding Party must:
  - (i) subject to clause 8.5(a), fund the capital costs of the Sole Risk Development in accordance with clause 11 of the Funding and Distribution Policy;
  - (ii) in relation to costs incurred by the Manager pertaining to the WA Iron Ore JV and the Sole Risk Development as a whole in a Half Year (such as management, infrastructure expenses and overheads) other than Rail and Port Operating Costs (***Whole of System Costs***), incur a portion of Whole of System Costs allocated to it by the Manager on the basis of the proportion of tonnes shipped by the Sole Risk Development in that Half Year as compared to the total tonnes shipped by the WA Iron Ore JV in that Half Year plus:
    - (A) the tonnes shipped by the Sole Risk Development in that Half Year; and
    - (B) the tonnes shipped by any previous Sole Risk Development in that Half Year; and
  - (iii) incur any other increase in operating costs (other than Rail and Port Operating Costs) not captured in paragraph (ii) directly referable to the Sole Risk Development, including any costs incurred during the period of construction of the Sole Risk Development.
- (g) The Sole Funding Party will be entitled to:
  - (i) all the additional capacity created by the Sole Risk Development; and
  - (ii) receive the Sole Risk Iron Ore Product attributable to the Sole Risk Development on the same terms as apply to other Iron Ore Product of that type sold under clause 6 as a stand alone product (unless the other Owner has agreed to blending with JV Production, in which case the Sole Funding Party will receive blended product in accordance with the arrangements agreed with the other Owner).
- (h) Subject to paragraphs (c) and (o), the Sole Risk Development will not be considered to be part of the WA Iron Ore JV, and subject to any express provision to the contrary in any Transaction Document (including item 3 of this Schedule 4), decisions that relate solely to the Sole Risk Development will be made by the Sole Funding Party.

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- (i) The Sole Risk Development will be constructed by the Manager in consultation with the Sole Funding Party consistent with the Feasibility Study undertaken in connection with the Sole Risk Development, and the Manager will be required to report to the Sole Funding Party as reasonably required by the Sole Funding Party as to progress including as to cost. The Manager will prepare monthly invoices in respect of the Sole Risk Development in accordance with this item 1 in reasonable detail, which invoices will be payable by the Sole Funding Party.
- (j) If a Sole Funding Party has met its payment obligations under paragraph (a) and proceeds with a Sole Risk Development, the Manager will be obliged to construct, and the Sole Funding Party will be obliged to fund the construction of, the Sole Risk Development in accordance with the Operational Implementation Plan set out in the applicable Feasibility Study, without adjustment unless the adjustment will not, in the reasonable opinion of the Manager, have any material effect on the scope, timing or cost of the works required by the Feasibility Study.
- (k) If a Sole Risk Development has not reached Operational Completion \* \* \*, then the Manager will provide written notice to each Owner. \* \* \* the Owner which is not the Sole Funding Party (the ***Opt-in Owner***) may elect by written notice to the Sole Funding Party and to the Manager to proceed with the Sole Risk Development as part of the WA Iron Ore JV. If the Opt-in Owner provides such notice, then:
  - (i) the Project the subject of the Sole Risk Development will proceed as part of the WA Iron Ore JV;
  - (ii) clause 8.3(d) will apply; and
  - (iii) the Opt-in Owner must reimburse, to the Sole Funding Party its Participating Share of:
    - (A) all costs incurred by the Sole Funding Party in connection with the Sole Risk Development up to the date such notice is provided (any such cost to be Escalated from the end of the month in which that cost was incurred until the date of reimbursement); and
    - (B) any amount paid by the Sole Funding Party for the Purchased Tonnes pursuant to paragraph (a) (such amount to be Escalated from the end of the month in which that amount was paid by the Sole Funding Party until the date of reimbursement).

If no such notice is given, the Sole Funding Party may proceed with the Sole Risk Development and the rights of the Opt-In Owner under this paragraph (h) will lapse and be of no further force or effect.

- (l) Subject to any Existing JV Arrangements, the Sole Risk Development will be operated and maintained by the Manager on a unified basis in conjunction with the Iron Ore Assets as if it had been constructed by the WA Iron Ore JV (accordingly the provisions such as standard of service set out in the Transaction Documents will apply), and no management fees in excess of cost will be payable.
- (m) During the period of construction of the Sole Risk Development, the Manager will use all reasonable endeavours to minimise interference with, or disruption to, the JV Operations.
- (n) If the construction of the Sole Risk Development results or is likely to result in a temporary decrease in the capacity of the Pilbara Integrated System to which the other Owner is entitled during the construction period which would result in an unavoidable loss of sales of Iron Ore Product by that other Owner (***Loss of Sales***), the Sole Funding Party must reimburse the other Owner for the loss of Marginal Profit incurred by the other Owner which arises from Loss of Sales, \* \* \*

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## West Australian Iron Ore Production Joint Venture Agreement

(i) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(B) \* \* \*

(C) \* \* \*

(D) \* \* \*

(E) \* \* \*

For the purposes of this paragraph (n), **Marginal Profit** means the revenue from sale of a unit of Iron Ore Product produced less the marginal cost of producing that unit of Iron Ore Product, for each relevant unit of Iron Ore Product.

(o) \* \* \*

(p) Without limiting any other provision of this Agreement, the relevant Owners will do all things and execute all documents necessary and take all steps (including, where the Sole Funding Party does not own the tenements the subject of the development taking all steps necessary to ensure the Sole Risk Development can proceed on those tenements) within its power, as required by the Manager or the Sole Funding Party, to give effect to construction of the Sole Risk Development in accordance with the scope of works provided for in the applicable Feasibility Study and the associated Operational Implementation Plan, as adjusted in accordance with paragraph (g).

(q) If a Sole Funding Party transfers all of its Participating Share in accordance with clause 10, it will also transfer, to the acquirer of that interest, its Sole Risk Assets.

## 2. Sole Risk Opportunity

(a) If a Sole Funding Party has elected to proceed with a Sole Risk Opportunity pursuant to clause 8.4, the Sole Funding Party, unless otherwise agreed by the Owners' Council, may proceed with the Sole Risk Opportunity only in accordance with the New Opportunity Notice.

(b) \* \* \*

(i) \* \* \*

(A) \* \* \*

(B) \* \* \*

(1) \* \* \*

(2) \* \* \*

\* \* \*

(3) \* \* \*

(4) \* \* \*

(5) \* \* \*

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## West Australian Iron Ore Production Joint Venture Agreement

- (ii) \* \* \*
  - (A) \* \* \*
  - (B) \* \* \*
  - \* \* \*
  - (C) \* \* \*
  - (D) \* \* \*
  - (E) \* \* \*
- (c) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
  - (iii) \* \* \*
- (d) The Sole Funding Party will:
  - (i) be entitled to all the additional capacity created by the Sole Risk Opportunity, including any capacity created by a Sole Risk Opportunity Development (and its capacity entitlements under clause 6.3 will be increased accordingly); and
  - (ii) receive the Sole Risk Iron Ore Product attributable to the Sole Risk Opportunity on the same terms as apply to other Iron Ore Product of that type sold under clause 6 as a stand alone product (unless the other Owner has agreed to blending with JV Production, in which case the Sole Funding Party will receive blended product in accordance with the arrangements agreed with the other Owner).
- (e) The Sole Risk Opportunity will not be considered to be part of the WA Iron Ore JV, and subject to any express provision to the contrary in any Transaction Document (including item 3 of this schedule 4), decisions which relate to the Sole Risk Opportunity will be made by the Sole Funding Party.
- (f) Subject to any contractual constraints existing at the time of the acquisition, the Sole Risk Opportunity will be operated and maintained by the Manager on a unified basis in conjunction with the Iron Ore Assets as if it had been constructed by the WA Iron Ore JV (accordingly the provisions such as standard of service set out in the Transaction Documents will apply), and no management fees in excess of cost will be payable.
- (g) Any Sole Risk Opportunity Development will be constructed by the Manager in consultation with the Sole Funding Party consistently with the New Opportunity Notice, and the Manager will be required to report to the Sole Funding Party as reasonably required by the Sole Funding Party as to progress including as to cost. The Manager will prepare monthly invoices in respect of the Sole Risk Opportunity Development in accordance with this item 2 in reasonable detail, which invoices will be payable by the Sole Funding Party. Items 1(m) and (n) of this schedule 4 will apply to any Sole Risk Opportunity Development.

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## West Australian Iron Ore Production Joint Venture Agreement

- (h) \* \* \*
- (i) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
  - (iii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
- (j) \* \* \*
- (k) Without limiting any other provision of this Agreement, the relevant Owners will do all things and execute all documents necessary and take all steps (including, \* \* \*
- (l) \* \* \*

### 3. Subsequent Expansions of Sole Risk Developments and Sole Risk Opportunities

- (a) If:
  - (i) the Sole Funding Party of a Sole Risk Development or the other Owner wishes to expand that Sole Risk Development beyond the final scope and delivery schedule set out in the Feasibility Study and Operational Implementation Plan that applied with respect to the Sole Risk Development; or
  - (ii) the Sole Funding Party of a Sole Risk Opportunity or the other Owner wishes to expand that Sole Risk Opportunity beyond the final scope set out in the New Opportunity Notice that applied with respect to that Sole Risk Opportunity, including by:
    - (A) increasing the maximum rate of production of the New Opportunity above the amount specified in the New Opportunity Notice; or
    - (B) expanding the maximum Pilbara Integrated System and/or increasing the extent to which the New Opportunity uses the Pilbara Integrated System above the amount specified in the New Opportunity Notice,

it must first provide written notice to the Manager and to the other Owner proposing that the Manager investigate:

- (iii) a mine development (either as an additional mine or as a replacement to an existing mine that is nearing the end of its mine life); or
- (iv) expansion of an existing mine,

and associated infrastructure expansions, for a certain quantity (a ***Subsequent Sole Risk Development Proposal***). The Manager may (and will, if directed by an Owner) \* \* \* provide to the Owners' Council for review a Preliminary Study for that Subsequent Sole Risk Development Proposal in accordance with clause 8.2(a).

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## West Australian Iron Ore Production Joint Venture Agreement

- (b) Subject to paragraph (c) \* \* \*, the provisions of clauses 8.2(c) to (h) will apply to the studies associated with the Subsequent Sole Risk Development Proposal, the provisions of clause 8.3 will apply to the decision of the Owners' Council on whether to proceed with the Project, and the provisions of item 1 of this schedule will apply if an Owner wishes to proceed with the Project as a Sole Risk Development.
- (c) If, pursuant to clauses 8.3(b) or (c), the Project contemplated by the Subsequent Sole Risk Development Proposal is to proceed as part of the WA Iron Ore JV and relates to a Sole Risk Opportunity, then the Owner (not being the Sole Funding Party of the Sole Risk Opportunity) (the **Purchasing Owner**) will pay as directed by the other Owner in accordance with the Funding and Distribution Policy, the Purchasing Owner's Participating Share of the fair market value of the assets comprised by the Sole Risk Opportunity to be used in the Project (other than rail and port infrastructure that may be used pursuant to item 2(h) of this schedule), taking into account the cost savings and decreased risks for that Purchasing Owner that result from the Sole Funding Party having undertaken the Sole Risk Opportunity.
- (d) The amount to be paid will be agreed by the Owners or, failing agreement, will be determined by the Valuers acting in accordance with item 1 of schedule 9.

### 4. Nomination of Sole Risk Entity

- (a) If a Sole Funding Party elects to proceed with a Sole Risk Development pursuant to clause 8.3(e) or a Sole Risk Opportunity pursuant to clause 8.4(f), then that Sole Funding Party may, at any time during which the Sole Funding Party's entitlement to proceed with the Sole Risk Development or Sole Risk Opportunity (as applicable) continues, elect to nominate a Related Corporation of the Sole Funding Party (the **Sole Risk Entity**) to undertake that Sole Risk Development or Sole Risk Opportunity on its behalf.
- (b) If a Sole Funding Party elects for a Sole Risk Entity to undertake a Sole Risk Development or Sole Risk Opportunity pursuant to paragraph (a), then the Sole Risk Entity must enter into a Deed of Accession in the form set out in schedule 18 under which it agrees to:
  - (i) assume the obligations of the Sole Funding Party under the Joint Venture Agreement; and
  - (ii) be bound by the terms of the Joint Venture Agreement,in each case with respect to only the relevant Sole Risk Development or Sole Risk Opportunity in respect of which the election was made.
- (c) In order to give effect to the provisions of this item 4, each party to this Agreement unconditionally and irrevocably:
  - (i) appoints the Manager to be its attorney and in its name and on its behalf to execute each Deed of Accession and to do all such other acts as are necessary to give effect to the provisions of this item 4; and
  - (ii) with effect on and from the date the Deed of Accession becomes effective:
    - (A) consents to the Sole Risk Entity becoming a party to this Agreement for the purposes of the relevant Sole Risk Development or Sole Risk Opportunity and assuming all obligations of the Sole Funding Party in accordance with the provisions of this item 4 and the Deed of Accession in respect of that Sole Risk Development or Sole Risk Opportunity (as applicable);

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- (B) agrees that the Sole Risk Entity will be entitled, subject to the terms of the Deed of Accession, to exercise all of the rights, privileges and benefits of the Sole Funding Party under this schedule as if that Sole Risk Entity was named as a party to this Agreement, but only in respect of the relevant Sole Risk Development or Sole Risk Opportunity to which the Sole Risk Entity has been nominated; and
  - (C) releases and forever discharges the Sole Funding Party that nominated the Sole Risk Entity from all Liabilities that arise on or after the date of execution of the Deed of Accession (including any obligation to pay Called Sums) in respect of the Sole Risk Development or Sole Risk Opportunity.
- (d) With effect on and from the date the Deed of Accession becomes effective:
  - (i) each reference in this schedule to the Sole Funding Party in respect of the relevant Sole Risk Development or Sole Risk Opportunity will be taken to be a reference to the Sole Risk Entity, except in the case of items 1(q), 2(l) and 3 which will not apply to the Sole Risk Entity;
  - (ii) if the Sole Risk Entity is undertaking a Sole Risk Development, then:
    - (A) the references to “the Owners” in item 1(c) will be taken to include a reference to the Sole Risk Entity;
    - (B) the references to “the other Owner” in item 1(g)(ii) will be taken to be references to each Owner;
    - (C) the reference to “each Owner” in item 1(k) will be taken to include a reference to the Sole Risk Entity;
    - (D) the reference to “the Owner which is not a Related Corporation of Sole Funding Party” in item 1(k) will be taken to be a reference to each Owner that is not a Related Body Corporate of the Sole Risk Entity;
    - (E) the references to “the other Owner” or “that other Owner” in item 1(n) will be taken to be a reference to “each Owner that is not a Related Corporation of the Sole Funding Party”;
    - (F) the reference to “the Owners” or “either Owner” in item 1(n) will be taken to include a reference to the Sole Risk Entity; and
    - (G) the reference to the “relevant Owners” in item 1(p) will be taken to include a reference to the Sole Risk Entity;
  - (iii) if the Sole Risk Entity is undertaking a Sole Risk Opportunity, then:
    - (A) the references to “the other Owner” in item 2(d)(ii) will be taken to be references to each Owner; and
    - (B) the reference to the “relevant Owners” in item 2(i) will be taken to include a reference to the Sole Risk Entity;
  - (iv) if the Sole Risk Entity is undertaking either Sole Risk Development or Sole Risk Opportunity, then:
    - (A) the reference to “An Owner” in clause 8.5(c) will be taken to be a reference to “The Sole Risk Entity”;
    - (B) the reference to “the other Owner” in item 5(a) will be taken to be a reference to “each Owner that is not a Related Corporation of the Sole Funding Party”; and

## West Australian Iron Ore Production Joint Venture Agreement

- (C) the reference to “the Owner that is not the Sole Funding Party” in item 6(b) and (c)(i) will be taken to be a reference to “each Owner that is not a Related Corporation of the Sole Funding Party”; and
- (v) the Sole Risk Entity will be deemed, to the extent necessary and only in respect of such matters as are relevant to the Sole Risk Development or Sole Risk Opportunity (as applicable), to be an “Owner” or a “party” (as applicable) for the purposes of the following clauses:
  - (A) **(Term)** clause 2.5;
  - (B) **(Manager’s Duties)** clause 4.3(b);
  - (C) **(Accounts and Records)** clauses 4.9(e)(ii) and (iii);
  - (D) **(Accounting Systems)** clause 4.10(a) and (b);
  - (E) **(Audit)** clauses 4.11(b)(iii) and (iv) (provided that the costs of such audit will be borne by the Sole Funding Party), (c) and (e);
  - (F) **(Reporting)** clause 4.12 for the purposes of providing reports in relation to the Sole Risk Development or Sole Risk Opportunity (as applicable) in accordance with the Reporting Policy;
  - (G) **(Access to information)** clauses 4.13(b) and (e)(i);
  - (H) **(Insurance)** clause 4.15(c), (d) and (e);
  - (I) **(Confidentiality)** clause 14;
  - (J) **(Relationship of the Parties)** clause 15;
  - (K) **(Independent Expert)** clause 16;
  - (L) **(Prohibition on Partition)** clause 17;
  - (M) **(Force Majeure)** clause 18;
  - (N) **(GST)** clause 19;
  - (O) **(Governing Law and Jurisdiction)** clause 20; and
  - (P) **(Ancillary)** clause 21 (provided that clause 7 of the Deed of Accession will apply in respect of clause 21.3).
- (e) A Sole Risk Entity must not create a Security Interest or permit a Security Interest to subsist over its rights under this Agreement unless the chargee under the Security Interest enters into an Intercreditor Deed in the form of part 3 of schedule 8 in favour of each Owner. Each other party to this Agreement must, on request, enter into that Intercreditor Deed with the Sole Risk Entity.
- (f) The Sole Risk Entity may Dispose of the whole, but not part, of its rights under this Agreement provided that the assignee must first enter into a Deed of Accession in the form set out in schedule 18.
- (g) The accession of a Sole Risk Entity pursuant to this item 4 will be subject to and conditional on the Sole Funding Party obtaining all necessary Authorisations and third party approvals.

### 5. General provisions

- (a) If, in connection with any Sole Risk Development or Sole Risk Opportunity, either at the time the Sole Funding Party elects to proceed with the Sole Risk Development or Sole Risk Opportunity or

## West Australian Iron Ore Production Joint Venture Agreement

subsequently, the Sole Funding Party or a Related Corporation of the Sole Funding Party wishes to undertake any other activities (including Secondary Processing) on any JV Tenement that does not form part of the Sole Risk Development or Sole Risk Opportunity (**Proposed Activities**), the Sole Funding Party will provide written notice to the Manager and the other Owners and item 6 of this schedule will apply.

- (b) If a Sole Funding Party sustains or incurs any Loss as a result (whether directly or indirectly) of any bad faith, wilful misconduct or gross negligence on the part of the Manager in respect of a Sole Risk Development or Sole Risk Opportunity (as applicable), the Manager must pay an amount to the Sole Funding Party that is equal to the amount of the Loss. Any amount payable by the Manager pursuant to this paragraph (b) will be costs of the WA Iron Ore JV and will be funded by the Owners in proportion to their respective Participating Shares in accordance with clause 3.11.
- (c) If the Manager sustains or incurs any Loss as a result (whether directly or indirectly) of any bad faith, wilful misconduct or gross negligence on the part of a Sole Funding Party in respect of a Sole Risk Development or Sole Risk Opportunity (as applicable), the Sole Funding Party must pay an amount to the Manager that is equal to the amount of the Loss. Any amount payable to the Manager pursuant to this paragraph (c) will be a revenue of the WA Iron Ore JV.
- (d) If a Sole Risk Development or Sole Risk Opportunity is undertaken, a Sole Risk Scheduling Protocol will be developed in accordance with item 5.4 of the Infrastructure and Blending Principles (or, if agreed, the equivalent provisions of the Infrastructure Sharing Agreement). The Scheduling Protocol will be subject to any such Sole Risk Scheduling Protocol.
- (e) \* \* \*

### 6. Sole Risk Activities on Iron Ore JV Tenements

- (a) Any notice under item 5(a) must contain the following information:
  - (i) the reasons for the selection of the applicable JV Tenement as the location of the Proposed Activities; and
  - (ii) the scope of the Proposed Activities, including:
    - (A) details of the forecast timeframe within which the Proposed Activities are to be commenced and completed;
    - (B) details of any Authorisations required to implement and undertake the Proposed Activities;
    - (C) detailed technical information, plans, specifications, maps and any other information which may reasonably be considered relevant to the Manager for the purposes of making a determination under paragraph (b); and
    - (D) details of the steps (if any) the Sole Funding Party or its Related Corporation proposes to take to minimise any interference or disruption to the JV Operations in connection with the Proposed Activities.
- (b) \* \* \* the Owner that is not the Sole Funding Party will provide written notice to the Sole Funding Party and the Manager which either:
  - (i) consents to the Proposed Activities without qualification;
  - (ii) subject to paragraph (c), refuses to consent to the Proposed Activities; or

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

- (iii) subject to paragraph (c), consents to the proposed Activities, provided that as a condition to such consent the relevant Owner or its Related Corporation make reasonable alterations to the Proposed Activities or comply with reasonable conditions on the conduct of the Proposed Activities.

If a relevant Owner fails to give such notice \* \* \* it will be deemed to have given consent pursuant to paragraph (b)(i).

- (c) A relevant Owner may only refuse to consent pursuant to paragraph (b)(ii), or require alterations or impose conditions to its consent pursuant to paragraph (b)(iii), if it reasonably determines, after consultation with the Sole Funding Party, that the Proposed Activities are likely to:
  - (i) unduly prejudice or interfere with any current or prospective JV Operations (including on any area that the Owner that is not the Sole Funding Party reasonably expects will become a JV Tenement in connection with future JV Operations); or
  - (ii) materially reduce the quantity of economically extractable iron ore available to the WA Iron Ore JV.

In order to enable the relevant Owner to make a determination under paragraph (b), the Manager must provide that Owner with such information and such assistance as may reasonably be required by that Owner.

- (d) A relevant Owner may not refuse to grant such consent, or impose such alterations or conditions, where the Sole Funding Party or its Related Corporation is required to undertake the Proposed Activities on the relevant JV Tenement pursuant to any applicable Law or requirement of any Authority.
- (e) If a relevant Owner consents to the Proposed Activities pursuant to paragraphs (b)(i) or (iii), the Sole Funding Party will, or will procure that its Related Corporations will:
  - (i) comply with any conditions or qualifications specified in that consent; and
  - (ii) take reasonable steps to ensure that the Proposed Activities do not:
    - (A) unduly prejudice or interfere with any current or prospective JV Operations; or
    - (B) materially reduce the quantity of economically extractable iron ore available to the WA Iron Ore JV, by conducting additional drilling to ensure that any prospective resources are not sterilised by the proposed activities or where this is not practicable, the payment of agreed compensation of prospective resources.
- (f) If, notwithstanding paragraph (e), the Proposed Activities of the Sole Funding Party unduly prejudice or interfere with any current or prospective JV Operations or materially reduce the quantity of economically extractable iron ore available to the WA Iron Ore JV, then the parties will meet and discuss in good faith the measures that the Sole Funding Party can take to rectify the situation (including the form and quantum of any compensation it may pay to the WA Iron Ore JV) as soon as reasonably practicable. If the parties are unable to
- (g) agree on the measures the Sole Funding Party is required to take to rectify the situation, then any party may refer the matter for determination by the Independent Expert in accordance with clause 16.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



# **West Australian Iron Ore Production Joint Venture Agreement**

## **Schedule 5**

### **Pre-Feasibility and Feasibility Studies**

#### **1. Preliminary Studies**

The Preliminary Study must:

- (a) be conducted based on customary economic assumptions agreed by the Owners' Council (other than in respect of the assumptions listed in paragraphs (a)(i), (ii) and (iii)) or, in the absence of such agreement (or in the case of paragraphs (a)(i), (ii) and (iii)), selected by the Manager, including in relation to:
  - (i) iron ore prices;
  - (ii) current and projected demand and supply conditions in the global market;
  - (iii) foreign exchange;
  - (iv) cost of capital; and
  - (v) inflation; and
- (b) include the overall scope, direction and timing of the Contemplated Project.

#### **2. Pre-Feasibility Studies**

The Pre-Feasibility Study must:

- (a) be conducted based on customary economic assumptions agreed by the Owners' Council (other than in respect of the assumptions listed in paragraphs (a)(i), (ii) and (iii)) or, in the absence of such agreement (or in the case of paragraphs (a)(i), (ii) and (iii)), selected by the Manager, including in relation to:
  - (i) iron ore prices;
  - (ii) current and projected demand and supply conditions in the global market;
  - (iii) foreign exchange;
  - (iv) cost of capital; and
  - (v) inflation; and
- (b) include the overall scope, direction and timing of the Contemplated Project, including:
  - (i) detailed technical information, plans, specifications, maps and any other information which may reasonably be considered relevant to the Contemplated Project (including those items referred to in item 2(b) of this schedule and which are relevant to a Pre-Feasibility Study);
  - (ii) a preliminary engineering study capital cost estimate (+/- 20-25%) of the cost to bring the Contemplated Project to Operational Completion and reasonable details of the major categories of expenditure, including:
    - (A) direct;
    - (B) indirect;
    - (C) owner's; and
    - (D) contingent costs;

## **West Australian Iron Ore Production Joint Venture Agreement**

- (iii) details of the associated execution strategy required to implement the Contemplated Project, including Authorisations, third party approvals, commercial, contract and risk management strategies; and
- (iv) consideration of alternatives that deliver Pilbara System Capacity (eg, mine, infrastructure and ancillary assets) sufficient to meet the requirements of the Project; and
- (v) a detailed financial evaluation of the results of the Pre-Feasibility Study and the Manager's assessment of the Contemplated Project, including ranking of the options considered by the Pre-Feasibility Study.

### **3. Feasibility Studies**

The Feasibility Study must:

- (a) be conducted based on customary economic assumptions agreed by the Owners' Council (other than in respect of the assumptions listed in paragraphs (a)(i), (ii) and (iii)) or, in the absence of such agreement (or in the case of paragraphs (a)(i), (ii) and (iii)), selected by the Manager, including in relation to:
  - (i) iron ore prices;
  - (ii) current and projected demand and supply conditions in the global market;
  - (iii) foreign exchange;
  - (iv) cost of capital; and
  - (v) inflation;
- (b) include the final scope and project delivery plan of the Project, including:
  - (i) detailed technical information, plans, specifications, maps and any other information which may reasonably be considered relevant to the Project, including:
    - (A) the quantum and nature of scheduled iron ore reserves and resources within the defined area of the Project;
    - (B) the product type and likely trends in quality specifications that are expected to be produced;
    - (C) projected capital and operating costs of the Project over the project life;
    - (D) the quantity of additional system capacity (including Latent System Capacity across each major infrastructure element to be used by the expansion or development) that is expected to be created by the Project;
    - (E) a clear statement of the scheduled iron ore reserves and resources to be consumed by the Project and a delivery schedule setting out the tonnages expected to be produced and delivered for each year of the Project;
    - (F) the required use of system capacity broken down by major infrastructure element to be used in connection with the Project; and
    - (G) details of any downstream infrastructure that is required to be constructed in connection with the Project;

## West Australian Iron Ore Production Joint Venture Agreement

- (ii) a definitive engineering study capital cost estimate ( $\pm 10\text{--}15\%$ ) of the cost to bring the Project to Operational Completion and reasonable details of the major categories of expenditure, including:
    - (A) direct;
    - (B) indirect;
    - (C) Owner's; and
    - (D) contingent costs;
  - (iii) an assessment of the Project (including valuation) based on the Iron Ore Product being produced by that Project being sold as both a stand alone product and a blended product;
  - (iv) preparation of social and environmental impact assessment;
  - (v) details of the associated execution strategy required to implement the Project, including Authorisations, third party approvals, commercial, contract and evaluation of key risks and identification of risk management strategies; and
  - (vi) an operational implementation plan, including the identification of the project schedule and key project milestones (the ***Operational Implementation Plan***); and
- (c) otherwise be of a standard which is sufficient to allow the Manager to proceed immediately to construction and include such information, contain such analysis, and be in a form that would enable a major international bank to form a reasonable judgment with respect to the provision of project financing for the Project.

In addition to providing each Owner with a copy of each Pre-Feasibility Study and Feasibility Study, the Manager must also provide each Owner with a copy of the underlying financial models used in preparing that Pre-Feasibility Study or Feasibility Study (as applicable), including physical and financial information schedules that include operating and capital assumptions that are consistent with those set out in the Reporting Policy. The key assumptions adopted by the Manager in the preparation of the Pre-Feasibility Study or Feasibility Study (as applicable) must be clearly identified and included in those schedules.

**West Australian Iron Ore  
Production Joint Venture Agreement**

**Schedule 6**

**Owner Guarantee—Deed of Indemnity**

**Owner Guarantee—Deed of  
Indemnity**

[Insert name of Supporting Entity]

[Insert name of Relevant Group Member]

Deed of Indemnity in respect of [Description of Owner  
Guarantees]

# Owner Guarantee—Deed of Indemnity

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## Owner Guarantee—Deed of Indemnity

### Date

### Parties

1. [Insert Name of Supporting Entity] (the *Indemnifier*).
2. [Insert Name of Relevant Group Member] (the *Relevant Group Member*).

### Recital

- A On [#], certain members of the Rio Tinto Group and BHP Billiton Group entered into the West Australian Iron Ore Production Joint Venture Agreement for the purposes of establishing the West Australian Iron Ore Production Joint Venture (the *Joint Venture Agreement*).
- B Clause 4.2(j) and item 1.1 of Schedule 3 of the Joint Venture Agreement require the provision in connection with certain Owner Guarantees of an indemnity in the form set out in this Deed by a Supporting Entity.
- C The Relevant Group Member has provided [Description of Owner Guarantee(s)] (the *Owner Guarantees*).
- D The Indemnifier is entering into this Deed for the purposes of satisfying [the obligation of [Insert name of relevant Owner Parent] (the *Owner Parent*)/its obligation] to provide support to the Relevant Group Member for a proportion of each Owner Guarantee commensurate with [Insert name of relevant Owner]'s (the *Relevant Owner*) Participating Share in accordance with clause 4.2(j) and item 1.1 of schedule 3 of the Joint Venture Agreement.

It is agreed as follows.

### 1. Definitions and Interpretation

#### 1.1 Joint Venture Agreement definitions to apply

Subject to a contrary meaning being specified in clause 1.2, words and expressions defined in the Joint Venture Agreement have the same meaning when used in this Deed.

#### 1.2 Defined Terms

*Creditor* means a person to which the Relevant Group Member owes obligations to pursuant to the Owner Guarantees.

*Joint Venture Agreement* has the meaning given in Recital A.

*Owner Guarantees* mean the Guarantees described in Schedule 1.

*Owner Parent* has the meaning given in Recital D.

*Relevant Owner* has the meaning given in Recital D.

#### 1.3 Joint Venture Agreement interpretation provisions to apply

Clauses 1.2 to 1.5 of the Joint Venture Agreement will apply, *mutatis mutandis*, in the interpretation of this Deed.

## **Owner Guarantee—Deed of Indemnity**

### **2. Provision in Accordance with clause 4.2(j) of the Joint Venture Agreement**

The Indemnifier has entered into this Deed in satisfaction of [the Owner Parent's/its] obligations to provide support to the Relevant Group Member for a proportion of the Owner Guarantees commensurate with the Participating Share of the Relevant Owner in accordance with clause 4.2(j) and item 1.1 of schedule 3 of the Joint Venture Agreement.

### **3. Indemnity**

#### **3.1 General indemnity**

The Indemnifier unconditionally and irrevocably indemnifies the Relevant Group Member against any Loss that may be incurred or sustained by it in relation to the Owner Guarantees or as a direct or indirect consequence of any claim made or purported to be made under the Owner Guarantees, or anything done by any person who is, or claims to be, entitled to the benefit of the Owner Guarantee, in proportion to the Participating Share of the Relevant Owner.

#### **3.2 Payment**

- (a) Without limiting clause 3.1, within 30 days, or such shorter period as may be reasonably required to ensure payment by the date required under the Owner Guarantee, of demand by the Relevant Group Member, the Indemnifier must pay to the Relevant Group Member a proportion equal to the aggregate of the Participating Shares of all Owners \* \* \* of all amounts paid or required to be paid by the Relevant Group Member under any Owner Guarantee. In making a demand, the Relevant Group Member must provide the Indemnifier with such reasonable information and materials explaining how the demanded amount has been determined by the Relevant Group Member.
- (b) All payments required under clause 3.1 and this clause 3.2 must be made in the currency in which the amounts are paid or required to be paid by the Relevant Group Member under each Owner Guarantee.

#### **3.3 Requirement to Indemnify Unconditional**

The Indemnifier's obligations pursuant to clauses 3.1 and 3.2 are absolute and unconditional. They will not be subject to any reduction, termination or other impairment by any set-off, deduction, abatement, counterclaim, agreement, defence, suspension, deferment or otherwise and the Indemnifier will not be released, relieved or discharged from any obligations under this Deed, nor will such obligations be prejudiced or affected, for any reason other than termination of this Deed pursuant to clause 5.1.

### **4. Repayments and Receipts**

- (a) Subject to paragraph (b), if the Relevant Group Member receives any interest or other return on, or any repayment, reimbursement or other recovery in respect of any Owner Guarantee, the Relevant Group Member must (after all amounts owing as at the date of Completion in respect of such Owner Guarantee have been repaid to the Relevant Group Member) account to the Indemnifier for the aggregate of the Participating Shares of all Owners \* \* \* of the net amount received.
- (b) The Relevant Group Member (and any of its Related Corporations) will not be required to reimburse or compensate Indemnifier for any withholding tax or other deduction required to be made from any amount received by the Relevant Group Member, or from any amount to be paid to the Indemnifier under this clause 4.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



## **Owner Guarantee—Deed of Indemnity**

### **5. Release of Indemnity**

#### **5.1 Events of Release**

This Deed will terminate on the earlier of:

- (a) immediately upon:
  - (i) all Owner Guarantees being cancelled; or
  - (ii) the Relevant Group Member being released from its obligations under the all Owner Guarantees; or
- (b) where the Related Corporations of the Indemnifier cease to hold the largest Participating Share \* \* \*, on the later of:
  - (i) 30 days after such Related Corporations have ceased to hold such Participating Share; or
  - (ii) when the contemporaneous acquirer of its Participating Interest which has the largest Participating Share \* \* \* has provided the required support for the Owner Guarantees in accordance with clause 4.2(j) of the Joint Venture Agreement in replacement of this Deed.

#### **5.2 Notification of Release**

The Relevant Group Member will notify the Indemnifier as soon as practicable after:

- (a) an Owner Guarantee is cancelled;
- (b) the Relevant Group Member is released from its obligations under an Owner Guarantee; or
- (c) this Deed has otherwise terminated in accordance with clause 5.1

### **6. Confidentiality**

The Indemnifier must at all times observe, comply with and give effect to the provisions of clause 14 of the Joint Venture Agreement with respect to any Confidential Information disclosed in connection with this Deed.

### **7. Costs and Stamp Duty**

- (a) Each party to this Deed will bear its own costs arising out of the preparation and execution of this Deed.
- (b) All stamp duty (including fines, penalties and interest) payable on or in connection with this Deed must be borne by the Indemnifier. The Indemnifier must indemnify the Relevant Group Member on demand against any Liability for that stamp duty.

### **8. Notices**

Any notice, demand, consent, certificate, approval, nomination, waiver or other similar communication given or made in connection with this Deed:

- (a) will be in writing and signed by the sender or a person duly authorised by the sender;

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## Owner Guarantee—Deed of Indemnity

- (b) will be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Deed:
  - (i) to the Relevant Group Member: [#]
  - (ii) to the Indemnifier [#]
- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a Business Day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

## 9. GST

### 9.1 Definitions

For the purposes of this clause 9:

- (a) **Adjustment** has the meaning given by the GST Law;
- (b) **Consideration** has the meaning given by the GST Law;
- (c) **Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but which the representative member of a GST Group or the Joint Venture Operator of a GST Joint Venture is entitled under GST Law;
- (d) **GST** has the meaning given by the GST Law;
- (e) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply;
- (f) **GST Group** has the meaning given by the GST Law;
- (g) **GST Joint Venture** has the meaning given by the GST Law;
- (h) **GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (i) **Joint Venture Operator** has the meaning given by the GST Law;
- (j) **Tax Invoice** has the meaning given by the GST Law; and
- (k) **Taxable Supply** has the meaning given by the GST Law excluding the reference to Section 84–5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 9.2 Recovery of GST

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other Consideration for the Taxable Supply is provided. This clause 9.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

### 9.3 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

## **Owner Guarantee—Deed of Indemnity**

### **9.4 Adjustments**

If an Adjustment occurs in relation to a Taxable Supply made under, by reference to or in connection with this Agreement, the GST Amount will be recalculated to reflect that Adjustment and an appropriate payment will be made between the parties.

### **9.5 Revenue exclusive of GST**

Any reference in this Agreement to price, value, sales, revenue or a similar amount (*Revenue*), is a reference to that Revenue exclusive of GST.

### **9.6 Cost exclusive of GST**

Any reference in this Agreement (other than in the calculation of Consideration or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount (*Cost*), is a reference to that Cost exclusive of any Input Tax Credit entitlement.

### **9.7 GST obligations to survive termination**

This clause 9 will continue to apply after expiration or termination of this Agreement.

## **10. Governing Law and Jurisdiction**

### **10.1 Governing Law**

- (a) This Deed will be governed by the laws of Western Australia.
- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this Deed on the basis that the courts of Western Australia are not an appropriate forum.

### **10.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this Deed in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

### **10.3 Dispute Resolution**

- (a) The parties will first seek to resolve any dispute under or in connection with this Deed by discussions in good faith.
- (b) Any party may, by notice to the other parties, require any dispute arising under or in connection with this Deed to be referred to the Chief Executives. The Chief Executives will meet and seek in good faith to resolve the dispute within 30 days.
- (c) If the Chief Executives are unable to resolve the dispute within 30 days of referral to them, any party may refer the dispute to the Owners' Chairpersons, who will meet and seek in good faith to resolve the dispute within 30 days.
- (d) If the Owners' Chairpersons are unable to resolve the dispute within 30 days of referral to them, then any party may commence proceedings in any court of competent jurisdiction.

## **Owner Guarantee—Deed of Indemnity**

- (e) Subject to paragraph (f), a party may not commence court proceedings in relation to any dispute arising out of or in connection with this Deed until it has complied with the dispute resolution process set out in paragraphs (a) to (d).
- (f) Nothing in this clause 10 prevents a party seeking appropriate injunctive or interlocutory relief at any time to preserve property or rights or to avoid losses that are not compensable in damages.
- (g) Each party agrees that:
  - (i) it is responsible for its own costs in connection with the dispute resolution process; and
  - (ii) the costs of any suit, action or proceeding commenced under or in connection with this Deed will be borne as between the parties as determined by the court of competent jurisdiction that hears the suit, action or proceeding.

## **11. Ancillary Provisions**

The provisions of clauses 21.2 to 21.6, 21.9 and 21.11 to 21.13 of the Joint Venture Agreement will apply *mutatis mutandis*, unless the context requires otherwise.

**Owner Guarantee—Deed of Indemnity**

**Schedule 1—Owner Guarantees**

[Description of Owner Guarantee[s]]

## **Owner Guarantee—Deed of Indemnity**

**Executed** as a Deed.

[Insert relevant execution clauses.]

**West Australian Iron Ore  
Production Joint Venture Agreement**

**Schedule 7  
Ore Sales Agreement**

**WA Iron Ore Joint Venture—Ore  
Sales Agreement  
([#])**

**[Selling Entities]**

**[[#]]**

**[Manager (as agent for and on behalf of the Selling Entities)]**



# WA Iron Ore Joint Venture—Ore Sales Agreement

([#])

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12.7 * * *	6

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

**WA Iron Ore Joint Venture—Ore Sales Agreement**  
**([#])**

<b>13. GST</b>	<b>6</b>
13.1 Definitions	6
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# WA Iron Ore Joint Venture—Ore Sales Agreement

([#])

## Date

## Parties

1. [Insert details of each Selling Entity (as defined in the Joint Venture Agreement)] (collectively the **Sellers**).
2. [#] (the **Buyer**).
3. [Manager (as agent for and on behalf of the Sellers)] (the **Manager**).

## Recitals

- A On *[insert date of Joint Venture Agreement]*, certain members of the Rio Tinto Group and BHP Billiton Group entered into the West Australian Iron Ore Joint Venture Agreement for the purpose of establishing the WA Iron Ore JV (the *Joint Venture Agreement*).
- B *[Insert name of Substantial Owner/Majority Owner/Ore Purchasing Owner]* is a *[Substantial Owner/Majority Owner/Ore Purchasing Owner]* pursuant to clause 10 of the Joint Venture Agreement and, in accordance with clause [6.2(c)/6.2(f)], that Owner has nominated the Buyer to enter into this Ore Sales Agreement.
- C Clauses 6.1 to 6.4 of the Joint Venture Agreement provide for the Owners and the Manager to procure that the Sellers sell to the Buyer, and the Buyer purchase from the Sellers, amounts of Iron Ore Product from time to time on the terms of the Joint Venture Agreement (*Clause 6 Sales*).
- D In order to specify certain additional terms which apply to Clause 6 Sales, and to provide for related matters, the Manager (as agent of the Sellers) and the Buyer have agreed to enter into this Agreement.
- E Nothing contained in this Agreement is intended to confer on the Buyer any rights or obligations to purchase Iron Ore Product additional to the rights and obligations referred to in Recital B.

It is agreed as follows.

## 1. Definitions and Interpretation

### 1.1 Joint Venture Agreement definitions to apply

Subject to a contrary meaning being specified in clause 1.2, words and expressions defined in the Joint Venture Agreement have the same meaning when used in this Agreement.

### 1.2 Definitions

The following definitions apply unless the context requires otherwise.

*Clause 6 Sales* has the meaning given in Recital C.

*Commencement Date* means [#].

*Joint Venture Agreement* has the meaning given in Recital A.

### 1.3 Joint Venture Agreement interpretation provisions to apply

Items 1.2 to 1.5 (inclusive) of schedule 1 of the Joint Venture Agreement will apply, *mutatis mutandis*, in the interpretation of this Agreement.

# **WA Iron Ore Joint Venture—Ore Sales Agreement**

**([#])**

## **1.4 Relationship of Sellers**

- (a) This Agreement establishes a separate contract between each Seller on the one part and the Buyer on the other part. Nothing in this Agreement implies that the parties are:
  - (i) forming a partnership, agency (other than in relation to the Sellers and the Manager) or a similar relationship;
  - (ii) otherwise carrying on business in common with a view to profit, within the meaning of any partnership or limited partnership legislation in any jurisdiction; or
  - (iii) otherwise creating any fiduciary relationship between the parties.
- (b) Each Seller is the legal and beneficial owner of the Iron Ore Product to be delivered by it to the Buyer pursuant to this Agreement until such time as title and risk passes in accordance with clause 4.2. Accordingly, the rights, obligations and liabilities of the Sellers under this Agreement are several and not joint or joint and several.
- (c) As contemplated by clause 6.2(b) of the Joint Venture Agreement, if a JV Entity ceases to be a Non-Selling Entity and becomes a Selling Entity, then:
  - (i) that JV Entity must execute, or otherwise agree to comply with and give effect to, this Agreement as soon as practicable; and
  - (ii) with effect from the date of such execution, each party:
    - (A) irrevocably consents to that JV Entity becoming a party to, and assuming its obligations as a Seller under, this Agreement; and
    - (B) agrees to that JV Entity being entitled to exercise all of the rights, privileges and benefits of a Seller under this Agreement,as if that JV Entity was named as a party to this Agreement.

## **2. Term and Termination**

### **2.1 Commencement**

This Agreement commences on the Commencement Date and continues to apply to any Clause 6 Sales by the Sellers occurring on or after that date until terminated in accordance with clause 2.2.

### **2.2 Termination**

This Agreement (other than clauses 1, 9, 10, 11, 13 and 14, and this clause 2) will automatically terminate on the earlier of:

- (a) the date on which the WA Iron Ore JV is terminated in accordance with the Joint Venture Agreement;
- (b) the date on which the Buyer (or its Related Corporations) ceases to hold, subject (where applicable as a result of the operation of schedule 10 of the Joint Venture Agreement) to clause 6.2(f) of the Joint Venture Agreement, a Participating Share which is greater than 17%, unless this Agreement is assigned or novated to a purchaser of a Participating Interest pursuant to clause 10 of the Joint Venture Agreement; or
- (c) the date on which the Manager, on behalf of the Selling Entities, and the Buyer agree to terminate this Agreement.

Termination of this Agreement will be without prejudice to any obligation accruing under this Agreement prior to termination.

## **WA Iron Ore Joint Venture—Ore Sales Agreement**

**([#])**

### **3. Terms to apply to Clause 6 Sales**

For the purposes of all Clause 6 Sales, the Sellers agree to sell, and the Buyer agrees to purchase, Iron Ore Product on the terms of, and in accordance with the provisions of, this Agreement and the Joint Venture Agreement.

### **4. Deliveries of Iron Ore Product**

#### **4.1 Sellers to Deliver Iron Ore Product**

Clause 6 Sales of Iron Ore Product will be delivered to the Buyer by the Sellers at the relevant loading port in Western Australia. The Manager must ensure that all such deliveries are made in accordance with the Scheduling Protocol.

#### **4.2 Title and Risk**

Clause 6 Sales of Iron Ore Product will be on a FOB basis. Title to, and all risk of loss, damage or destruction to, Iron Ore Product will pass to the Buyer at the time that Iron Ore Product passes over the ship's rail from the loading devices into the vessel at the relevant loading port in Western Australia, and the sale and purchase of that Iron Ore Product will be deemed to have occurred at that point.

### **5. Quantity**

The quantity of Iron Ore Product to be sold and purchased as Clause 6 Sales in each Half Year, by Product Type, will be determined in accordance with clause 6.3 of the Joint Venture Agreement.

### **6. Ore Sales Price**

The Ore Sales Price to be paid by the Buyer for Clause 6 Sales will be determined in accordance with clause 6.4 of the Joint Venture Agreement.

### **7. Weighing, Sampling and Analysis**

- (a) For all Clause 6 Sales, the Manager must comply with the Weighing, Sampling and Analysis Protocol in relation to the weighing of shipments of Iron Ore Product and the sampling and analysis of shipments of Iron Ore Product at the relevant loading port in Western Australia.
- (b) All costs incurred by the Manager in connection with the weighing, sampling and analysis of Iron Ore Product pursuant to paragraph (a) will be costs of the WA Iron Ore JV.
- (c) For the avoidance of doubt, the costs of determining the weight of each shipment of Iron Ore Product and the sampling and analysis of each shipment of Iron Ore Product at the relevant discharge port will, as between the parties, be borne by the Buyer.

### **8. Invoicing and Payment**

#### **8.1 Invoices**

As soon as practicable after the end of each Half Year, the Manager, on behalf of the Sellers, must prepare, issue and deliver to the Buyer an invoice for Clause 6 Sales showing:

- (a) the total quantity of Iron Ore Product, broken down by Product Type, delivered to the Buyer in that Half Year (as determined in accordance with clause 6.3 of the Joint Venture Agreement); and

## **WA Iron Ore Joint Venture—Ore Sales Agreement**

**([#])**

- (b) the total Ore Sales Price (as determined in accordance with clause 6.4 of the Joint Venture Agreement) for Iron Ore Product delivered in that Half Year, together with a breakdown of:
  - (i) the JV Production Accounting Costs actually incurred for that Half Year in total and as attributed to the other Owner's JV Entities; and
  - (ii) the Buyer's "First Owner dmtu" and "Total other Owner dmtu" for the purposes of clause 6.4(b) of the Joint Venture Agreement.

### **8.2 Payment**

The Buyer must pay the Ore Sales Price on demand by the Manager in accordance with item 5 of the Funding and Distribution Policy.

### **8.3 Delay in Payment**

If the Buyer fails to make payment of the Ore Sales Price by the date demanded by the Manager under clause 8.2, it must pay interest on the unpaid amount from that date in accordance with item 1.5 of schedule 1 of the Joint Venture Agreement. Interest must be paid on the date when payment of the amount due is made.

### **8.4 Disputed Invoices**

- (a) The dispute resolution procedure set out in clause 6.4(h) of the Joint Venture Agreement will apply to any dispute relating to the amount specified in any invoice provided under this clause 8.
- (b) A party will not be entitled to withhold payment of any amount payable by reason of any dispute.

## **9. Disposals**

### **9.1 No restriction on Disposals by the Buyer**

Subject to clauses 10 and, to the extent applicable, 11 of the Joint Venture Agreement, the Buyer may Dispose of all or any part of its rights, obligations or interest in and under this Agreement.

### **9.2 Assignment as Part of Disposal of Participating Interest**

If the Buyer or a Related Corporation of the Buyer Disposes of the whole or a part of its Participating Interest in accordance with clause 10 of the Joint Venture Agreement, then the provisions of clause 10 of the Joint Venture Agreement will apply.

### **9.3 Nomination of New Buyers**

As contemplated by clause 6.2(c) of the Joint Venture Agreement, the Buyer may at any time, and from time to time, provide written notice to the Sellers and the Manager nominating one or more of its Related Corporations to assume all or any part of its rights, obligations and interest in and under this Agreement. Any such notice must specify in reasonable detail the rights and obligations to be assumed by such Related Corporation(s) and, where applicable, the amount of the Buyer's entitlement to Iron Ore Product to be assumed (which may be specified by Product Type, as a percentage of the Buyer's entitlement or in any other way).

## **WA Iron Ore Joint Venture—Ore Sales Agreement**

**([#])**

### **10. Notices**

Any notice, demand, consent, certificate, approval, nomination, waiver or other similar communication given or made in connection with this Agreement (a notice):

- (a) will be in writing and signed by the sender or a person duly authorised by the sender;
- (b) will be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Agreement:
  - (i) to the Buyer: [#]
  - (ii) to the Manager: [#]
- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

### **11. Confidentiality**

The Manager and the Buyer must at all times observe, comply with and give effect to the provisions of clause 14 of the Joint Venture Agreement with respect to any Confidential Information disclosed in connection with this Agreement.

### **12. Force Majeure**

#### **12.1 Event of Force Majeure**

For the purposes of this clause 12, an *Event of Force Majeure* means an event beyond the reasonable control of a party, including:

- (a) act of God, lightning, storm, flood, cyclone, tidal wave, landslide, fire, earthquake or explosion;
- (b) strike, lockout or stoppage or ban or limitation on work or restraint of labour, whether at a mine or mines, railway, port or otherwise;
- (c) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic;
- (d) any act, inaction, demand, order, restraint, restriction, requirement, prevention, frustration or hindrance by or of any government or other competent authority;
- (e) embargo, unavailability of essential equipment, materials or facilities, unavailability of qualified employees or contractors, power or water shortages or lack of transportation; or
- (f) any other cause, whether specifically referred to above or otherwise which is not within its reasonable control.

#### **12.2 No liability during an Event of Force Majeure**

A party will not be liable for any delay in or failure of performance in respect of Clause 6 Sales under this Agreement or the Joint Venture Agreement (other than a delay in or failure to make payment of any amount payable under those agreements) if:

- (a) that delay or failure arises from an Event of Force Majeure;

## WA Iron Ore Joint Venture—Ore Sales Agreement

([#])

- (b) it has taken all proper precautions, due care and reasonable alternative measures with the object and intent of avoiding the delay or failure and of carrying out its obligations under this Agreement or the Joint Venture Agreement; and
- (c) as soon as practicable after the beginning of the Event of Force Majeure which affects the ability of the party claiming under this clause 12.2 to observe or perform any of its obligations under this Agreement or the Joint Venture Agreement, the claiming party gives notice to each other party:
  - (i) fully describing the Event of Force Majeure and, as far as possible, estimating its duration;
  - (ii) identifying the specific obligations affected by that Event of Force Majeure and the possible extent to which the claiming party will be unable to perform those obligations; and
  - (iii) specifying the measures proposed to be adopted to remedy or abate the Event of Force Majeure.

### 12.3 Suspension of obligations

While an Event of Force Majeure continues, the obligations which cannot be performed because of the Event of Force Majeure (other than a delay in or failure to make payment of any amount payable under this Agreement or the Joint Venture Agreement) will be suspended.

### 12.4 Remedy of Force Majeure

The party that is prevented from carrying out its obligations under this Agreement or the Joint Venture Agreement as a result of an Event of Force Majeure will remedy the Event of Force Majeure to the extent reasonably practicable, keep the other parties regularly informed on the progress of remedying the Event of Force Majeure and resume the performance of its obligations as soon as reasonably possible.

### 12.5 Mitigation

The party that is prevented from carrying out its obligations under this Agreement or the Joint Venture Agreement as a result of an Event of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by a party or a third party as a result of its failure to carry out its obligations under this Agreement.

### 12.6 No requirement to settle labour dispute

A party is not required, under clause 12.4 or 12.5, to settle any labour dispute against its will.

### 12.7 \* \* \*

\* \* \*

## 13. GST

### 13.1 Definitions

For the purposes of this clause 13:

- (a) **Adjustment** has the meaning given by the GST Law;
- (b) **Consideration** has the meaning given by the GST Law;

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



## WA Iron Ore Joint Venture—Ore Sales Agreement

([#])

- (c) **Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but which the representative member of a GST Group or the Joint Venture Operator of a GST Joint Venture is entitled under GST Law;
- (d) **GST** has the meaning given by the GST Law;
- (e) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply;
- (f) **GST Group** has the meaning given by the GST Law;
- (g) **GST Joint Venture** has the meaning given by the GST Law;
- (h) **GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (i) **Joint Venture Operator** has the meaning given by the GST Law;
- (j) **Tax Invoice** has the meaning given by the GST Law; and
- (k) **Taxable Supply** has the meaning given by the GST Law excluding the reference to Section 84–5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 13.2 Recovery of GST

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other Consideration for the Taxable Supply is provided. This clause 13.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

### 13.3 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

### 13.4 Adjustments

If an Adjustment occurs in relation to a Taxable Supply made under, by reference to or in connection with this Agreement, the GST Amount will be recalculated to reflect that Adjustment and an appropriate payment will be made between the parties.

### 13.5 Revenue exclusive of GST

Any reference in this Agreement to price, value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.

### 13.6 Cost exclusive of GST

Any reference in this Agreement (other than in the calculation of Consideration or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount (**Cost**), is a reference to that Cost exclusive of any Input Tax Credit entitlement.

## **WA Iron Ore Joint Venture—Ore Sales Agreement**

**([#])**

### **13.7 GST obligations to survive termination**

This clause 13 will continue to apply after expiration or termination of this Agreement.

## **14. Governing Law and Jurisdiction**

### **14.1 Governing Law**

- (a) This Agreement and any Clause 6 Sale will be governed by the laws of Western Australia, Australia.
- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this Agreement or any Clause 6 Sale on the basis that the courts of Western Australia are not an appropriate forum.

### **14.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this Agreement or any Clause 6 Sale in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

### **14.3 Dispute Resolution**

- (a) The parties will first seek to resolve any dispute under or in connection with this Agreement any Clause 6 Sale by discussions in good faith.
- (b) Any party may, by notice to the other parties, require any dispute (other than a dispute to which clause 8.4(a) applies) arising under or in connection with this Agreement or any Clause 6 Sale to be referred to the Chief Executives. The Chief Executives will meet and seek in good faith to resolve the dispute within 30 days.
- (c) If the Chief Executives are unable to resolve the dispute within 30 days of referral to them, any party may refer the dispute to the Owners' Chairpersons, who will meet and seek in good faith to resolve the dispute within 30 days.
- (d) Subject to paragraph (e), a party may not commence court proceedings in relation to any dispute arising out of or in connection with this Agreement or any Clause 6 Sale until it has complied with the dispute resolution process set out in paragraphs (a) to (c).
- (e) Nothing in this clause 14 prevents a party seeking appropriate injunctive or interlocutory relief at any time to preserve property or rights or to avoid losses that are not compensable in damages.
- (f) Each party agrees that:
  - (i) it is responsible for its own costs in connection with the dispute resolution process; and
  - (ii) the costs of any suit, action or proceeding commenced under or in connection with this Agreement or any Clause 6 Sale will be borne as between the parties as determined by the court of competent jurisdiction that hears the suit, action or proceeding.

## **WA Iron Ore Joint Venture—Ore Sales Agreement**

**([#])**

### **14.4 Service of Process**

- (a) Each party agrees that service of all writs, process and summonses in any suit, action or proceeding under or in connection with this Agreement or any Clause 6 Sale brought in Western Australia may be made on its registered or principal office for the time being in Australia.
- (b) Nothing contained or implied in this Agreement will in any way be taken to limit the ability of a party to:
  - (i) serve any writs, process or summonses; or
  - (ii) obtain jurisdiction over a party in other jurisdictions,  
in any manner permitted by Law.

### **15. General Provisions**

The provisions of clauses 21.2 to 21.7 and 21.9 to 21.13 of the Joint Venture Agreement will apply *mutatis mutandis*, unless the context requires otherwise.

**WA Iron Ore Joint Venture—Ore Sales Agreement**  
**([#])**

**Executed** by the parties

[Insert relevant execution clauses.]

# **West Australian Iron Ore Production Joint Venture Agreement**

## **Schedule 8**

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# **West Australian Iron Ore Production Joint Venture Agreement**

## **Part 1**

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## Schedule 8

\* \* \*

\* \* \*

\* \* \*

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\* \* \*

\* \* \*

\* \* \*

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

\*\*\*

<b>1.</b>	***	<b>1</b>
	1.1 ***	1
	1.2 ***	1
	1.3 ***	1
	1.4 ***	1
<b>2.</b>	***	<b>1</b>
	2.1 ***	1
	2.2 ***	2
	2.3 ***	2
	2.4 ***	2
	2.5 ***	2
<b>3.</b>	***	<b>2</b>
	3.1 ***	2
	3.2 ***	3
	3.3 ***	3
	3.4 ***	3
	3.5 ***	3
	3.6 ***	3
	3.7 ***	3
	3.8 ***	3
	3.9 ***	3
<b>4.</b>	***	<b>4</b>
<b>5.</b>	***	<b>4</b>
<b>6.</b>	***	<b>4</b>
	6.1 ***	4
	6.2 ***	4
<b>7.</b>	***	<b>4</b>
	7.1 ***	4
	7.2 ***	4
<b>8.</b>	***	<b>5</b>
	8.1 ***	5
	8.2 ***	5
	8.3 ***	5
	8.4 ***	5
	8.5 ***	5
<b>9.</b>	***	<b>5</b>
	9.1 ***	5
	9.2 ***	6

\*\*\* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



	9.3	***	6
	9.4	***	6
	9.5	***	6
	9.6	***	6
	9.7	***	6
<b>10.</b>	***		<b>6</b>
	10.1	***	6
	10.2	***	7
	10.3	***	7
	10.4	***	8
	10.5	***	8
<b>11.</b>	***		<b>8</b>
<b>12.</b>	***		<b>8</b>
	12.1	***	8
	12.2	***	8
<b>13.</b>	***		<b>9</b>
	13.1	***	9
	13.2	***	9
	13.3	***	9
	13.4	***	9
	13.5	***	9
	13.6	***	9
	13.7	***	9
	13.8	***	9
	13.9	***	9
	***		
<b>1</b>	***		<b>10</b>
<b>2</b>	***		<b>11</b>
<b>3</b>	***		

\*\*\* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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A. \*\*\*

B. \*\*\*

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1. \*\*\*

1.1 \*\*\*

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1.2 \*\*\*

(a) \*\*\*

(b) \*\*\*

(c) \*\*\*

1.3 \*\*\*

(a) \*\*\*

(b) \*\*\*

1.4 \*\*\*

\*\*\*

2. \*\*\*

2.1 \*\*\*

(a) \*\*\*

\*\*\* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

- (b) \* \* \*
- (i) \* \* \*
- (ii) \* \* \*
- (iii) \* \* \*

**2.2** \* \* \*

\* \* \*

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*

**2.3** \* \* \*

\* \* \*

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) \* \* \*
- (f) \* \* \*
- (g) \* \* \*
- (h) \* \* \*
- (i) \* \* \*

**2.4** \* \* \*

\* \* \*

- (a) \* \* \*
- (b) \* \* \*

**2.5** \* \* \*

\* \* \*

**3.** \* \* \*

**3.1** \* \* \*

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

**3.2**    \* \* \*  
         \* \* \*  
  
      (a)    \* \* \*  
      (b)    \* \* \*  
      (c)    \* \* \*

**3.3**    \* \* \*  
         \* \* \*

**3.4**    \* \* \*  
         \* \* \*

**3.5**    \* \* \*  
         \* \* \*

**3.6**    \* \* \*  
         \* \* \*

**3.7**    \* \* \*  
         \* \* \*  
  
      (a)    \* \* \*  
      (b)    \* \* \*  
      (c)    \* \* \*  
         \* \* \*

**3.8**    \* \* \*  
         \* \* \*  
  
      (a)    \* \* \*  
      (b)    \* \* \*

**3.9**    \* \* \*  
         \* \* \*  
  
      (a)    \* \* \*  
      (b)    \* \* \*  
         \* \* \*

\* \* \*    Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

**4.** \* \* \*

(a) \* \* \*

(b) \* \* \*

**5.** \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

\* \* \*

**6.** \* \* \*

**6.1** \* \* \*

\* \* \*

**6.2** \* \* \*

\* \* \*

**7.** \* \* \*

**7.1** \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(d) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

**7.2** \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

**8.**       \* \* \*

**8.1**       \* \* \*

          \* \* \*

          (a)       \* \* \*

          (b)       \* \* \*

**8.2**       \* \* \*

          \* \* \*

          (a)       \* \* \*

          (b)       \* \* \*

**8.3**       \* \* \*

          \* \* \*

          (a)       \* \* \*

          (b)       \* \* \*

**8.4**       \* \* \*

          \* \* \*

**8.5**       \* \* \*

          (a)       \* \* \*

          (b)       \* \* \*

**9.**       \* \* \*

**9.1**       \* \* \*

          \* \* \*

          (a)       \* \* \*

          (b)       \* \* \*

          (c)       \* \* \*

          (d)       \* \* \*

          (e)       \* \* \*

          (f)       \* \* \*

          (g)       \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# **West Australian Iron Ore Production Joint Venture Agreement**

## **Part 2**

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

Schedule 8

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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	3.9 ***	3
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<b>5.</b>	***	<b>4</b>
<b>6.</b>	***	<b>4</b>
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	7.1 ***	4
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\*\*\* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \*    Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\*\*\* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \*    Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \*    Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \*     Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

# **West Australian Iron Ore Production Joint Venture Agreement**

## **Part 3**

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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3.1	***	2
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5.1	***	4
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5.6	***	4
5.7	***	4
6.	***	<b>5</b>
6.1	***	5
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6.3	***	6
6.4	***	6
6.5	***	6
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\*\*\* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

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# West Australian Iron Ore Production Joint Venture Agreement

## Schedule 9

### Determination of Fair Market Value and Purchase Options

#### 1. Determination of Fair Market Value

##### 1.1 Application

The provisions of this item 1 will be interpreted in accordance with the relevant provisions of the Agreement and will apply in the following circumstances:

- (a) determination of the fair market value of the Target Iron Ore Assets as contemplated by clause 8.6(c);
- (b) determination of the fair market value of the Participating Interest of the Defaulting Owner and the Iron Ore Assets of the Defaulting Owner and its Related Corporations as contemplated by clause 9.5(a)(i);
- (c) determination of the fair market value of the entire WA Iron Ore JV as contemplated by clause 9.5(a)(ii);
- (d) determination of the fair market value of the scheduled reserves and resources to be developed by a Sole Funding Party as contemplated by item 1(b) of schedule 4;
- (e) determination of the fair market value of the assets comprised by the Sole Risk Opportunity as contemplated by item 2 (i)(iii)(A) of schedule 4; and
- (f) determination of the fair market value of the Purchasing Owner's Participating Share of the assets referred to in item 3 (c) of schedule 4.

##### 1.2 Determination of Fair Market Value

The fair market value in each case will be:

- (a) agreed in writing by the Owners; or
- (b) if the Owners are unable to reach agreement \* \* \* the average of three valuations determined by three independent experts in accordance with the remaining provisions of this item 1 (each a **Valuer**).

##### 1.3 Selection of Valuers

- (a) The Valuers will be selected by agreement between the Owners or, failing agreement \* \* \* such Valuers will be nominated by the President of the Institute of Chartered Accountants, Australia at the request of either Owner.
- (b) The Valuers will:
  - (i) have appropriate qualifications, including experience in valuation of resource and infrastructure assets; and
  - (ii) not have any interest which conflicts or may conflict with his or her appointment as an expert in relation to the dispute.

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## **West Australian Iron Ore Production Joint Venture Agreement**

### **1.4 Conduct of Valuers**

- (a) In determining the fair market value, each Valuer will:
  - (i) consult with the Manager;
  - (ii) accept oral and written submissions from the Owners which may be made to him \* \* \*; and
  - (iii) make a written determination of fair market value independently and without consultation of the other Valuers.
- (b) Each Valuer will keep all information received in connection with its appointment under this Agreement confidential.
- (c) The costs and expenses of each Valuer in making its valuation will be borne by the Owners equally.

### **1.5 Matters to be considered by Valuers**

In determining the fair market value, each Valuer will value the transaction as between a willing but not anxious seller and a willing but not anxious buyer at arms length and have regard to all relevant matters including:

- (a) current and projected demand and supply conditions in the global iron ore market;
- (b) likely trends in iron ore quality specifications and pricing;
- (c) likely timing and scale of development and/or expansion of all relevant iron ore deposits;
- (d) quantum and nature of all relevant iron ore reserves and resources;
- (e) projected capital and operating costs of development and/or expansion over project life;
- (f) the global competitiveness of relevant iron ore product;
- (g) the party that will bear any stamp duty or equivalent duty arising in connection with the transaction concerned and the amount of that duty; and
- (h) any specific matters that are expressly stated to be considered in the clauses to which this schedule applies.

### **1.6 Manager to provide information**

The Manager must provide all reasonable information that the Owners or the Valuers (as applicable) requires in order to agree or determine the fair market value in accordance with this item 1.

### **1.7 Valuation to be GST exclusive**

The fair market value agreed by the Owners or determined by the Independent Expert (as applicable) will be determined on a GST exclusive basis and, accordingly, the fair market value will be expressly stated to be GST exclusive.

### **1.8 Time for completion of valuation**

\* \* \* that Valuer will be required to complete their valuation and to deliver a copy of their valuation to the Manager and to the Owners.

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## **West Australian Iron Ore Production Joint Venture Agreement**

### **1.9 Extensions of time**

If a Valuer fails to complete the valuation within the time fixed under item 1.8, the Owners or the President of the Institute of Chartered Accountants, Australia, as the case may be, may extend the time for completion of the valuations. If no extension is granted \* \* \* another Valuer will be appointed to make that Valuer's valuation in accordance with this schedule 9.

## **2. Purchase Options**

### **2.1 Application**

The provisions of this item 2 will be interpreted in accordance with the relevant provisions of the Agreement and will apply to any Purchase Option exercised pursuant to clause 9.6.

### **2.2 Conditions Precedent**

It will be a condition precedent to completion of the purchase that the Non-Defaulting Owner has obtained all necessary Authorisations. The Non-Defaulting Owner must use all reasonable endeavours to obtain all necessary Authorisations as soon as practicable.

### **2.3 Completion of Purchase**

If any Purchase Option is exercised, then:

- (a) subject to clause 9.5(c) and (e), the Defaulting Owner will, and, where relevant, will procure that its Related Corporations:
  - (i) on completion, transfer to the Non-Defaulting Owner all of:
    - (A) its Participating Interest, including the Participant Loans and Debentures; and
    - (B) the Iron Ore Assets of the Defaulting Owner and its Related Corporations, either directly or by the acquisition of Securities in the JV Entities that are Related Corporations of the Defaulting Owner at the election of the Non-Defaulting Owner,  
  
free from any Security Interests, pre-emptive rights, and other third party rights (other than a Cross Charge, a Permitted Security Interest or any Existing JV Arrangements), in consideration for payment by the Non-Defaulting Owner of the Purchase Option Price; and
  - (ii) at or before completion, sign, execute, deliver and do all deeds, documents, transfers, instruments, assurances, acts and other things as may be necessary or appropriate to effect the transfers referred to in paragraph (a)(i) to the Non-Defaulting Owner; and
- (b) the Non-Defaulting Owner will, and, where relevant, will procure that its Related Corporations:
  - (i) \* \* \* provide written notice to the Defaulting Owner of a time during business hours at which, and a place in Australia at which, completion is to occur; and
  - (ii) on completion, pay the Purchase Option Price in accordance with item 2.4.

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## West Australian Iron Ore Production Joint Venture Agreement

### 2.4 Application of Purchase Option Price

Payment of the Purchase Option Price will be made on completion of the purchase by the Non-Defaulting Owner in the following order of priority:

- (a) first, in payment of royalties to the State and any withholding or deduction for or on account of any taxes, duties, assessments or governmental charges which are referable to the Defaulting Owner (and the Non-Defaulting Owner will not be obliged to reimburse or compensate or make any payment to the Defaulting Owner for or in respect of any such withholding or deduction);
- (b) secondly, by paying to the Manager all Default Amounts owed to it;
- (c) thirdly, by paying to the Non-Defaulting Owner the total of all Unpaid Amounts that have been funded by the Non-Defaulting Owner, along with all associated Default Interest and Default Costs and any valuation fees and expenses charged to the account of the Defaulting Owner pursuant to item 1; and
- (d) fourthly, the balance (if any) will be paid to the Defaulting Owner, or as it may otherwise direct and will not carry any interest.

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### 2.6 Stamp duty and costs

The cost of any stamp duty or equivalent duty arising in connection with the exercise of the Purchase Option will be payable by the Non-Defaulting Owner.

### 2.7 Warranty

The Defaulting Owner warrants to the Non-Defaulting Owner that it has good title to the assets to be transferred free from any Security Interest, pre-emptive rights, and other third party rights (other than a Cross Charge, a Permitted Security Interest and any Existing JV Arrangements).

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# West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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# West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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## West Australian Iron Ore Production Joint Venture Agreement

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**West Australian Iron Ore  
Production Joint Venture Agreement**

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West Australian Iron Ore  
Production Joint Venture Agreement

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West Australian Iron Ore  
Production Joint Venture Agreement

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- (ii) \* \* \*
- (A) \* \* \*
- (B) \* \* \*
- \* \* \*
- (h) \* \* \*
- (i) \* \* \*
- (j) \* \* \*
- (e) \* \* \*

7. \* \* \*

7.1 \* \* \*

- \* \* \*
- (a) \* \* \*
- (b) \* \* \*

7.2 \* \* \*

- \* \* \*
- (a) \* \* \*
- (b) \* \* \*

7.3 \* \* \*

- \* \* \*
- (a) \* \* \*
- (b) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



## West Australian Iron Ore Production Joint Venture Agreement

(c) \* \* \*

(d) \* \* \*

(f) \* \* \*

### 7.4 \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

(i) \* \* \*

(c) \* \* \*

### 7.5 \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(f) \* \* \*

(n) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(B) \* \* \*

(C) \* \* \*

(D) \* \* \*

(E) \* \* \*

\* \* \* .

### 7.6 \* \* \*

\* \* \*

(a) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

**West Australian Iron Ore  
Production Joint Venture Agreement**

(b) \* \* \*  
(c) \* \* \*

**7.7** \* \* \*  
\* \* \*  
(a) \* \* \*  
(b) \* \* \*  
(c) \* \* \*

**7.8** \* \* \*  
\* \* \*

**7.9** \* \* \*  
\* \* \*  
(a) \* \* \*  
(b) \* \* \*  
(c) \* \* \*

**7.10** \* \* \*  
\* \* \*

**7.11** \* \* \*  
\* \* \*  
(a) \* \* \*  
    (a) \* \* \*  
(b) \* \* \*  
(c) \* \* \*  
    (d) \* \* \*  
        (i) \* \* \*  
            \* \* \*  
            (C) \* \* \*  
            (D) \* \* \*  
            (E) \* \* \*  
        (ii) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

(A) \* \* \*

(B) \* \* \*

(d) \* \* \*

(e) \* \* \*

**8.** \* \* \*

**8.1** \* \* \*

\* \* \*

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

**8.2** \* \* \*

\* \* \*

(a) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(iv) \* \* \*

(b) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

**8.3** \* \* \*

\* \* \*

**8.4** \* \* \*

\* \* \*

(a) \* \* \*

**8.5** \* \* \*

\* \* \*

(a) \* \* \*

(i) \* \* \*

(ii) \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

- (b) \* \* \*
- (c) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
- (d) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*

### 8.6 \* \* \*

- (a) \* \* \*
  - (i) \* \* \*
    - (a) \* \* \*
      - (i) \* \* \*
      - (ii) \* \* \*
  - (ii) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
    - \* \* \*
    - \* \* \*
    - (a) \* \* \*
    - (b) \* \* \*
  - (iii) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
  - (iv) \* \* \*
  - (v) \* \* \*
    - (c) \* \* \*
  - (vi) \* \* \*
    - \* \* \*
    - \* \* \*
  - (vii) \* \* \*
    - \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

West Australian Iron Ore  
Production Joint Venture Agreement

- (a) \* \* \*
  - (i) \* \* \*
    - (A) \* \* \*
    - (B) \* \* \*
    - \* \* \*
  - (ii) \* \* \*
- (b) \* \* \*
  - (i) \* \* \*
  - (ii) \* \* \*
- (viii) \* \* \*
  - \* \* \*
  - \* \* \*
  - \* \* \*
  - (a) \* \* \*
  - (b) \* \* \*
  - (c) \* \* \*
  - (d) \* \* \*
- (ix) \* \* \*

- 8.7 \* \* \*
- \* \* \*
- (a) \* \* \*
    - (i) \* \* \*
    - (ii) \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*
- \* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

(a) \* \* \*

(b) \* \* \*

(b) \* \* \*

(b) \* \* \*

(c) \* \* \*

(c) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(iii) \* \* \*

(d) \* \* \*

(e) \* \* \*

(e) \* \* \*

(i) \* \* \*

(ii) \* \* \*

**8.8** \* \* \*

\* \* \*

(a) \* \* \*

(i) \* \* \*

(ii) \* \* \*

(b) \* \* \*

(c) \* \* \*

(i) (A) \* \* \*

(B) \* \* \*

(ii) \* \* \*

(A) \* \* \*

(B) \* \* \*

(iv) \* \* \*

**8.9** \* \* \*

\* \* \*

\* \* \*

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## West Australian Iron Ore Production Joint Venture Agreement

**9.**     \* \* \*

**9.1**    \* \* \*

\* \* \*

**9.2**    \* \* \*

\* \* \*

(a)    \* \* \*

(b)    \* \* \*

(f)    \* \* \*

(c)    \* \* \*

**9.3**    \* \* \*

(a)    \* \* \*

(b)    \* \* \*

(c)    \* \* \*

(d)    \* \* \*

**10.**    \* \* \*

\* \* \*

**11.**    \* \* \*

\* \* \*

**12.**    \* \* \*

\* \* \*

**13.**    \* \* \*

\* \* \*

**14.**    \* \* \*

\* \* \*

**15.**    \* \* \*

\* \* \*

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

**West Australian Iron Ore  
Production Joint Venture Agreement**

**16.**   \* \* \*  
          \* \* \*

**17.**   \* \* \*  
          \* \* \*

**18.**   \* \* \*  
          \* \* \*

**19.**   \* \* \*  
          \* \* \*

**20.**   \* \* \*  
          \* \* \*

**21.**   \* \* \*  
          \* \* \*

**22.**   \* \* \*  
          \* \* \*

\* \* \*

\* \* \*   Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission



**West Australian Iron Ore  
Production Joint Venture Agreement**

**Schedule 11**

**New Owner's Assumption Deed**

**West Australian Iron Ore Joint Venture—  
New Owner's Deed of Assumption**

*[Insert name of Acquiring Owner]*

*[Insert name of Disposing Owner]*

*[Insert names of each other party to the Joint Venture  
Agreement]*

**West Australian Iron Ore Joint Venture—  
New Owner’s Deed of Assumption**

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# West Australian Iron Ore Joint Venture— New Owner’s Deed of Assumption

**Date**

**Parties**

1. [#] [(ACN [#])] (the *Acquiring Owner*).
2. [#] [(ACN [#])] (the *Disposing Owner*).
3. *[Insert name and details of each other party to the Joint Venture Agreement]* (collectively the *Other Parties*).

**Recitals**

- A The Disposing Owner and the Other Parties are the current parties to the West Australian Iron Ore Joint Venture Agreement dated [#] (the *Joint Venture Agreement*) and certain other Transaction Documents.
- B The Participating Shares of the Owners in the WA Iron Ore JV before the Effective Date are:  
The Disposing Owner [#%]  
*[Insert details for each Other Party that is an Owner] [#%]*
- C The Disposing Owner has agreed to Dispose to the Acquiring Owner, and the Acquiring Owner has agreed to acquire, the Disposal Interest (and corresponding Participating Share) in the WA Iron Ore JV, so that on and from the Effective Date the Participating Shares of the parties will be:  
*[The Disposing Owner (if part of interest is retained) [#%]]*  
*[Insert details for each Other Party that is an Owner] [#%]*  
The Acquiring Owner [#%]
- D Clause 10.8 of the Joint Venture Agreement provides that, unless otherwise agreed in writing by the Owners, no Disposal of a Participating Interest to a third party that would otherwise be permitted under that clause may be made unless certain conditions are satisfied (including, among others, the execution of this Deed).
- E The Disposing Owner wishes to be released from *[all][a portion, referable to the Disposal Interest]* of its obligations under the Joint Venture Agreement and the other Transaction Documents that are referable to the Disposal Interest as from the Effective Date.
- F In order to give effect to the Disposal of the Disposal Interest, and in satisfaction of the requirement to enter into a New Owner’s Assumption Deed pursuant to clause 10.8 of the Joint Venture Agreement, the parties have agreed to enter into this Deed.

**It is agreed** as follows.

## **1. Definitions and interpretation**

### **1.1 Joint Venture Agreement definitions to apply**

Subject to a contrary meaning being specified in clause 1.2, words and expressions defined in the Joint Venture Agreement have the same meaning when used in this Deed.

### **1.2 Definitions**

In this Deed, the following terms have the following meanings unless the context requires otherwise.

## West Australian Iron Ore Joint Venture— New Owner's Deed of Assumption

**Disposal Interest** means the permitted whole or the permitted portion of the Disposing Owner's Participating Interest as at the Effective Date, being a Participating Share of [#]%

**Effective Date** means the date on which each of the requirements set out in clause 10.8 of the Joint Venture Agreement have been satisfied in respect of the acquisition of the Disposal Interest.

**Joint Venture Agreement** has the meaning given in Recital A.

### 1.3 Joint Venture Agreement interpretive provisions to apply

Items 1.2 to 1.5 (inclusive) of schedule 1 to the Joint Venture Agreement will apply, *mutatis mutandis*, in the interpretation of this Deed.

## 2. Acquiring Owner to Assume Liability

With effect on and from the Effective Date, the Acquiring Owner, to the extent of the Disposal Interest:

- (a) enjoys all of the rights and benefits of the Disposing Owner under the Joint Venture Agreement and, to the extent applicable, the other Transaction Documents to which the Disposing Owner is a party, and may hold and deal with the Disposal Interest in accordance with the terms of the Joint Venture Agreement without any interruption or disturbance from the Disposing Owner;
- (b) assumes the covenants, liabilities and obligations of the Disposing Owner arising on or after the Effective Date under the Joint Venture Agreement and undertakes to discharge those covenants, liabilities and obligations as and when required;
- (c) notwithstanding paragraph (b):
  - (i) the Acquiring Owner agrees that any steps taken prior to the Effective Date with respect to the exercise of a Purchase Option or a Dilution Option in accordance with the Joint Venture Agreement, or in order to reach completion of that Purchase Option or Dilution Option, will be effective as against the Acquiring Owner even if the relevant obligations have arisen prior to the Effective Date; and
  - (ii) to the extent that the Acquiring Owner becomes a Majority Owner as a result of the acquisition of the Disposal Interest, the Acquiring Owner agrees to assume the obligations of the Disposing Owner \* \* \*

## 3. Consent of Other Parties

With effect on and from the Effective Date, each of the Other Parties:

- (a) irrevocably and unconditionally consent to the Acquiring Owner becoming a holder of the Disposal Interest and assuming the covenants, liabilities and obligations of the Disposing Owner in relation to the Disposal Interest in accordance with, and to the extent referred to in, clause 2;
- (b) acknowledge and agree that the Acquiring Owner will be entitled to exercise all of the rights and benefits of the Disposing Owner in respect of the Disposal Interest; and
- (c) agree to be bound by the terms of the Joint Venture Agreement and all other Transaction Documents (to the extent relevant) between the Disposing Owner and any of the Other Parties as if the Acquiring Owner was named in that agreement or agreements as a party [*instead of / in addition to*] the Disposing Owner, but only in respect of the Disposal Interest.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## **West Australian Iron Ore Joint Venture— New Owner's Deed of Assumption**

### **4. Disposing Owner Released**

With effect on and from the Effective Date, each of the Other Parties releases and forever discharges the Disposing Owner from the covenants, liabilities and obligations relating to or connected with the Disposal Interest on or after the Effective Date under the Joint Venture Agreement and the other Transaction Documents (to the extent relevant), subject to any accrued rights.

### **5. Liability Pending Effective Date**

Until the Effective Date, the Disposing Owner will remain liable for and be responsible for performing and observing all of the covenants, liabilities and obligations which are expressed to apply in respect of, or attaching to the Disposal Interest under the Joint Venture Agreement and the other Transaction Documents (to the extent relevant).

### **6. Address of Acquiring Owner for Notices**

For the purposes of the Joint Venture Agreement and the other Transaction Documents (to the extent relevant), the address of the Acquiring Owner to which all notices must be delivered is:

to *[Insert details of Acquiring Owner]*: [#]

Attention [#]

Address: [#]

Fax No: [#]

### **7. Costs and stamp duty**

- (a) Each party will bear the costs arising out of the negotiation, preparation, execution and enforcement of this Deed.
- (b) Subject to the Joint Venture Agreement, all stamp duty (including fines, penalties and interest) which may be payable on or in connection with this Deed and any instrument executed under this Deed will be borne by the Acquiring Owner. The Acquiring Owner will indemnify the Disposing Owner and the Other Parties on demand against any liability for that stamp duty.

## **8. Governing Law and Jurisdiction**

### **8.1 Governing Law**

- (a) This Deed will be governed by the laws of Western Australia, Australia.
- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this Deed on the basis that the courts of Western Australia are not an appropriate forum.

### **8.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this Deed in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

## **West Australian Iron Ore Joint Venture— New Owner's Deed of Assumption**

### **8.3 Dispute Resolution**

Any dispute, controversy, claim or difference of whatever nature arising under, out of, or in connection with this Deed will be resolved in accordance with clause 20.3 of the Joint Venture Agreement.

### **8.4 Service of Process**

- (a) Each party agrees that service of all writs, process and summonses in any suit, action or proceeding under or in connection with this Deed brought in Western Australia may be made on its registered or principal office for the time being in Australia.
- (b) Nothing contained or implied in this Deed will in any way be taken to limit the ability of a party to:
  - (i) serve any writs, processes or summonses; or
  - (ii) obtain jurisdiction over a party in other jurisdictions,  
in any manner permitted by Law.

### **9. General Provisions**

The provisions of clauses 19, 21.1 (subject to clause 6 of this Deed) to 21.6, 21.9 and 21.11 to 21.13 of the Joint Venture Agreement will apply, *mutatis mutandis*, in this Deed unless the context requires otherwise.

**West Australian Iron Ore Joint Venture—  
New Owner’s Deed of Assumption**

**Executed** as a Deed in Western Australia.

[Insert relevant execution clauses]



**West Australian Iron Ore  
Production Joint Venture Agreement**

**Schedule 12  
Cross Charges**

**West Australian Iron Ore  
Production Joint Venture Agreement**

**Part 1**

Form of Owner Cross Charge

**West Australian Iron Ore  
Production Joint Venture Cross Charge  
([BHP Billiton JV Entities /  
Rio Tinto JV Entities])**

**Each company listed in Schedule 1**

**[Rio Tinto Owner / BHP Billiton Owner / Majority Owner]**

[ACN/ABN] [*insert*]

**[Manager]**

[ACN/ABN] [*insert*]

***Note:** This is the form of charge that each JV Entity will give as contemplated by clause 11.8 of the Joint Venture Agreement.*

*If the Personal Property Securities Act applies to the creation and perfection of security interests at the time a charge in this form is granted then consequential amendments will be made to make this an effective security for the purposes of that Act.*

# **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

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**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton JV Entities / Rio Tinto JV Entities])**

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# **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

## **DATE**

## **PARTIES**

**Each company listed in Schedule 1**

(each an **Initial Chargor**)

**[Rio Tinto Owner / BHP Billiton Owner / Majority Owner]**

**[ACN/ABN] [insert] (Owner Chargee)**

**[Manager]**

**[ACN/ABN] [insert] (Manager)**

## **RECITALS**

- A. Under the terms of the Transaction Documents, the Obligors must perform certain financial obligations for the benefit of each Chargee and other parties to whom JV Funding Amounts may be payable, and the Chargors may be obliged to perform certain non-financial obligations for the benefit of the Owner Chargee to enable the Owner Chargee to complete a purchase after exercising a Purchase Option.
- B. Each Chargor is entering into this document in favour of each Chargee to secure the performance of some of those obligations.
- C. This document is a Cross Charge required under clause 11.8 of the Joint Venture Agreement.

## **OPERATIVE PROVISIONS**

### **1. CREATION OF CHARGE**

#### **1.1 Charging provision**

- (a) Each Chargor as beneficial owner charges all its Charged Property in favour of the Owner Chargee to secure the punctual payment of all Secured Money and the punctual performance of all Secured Obligations.
- (b) Each Chargor as beneficial owner charges all its Charged Property in favour of the Manager to secure the punctual payment of all Secured Money.

#### **1.2 Fixed charge**

The Charge operates:

- (a) as a fixed charge over all Fixed Charged Property; and
- (b) subject to clause 1.6, as a floating charge over all Floating Charge Property.

#### **1.3 Priority**

Subject to the terms of any Priority Security Interest, the Charge is a first-ranking charge.

#### **1.4 Dealings with Charged Property**

Each Chargor covenants for the benefit of each Chargee that it will not:

- (a) **(negative pledge)** create a Security Interest or permit a Security Interest to subsist over any Charged Property except as permitted by clauses 10 and 11 of the Joint Venture Agreement; or

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

- (b) **(no Disposal)** Dispose of all or any of its Charged Property except in accordance with clause 1.5.

### **1.5 Dealing with Charged Property**

Each Chargee consents to any Chargor Disposing of:

- (a) its Floating Charge Property in the ordinary course of the day-to-day operations of the Chargor; or
- (b) its Charged Property (including Floating Charged Property) as permitted by clause 10 of the Joint Venture Agreement.

### **1.6 Crystallisation**

The Charge will cease to operate as a floating charge and will operate as a fixed charge, and the licence under clause 1.5(a) will automatically and immediately be withdrawn:

- (a) in relation to all of a Chargor's Floating Charge Property, if this document is enforced against that Chargor's Charged Property; or
- (b) in relation to part of a Chargor's Floating Charge Property, if:
  - (i) that Chargor breaches clause 1.4; or
  - (ii) any step is taken to levy or enforce any distress or other execution on or against that part of the Floating Charge Property or to enforce any Security Interest relating to that part of the Floating Charge Property.

### **1.7 Floating nature of Charge restored**

If the Charge has become a fixed charge under clause 1.6 in relation to all or part of a Chargor's Floating Charge Property, the Chargees may restore the licence under clause 1.5(a) by notice to the relevant Chargor, so that the Charge will again operate as a floating charge and not as a fixed charge in relation to that Floating Charge Property.

### **1.8 Prohibited Interests to become Charged Property**

If the relevant Chargor gives the Chargees a notice in the form of Schedule 3, each Prohibited Interest described in the notice will automatically and immediately become part of the Charged Property of that Chargor without the necessity for any further act by the Chargor.

## **2. UNDERTAKING TO PAY**

- (a) Subject to paragraph (b), each Chargor undertakes duly and punctually to pay to each Chargee an amount equal to each JV Funding Amount when that JV Funding Amount is due, whether or not the Chargor is the obligor, or the relevant Chargee is the obligee, of that JV Funding Amount.
- (b) A Chargor's obligation under paragraph (a) to make a payment in relation to a JV Funding Amount is taken to be satisfied to the extent that the obligor of that JV Funding Amount makes payment of the JV Funding Amount to the relevant obligee in accordance with the Transaction Documents.

## **3. UNDERTAKING TO PERFORM**

### **3.1 Undertaking in respect of Secured Obligations**

Each Chargor undertakes to each Chargee that it will perform the Secured Obligations.

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

### **3.2 Undertaking in respect of Joint Venture Agreement obligations**

[Each of Hamersley Iron Pty Limited and Hamersley Iron-Yandi Pty Limited]/[BHP Billiton Minerals Pty Ltd] undertakes to the Owner Chargee to do each thing that an Owner is obliged under the Joint Venture Agreement to procure it to do.

## **4. ENFORCEMENT OF CHARGE**

- (a) The Owner Chargee may take action under this document to enforce the Charge and exercise its powers under this document against a Chargor if an Owner Event of Default has occurred and is continuing in relation to that Chargor.
- (b) The Manager may take action under this document to enforce the Charge and exercise its powers under this document against a Chargor if a Manager Event of Default has occurred and is continuing in relation to that Chargor.
- (c) If no Owner Event of Default is continuing, the Owner Chargee must immediately cease any action to enforce the Charge or exercise its powers under this document, including by removing any Receiver if it has been appointed and giving up possession of any Charged Property.
- (d) If no Manager Event of Default is continuing, the Manager must immediately cease any action to enforce the Charge or exercise its powers under this document, including by removing any Receiver if it has been appointed and giving up possession of any Charged Property.
- (e) If, at any time, the Owner Chargee and the Manager are both entitled to enforce the Charge, then:
  - (i) the exercise by the Owner Chargee of an enforcement power takes precedence over the exercise by the Manager of an enforcement power; and
  - (ii) the Manager may not exercise any enforcement power to the extent inconsistent with an enforcement power being exercised by the Owner Chargee while the Owner Chargee exercises its enforcement powers.

## **5. APPOINTMENT OF RECEIVER**

### **5.1 Power to appoint and remove**

A Chargee may at any time after it becomes entitled to enforce the Charge against a Chargor:

- (a) appoint a Receiver of all or part of the Charged Property of that Chargor; and
- (b) remove any Receiver it appointed and (subject to clause 4) appoint another in its place.

Any appointment or removal under this subclause must be in writing.

### **5.2 After commencement of winding up**

The power to appoint a Receiver under clause 5.1 may be exercised even though:

- (a) an order has been passed to wind up the Chargor when a Chargee becomes entitled to enforce the Charge, or when an appointment is made; or
- (b) a Receiver appointed in the circumstances specified in the preceding paragraph may not, or may not in some respects, act as the Chargor's agent.



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### 6. AGENCY

#### 6.1 Agent of the Chargor

Subject to clause 6.2 and the next sentence, every Receiver appointed under clause 5 will be taken to be the agent of a Chargor, and that Chargor will be responsible for the Receiver's acts, defaults and remuneration. The Chargee who appointed a Receiver may, by notice to the Receiver and the relevant Chargor, require the Receiver to act as its agent.

#### 6.2 Ceasing to be agent

If for any reason (including operation of law) a Receiver ceases to be the agent of a Chargor because of an order passed to wind up the Chargor, the Receiver immediately becomes the agent of the Chargee who appointed it.

### 7. POWERS OF ENFORCING PARTY

- (a) The Enforcing Party will have full power to do all or any of the following:
- (i) **(take possession)** take possession of, collect and get in the Charged Property and for that purpose to take any proceedings (in the name of the Chargor or otherwise);
  - (ii) **(give receipts)** give receipts for all money and other property that may come into the hands of the Receiver in exercise of any power given by this document;
  - (iii) **(obligations under Transaction Documents)** cause the Chargor to continue to be associated with the other parties for the purpose of fulfilling its obligations under the Transaction Documents or concur in the continuance of any of those documents;
  - (iv) **(exercise rights)** exercise all or any powers, rights, discretions and remedies of the Chargor or in connection with the Charged Property (including rights available under the Corporations Act or any other statute);
  - (v) **(raise money on Charged Property in priority)** for the purposes of clause 7(a)(iv), borrow or raise money on the security of the Charged Property in priority to this Charge;
  - (vi) **(sell assets)** sell (whether or not a Receiver has taken possession), exchange or otherwise Dispose of (absolutely or conditionally) the Charged Property (or agree to do so):
    - (A) by public auction, private sale or tender for cash or on credit;
    - (B) in one lot or in parcels; and
    - (C) with or without special conditions and otherwise on terms the Receiver considers desirable;
  - (vii) **(execute documents)** execute any document (in the name of the Chargor or otherwise) for the purpose of carrying into effect any power, right and discretion conferred on the Enforcing Party;
  - (viii) **(settle disputes)** make any settlements, arrangements or compromise that it thinks fit; and
  - (ix) **(do everything)** do or cause to be done everything with respect to the Charged Property (without being responsible for any resulting loss or damage) that it thinks necessary and which could have been done or caused to be done by the Enforcing Party if it was the absolute owner of the Charged Property.

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- (b) Subject always to the obligations of the Enforcing Party under the Corporations Act an Enforcing Party may exercise its power under clause 7(a)(vi) by selling the relevant Charged Property to the Chargee who appointed it.
- (c) An Enforcing Party's powers, rights and discretions referred to in this clause 7:
  - (i) must be interpreted separately and not by reference to one another; and
  - (ii) are in addition to all other powers, rights and discretions conferred on it by law, but are subject to clause 14.
- (d) Any legislation that adversely affects an obligation of a Chargor, or the exercise by an Enforcing Party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

### **8. PROTECTION OF THIRD PARTIES**

A purchaser or other party to a disposal or dealing in attempted exercise of a power contained in this document is not:

- (a) bound to enquire whether there has been a default, whether a Receiver has been properly appointed or about the propriety or regularity of a sale, disposal or dealing; or
- (b) affected by notice that a sale, disposal or dealing is unnecessary or improper.

Despite any irregularity or impropriety in a sale, disposal or dealing, it is to be treated, for the protection of the purchaser or other party to the disposal or dealing, as being authorised by this document and valid.

### **9. POWERS EXERCISABLE BY CHARGEES**

#### **9.1 Exercise of powers**

After the Charge has become enforceable against a Chargor, a Chargee may exercise any power as an Enforcing Party in addition to any power it has as Chargee. A Chargee may do so even if a Receiver is appointed.

#### **9.2 Protection of Chargee**

The exercise of any power by a Chargee does not cause the Chargee to:

- (a) be a mortgagee in possession;
- (b) account as mortgagee in possession; or
- (c) be answerable for any act or omission for which a mortgagee in possession is liable.

### **10. REALISATION**

After the Charge has become enforceable against a Chargor, the Chargor must do anything, and ensure that its employees and agents do anything, that the Enforcing Party may reasonably require to assist it to realise the Charged Property and exercise any power, right, discretion or remedy including:

- (a) execute any transfer (including any transfer in blank) of, or other document in relation to, any Charged Property;

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- (b) do anything that the Enforcing Party thinks is necessary or desirable under the law in force in any place where any Charged Property is situated; and
- (c) give any notice, order, direction and consent that the Enforcing Party thinks is necessary or desirable.

### **11. APPLICATION OF MONEY**

Money that an Enforcing Party receives under or because of this document in relation to a Chargor is to be applied in the following order:

- (a) **(expenses)** first in payment of all expenses of and incidental to:
  - (i) the appointment of any Receiver to that Chargor; and
  - (ii) the exercise or attempted exercise by the Enforcing Party of any power, right or discretion referred to in clause 7 (including the Enforcing Party's reasonable remuneration) against that Chargor;
- (b) **(outgoings)** then in payment of any other outgoings that the Enforcing Party thinks fit to pay;
- (c) **(Priority Security Interest)** then in discharging any Priority Security Interest;
- (d) **(Secured Money payable to appointor)** then in payment to the Chargee who appointed it of the Secured Money and any amount necessary to give effect to any indemnity contained in this document;
- (e) **(Secured Money payable to other Chargee)** then in payment to the other Chargee of the Secured Money and any amount necessary to give effect to any indemnity contained in this document; and
- (f) **(surplus)** then, subject to proper claims enforceable under other Security Interests, any surplus must be paid to the relevant Chargor.

### **12. CONTINUING SECURITY**

The Charge is a continuing security, and remains in full force in relation to each Chargor until a final irrevocable discharge of the Charge is given by each Chargee, despite any transaction or other thing (including a settlement of account or intervening payment).

### **13. PROSPECTIVE LIABILITY**

The parties acknowledge that for the purpose of fixing priorities between the Charge and any subsequent charge registered or registrable under the Corporations Act and for no other purposes, the Charge secures each Chargor's prospective liability (being the liability to pay its Secured Money, its liability to perform the Secured Obligations and its liability to indemnify the Enforcing Party as provided in this document) up to a maximum of \$150 billion. The Charge may also secure prospective liabilities in excess of this specified maximum amount.

### **14. RESTRICTIONS ON DISPOSAL BY ENFORCING PARTY**

In exercising its rights under this document to Dispose of Charged Property, an Enforcing Party may only Dispose of Charged Property:

- (a) in order to complete a purchase by the Owner Chargee after it exercises a Purchase Option;
- (b) in the ordinary course of the day-to-day operations of the Chargor;

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- (c) as permitted by clause 10 of the Joint Venture Agreement; or
- (d) if that Charged Property:
  - (i) is not required in the day-to-day operations of the Chargor;
  - (ii) is not otherwise required for the carrying on of the WA Iron Ore JV; and
  - (iii) is not shares or other securities in another JV Entity.

### **15. NO MARSHALLING**

A Chargee is not under any obligation to marshal, appropriate or exercise, apply, perfect or recover any Security Interest that the Chargee holds at any time or any funds or property that the Chargee may be entitled to receive or have a claim on.

### **16. NO PAYMENT AVOIDANCE**

If any payment by a Chargor to an Enforcing Party is avoided for any reason (including any legal limitation, disability or incapacity of or affecting a party or any other fact or circumstance), and whether or not:

- (a) the obligation to make the payment was illegal, void or substantially avoided; or
- (b) any fact or circumstance was or ought to have been within the knowledge of the Enforcing Party, that Chargor:
- (c) as an additional independent obligation indemnifies the Enforcing Party against that avoided payment; and
- (d) acknowledges that the Chargee's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made.

Any discharge or release between a Chargee and a Chargor is subject to reinstatement of the Chargee's rights under this clause.

### **17. POWER OF ATTORNEY**

#### **17.1 Appointment of attorney**

Each Chargor irrevocably appoints each Chargee, with effect on and from the time that the Charge becomes enforceable by that Chargee against it, to be its attorney to:

- (a) **(all acts necessary)** do anything necessary or desirable in the opinion of the Chargee to:
  - (i) give full effect to this document;
  - (ii) better secure the payment of the Secured Money or the performance of the Secured Obligations;
  - (iii) better secure the Chargor's Charged Property to the Chargee in a manner consistent with this document; or
  - (iv) assist in the execution or exercise of any power, including execute any transfer (including any transfer in blank) or other document;
- (b) **(Chargee powers)** exercise any power, right, discretion or remedy of the Chargee; and

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- (c) **(general)** do anything that the Chargor must or may do, or that the Chargee may do, under this document or by law, at the Chargor's cost.

A Chargee may appoint and remove substitutes, and may delegate its powers under this clause (including this power of delegation) and revoke any delegation.

### **17.2 General**

- (a) An attorney appointed under clause 17.1 may do anything contemplated by that clause even if the attorney is affected by an actual or potential conflict of interest or duty, or might benefit from doing it.
- (b) An attorney appointed under clause 17.1 may do anything contemplated by that clause in its name, in the name of the relevant Chargor or in the name of both of them.
- (c) A Chargor must ratify anything done by an attorney under clause 17.1.
- (d) Each Chargor gives the power of attorney in clause 17.1:
  - (i) to secure:
    - (A) payment of the Secured Money to the Chargee under this document and, in the case of the Owner Chargee, performance of the Secured Obligations;
    - (B) the Charged Property to the relevant Chargee in a manner consistent with this document; and
    - (C) any property interest of the relevant Chargee under this document; and
  - (ii) for valuable consideration, receipt of which is acknowledged by the Chargor.

### **17.3 What an attorney may do in Western Australia**

Without prejudice to the appointment and powers in clauses 17.1 and 17.2, each Chargor appoints each Chargee to exercise, in connection with any property in Western Australia, all or any of the rights, powers and remedies exercisable by an attorney appointed by an instrument in the form of the 19th Schedule to the *Transfer of Land Act 1893* (WA).

## **18. RELEASE AND DISCHARGE**

### **18.1 Partial release**

- (a) Each Chargee agrees that if Charged Property is Disposed of in accordance with clause 10 of the Joint Venture Agreement, it will release that property from the Charge by executing a Release Deed.
- (b) Each Chargee must do anything (including execute any document or form), and must ensure that its employees and agents do anything (including execute any document or form), that the relevant Chargor may reasonably require to give full effect to a release contemplated by clause 18.1(a).
- (c) This clause does not limit the operation of clause 16.

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### **18.2 Full discharge**

Each party acknowledges and agrees that, except as contemplated by clause 18.1, neither Chargee is under any obligation to grant a discharge of the Charge or any other Security Interest granted under this document unless:

- (a) the party seeking the discharge has no continuing or subsisting obligations under the Transaction Documents;
- (b) no Secured Money or Secured Obligation is owing to it by the party seeking the discharge;
- (c) no Secured Money or Secured Obligation is contingently owing to it by the party seeking the discharge (except where there is no reasonable likelihood of the contingent event occurring); and
- (d) that Chargee is satisfied that there is no reasonable prospect of Secured Money or a Secured Obligation arising in the future,

at the time that discharge is sought.

## **19. BENEFIT, ASSIGNMENT AND ACCESSION**

### **19.1 Owner's Capacity**

The Owner Chargee holds the benefit of this document for itself and each other member of its Owner Block from time to time.

### **19.2 Assignment**

A party may only assign, declare a trust over or otherwise deal with its rights under this document:

- (a) in the case of the Owner Chargee, if it ceases to be the Owner with the largest Participating Share in the [BHP Billiton / Rio Tinto] Owner Block, to the Owner with the largest Participant Share in that Owner Block in accordance with the Joint Venture Agreement;
- (b) in the case of the Manager, to a replacement Manager appointed in accordance with the Joint Venture Agreement; and
- (c) in any other case, with the consent of each other party.

This clause does not apply to a dealing which is the creation of a Security Interest.

### **19.3 Accession**

A JV Entity may accede to this document as a **Chargor** by executing an Accession Deed and delivering it to each Chargee. On and from the date of the Accession Deed, the relevant entity will be deemed to be a party to this document with the rights and obligations of a **Chargor**.

## **20. REGISTRATION AND STAMPING**

Each Chargor must at its own cost:

- (a) (**registration under Corporations Act**) ensure that this document is registered (and not just provisionally) against it under section 263 of the Corporations Act;
- (b) (**other registration**) ensure that this document is registered in any other way which any other party notifies to it if any other party is reasonably satisfied that registration is necessary or desirable to perfect the Charge or to protect the rights of any other party under this document;

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- (c) **(Authorisations)** obtain all necessary Authorisations in relation to this document and lodge them for registration in each jurisdiction required to perfect the Charge;
- (d) **(stamping)** ensure that this document is stamped for the proper amount in each state and territory of Australia in which this document is required to be stamped; and
- (e) **(do everything to perfect Charge)** do everything necessary in each jurisdiction required to perfect the Charge.

### **21. CONFIDENTIALITY**

#### **21.1 Confidential Information not to be disclosed**

- (a) For the purposes of this clause 21, **Confidential Information** means the terms and conditions of this document and the Transaction Documents.

It does not include information:

- (i) which is in or comes into the public domain otherwise than by disclosure in breach of this document or a Transaction Document;
  - (ii) (other than in respect of the terms and conditions of this document or a Transaction Document) already known to the person at the date of disclosure;
  - (iii) acquired from a third party who is entitled to disclose it; and
  - (iv) which is independently developed by the person receiving that information otherwise than by disclosure in breach of this document or a Transaction Document.
- (b) Each party undertakes that it will not, and will procure that its Related Corporations will not:
    - (i) disclose Confidential Information, including Confidential Information of any other party (the **Protected Party**), to any person; or
    - (ii) use Confidential Information of the Protected Party, except either:
      - (iii) with the prior written approval of the Protected Party; or
      - (iv) for the purposes of this document or the Transaction Documents, or as otherwise permitted by this clause 21.
  - (c) Each party undertakes that it will:
    - (i) promptly do anything reasonably required by another party to prevent or restrain a breach or suspected breach of this clause 21.1 or any infringement or suspected infringement whether by court proceedings or otherwise; and
    - (ii) inform each other party immediately if it becomes aware that Confidential Information has been disclosed to an unauthorised third party.

#### **21.2 Permitted disclosure**

Subject to clause 21.3, a party may disclose Confidential Information:

- (a) **(Related Corporation)** to any of its Related Corporations;
- (b) **(officers and employees)** to its directors, employees, officers and agents or of any of its Related Corporations;

## West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])

- (c) (**professional advisers**) to its professional advisers (including legal advisers) and consultants;
- (d) (**lenders**) to a bank or other financial institution (and its professional advisers including legal advisers) in connection with any loan or other financial accommodation or application for a loan or financial accommodation to it or to any of its Related Corporations or the provision of underwriting for any issue of securities;
- (e) (**potential disposals**) in connection with any potential Disposal, Security Interest or investment;
- (f) (**disposals**) to a third party to whom a party has made a Disposal of part of its Participating Interest or who has otherwise acquired an economic interest in part of a party's property;
- (g) (**required Disclosures**) to the extent required under any applicable Law or the rules or regulations of any recognised securities exchange which apply to it or to any of its Related Corporations;
- (h) (**legal proceedings**) if the disclosure is required for the purposes of any legal, administrative or other proceedings involving it or any of its Related Corporations;
- (i) (**Duties**) if and to the extent that it may be reasonably necessary in the discharge of its duties and obligations under this document or a Transaction Document;
- (j) (**Authority**) if and to the extent that it may be reasonably necessary or desirable to disclose the information to any Authority in connection with applications for any Authorisations; and
- (k) (**Customers**) to an existing or potential customer of Iron Ore Product in connection with the sale of Iron Ore Product or other arrangements for the supply of Iron Ore Product to that customer.

### 21.3 Conditions to disclosure

- (a) Any disclosure:
  - (i) under clause 21.2(d), (e) or (f) may only be made if the person to whom disclosure is to be made first agrees with the party disclosing the information, in a form enforceable by the Protected Party and which is no less onerous than the requirements of this clause 21, that the information concerned must not be disclosed to any other person for any purpose, and such disclosure may only be made for the purposes of satisfying the person to whom disclosure is made as to the value and commercial viability of the proposed transaction; and
  - (ii) under clause 21.2(a) to (c), (i) and (j) may only be made if the person to whom disclosure is to be made is informed of the confidential nature of the information and required to, in the case of an Authority, to the extent possible, respect that confidentiality.
- (b) Any Confidential Information that is required to be disclosed in legal, administrative or other proceedings (other than between the parties) pursuant to clause 21.2(h) may not be disclosed to any person unless:
  - (i) prior to that disclosure, the party intending to disclose the Confidential Information (**Disclosing Party**) notifies each other party giving full details of:
    - (A) the legal, administrative or other proceedings in relation to which disclosure is required, including to the maximum extent permitted by Law, copies of documents filed in those legal, administrative or other proceedings; and
    - (B) the Confidential Information intended to be disclosed;



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- (ii) to the maximum extent permitted by Law, the Disclosing Party gives each other party a reasonable opportunity in a court of law or other appropriate body or forum to:
  - (A) challenge whether the proposed disclosure is in accordance with the terms of this clause 21;
  - (B) challenge the obligation of the Disclosing Party or any other person to make that disclosure; or
  - (C) secure an order or ruling (including, where appropriate, an order or ruling that the disclosure should only be made on a confidential basis) to protect or preserve the confidentiality of the relevant information;
- (iii) the Disclosing Party takes all reasonable steps to preserve the Confidential Information to be disclosed, including, where appropriate, by doing all things necessary to obtain an order that the Confidential Information be disclosed in accordance with an appropriate confidentiality regime; and
- (iv) the other requirements of this clause 21 applicable to that disclosure are satisfied.

### **21.4 Law of confidentiality**

The confidentiality undertaking contained in this document will be in addition to and will in no way derogate from the obligations of the parties in respect of secret and confidential information at law, in equity or under any statute or trade or professional custom or use.

### **21.5 Former party bound**

This clause 21 will continue to bind a party after it ceases to be a party to this document.

## **22. NOTICES**

Any notice, demand, consent, certificate, approval, nomination, waiver or other similar communication given or made in connection with this document (a **notice**):

- (a) will be in writing and signed by the sender or a person duly authorised by the sender;
- (b) will be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this document:
  - (i) to the Manager: [#]
  - (ii) to the Owner Chargee: [#]
  - (iii) to a Chargor: [#]
- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

## **23. GOVERNING LAW**

### **23.1 Governing law**

- (a) This document is governed by the laws of Western Australia, Australia.

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this document on the basis that the courts of Western Australia are not an appropriate forum.

### **23.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this document in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

## **24. ANCILLARY PROVISIONS**

### **24.1 Severability**

If any of the provisions of this document is or becomes invalid, illegal or unenforceable, in whole or in part, under the law of any jurisdiction, the validity, legality or enforceability of such provision or part under the law of any other jurisdiction and the validity, legality and enforceability of the remaining provisions of this document will not in any way be affected or impaired. If any provision of this document, or its application to any person or entity or any circumstance, is invalid or unenforceable, the parties will make such suitable and equitable provision as is necessary in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

### **24.2 Variation**

No variation, modification or amendment of all or any part of this document, including the schedules to this document, will be effective unless in writing and signed by or on behalf of each party.

### **24.3 No Waiver**

No failure of any of the parties to exercise, or delay by it in exercising, any right, power or remedy in connection with this document will operate as a waiver thereof, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.

### **24.4 Remedies**

- (a) Except as otherwise provided for in this document, the rights and remedies of the parties are cumulative and not exclusive of rights and remedies provided by Law.
- (b) Without prejudice to any other rights and remedies which any party may have, each party acknowledges and agrees that damages would not be an adequate remedy for any breach by any party of the provisions of this document and any party will be entitled to seek the remedies of injunction, specific performance and other equitable relief (and the parties will not contest the appropriateness or availability thereof), for any threatened or actual breach of any provision of this document by any party and no proof of special damages will be necessary for the enforcement by any party of the rights under this document.

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### **24.5 No Merger**

The rights and obligations of the parties:

- (a) will not merge on the completion of any transaction contemplated by this document; and
- (b) will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### **24.6 Costs and Expenses**

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this document.
- (b) All stamp duty (including fines, penalties and interest) payable by a party on or in connection with this document will be borne by that party.

### **24.7 Further Assurances**

Each party agrees to do anything necessary or desirable (including executing agreements, deeds, transfers, instruments and documents) to give full effect to this document and the transactions contemplated by it.

### **24.8 Enurement**

Except as provided in this document, the provisions of this document will enure for the benefit of, and be binding on, the parties and their respective successors and permitted assigns.

### **24.9 Counterparts**

This document may be executed in any number of counterparts and by the parties on separate counterparts, each of which will be an original but all of which together will constitute one and the same instrument. This document will not take effect until each party has executed at least one counterpart.

**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton JV Entities / Rio Tinto JV Entities])**

**Schedule 1**

**INITIAL CHARGORS**

*[insert relevant JV entities]*

# West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])

## Schedule 2

### INTERPRETATION

#### 1. DEFINITIONS

The following definitions apply in this document.

**Accession Deed** means a document substantially in the form of Schedule 4.

**Additional Chargor** means any company that accedes to this document in accordance with clause 19.3.

**Authorisations** means all permissions, licences, authorisations, approvals, consents, rulings, registrations, filings, lodgements, permits, franchises, agreements, notarisations, certificates, licences, approvals, directions, declarations, authorities or exemptions from, by or with any Authority.

**Authority** means any minister, government or representative of a government or any governmental, quasi-governmental, local government, statutory, judicial, administrative, fiscal, tax, competition or regulatory authority, entity or other body, department, concession, tribunal, self-regulatory organisation established pursuant to statute or rules of a recognised stock exchange, instrumentality, agency, statutory corporation or public authority.

**BHP Billiton Group** has the meaning given in the Joint Venture Agreement.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**Called Sum** has the meaning given in the Joint Venture Agreement.

**Cash** has the meaning given in the Funding and Distribution Policy.

**Charge** means each charge created by clause 1.

**Charged Property** means all a Chargor's interest in all its property anywhere (both present and future), other than the Excluded Property.

**Chargees** means the Owner Chargee and the Manager.

**Chargor Block Member** means the Chargors' Owner and each other member of its Owner Block.

**Chargors** means each Initial Chargor and any Additional Chargor.

**Chargors' Issuer** means the Issuer of which each Chargor is a Subsidiary.

**Chargors' Owner** means the Owner of which each Chargor is a Subsidiary.

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

**Cross Charge** has the meaning given in the Joint Venture Agreement.

**Default Costs** has the meaning given in the Joint Venture Agreement.

**Default Interest** has the meaning given in the Joint Venture Agreement.

**Dispose** means, in relation to any asset, to sell, transfer, assign, declare oneself a trustee of, or part with the benefit of, or otherwise dispose of, the asset (or any interest in it, or any part of it) other than (in each case) by the creation of a Security Interest, and **Disposal** has a corresponding meaning.

**Enforcing Party** means:

- (a) a Chargee entitled under clause 4 to take action to enforce the Charge; and
- (b) a Receiver entitled under clause 5 to take action to enforce the Charge.

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

**Excluded Assets** has the meaning given in the Joint Venture Agreement.

**Excluded Property** means:

- (a) any Excluded Assets;
- (b) any Sole Risk Development or Sole Risk Opportunity;
- (c) any Prohibited Interest unless and until the relevant Chargor gives a notice in relation to it in accordance with clause 1.8; and
- (d) any other property, to the extent that:
  - (i) it is located in New South Wales, for the purposes of the mortgage duty provisions of the *Duties Act 1997* (NSW), at the date of first execution of this document;
  - (ii) it is land located in New South Wales, for the purposes of the mortgage duty provisions of the *Duties Act 1997* (NSW), at any time within 12 months after the date of first execution of this document; or
  - (iii) it is located in New South Wales, for the purposes of the mortgage duty provisions of the *Duties Act 1997* (NSW), is “relevant property” as defined in section 208(6) of the *Duties Act 1997* (NSW) and is identified in this document or identified under an arrangement in place when this document was first executed,

unless and until the *Duties Act 1997* (NSW) ceases to impose duty on mortgages or charges.

**Fixed Charge Property** means all Charged Property that is not Floating Charge Property.

**Floating Charge Property** means:

- (a) Iron Ore Product; and
- (b) any other Charged Property that the relevant Chargor deals with in the ordinary course of the day-to-day operations of the Chargor.

**Funding and Distribution Policy** has the meaning given in the Joint Venture Agreement.

**Insolvency Administration** means, in relation to a person, its winding up, or the appointment of an administrator to that person pursuant to Part 5.3A of the Corporations Act.

**Iron Ore Assets** has the meaning given in the Joint Venture Agreement.

**Iron Ore Product** has the meaning given in the Joint Venture Agreement.

**Issuer** has the meaning given in the Joint Venture Agreement.

**Joint Venture Agreement** means the West Australian Iron Ore Production Joint Venture Agreement dated [*insert*] between [the Chargees] and others.

**JV Entity** has the meaning given in the Joint Venture Agreement.

**JV Funding Amount** means:

- (a) any Called Sum payable by a Chargor Block Member to the Manager or the Chargors’ Issuer under the Transaction Documents and any Default Interest or Default Costs arising from a failure by a Chargor Block Member to pay a Called Sum;
- (b) any amount that a Chargor Block Member is required to transfer or procure the transfer of in accordance with clause 3.11(h) of the Joint Venture Agreement;

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

- (c) the amount that a Chargor Block Member is obliged to pay to purchase any NDO Loan under the Transaction Documents;
- (d) the amount that the Chargors' Owner is obliged to pay:
  - (i) under clause 6.3 of the Funding and Distribution Policy; or
  - (ii) under clause 6.4 of the Funding and Distribution Policy;
- (e) the amount of any Cash costs of a Sole Risk Development or a Sole Risk Opportunity that the Chargors' Owner or a Sole Risk Entity that is a Related Corporation of the Chargors' Owner is obliged to pay under items 1(f), 1(j) and 2(c) of schedule 4 of the Joint Venture Agreement or item 11.3 of the Funding and Distribution Policy; and
- (f) the amount of any Participant Loans owing or payable by the Chargors' Issuer or the Manager to the Owner Chargee, each on any account at any time, whether present or future, actual or contingent or incurred alone, jointly, severally or jointly and severally and without regard to the capacity in which the relevant Obligor is liable.

**Law** includes statutes, regulations, rules of the common law, principles of equity, regulatory agency policies and guidelines and security exchange rules.

**Manager** has the meaning given in the Joint Venture Agreement.

**Manager Event of Default** means, in relation to a Chargor, that Chargor entering into Insolvency Administration.

**NDO Loan** has the meaning given in the Joint Venture Agreement.

**Obligor** means:

- (a) the Chargors' Owner;
- (b) the Chargors' Issuer; and
- (c) the Manager.

**Owner** has the meaning given in the Joint Venture Agreement.

**Owner Block** has the meaning given in the Joint Venture Agreement.

**Owner Event of Default** means, in relation to a Chargor, any of the following:

- (a) a failure by any Obligor to pay:
  - (i) an amount that it is obliged to pay to purchase any NDO Loan under the Transaction Documents when due; or
  - (ii) any other Secured Money (other than any failure to repay a Participant Loan) within 30 days after the due date for payment; or
- (b) a failure by a Chargor to perform its Secured Obligations within 30 days of written notice from the Chargee requesting it to do so.

**Participant Loans** has the meaning given in the Joint Venture Agreement.

**Participant Share** has the meaning given in the Joint Venture Agreement.

**Participating Interest** has the meaning given in the Joint Venture Agreement.

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

**Priority Security Interest** means:

- (a) any Security Interest that the Chargees agree ranks in priority to the Charge; and
- (b) any Security Interest over Charged Property that ranks in priority to the Charge by operation of law.

**Prohibited Interest** means an asset or interest described in Schedule 6 unless and until the relevant Chargor gives a notice in accordance with clause 1.8 in relation to that asset or interest.

**Purchase Option** has the meaning given in the Joint Venture Agreement, and the Chargee **exercises a Purchase Option** by giving a written notice in accordance with clause 9.5(b) of the Joint Venture Agreement.

**Receiver** means a receiver or receiver and manager appointed under clause 5.

**Related Corporation** has the meaning given to **Related Body Corporate** in the Corporations Act but as if **subsidiary** had the meaning given in this document, and also includes:

- (a) in the case of Rio Tinto, any member of the Rio Tinto Group; and
- (b) in the case of BHP Billiton, any member of the BHP Billiton Group.

**Release Deed** means a document in substantially the form of Schedule 5.

**Rio Tinto Group** has the meaning given in the Joint Venture Agreement.

**Secured Money** means the money owing by a Chargor to the Chargee under clause 2, whether present or future, on actual or contingent or incurred alone, jointly, severally or jointly and severally and without regard to the capacity in which the Chargor is liable.

**Secured Obligation** means, if the Owner Chargee's Purchase Option is exercised, a Chargor's obligation to transfer to the Owner all of its Iron Ore Assets either directly or through the acquisition of securities in JV Entities owned by it in accordance with item 2 of schedule 9 of the Joint Venture Agreement.

**Security Interest** means any mortgage, pledge, lien or charge or any other security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset.

**Sole Risk Development** has the meaning given in the Joint Venture Agreement.

**Sole Risk Opportunity** has the meaning given in the Joint Venture Agreement.

**Subsidiary** has the meaning given in the Corporations Act, provided that:

- (a) an entity will also be deemed to be a Subsidiary of a body corporate if it is controlled (within the meaning of that term provided by Pt 1.2, Div 6 of the Act); and
- (b) a trust may be a Subsidiary (for the purposes of which a unit or other beneficial interest will be deemed to be a share in the capital of a body corporate) and a body corporate or a trust may be a Subsidiary of a trust.

**Transaction Document** has the meaning given in the Joint Venture Agreement.

**WA Iron Ore JV** has the meaning given in the Joint Venture Agreement.



# **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

## **2. RULES FOR INTERPRETING THIS DOCUMENT**

### **2.1 Interpretation**

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule is a reference to a clause of, or schedule to, this document.
- (f) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
- (g) A reference to a party to this document, the Transaction Documents or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to sale or sell includes to procure the sale and a reference to purchase includes to procure the purchase.
- (j) A reference to dollars and \$ is to Australian currency.
- (k) A reference to time is a reference to:
  - (i) time in the place in which the relevant event occurs; or
  - (ii) if the relevant event is to occur in more than one place, time in Perth, Western Australia.
- (l) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the immediately succeeding Business Day.
- (m) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (n) Nothing in this document is to be interpreted against a party on the ground that the party put forward this document or a relevant part of it.

### **2.2 Consents or approval**

If the doing of any act, matter or thing under this document is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

### **2.3 Method of payment**

All payments required to be made under this document must be tendered by way of direct transfer of immediately available funds to the bank account nominated in writing by the party to whom the payment is

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton JV Entities / Rio Tinto JV Entities])**

due. Any payment tendered under this document after 4pm in the local time of the bank branch from which payment is made must be taken to have been made on the next succeeding Business Day (the deemed payment date) after the date on which payment is tendered, and if the deemed payment date is after the relevant due date for payment, interest will accrue under item 1.5 accordingly.

### **2.4 Interest on amounts payable**

Interest accrues on each amount which is due and payable, but not paid, by one party to another under or in accordance with this document:

- (a) on a daily basis from the due date up to the date of actual payment;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the rate which is the sum of the Bank Bill Rate (as defined in the Joint Venture Agreement) plus a margin of 3%, calculated for successive periods of one month, with the first period commencing on the due date of the amount on which interest is payable.

The defaulting party must pay interest accrued under this item 2.4 on written demand by the non-defaulting party or, if no demand is made, on the last day of each month. The interest is payable in the currency of the unpaid amount on which it accrues.

**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton JV Entities / Rio Tinto JV Entities])**

**Schedule 3**

**NOTICE**

**TO:** *[insert names]* (Chargees)

**FROM:** *[insert namess]* (Chargor)

**West Australian Iron Ore Production Joint Venture Cross Charge ([insert name] JV Entities)**

In this document, capitalised terms have the meaning given in the West Australian Iron Ore Production Joint Venture Cross Charge ([*insert name*]) dated [*insert*] granted by the Chargor in favour of the Chargee.

The Chargor notifies the Chargees that, with effect from the date of this notice, the following assets or interests listed below have ceased to be **Prohibited Interests** for the purposes of the West Australian Iron Ore Production Joint Venture Cross Charge:

*[insert description of the relevant assets or interests that are no longer Prohibited Interests].*

Date [*insert date*]

*[insert execution clause]*

**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton JV Entities / Rio Tinto JV Entities])**

**Schedule 4**

**ACCESSION DEED**

**BY:** [insert name] (Additional Chargor)

**IN FAVOUR OF:** [insert names] (Chargees)

**West Australian Iron Ore Production Joint Venture Cross Charge ([insert name] JV Entities)**

In this document, capitalised terms have the meaning given in the West Australian Iron Ore Production Joint Venture Cross Charge ([insert name]) dated [insert] granted by the Chargor in favour of the Chargee (**Cross Charge**).

The Additional Chargor:

- (a) charges its Charged Property in favour of each Chargee on the terms set out in the Cross Charge; and
- (b) covenants for the benefit of each Chargee to observe, perform and be bound by all of the undertakings, liabilities and obligations of a Chargor under the Cross Charge.

This document is governed by the laws of Western Australia, Australia.

**EXECUTED AND DELIVERED** as a deed poll on [insert date].

[insert execution clause]

**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton JV Entities / Rio Tinto JV Entities])**

**Schedule 5**

**RELEASE DEED**

**BY:** [insert name] (Chargee)

**IN FAVOUR OF:** [insert name] (Chargor)

**West Australian Iron Ore Production Joint Venture Cross Charge ([insert name] JV Entities)**

In this document, capitalised terms have the meaning given in the West Australian Iron Ore Production Joint Venture Cross Charge ([insert name]) dated [insert] granted by the Chargor in favour of the Chargee, and **Released Property** means *[insert description of property to be released]*.

The Chargee releases the Released Property from the Cross Charge or reconveys, transfers or assigns (as appropriate) the Released Property to the Chargor free of the Cross Charge, but without affecting the rights of the Chargee in respect of all other Charged Property and without otherwise affecting the rights of the Chargee under each Transaction Document.

This document is governed by the laws of Western Australia, Australia.

**EXECUTED AND DELIVERED** as a deed poll on [insert date].

[insert execution clause]

**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton JV Entities / Rio Tinto JV Entities])**

**Schedule 6**

**PROHIBITED INTERESTS**

*[List, for each relevant Chargor, any asset or interest that cannot be initially subject to the Cross Charge because of Agreed Impediments]*

**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton JV Entities / Rio Tinto JV Entities])**

**EXECUTED AND DELIVERED as a deed.**

*[Insert execution clauses.]*

**West Australian Iron Ore  
Production Joint Venture  
Cross Charge  
([BHP Billiton Owner / Rio  
Tinto Owner / Incoming  
Owner])**

**[[BHP Billiton Owner] / [Rio Tinto Owner] / [Incoming Owner]]  
[ACN/ABN] [*insert*]  
[[Rio Tinto Owner] / [BHP Billiton Owner] / [Majority Owner]]  
[ACN/ABN] [*insert*]**

***Note:*** *This document is required when an Owner is required to grant security by way of Cross Charge.*

*If the Personal Property Securities Act applies to the creation and perfection of security interests at the time a charge in this form is granted then consequential amendments will be made to make this an effective security for the purposes of that Act.*



# **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

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**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

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**West Australian Iron Ore  
Production Joint Venture Agreement**

**Part 2**

Form of JV Entity Cross Charge

# West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])

## DATE

## PARTIES

[[BHP Billiton Owner] / [Rio Tinto Owner] / [Incoming Owner]]

[ACN/ABN] *[insert]* (Chargor)

[[Rio Tinto Owner] / [BHP Billiton Owner] / [Majority Owner]]

[ACN/ABN] *[insert]* (Chargee)

## RECITALS

- A. Under the terms of the Transaction Documents, the Obligors must perform certain financial obligations for the benefit of the Chargee and other parties to whom JV Funding Amounts may be payable, and the Chargor must perform certain non-financial obligations for the benefit of the Chargee under the Joint Venture Agreement.
- B. The Chargor is entering into this document in favour of the Chargee to secure the performance of some of those obligations.
- C. This document is a Cross Charge that is required [as a **Completion Document** under clause 6.2 of the Implementation Agreement / to satisfy the requirements set out in clause 10.8(c) of the Joint Venture Agreement].

## OPERATIVE PROVISIONS

### 1. CREATION OF CHARGE

#### 1.1 Charging provision

The Chargor as beneficial owner charges all its Charged Property in favour of the Chargee to secure the punctual payment of all Secured Money and the punctual performance of all Secured Obligations.

#### 1.2 Fixed charge

The Charge operates as a fixed charge over all Charged Property.

#### 1.3 Priority

Subject to the terms of any Priority Security Interest, the Charge is a first-ranking charge.

#### 1.4 Dealings with Charged Property

- (a) The Chargor covenants for the benefit of the Chargee that it will not:
  - (i) **(negative pledge)** create a Security Interest or permit a Security Interest to subsist over any Charged Property or the Issuer Shares; or
  - (ii) **(no Disposal)** Dispose of all or any of its Charged Property or the Issuer Shares, except as permitted by clauses 10 and 11 of the Joint Venture Agreement.
- (b) The Chargee consents to the Chargor Disposing of its Charged Property or the Issuer Shares as permitted by clause 10 or 11 of the Joint Venture Agreement.

# **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

## **1.5 Issuer Shares to become Charged Property**

If the Chargor gives the Chargee a notice in the form of Schedule 3, the Issuer Shares will automatically and immediately become part of the Charged Property without the necessity for any further act by the Chargor.

*[This clause 1.5, paragraph (b) of the definition of 'Excluded Property' and Schedule 3 can be deleted where the Cross Charge is being granted by an Incoming Owner (unless the Incoming Owner acquires the Participating Interest of an existing Owner in circumstances where the charge over the Issuer Shares is not yet required to be provided under clause 11.8 of the Joint Venture Agreement). Where this clause, paragraph (b) of the definition of Excluded Property and Schedule 3 are deleted, the Issuer Shares will form part of the Charged Property and accordingly the references to the Issuer Shares in clause 1.4 will also be deleted.]*

## **1.6 Obligations to become Secured Obligations**

If the Chargor gives the Chargee a notice in the form of Schedule 4, the obligations described in that notice will automatically and immediately become Secured Obligations without the necessity for any further act by the Chargor.

*[If this Cross Charge is granted by an Incoming Owner in accordance with clause 10.8(c) of the Joint Venture Agreement, Schedule 4 can be deleted and the definition of Secured Obligations can list the relevant obligations (unless the Incoming Owner acquires the Participating Interest of an existing Owner in circumstances where the Cross Charge is not yet required to extend to secure those obligations in accordance with arrangements agreed between the Owners).]*

## **2. UNDERTAKING TO PAY**

- (a) Subject to paragraph (b), the Chargor undertakes duly and punctually to pay to the Chargee an amount equal to each JV Funding Amount when that JV Funding Amount is due, whether or not the Chargor is the obligor, or the Chargee is the obligee, of that JV Funding Amount.
- (b) The Chargor's obligation under paragraph (a) to make a payment in relation to a JV Funding Amount is taken to be satisfied to the extent that the obligor of that JV Funding Amount makes payment of the JV Funding Amount to the relevant obligee in accordance with the Transaction Documents.

## **3. UNDERTAKING TO PERFORM**

The Chargor undertakes to the Chargee that it will perform the Secured Obligations.

## **4. ENFORCEMENT OF CHARGE**

- (a) The Chargee may take action under this document to enforce the Charge and exercise its powers under this document if an Event of Default has occurred and is continuing.
- (b) The Chargee may take action under this document to enforce the Charge and exercise its powers under this document if an Insolvency Enforcement Trigger has occurred and is continuing but the Chargee or a Receiver appointed by it may not exercise any power of sale or otherwise Dispose of any Charged Property (unless it is also permitted to enforce the Charge in accordance with paragraph (a)).
- (c) If no Event of Default or Insolvency Enforcement Trigger is continuing, the Chargee must immediately cease any action to enforce the Charge or exercise its powers under this document, including by removing any Receiver if it has been appointed and giving up possession of any Charged Property.

**West Australian Iron Ore Production Joint Venture Cross Charge**  
**([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

- (d) For the purposes of paragraph (c), the relevant Insolvency Enforcement Trigger will be deemed to be no longer continuing in the following circumstances:

<b>Form of Insolvency Enforcement Trigger</b>	<b>Event causing the Insolvency Enforcement Trigger to cease to exist</b>
Appointment of an administrator to the Chargor pursuant to Part 5.3A of the Corporations Act.	The administration of the Chargor ends.
A liquidator appointed to the Chargor:	Either:
(a) disclaims the Joint Venture Agreement by “signed writing” under section 568(1) of the Corporations Act; or	(a) the liquidator withdraws or abandons the disclaimer, or the disclaimer is otherwise set aside by the court under section 568B of the Corporations Act;
(b) applies for leave of the court in accordance with section 568 (1A) of the Corporations to disclaim the Joint Venture Agreement.	(b) the court refuses to grant leave to disclaim the Joint Venture Agreement in accordance with section 568(1) (f) of the Corporations Act;
	(c) the liquidator discontinues or abandons the application, or the application is otherwise struck out or permanently stayed by the court;
	(d) the liquidator loses its right to disclaim the Joint Venture Agreement in accordance with s568(8) of the Corporations Act; or
	(e) the liquidation is permanently stayed or terminated and the directors of the Chargor resume their management and control.
A liquidator or a deed administrator appointed to the Chargor:	Either:
(a) enters into an agreement;	(a) the liquidator or deed administrator of the Chargor:
(b) makes an offer (in writing or, if orally, in a manner capable of acceptance so as to form a binding contract);	(i) terminates the agreement;
	(ii) retracts the offer;
	(iii) retracts the invitation for offers; or
(c) issues an invitation for offers (in writing or, if orally, in a manner capable of acceptance so as to form a binding contract); or	(iv) retracts the written intention, and undertakes to the Chargee to comply with clause 1.4; or
(d) indicates in writing an intention,	

# West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])

Form of Insolvency Enforcement Trigger	Event causing the Insolvency Enforcement Trigger to cease to exist
to deal with Charged Property or the Issuer Shares in breach of clause 1.4.	(b) either: <ul style="list-style-type: none"> <li>(i) the liquidation is permanently stayed or terminated; or</li> <li>(ii) the deed of company arrangement ends or is terminated, and, in either case, the directors of the Chargor resume their management and control.</li> </ul>

## 5. APPOINTMENT OF RECEIVER

### 5.1 Power to appoint and remove

The Chargee may at any time after it becomes entitled to enforce the Charge:

- (a) appoint a Receiver of all or part of the Charged Property; and
- (b) remove any Receiver it appointed and (subject to clause 4) appoint another in its place.

Any appointment or removal under this subclause must be in writing.

### 5.2 After commencement of winding up

The power to appoint a Receiver under clause 5.1 may be exercised even though:

- (a) an order has been passed to wind up the Chargor when the Chargee becomes entitled to enforce the Charge, or when an appointment is made; or
- (b) a Receiver appointed in the circumstances specified in the preceding paragraph may not, or may not in some respects, act as the Chargor's agent.

## 6. AGENCY

### 6.1 Agent of the Chargor

Subject to clause 6.2 and the next sentence, every Receiver appointed under clause 5 will be taken to be the agent of the Chargor, and the Chargor will be responsible for the Receiver's acts, defaults and remuneration. The Chargee may, by notice to the Receiver and the Chargor, require the Receiver to act as its agent.

### 6.2 Ceasing to be agent

If for any reason (including operation of law) a Receiver ceases to be the agent of the Chargor because of an order passed to wind up the Chargor, the Receiver immediately becomes the agent of the Chargee.

## 7. POWERS OF ENFORCING PARTY

- (a) The Enforcing Party will have full power to do all or any of the following:
  - (i) **(take possession)** take possession of, collect and get in the Charged Property and for that purpose to take any proceedings (in the name of the Chargor or otherwise);

**West Australian Iron Ore Production Joint Venture Cross Charge**  
**([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

- (ii) **(give receipts)** give receipts for all money and other property that may come into the hands of the Receiver in exercise of any power given by this document;
  - (iii) **(obligations under Transaction Documents)** cause the Chargor to continue to be associated with the other parties for the purpose of fulfilling its obligations under the Transaction Documents or concur in the continuance of any of those documents;
  - (iv) **(exercise rights)** exercise all or any powers, rights, discretions and remedies of the Chargor or in connection with the Charged Property (including rights available under the Corporations Act or any other statute);
  - (v) **(raise money on Charged Property in priority)** for the purposes of clause 7(a)(iv), borrow or raise money on the security of the Charged Property in priority to this Charge;
  - (vi) **(sell assets)** sell (whether or not a Receiver has taken possession), exchange or otherwise Dispose of (absolutely or conditionally) the Charged Property (or agree to do so):
    - (A) by public auction, private sale or tender for cash or on credit;
    - (B) in one lot or in parcels; and
    - (C) with or without special conditions and otherwise on terms the Receiver considers desirable;
  - (vii) **(execute documents)** execute any document (in the name of the Chargor or otherwise) for the purpose of carrying into effect any power, right and discretion conferred on the Enforcing Party;
  - (viii) **(settle disputes)** make any settlements, arrangements or compromise that it thinks fit; and
  - (ix) **(do everything)** do or cause to be done everything with respect to the Charged Property (without being responsible for any resulting loss or damage) that it thinks necessary and which could have been done or caused to be done by the Enforcing Party if it was the absolute owner of the Charged Property.
- (b) Subject always to the obligations of the Enforcing Party under the Corporations Act an Enforcing Party may exercise its power under clause 7(a)(vi) by selling the relevant Charged Property to the Chargee.
  - (c) An Enforcing Party's powers, rights and discretions referred to in this clause 7:
    - (i) must be interpreted separately and not by reference to one another; and
    - (ii) are in addition to all other powers, rights and discretions conferred on it by law,but are subject to clause 14.
  - (d) Any legislation that adversely affects an obligation of the Chargor, or the exercise by an Enforcing Party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

**8. PROTECTION OF THIRD PARTIES**

A purchaser or other party to a disposal or dealing in attempted exercise of a power contained in this document is not:

- (a) bound to enquire whether there has been a default, whether a Receiver has been properly appointed or about the propriety or regularity of a sale, disposal or dealing; or



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- (b) affected by notice that a sale, disposal or dealing is unnecessary or improper.

Despite any irregularity or impropriety in a sale, disposal or dealing, it is to be treated, for the protection of the purchaser or other party to the disposal or dealing, as being authorised by this document and valid.

### **9. POWERS EXERCISABLE BY CHARGEE**

#### **9.1 Exercise of powers**

After the Charge has become enforceable, the Chargee may exercise any power as an Enforcing Party in addition to any power it has as the Chargee. The Chargee may do so even if a Receiver is appointed.

#### **9.2 Protection of Chargee**

The exercise of any power by the Chargee does not cause the Chargee to:

- (a) be a mortgagee in possession;
- (b) account as mortgagee in possession; or
- (c) be answerable for any act or omission for which a mortgagee in possession is liable.

### **10. REALISATION**

After the Charge has become enforceable, the Chargor must do anything, and ensure that its employees and agents do anything, that the Enforcing Party may reasonably require to assist it to realise the Charged Property and exercise any power, right, discretion or remedy including:

- (a) execute any transfer (including any transfer in blank) of, or other document in relation to, any Charged Property;
- (b) do anything that the Enforcing Party thinks is necessary or desirable under the law in force in any place where any Charged Property is situated; and
- (c) give any notice, order, direction and consent that the Enforcing Party thinks is necessary or desirable.

### **11. APPLICATION OF MONEY**

Money that an Enforcing Party receives under or because of this document is to be applied in the following order:

- (a) **(expenses)** first in payment of all expenses of and incidental to:
  - (i) the appointment of any Receiver; and
  - (ii) the exercise or attempted exercise by the Enforcing Party of any power, right or discretion referred to in clause 7 (including the Enforcing Party's reasonable remuneration);
- (b) **(outgoings)** then in payment of any other outgoings that the Enforcing Party thinks fit to pay;
- (c) **(Priority Security Interest)** then in discharging any Priority Security Interest;
- (d) **(Secured Money)** then in payment to the Chargee of the Secured Money and any amount necessary to give effect to any indemnity contained in this document; and
- (e) **(surplus)** then, subject to proper claims enforceable under other Security Interests, any surplus must be paid to the Chargor.

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**12. CONTINUING SECURITY**

The Charge is a continuing security, and remains in full force until a final irrevocable discharge of the Charge is given by the Chargee, despite any transaction or other thing (including a settlement of account or intervening payment).

**13. PROSPECTIVE LIABILITY**

The parties acknowledge that for the purpose of fixing priorities between the Charge and any subsequent charge registered or registrable under the Corporations Act and for no other purposes, the Charge secures the Chargor's prospective liability (being the liability to pay its Secured Money, its liability to perform the Secured Obligations and its liability to indemnify the Enforcing Party as provided in this document) up to a maximum of \$150 billion. The Charge may also secure prospective liabilities in excess of this specified maximum amount.

**14. ENFORCEMENT SUBJECT TO JOINT VENTURE AGREEMENT**

In exercising its rights under this document to Dispose of Charged Property:

- (a) an Enforcing Party may only Dispose of Charged Property if it Disposes of the whole or a proportionate part of the Chargor's Participating Interest; and
- (b) an Enforcing Party must comply with clause 10 of the Joint Venture Agreement unless it is exercising a Dilution Option or Purchase Option, in which case it must do so in accordance with the Joint Venture Agreement.

**15. NO MARSHALLING**

The Chargee is not under any obligation to marshal, appropriate or exercise, apply, perfect or recover any Security Interest that the Chargee holds at any time or any funds or property that the Chargee may be entitled to receive or have a claim on.

**16. NO PAYMENT AVOIDANCE**

If any payment by the Chargor to an Enforcing Party is avoided for any reason (including any legal limitation, disability or incapacity of or affecting a party or any other fact or circumstance), and whether or not:

- (a) the obligation to make the payment was illegal, void or substantially avoided; or
- (b) any fact or circumstance was or ought to have been within the knowledge of the Enforcing Party, the Chargor:
- (c) as an additional independent obligation indemnifies the Enforcing Party against that avoided payment; and
- (d) acknowledges that the Chargee's rights are to be reinstated and will be the same in relation to that amount as if the application, or the payment or transaction giving rise to it, had not been made.

Any discharge or release between the Chargee and the Chargor is subject to reinstatement of the Chargee's rights under this clause.

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### **17. POWER OF ATTORNEY**

#### **17.1 Appointment of attorney**

The Chargor irrevocably appoints the Chargee, with effect on and from the time that the Charge becomes enforceable, to be its attorney to:

- (a) **(all acts necessary)** do anything necessary or desirable in the opinion of the Chargee to:
  - (i) give full effect to this document;
  - (ii) better secure the payment of the Secured Money or the performance of the Secured Obligations;
  - (iii) better secure the Charged Property to the Chargee in a manner consistent with this document; or
  - (iv) assist in the execution or exercise of any power,  
including execute any transfer (including any transfer in blank) or other document;
- (b) **(Chargee powers)** exercise any power, right, discretion or remedy of the Chargee; and
- (c) **(general)** do anything that the Chargor must or may do, or that the Chargee may do, under this document or by law, at the Chargor's cost.

The Chargee may appoint and remove substitutes, and may delegate its powers under this clause (including this power of delegation) and revoke any delegation.

#### **17.2 General**

- (a) An attorney appointed under clause 17.1 may do anything contemplated by that clause even if the attorney is affected by an actual or potential conflict of interest or duty, or might benefit from doing it.
- (b) An attorney appointed under clause 17.1 may do anything contemplated by that clause in its name, in the name of the Chargor or in the name of both of them.
- (c) The Chargor must ratify anything done by an attorney under clause 17.1.
- (d) The Chargor gives the power of attorney in clause 17.1:
  - (i) to secure:
    - (A) payment of the Secured Money to the Chargee under this document and performance of the Secured Obligations;
    - (B) the Charged Property to the Chargee in a manner consistent with this document; and
    - (C) any property interest of the Chargee under this document; and
  - (ii) for valuable consideration, receipt of which is acknowledged by the Chargor.

#### **17.3 What an attorney may do in Western Australia**

Without prejudice to the appointment and powers in clauses 17.1 and 17.2, the Chargor appoints the Chargee to exercise, in connection with any property in Western Australia, all or any of the rights, powers and remedies exercisable by an attorney appointed by an instrument in the form of the 19th Schedule to the *Transfer of Land Act 1893* (WA).

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### **18. RELEASE AND DISCHARGE**

#### **18.1 Partial release**

- (a) The Chargee agrees that if Charged Property is Disposed of in accordance with clause 10 of the Joint Venture Agreement, it will release that property from the Charge by executing a Release Deed.
- (b) The Chargee must do anything (including execute any document or form), and must ensure that its employees and agents do anything (including execute any document or form), that the Chargor may reasonably require to give full effect to a release contemplated by clause 18.1(a).
- (c) This clause does not limit the operation of clause 16.

#### **18.2 Full discharge**

Each party acknowledges and agrees that, except as contemplated by clause 18.1, the Chargee is not under any obligation to grant a discharge of this Charge or any other Security Interest granted under this document unless:

- (a) the party seeking the discharge has no continuing or subsisting obligations under the Transaction Documents;
- (b) no Secured Money or Secured Obligation is owing by the party seeking the discharge;
- (c) no Secured Money or Secured Obligation is contingently owing by the party seeking the discharge (except where there is no reasonable likelihood of the contingent event occurring); and
- (d) the Chargee is satisfied that there is no reasonable prospect of Secured Money or a Secured Obligation arising in the future,

at the time that discharge is sought.

### **19. BENEFIT AND ASSIGNMENT**

#### **19.1 Chargee's capacity**

The Chargee holds the benefit of this document for itself and each other member of its Owner Block from time to time.

#### **19.2 Assignment**

A party may only assign, declare a trust over or otherwise deal with its rights under this document:

- (a) as permitted by the Joint Venture Agreement; or
- (b) with the consent of each other party.

This clause does not apply to a dealing which is the creation of a Security Interest.

### **20. REGISTRATION AND STAMPING**

The Chargor must at its own cost:

- (a) (**registration under Corporations Act**) ensure that this document is registered (and not just provisionally) against it under section 263 of the Corporations Act;

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- (b) **(other registration)** ensure that this document is registered in any other way which any other party notifies to it if any other party is reasonably satisfied that registration is necessary or desirable to perfect the Charge or to protect the rights of any other party under this document;
- (c) **(Authorisations)** obtain all necessary Authorisations in relation to this document and lodge them for registration in each jurisdiction required to perfect the Charge;
- (d) **(stamping)** ensure that this document is stamped for the proper amount in each state and territory of Australia in which this document is required to be stamped; and
- (e) **(do everything to perfect Charge)** do everything necessary in each jurisdiction required to perfect the Charge.

## **21. CONFIDENTIALITY**

### **21.1 Confidential Information not to be disclosed**

- (a) For the purposes of this clause 21, **Confidential Information** means the terms and conditions of this document and the Transaction Documents.  
It does not include information:
  - (i) which is in or comes into the public domain otherwise than by disclosure in breach of this document or a Transaction Document;
  - (ii) (other than in respect of the terms and conditions of this document or a Transaction Document) already known to the person at the date of disclosure;
  - (iii) acquired from a third party who is entitled to disclose it; and
  - (iv) which is independently developed by the person receiving that information otherwise than by disclosure in breach of this document or a Transaction Document.
- (b) Each party undertakes that it will not, and will procure that its Related Corporations will not:
  - (i) disclose Confidential Information, including Confidential Information of any other party (the **Protected Party**), to any person; or
  - (ii) use Confidential Information of the Protected Party,  
except either:
    - (iii) with the prior written approval of the Protected Party; or
    - (iv) for the purposes of this document or the Transaction Documents, or as otherwise permitted by this clause 21.
- (c) Each party undertakes that it will:
  - (i) promptly do anything reasonably required by another party to prevent or restrain a breach or suspected breach of this clause 21.1 or any infringement or suspected infringement whether by court proceedings or otherwise; and
  - (ii) inform each other party immediately if it becomes aware that Confidential Information has been disclosed to an unauthorised third party.

### **21.2 Permitted disclosure**

Subject to clause 21.3, a party may disclose Confidential Information:

- (a) **(Related Corporation)** to any of its Related Corporations;

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- (b) **(officers and employees)** to its directors, employees, officers and agents or of any of its Related Corporations;
- (c) **(professional advisers)** to its professional advisers (including legal advisers) and consultants;
- (d) **(lenders)** to a bank or other financial institution (and its professional advisers including legal advisers) in connection with any loan or other financial accommodation or application for a loan or financial accommodation to it or to any of its Related Corporations or the provision of underwriting for any issue of securities;
- (e) **(potential disposals)** in connection with any potential Disposal, Security Interest or investment;
- (f) **(disposals)** to a third party to whom a party has made a Disposal of part of its Participating Interest or who has otherwise acquired an economic interest in part of a party's property;
- (g) **(required Disclosures)** to the extent required under any applicable Law or the rules or regulations of any recognised securities exchange which apply to it or to any of its Related Corporations;
- (h) **(legal proceedings)** if the disclosure is required for the purposes of any legal, administrative or other proceedings involving it or any of its Related Corporations;
- (i) **(Duties)** if and to the extent that it may be reasonably necessary in the discharge of its duties and obligations under this document or a Transaction Document;
- (j) **(Authority)** if and to the extent that it may be reasonably necessary or desirable to disclose the information to any Authority in connection with applications for any Authorisations; and
- (k) **(Customers)** to an existing or potential customer of Iron Ore Product (as defined in the Joint Venture Agreement) in connection with the sale of Iron Ore Product or other arrangements for the supply of Iron Ore Product to that customer.

**21.3 Conditions to disclosure**

- (a) Any disclosure:
  - (i) under clause 21.2(d), (e) or (f) may only be made if the person to whom disclosure is to be made first agrees with the party disclosing the information, in a form enforceable by the Protected Party and which is no less onerous than the requirements of this clause 21, that the information concerned must not be disclosed to any other person for any purpose, and such disclosure may only be made for the purposes of satisfying the person to whom disclosure is made as to the value and commercial viability of the proposed transaction; and
  - (ii) under clause 21.2(a) to (c), (i) and (j) may only be made if the person to whom disclosure is to be made is informed of the confidential nature of the information and required to, in the case of an Authority, to the extent possible, respect that confidentiality.
- (b) Any Confidential Information that is required to be disclosed in legal, administrative or other proceedings (other than between the parties) pursuant to clause 21.2(h) may not be disclosed to any person unless:
  - (i) prior to that disclosure, the party intending to disclose the Confidential Information (**Disclosing Party**) notifies each other party giving full details of:
    - (A) the legal, administrative or other proceedings in relation to which disclosure is required, including to the maximum extent permitted by Law, copies of documents filed in those legal, administrative or other proceedings; and

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- (B) the Confidential Information intended to be disclosed;
- (ii) to the maximum extent permitted by Law, the Disclosing Party gives each other party a reasonable opportunity in a court of law or other appropriate body or forum to:
  - (A) challenge whether the proposed disclosure is in accordance with the terms of this clause 21;
  - (B) challenge the obligation of the Disclosing Party or any other person to make that disclosure; or
  - (C) secure an order or ruling (including, where appropriate, an order or ruling that the disclosure should only be made on a confidential basis) to protect or preserve the confidentiality of the relevant information;
- (iii) the Disclosing Party takes all reasonable steps to preserve the Confidential Information to be disclosed, including, where appropriate, by doing all things necessary to obtain an order that the Confidential Information be disclosed in accordance with an appropriate confidentiality regime; and
- (iv) the other requirements of this clause 21 applicable to that disclosure are satisfied.

**21.4 Law of confidentiality**

The confidentiality undertaking contained in this document will be in addition to and will in no way derogate from the obligations of the parties in respect of secret and confidential information at law, in equity or under any statute or trade or professional custom or use.

**21.5 Former party bound**

This clause 21 will continue to bind a party after it ceases to be a party to this document.

**22. NOTICES**

Any notice, demand, consent, certificate, approval, nomination, waiver or other similar communication given or made in connection with this document (a **notice**):

- (a) will be in writing and signed by the sender or a person duly authorised by the sender;
- (b) will be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this document:
  - (i) to the Chargee: [#]
  - (ii) to the Chorgor: [#]
- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

**23. GOVERNING LAW**

**23.1 Governing law**

- (a) This document is governed by the laws of Western Australia, Australia.

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- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this document on the basis that the courts of Western Australia are not an appropriate forum.

### **23.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this document in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

## **24. ANCILLARY PROVISIONS**

### **24.1 Severability**

If any of the provisions of this document is or becomes invalid, illegal or unenforceable, in whole or in part, under the law of any jurisdiction, the validity, legality or enforceability of such provision or part under the law of any other jurisdiction and the validity, legality and enforceability of the remaining provisions of this document will not in any way be affected or impaired. If any provision of this document, or its application to any person or entity or any circumstance, is invalid or unenforceable, the parties will make such suitable and equitable provision as is necessary in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

### **24.2 Variation**

No variation, modification or amendment of all or any part of this document, including the schedules to this document, will be effective unless in writing and signed by or on behalf of each party.

### **24.3 No Waiver**

No failure of any of the parties to exercise, or delay by it in exercising, any right, power or remedy in connection with this document will operate as a waiver thereof, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy.

### **24.4 Remedies**

- (a) Except as otherwise provided for in this document, the rights and remedies of the parties are cumulative and not exclusive of rights and remedies provided by Law.
- (b) Without prejudice to any other rights and remedies which any party may have, each party acknowledges and agrees that damages would not be an adequate remedy for any breach by any party of the provisions of this document and any party will be entitled to seek the remedies of injunction, specific performance and other equitable relief (and the parties will not contest the appropriateness or availability thereof), for any threatened or actual breach of any provision of this document by any party and no proof of special damages will be necessary for the enforcement by any party of the rights under this document.



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### **24.5 No Merger**

The rights and obligations of the parties:

- (a) will not merge on the completion of any transaction contemplated by this document; and
- (b) will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

### **24.6 Costs and Expenses**

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this document.
- (b) All stamp duty (including fines, penalties and interest) payable by a party on or in connection with this document will be borne by that party.

### **24.7 Further Assurances**

Each party agrees to do anything necessary or desirable (including executing agreements, deeds, transfers, instruments and documents) to give full effect to this document and the transactions contemplated by it.

### **24.8 Enurement**

Except as provided in this document, the provisions of this document will enure for the benefit of, and be binding on, the parties and their respective successors and permitted assigns.

### **24.9 Counterparts**

This document may be executed in any number of counterparts and by the parties on separate counterparts, each of which will be an original but all of which together will constitute one and the same instrument. This document will not take effect until each party has executed at least one counterpart.

# West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])

## Schedule 1

### INTERPRETATION

#### 1. DEFINITIONS

The following definitions apply in this document.

**Authorisations** means all permissions, licences, authorisations, approvals, consents, rulings, registrations, filings, lodgements, permits, franchises, agreements, notarisations, certificates, licences, approvals, directions, declarations, authorities or exemptions from, by or with any Authority.

**Authority** means any minister, government or representative of a government or any governmental, quasi-governmental, local government, statutory, judicial, administrative, fiscal, tax, competition or regulatory authority, entity or other body, department, concession, tribunal, self-regulatory organisation established pursuant to statute or rules of a recognised stock exchange, instrumentality, agency, statutory corporation or public authority.

**BHP Billiton Group** has the meaning given in the Joint Venture Agreement.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.

**Called Sum** has the meaning given in the Joint Venture Agreement.

**Cash** has the meaning given in the Funding and Distribution Policy.

**Charge** means the charge created by clause 1.

**Charged Property** means all the Chargor's interest in all its property anywhere (both present and future) including the Chargor's Participating Interest, other than the Excluded Property.

**Chargor Block Member** means the Chargor and each other member of the Chargor's Owner Block.

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

**Default Costs** has the meaning given in the Joint Venture Agreement.

**Default Interest** has the meaning given in the Joint Venture Agreement.

**Dilution Option** has the meaning given in the Joint Venture Agreement.

**Dispose** means, in relation to any asset, to sell, transfer, assign, declare oneself a trustee of, or part with the benefit of, or otherwise dispose of, the asset (or any interest in it, or any part of it) other than (in each case) by the creation of a Security Interest, and **Disposal** has a corresponding meaning.

**Enforcing Party** means:

- (a) the Chargee entitled under clause 4 to take action to enforce the Charge; and
- (b) a Receiver entitled under clause 5 to take action to enforce the Charge.

**Event of Default** means any of the following:

- (a) a failure by any Obligor to pay:
  - (i) an amount that it is obliged to pay to purchase any NDO Loan under the Transaction Documents when due; or
  - (ii) any other Secured Money (other than any failure to repay a Participant Loan) within 30 days after the due date for payment; or

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- (b) a failure by the Chargor to perform its Secured Obligations within 30 days of written notice from the Chargee requesting it to do so.

**Excluded Assets** has the meaning given in the Joint Venture Agreement.

**Excluded Property** means:

- (a) any Excluded Assets;
- (b) the Issuer Shares unless and until the Chargor gives a notice in accordance with clause 1.5; and
- (c) any other property, to the extent that:
  - (i) it is located in New South Wales, for the purposes of the mortgage duty provisions of the *Duties Act 1997* (NSW), at the date of first execution of this document;
  - (ii) it is land located in New South Wales, for the purposes of the mortgage duty provisions of the *Duties Act 1997* (NSW), at any time within 12 months after the date of first execution of this document; or
  - (iii) it is located in New South Wales, for the purposes of the mortgage duty provisions of the *Duties Act 1997* (NSW), is “relevant property” as defined in section 208(6) of the *Duties Act 1997* (NSW) and is identified in this document or identified under an arrangement in place when this document was first executed,unless and until the *Duties Act 1997* (NSW) ceases to impose duty on mortgages or charges.

**Funding and Distribution Policy** has the meaning given in the Joint Venture Agreement.

**Implementation Agreement** has the meaning given in the Joint Venture Agreement.

**Insolvency Enforcement Trigger** means:

- (a) the appointment of an administrator to the Chargor pursuant to Part 5.3A of the Corporations Act;
- (b) a liquidator appointed to the Chargor:
  - (i) disclaims the Joint Venture Agreement by “signed writing” under section 568(1) of the Corporations Act; or
  - (ii) applies for leave of the court in accordance with section 568(1A) of the Corporations to disclaim the Joint Venture Agreement; or
- (c) a liquidator or a deed administrator appointed to the Chargor:
  - (i) enters into an agreement;
  - (ii) makes an offer (in writing or, if orally, in a manner capable of acceptance so as to form a binding contract);
  - (iii) issues an invitation for offers (in writing or, if orally, in a manner capable of acceptance so as to form a binding contract); or
  - (iv) indicates in writing an intention,to deal with Charged Property or the Issuer Shares in breach of clause 1.4.

**Iron Ore Assets** has the meaning given in the Joint Venture Agreement.

**Issuer Shares** means the shares held by the Chargor in the [BHP Billiton Issuer / Rio Tinto Issuer].

**Joint Venture Agreement** means the West Australian Iron Ore Production Joint Venture Agreement dated [*insert*] between [the Chargor, the Chargee] and others.

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**JV Entity** has the meaning given in the Joint Venture Agreement.

**JV Funding Amount** means:

- (a) any Called Sum payable by a Chargor Block Member to the Manager or the [BHP Billiton Issuer / Rio Tinto Issuer] under the Transaction Documents and any Default Interest or Default Costs arising from a failure by a Chargor Block Member to pay a Called Sum;
- (b) any amount that a Chargor Block Member is required to transfer or procure the transfer of in accordance with clause 3.11(h) of the Joint Venture Agreement;
- (c) the amount that a Chargor Block Member is obliged to pay to purchase any NDO Loan under the Transaction Documents;
- (d) the amount that the Chargor is obliged to pay:
  - (i) under clause 6.3 of the Funding and Distribution Policy; or
  - (ii) under clause 6.4 of the Funding and Distribution Policy;
- (e) the amount of any Cash costs of a Sole Risk Development or a Sole Risk Opportunity that the Chargor or a Sole Risk Entity that is a Related Corporation of the Chargor is obliged to pay under items 1(f), 1(j) and 2(c) of schedule 4 of the Joint Venture Agreement or item 11.3 of the Funding and Distribution Policy; and
- (f) the amount of any Participant Loans owing or payable by the [BHP Billiton Issuer / Rio Tinto Issuer] or the Manager to the Chargee,

each on any account at any time, whether present or future, actual or contingent or incurred alone, jointly, severally or jointly and severally and without regard to the capacity in which the relevant Obligor is liable.

**Law** includes statutes, regulations, rules of the common law, principles of equity, regulatory agency policies and guidelines and security exchange rules.

**Manager** has the meaning given in the Joint Venture Agreement.

**NDO Loan** has the meaning given in the Joint Venture Agreement.

**Non-Defaulting Owner** has the meaning given in the Joint Venture Agreement.

**Obligor** means:

- (a) the Owner;
- (b) the [BHP Billiton / Rio Tinto] Issuer; and
- (c) the Manager.

**Owner Block** has the meaning given in the Joint Venture Agreement.

**Participant Loans** has the meaning given in the Joint Venture Agreement.

**Participating Interest** has the meaning given in the Joint Venture Agreement.

**Priority Security Interest** means:

- (a) any Security Interest that the Chargee agrees ranks in priority to the Charge; and
- (b) any Security Interest over Charged Property that ranks in priority to the Charge by operation of law.

**Purchase Option** has the meaning given in the Joint Venture Agreement and the Chargee **exercises a Purchase Option** by giving a written notice in accordance with clause 9.5(b) of the Joint Venture Agreement.

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

**Receiver** means a receiver or receiver and manager appointed under clause 5.

**Related Corporation** has the meaning given to **Related Body Corporate** in the Corporations Act but as if **subsidiary** had the meaning given in this document, and also includes:

- (a) in the case of Rio Tinto, any member of the Rio Tinto Group; and
- (b) in the case of BHP Billiton, any member of the BHP Billiton Group.

**Release Deed** means a document in substantially the form of Schedule 2.

**Rio Tinto Group** has the meaning given in the Joint Venture Agreement.

**Secured Money** means the money owing by the Chargor to the Chargee under clause 2, whether present or future, on actual or contingent or incurred alone, jointly, severally or jointly and severally and without regard to the capacity in which the Chargor is liable.

**Secured Obligation** means each of the following obligations:

- (a) unless and until a notice is given in the form of Schedule 4, none; or
- (b) if a notice is given in the form of Schedule 4, each obligation listed in the notice.

**Security Interest** means any mortgage, pledge, lien or charge or any other security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset.

**Sole Risk Development** has the meaning given in the Joint Venture Agreement.

**Sole Risk Opportunity** has the meaning given in the Joint Venture Agreement.

**Subsidiary** has the meaning given in the Corporations Act, provided that:

- (a) an entity will also be deemed to be a Subsidiary of a body corporate if it is controlled (within the meaning of that term provided by Pt 1.2, Div 6 of the Act); and
- (b) a trust may be a Subsidiary (for the purposes of which a unit or other beneficial interest will be deemed to be a share in the capital of a body corporate) and a body corporate or a trust may be a Subsidiary of a trust.

**Transaction Document** has the meaning given in the Joint Venture Agreement.

# **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

## **2. RULES FOR INTERPRETING THIS DOCUMENT**

### **2.1 Interpretation**

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule is a reference to a clause of, or schedule to, this document.
- (f) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
- (g) A reference to a party to this document, the Transaction Documents or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to sale or sell includes to procure the sale and a reference to purchase includes to procure the purchase.
- (j) A reference to dollars and \$ is to Australian currency.
- (k) A reference to time is a reference to:
  - (i) time in the place in which the relevant event occurs; or
  - (ii) if the relevant event is to occur in more than one place, time in Perth, Western Australia.
- (l) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the immediately succeeding Business Day.
- (m) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- (n) Nothing in this document is to be interpreted against a party on the ground that the party put forward this document or a relevant part of it.

### **2.2 Consents or approval**

If the doing of any act, matter or thing under this document is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

### **2.3 Method of payment**

All payments required to be made under this document must be tendered by way of direct transfer of immediately available funds to the bank account nominated in writing by the party to whom the payment is

## **West Australian Iron Ore Production Joint Venture Cross Charge ([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

due. Any payment tendered under this document after 4pm in the local time of the bank branch from which payment is made must be taken to have been made on the next succeeding Business Day (the deemed payment date) after the date on which payment is tendered, and if the deemed payment date is after the relevant due date for payment, interest will accrue under item 2.4 accordingly.

### **2.4 Interest on amounts payable**

Interest accrues on each amount which is due and payable, but not paid, by one party to another under or in accordance with this document:

- (a) on a daily basis from the due date up to the date of actual payment;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the rate which is the sum of the Bank Bill Rate (as defined in the Joint Venture Agreement) plus a margin of 3%, calculated for successive periods of one month, with the first period commencing on the due date of the amount on which interest is payable.

The defaulting party must pay interest accrued under this item 2.4 on written demand by the non-defaulting party or, if no demand is made, on the last day of each month. The interest is payable in the currency of the unpaid amount on which it accrues.

**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

**Schedule 2**

**RELEASE DEED**

**BY:** [insert name] (Chargee)

**IN FAVOUR OF:** [insert name] (Chargor)

**West Australian Iron Ore Production Joint Venture Cross Charge ([insert name])**

In this document, capitalised terms have the meaning given in the West Australian Iron Ore Production Joint Venture Cross Charge ([insert name]) dated [insert] granted by the Chargor in favour of the Chargee, and **Released Property** means [insert description of property to be released].

The Chargee releases the Released Property from the Cross Charge or reconveys, transfers or assigns (as appropriate) the Released Property to the Chargor free of the Cross Charge, but without affecting the rights of the Chargee in respect of all other Charged Property and without otherwise affecting the rights of the Chargee under each Transaction Document.

This document is governed by the laws of Western Australia, Australia.

**EXECUTED AND DELIVERED** as a deed poll on [insert date].

[insert execution clause]



**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

**Schedule 3**

**NOTICE—ISSUER SHARES**

**TO:** [insert name] (Chargee)

**FROM:** [insert name] (Chargor)

**West Australian Iron Ore Production Joint Venture Cross Charge ([insert name])**

In this document, capitalised terms have the meaning given in the West Australian Iron Ore Production Joint Venture Cross Charge ([insert name]) dated [insert] granted by the Chargor in favour of the Chargee.

The Chargor notifies the Chargee that, with effect from the date of this notice, the Issuer Shares have ceased to be Excluded Property.

Date [insert date]

[insert execution clause]

**West Australian Iron Ore Production Joint Venture Cross Charge  
([BHP Billiton Owner / Rio Tinto Owner / Incoming Owner])**

**Schedule 4**

**NOTICE—SECURED OBLIGATIONS**

**TO:** [insert name] (Chargee)

**FROM:** [insert name] (Chargor)

**West Australian Iron Ore Production Joint Venture Cross Charge ([insert name])**

In this document, capitalised terms have the meaning given in the West Australian Iron Ore Production Joint Venture Cross Charge ([insert name]) dated [insert] granted by the Chargor in favour of the Chargee.

The Chargor notifies the Chargee that, with effect from the date of this notice, the following obligations are **Secured Obligations** for the purposes of the West Australian Iron Ore Production Joint Venture Cross Charge:

- (1) if the Purchase Option is exercised by the Chargee, to transfer to the Chargee all of its Iron Ore Assets, either directly or through the acquisition of securities in JV Entities owned by it in accordance with item 2 of schedule 9 of the Joint Venture Agreement; and
- (2) if the Dilution Option is exercised by the Chargee, to assign to the Non-Defaulting Owner a proportion of its Participating Interest of any Iron Ore Assets and Participant Loans (to the extent that the Dilution Option is effected by way of assignment) in accordance with clause 9.8 of the Joint Venture Agreement.

Date [insert date]

[insert execution clause]

**EXECUTED AND DELIVERED** as a deed.

[Insert execution clauses]

**West Australian Iron Ore  
Production Joint Venture Agreement**

**Schedule 13**

**Creditor Deed Poll**

**West Australian Iron Ore  
Production Joint Venture  
Creditor Deed Poll  
([BHP Billiton/Rio Tinto])**

**Each company listed in Schedule 1**

***Note:** This is the form of Creditor Deed Poll  
contemplated by item 1.14 of the Funding and  
Distribution Policy.*

# **West Australian Iron Ore Production Joint Venture Creditor Deed Poll ([BHP Billiton/Rio Tinto])**

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# West Australian Iron Ore Production Joint Venture Creditor Deed Poll ([BHP Billiton/Rio Tinto])

**DATE**

**BY**

**Each company listed in Schedule 1**  
(each a **Creditor**)

**IN FAVOUR OF**

**Each Shareholder and each Debenture Holder (as defined in the Funding and Distribution Policy) in relation to [BHP Billiton Issuer / Rio Tinto Issuer] (each a Beneficiary)**

## **RECITALS**

- A. Each Creditor provides or may provide Iron Ore Loans, Excluded Loans or Sole Risk Loans to one or more [BHP Billiton / Rio Tinto] JV Entities.
- B. Each Creditor is entering into this document in favour of the Beneficiaries to set out the terms on which Iron Ore Loans, Excluded Loans and Sole Risk Loans may be repaid.
- C. This document is a Creditor Deed Poll required [as a **Completion Document** under the Implementation Agreement / under item 1.14 of the Funding and Distribution Policy].

## **OPERATIVE PROVISIONS**

### **1. UNDERTAKING TO COMPLY**

*[If a Creditor signing a deed in this form after Completion has made one kind of loan only, then only the relevant subclause needs to be inserted, and the irrelevant subclauses may be deleted. Consequential changes will be made to Recitals A and B.]*

#### **1.1 Iron Ore Liabilities**

Each Creditor:

- (a) acknowledges that Cash or other assets forming part of:
  - (i) Excluded Assets; or
  - (ii) Sole Risk Assets,must not be used to discharge any liability of a [BHP Billiton / Rio Tinto] JV Entity to the Creditor that is an Iron Ore Loan; and
- (b) undertakes to the Beneficiaries that it will not require repayment of any Iron Ore Loan owing or payable to it in any way that would result in a breach of the Funding and Distribution Policy.

#### **1.2 Excluded Liabilities**

Each Creditor:

- (a) acknowledges that Cash or other assets forming part of:
  - (i) Iron Ore Assets; or

## **West Australian Iron Ore Production Joint Venture Creditor Deed Poll ([BHP Billiton/Rio Tinto])**

- (ii) Sole Risk Assets (unless a Related Corporation of the Creditor is the Sole Funding Party or Sole Risk Entity), must not be used to discharge any liability of a [BHP Billiton / Rio Tinto] JV Entity to the Creditor that is an Excluded Loan; and
- (b) undertakes to the Beneficiaries that it will not require repayment of any Excluded Loan owing or payable to it in any way that would result in a breach of the Funding and Distribution Policy.

### **1.3 Sole Risk Liabilities**

Each Creditor:

- (a) acknowledges that Cash or other assets forming part of:
  - (i) Iron Ore Assets; or
  - (ii) Excluded Assets (unless a Related Corporation of the Creditor is the Sole Funding Party or Sole Risk Entity), must not be used to discharge any liability of a [BHP Billiton / Rio Tinto] JV Entity to the Creditor that is a Sole Risk Loan; and
- (b) undertakes to the Beneficiaries that it will not require repayment of any Sole Risk Loan owing or payable to it in any way that would result in a breach of the Funding and Distribution Policy.

## **2. [HOLDING MONEYS ON TRUST]**

[Each Creditor undertakes to the Beneficiaries that if (despite clause 1.2) it receives Cash or other assets forming part of Iron Ore Assets as a payment in respect of Excluded Loans then, unless and until the requirements of item 6.3(a) of the Funding and Distribution Policy have been complied with, it will hold the payment on trust for the Beneficiaries in proportion to their Participating Shares, and will account to them accordingly.]

*[The text above can be deleted if the Creditor or Creditors providing the Creditor Deed Poll are not providing (and will not provide) any Excluded Loans.]*

[Each Creditor undertakes to the Beneficiaries that if (despite clause 1.3) it receives Cash or other assets forming part of Iron Ore Assets as a payment in respect of Sole Risk Loans then, unless and until the requirements of item 11.9(e) of the Funding and Distribution Policy (to the extent applicable) have been complied with, it will hold the payment on trust for the Beneficiaries in proportion to their Participating Shares, and will account to them accordingly.]

*[The text above can be deleted if the Creditor or Creditors providing the Creditor Deed Poll are not providing (and will not provide) any Sole Risk Loans.]*

## **3. AMENDMENT**

This document may only be amended or replaced in respect of loans owing or payable to any Creditor by a deed signed by that Creditor and each person that is a Beneficiary at that time.

## **4. NOTICES**

Clause 21.1 (Notices) of the Joint Venture Agreement applies to all notices, consents or other communications under this document, on the basis that each Creditor notifies the Beneficiaries that its

## **West Australian Iron Ore Production Joint Venture Creditor Deed Poll ([BHP Billiton/Rio Tinto])**

address is the address set out opposite its name in Schedule 1, and each Beneficiary's address is the address as specified in clause 21.1 of the Joint Venture Agreement, or the address or fax number last notified by the intended recipient to the sender after the date of this document.

### **5. GOVERNING LAW**

#### **5.1 Governing law**

- (a) This document is governed by the laws of Western Australia, Australia.
- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this document on the basis that the courts of Western Australia are not an appropriate forum.

#### **5.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this document in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

### **6. ANCILLARY PROVISIONS**

Clauses 21.2 (Severability), 21.4 (No Waiver), 21.5 (Remedies), 21.6 (No Merger), 21.7 (Costs and Expenses), 21.9 (Further Assurances), 21.11 (Enurement) and 21.13 (Counterparts) of the Joint Venture Agreement apply to this document as if set out in full in this document (with any necessary changes).



**West Australian Iron Ore Production Joint Venture  
Creditor Deed Poll ([BHP Billiton/Rio Tinto])**

**Schedule 1**

**CREDITORS**

*[insert relevant creditors]*

# **West Australian Iron Ore Production Joint Venture Creditor Deed Poll ([BHP Billiton/Rio Tinto])**

## **Schedule 2**

### **INTERPRETATION**

#### **1. DEFINITIONS**

In this document **Joint Venture Agreement** means the West Australian Iron Ore Production Joint Venture Agreement, including the Funding and Distribution Policy, dated [*insert*] between the Owner, the [Rio Tinto / BHP Billiton] Owner and others.

#### **2. JOINT VENTURE AGREEMENT DEFINITIONS**

Any term used in this document that is not defined in this document but is defined in the Joint Venture Agreement has the meaning given to it in schedule 1 of the Joint Venture Agreement.

#### **3. RULES FOR INTERPRETING THIS DOCUMENT**

- (a) All rules for interpreting the Joint Venture Agreement apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- (b) All references to **clauses** are references to clauses (including subclauses and paragraphs) in this document unless specifically stated otherwise in this document.

**West Australian Iron Ore Production Joint Venture  
Creditor Deed Poll ([BHP Billiton/Rio Tinto])**

**EXECUTED AND DELIVERED** as a deed poll.

*[Insert execution clauses once agreed.]*

# West Australian Iron Ore Production Joint Venture Agreement

## Schedule 14

### Existing Cross Charges

#### Part 1—BHP Billiton Existing JV Cross Charges

Cross Charge	Parties
1. <b>Mt Newman Joint Venture Deed of Cross Charge</b> ASIC Charge No. 215643 dated 4 May 1988	—BHP Billiton Minerals Pty Limited ( <i>Chargor</i> ) —Pilbara Iron Limited (in liquidation with its residual assets or rights, title or other interests in the Joint Venture assigned to BHP Billiton Minerals Pty Limited under Deed of Assignment dated 16 September 1997) —Mitsui-C. Itoh Iron Pty Ltd —CI Minerals Australia Pty Ltd ( <i>Participants</i> )
2. <b>Wheelarra Joint Venture Deed of Cross Charge</b> ASIC Charge No. 1101594 dated 28 September 2004	—Mt Newman Mining Co. Pty. Limited ( <i>Manager</i> ) —BHP Iron Ore (Jimblebar) Pty Ltd ( <i>Chargor</i> ) —ITOCHU Minerals & Energy of Australia Pty Ltd —Mitsui Iron Ore Corporation Pty Ltd —Maanshan Iron and Steel (Australia) Pty Ltd —Shagang (Australia) Pty Ltd —Tangshan Iron and Steel (Australia) Pty Ltd —Wugang (Australia) Pty Ltd ( <i>Other Participants</i> )
3. <b>JW4 Joint Venture Deed of Cross Charge</b> ASIC Charge No. 1309289 dated 21 July 2005	—BHP Billiton Iron Ore Pty Ltd ( <i>Manager</i> ) —BHP Billiton Minerals Pty Ltd ( <i>Chargor</i> ) —ITOCHU Minerals & Energy of Australia Pty Ltd —Mitsui Iron Ore Corporation Pty Ltd —JFE Steel Australia (YD) Pty Ltd ( <i>Other Participants</i> )
4. <b>POSMAC Joint Venture Deed of Cross Charge</b>  ASIC Charge No. 862711 dated 3 April 2002	—BHP Billiton Iron Ore Pty Ltd ( <i>Manager</i> ) —BHP Billiton Minerals Pty Ltd ( <i>Chargor</i> ) —POS-Ore Pty Ltd —CI Minerals Australia Pty Ltd —Mitsui Iron Ore Corporation Pty Ltd ( <i>Other Participants</i> ) —BHP Billiton Iron Ore Pty Ltd ( <i>Manager</i> )

## West Australian Iron Ore Production Joint Venture Agreement

	Cross Charge	Parties
5.	<b>Dampier—Cliffs Deed of Cross Charge</b> ASIC Charge No. 338079/338082 dated 31 May 1984	—BHP Billiton Minerals Pty Limited —Cliffs Western Australian Mining Co Pty Ltd —Peko-Wallsend Operations Ltd —Mitsui Iron Ore Development Pty Ltd —Nippon Steel Australia Pty Ltd —Sumitomo Metal Australia Pty Ltd
6.	<b>Goldsworthy Joint Venture</b> Any Security Interest required under clause 7.9 of the Restated Mount Goldsworthy Mining Associates Joint Venture agreement dated 7 September 1990	
7.	<b>Yandi Joint Venture</b> Any Security Interest required under clause 7.9 of the Yandi Joint Venture Agreement dated 10 June 1991	
8.	Any other Security Interest required under the terms of any other Existing JV Cross Charge	

### Part 2—Rio Tinto Existing JV Cross Charges

	Cross Charge	Parties
1.	<b>Robe Joint Venture Deeds of Cross Charge</b> The cross charges created in connection with the Robe Joint Venture, including: Deed of Cross Charge (JVA) dated 31 May 1984 —ASIC Charge No. 199665 (Robe River Mining Co. Pty Ltd); and —ASIC Charge Nos. 236208, 382998 and 387842 (Robe River Limited), as subsequently amended by Amending Deeds in 1986, 1987, 2001, 2004 and 2007, including the following ASIC registered charges: —Amending Deed—Deed of Cross Charge (JVA) dated 24 January 1986 —ASIC Charge No. 199512 (Robe River Mining Co. Pty Ltd); and —ASIC Charge Nos. 15284 (North Mining Ltd); and —Amending Deed—Deed of Cross Charge (JVA) dated 5 April 2007 —ASIC Charge No. 1455193 (Robe River Mining Co. Pty Ltd); and —ASIC Charge No. 1455203 (North Mining Ltd)	—Robe River Mining Co. Pty Ltd —North Mining Limited —Robe River Limited (in their capacity as <b>Chargors</b> and <b>Chargees</b> ) —Mitsui Iron Ore Development Pty Ltd —Cape Lambert Iron Associates, a partnership carried on under that name by Nippon Steel Australia Pty Ltd, Sumitomo Metal Australia Pty Ltd and Mitsui Iron Ore Development Pty Ltd —Pannawonica Iron Associates, a partnership carried on under that name by Nippon Steel Australia Pty Ltd and Sumitomo Metal Australia Pty Ltd ( <b>Chargees</b> ) Note: BHP Billiton Minerals Pty Limited is also listed in ASIC records as a chargee in relation to the Deed of Cross Charge (Port and Rail)

## West Australian Iron Ore Production Joint Venture Agreement

Cross Charge	Parties
Deed of Cross Charge (Port and Rail) dated 31 May 1984, ASIC Charge No. 199925 (Robe River Mining Co. Pty Ltd), as subsequently amended by the Amendment to Deed of Cross Charge (Port and Rail) dated 24 January 1986, ASIC Charge No 15464 (North Mining Limited)	
2. <b>Hope Downs Joint Venture Deed of Cross Charge</b> ASIC Charge No. 1280563 dated 16 March 2006	—Hamersley WA Pty Ltd ( <i>Chargor</i> ) —Hope Downs Iron Ore Pty Ltd ( <i>Other Party</i> ) —Hamersley HMS Pty Ltd ( <i>Manager</i> )
3. <b>Channar Joint Venture Deed of Cross Charge</b> Deed of Cross Charge dated 16 November 1987 —ASIC Charge No. 148921 (Channar Mining Pty Ltd) —ASIC Charge No. 198871 (Channar Management Services Pty Limited)	—Channar Mining Pty Ltd —Sinosteel Channar Pty Ltd —Channar Management Services Pty Limited (in their capacity as <i>Chargors</i> and <i>Chargees</i> )
4. <b>Bao-HI Joint Venture Deed of Cross Charge</b> ASIC Charge No. 880262 dated 22 June 2002	—Ranges Mining Pty Ltd ( <i>Chargor</i> ) —Baosteel Australia Mining Company Pty Ltd ( <i>Other Participant</i> ) —Ranges Management Company Pty Ltd ( <i>Manager</i> )
5. <b>Beasley Joint Venture Deed of Cross Charge</b> ASIC Charge No. 1098312 dated 28 October 2004	—Beasley River Mining Pty Limited ( <i>Chargor</i> ) —Beasley River Iron Associates, a partnership carried on under that name by Nippon Steel Australia Pty Ltd, Sumitomo Metal Australia Pty Ltd and Mitsui Iron Ore Development Pty Ltd ( <i>Other Party</i> ) —Beasley River Management Pty Limited ( <i>Manager</i> )
6. <b>Rhodes Ridge Joint Venture Deed of Cross Charge</b> Any Security Interest required under the Rhodes Ridge Joint Venture Agreement dated 11 October 1972	
7. Any other Security Interest required under the terms of any other Existing JV Cross Charge	

# West Australian Iron Ore Production Joint Venture Agreement

## Schedule 15

### Product Types

For the purposes of this Schedule:

- (a) **Fines Product Types** means Iron Ore Products with a size \* \* \*; and
- (b) **Lump Product Types** means Iron Ore Products with a size \* \* \*.

<u>(dry basis)</u>	<u>Fe (%)</u>	<u>SiO<sub>2</sub> (%)</u>	<u>Al<sub>2</sub>O<sub>3</sub> (%)</u>	<u>P (%)</u>	<u>Moisture Content<sup>1</sup> (%)</u>	<u>LOI<sup>3</sup> (%)</u>
<b>1.Fines Product Types</b>						
<b>Rio Tinto Fines Product Types</b>						
(a) Pilbara Blend fines;	* * *	* * *	* * *	* * *	* * *	* * *
(b) Robe Valley fines;	* * *	* * *	* * *	* * *	* * *	* * *
(c) Rio Tinto Yandicoogina fines;	* * *	* * *	* * *	* * *	* * *	* * *
<b>BHP Billiton Fines Product Types</b>						
(d) Newman High Grade fines;	* * *	* * *	* * *	* * *	* * *	* * *
(e) MAC <sup>TM</sup> fines;	* * *	* * *	* * *	* * *	* * *	* * *
(f) Yandi fines;	* * *	* * *	* * *	* * *	* * *	* * *
<b>2.Lump Products</b>						
<b>Rio Tinto Lump Product Types</b>						
(a) Pilbara Blend lump;	* * *	* * *	* * *	* * *	* * *	* * *
(b) Robe Valley lump	* * *	* * *	* * *	* * *	* * *	* * *
<b>BHP Billiton Lump Product Types</b>						
(c) Newman High Grade lump;	* * *	* * *	* * *	* * *	* * *	* * *
(d) MAC <sup>TM</sup> lump;	***62.6	* * *	* * *	* * *	* * *	* * *
(e) Yandi lump.	* * *	* * *	* * *	* * *	* * *	* * *

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

**West Australian Iron Ore  
Production Joint Venture Agreement**

**Schedule 16**

**Parent Company Guarantee**



**Deed of Guarantee**

**[Rio Tinto Limited**

**Rio Tinto plc] /**

**[BHP Billiton Limited**

**BHP Billiton plc] /**

**[New Owner Parent]**

Parent Company Guarantee in relation to the  
West Australian Iron Ore Production Joint Venture

# Deed of Guarantee

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# Deed of Guarantee

## Date

## Parties

This Deed of Guarantee is granted by:

- [1. **Rio Tinto Limited** (ACN 004 458 404), a company incorporated in Australia, of Level 33, 120 Collins Street, Melbourne, Victoria, Australia (**RTL**); and
  2. **Rio Tinto plc** (registration number 00719885), a company incorporated in England and Wales, of 2 Eastbourne Terrace, London, United Kingdom (**RTP** and, together with RTL, the **Guarantor**),]
  - [1. **BHP Billiton Limited** (ACN 004 028 077), a company incorporated in Australia, of 180 Lonsdale Street, Melbourne, Victoria, Australia (**BHPBL**); and
  2. **BHP Billiton plc** (registration number 3196209), a company incorporated in England and Wales, of Neathouse Place, London, United Kingdom (**BHPBP** and, together with BHPBL, the **Guarantor**),]
- [[New Owner Parent] (the **Guarantor**),]
- in favour of each Beneficiary (as defined in this Deed).

## Recitals

- A The Guarantor has agreed to provide a guarantee for the performance of the obligations of the Obligor under clauses 6.3 (a)(iii)(B) and (C), 6.4(a)(iii)(B) and (C), 11.9(d)(ii) and 11.9(e)(ii) of the Funding and Distribution Policy.
- B [The Guarantor has also agreed to provide a guarantee for the performance of the obligations of the Obligor under clause 3.11 of the Joint Venture Agreement to pay Called Sums.]<sup>1</sup>

It is agreed as follows.

### 1. Definitions and Interpretation

#### 1.1 Joint Venture Agreement definitions to apply

Subject to clause 1.2, words and expressions which are defined in the Joint Venture Agreement have the same meaning in this Deed unless the context requires otherwise.

#### 1.2 Definitions

In this Deed, the following terms will have the following meanings unless the subject matter or context otherwise requires.

**Beneficiary** means each the [Rio Tinto / BHP Billiton] Owner \* \* \*

\* \* \*

**[Called Sum Obligation]** means any obligation of the Obligor:

- (a) to pay Called Sums under clause 3.11 of the Joint Venture Agreement;
- (b) to transfer or procure the transfer of an amount in accordance with clause 3.11(h) of the Joint Venture Agreement; or

<sup>1</sup> Only required where clause 11.8(c) of the Joint Venture Agreement applies.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## Deed of Guarantee

(c) to pay to purchase any NDO Loan under the clause 9.3 of the Joint Venture Agreement.]<sup>2</sup>

**FDP Obligation** means any obligation of the Obligor under clauses 6.3(a)(iii)(B) and (C), 6.4(a)(iii)(B) and (C), 11.9(d)(ii) and 11.9(e)(ii) of the Funding and Distribution Policy.

**Joint Venture Agreement** means the West Australian Iron Ore Production Joint Venture Agreement dated [\*] between Rio Tinto Limited, Rio Tinto plc, BHP Billiton Limited, BHP Billiton plc and certain other companies, as amended from time to time.

**Obligor** means [name of guaranteed Rio Tinto Owner / name of guaranteed BHP Billiton Owner / name of New Owner].

**Power** means any right, power, authority, discretion or remedy conferred on a Beneficiary by this Deed.

### 1.3 Joint Venture Agreement interpretation provisions to apply

Clause 1.2 of the Joint Venture Agreement applies, *mutatis mutandis*, in the interpretation of this Deed.

### 1.4 [Joint and several obligations

The obligations of [RTL and RTP / BHPBL and BHPBP] under this Deed are joint and several.]<sup>3</sup>

## 2. Guarantee

### 2.1 Funding and Distribution Policy Guarantee

- (a) The Guarantor unconditionally and irrevocably guarantees to each Beneficiary the due and punctual performance and observance by the Obligor of all its FDP Obligations.
- (b) If and whenever the Obligor defaults for any reason whatsoever in the performance of any of its FDP Obligations, the Guarantor will immediately upon demand unconditionally perform (or procure performance of) and satisfy (or procure the satisfaction of) the FDP Obligations in regard to which such default has been made in the manner prescribed by this Deed so that the same benefits will be conferred on each Beneficiary as it would have received if the FDP Obligations had been duly performed and satisfied by the Obligor.
- (c) As a separate and independent obligation, the Guarantor agrees that any of the FDP Obligations (including, without limitation, any moneys payable) which may not be enforceable against or recoverable from the Obligor by reason of any legal limitation, disability or incapacity on or of the Obligor or any other fact or circumstances will nevertheless be enforceable against and recoverable from the Guarantor as though the same had been incurred by the Guarantor and the Guarantor were the sole or principal obligor in respect thereof and must be performed or paid by the Guarantor on demand.
- (d) This Deed is in addition to and without prejudice to and not in substitution for any rights or security which any Beneficiary may now or in the future have or hold for the performance and observance of the FDP Obligations.

### 2.2 [Called Sum Guarantee

- (a) The Guarantor unconditionally and irrevocably guarantees the due and punctual performance and observance by the Obligor of all its Called Sum Obligations.

<sup>2</sup> Only required where clause 11.8(c) of the Joint Venture Agreement applies.

<sup>3</sup> Only required where there are multiple guarantors.

## Deed of Guarantee

- (b) If and whenever the Obligor defaults for any reason whatsoever in the performance of any of its Called Sum Obligations, the Guarantor will immediately upon demand unconditionally perform (or procure performance of) and satisfy (or procure the satisfaction of) the Called Sum Obligations in regard to which such default has been made in the manner prescribed by this Deed so that the same benefits will be conferred on each Beneficiary as it would have received if the Called Sum Obligations had been duly performed and satisfied by the Obligor.
- (c) As a separate and independent obligation, the Guarantor agrees that any of the Called Sum Obligations (including, without limitation, any moneys payable) which may not be enforceable against or recoverable from the Obligor by reason of any legal limitation, disability or incapacity on or of the Obligor or any other fact or circumstances will nevertheless be enforceable against and recoverable from the Guarantor as though the same had been incurred by the Guarantor and the Guarantor were the sole or principal obligor in respect thereof and must be performed or paid by the Guarantor on demand.
- (d) This Deed is in addition to and without prejudice to and not in substitution for any rights or security which any Beneficiary may now or in the future have or hold for the performance and observance of the Called Sum Obligations.<sup>4</sup>

### 2.3 Liability unaffected by other events

The liability of the Guarantor under clause 2.1 [and clause 2.2]<sup>5</sup>:

- (a) will not be released or diminished by any variation of the FDP Obligations [or Called Sum Obligations]<sup>6</sup> or any forbearance, neglect or delay in seeking performance of the FDP Obligations [or Called Sum Obligations]<sup>7</sup> or any granting of time for such performance; and
- (b) will not be affected or impaired by reason of any other fact or event which in the absence of this provision would or might constitute or afford a legal or equitable discharge or release or a defence to a guarantor.

### 2.4 Continuing guarantee

- (a) Clause 2.1:
  - (i) extends to cover the FDP Obligations as amended, varied or replaced, whether with or without the consent of the Guarantor in its capacity as guarantor including, for the avoidance of doubt, where such amendment, variation or replacement increases the obligations guaranteed by the Guarantor under this Deed; and
  - (ii) is a continuing guarantee and remains in full force and effect until the earlier of:
    - (A) the Obligor ceasing to be an Owner in accordance with the Joint Venture Agreement; and
    - (B) the Guarantor being entitled to be released from its obligations under this Deed in accordance with clause 10.10(e) of the Joint Venture Agreement,at which point the Guarantor will automatically be released from its obligations under clause 2.1 but without prejudice to any accrued liabilities of the Guarantor under this Deed.

<sup>4</sup> Only required where clause 11.8(c) of the Joint Venture Agreement applies.

<sup>5</sup> Only required where clause 11.8(c) of the Joint Venture Agreement applies.

<sup>6</sup> Only required where clause 11.8(c) of the Joint Venture Agreement applies.

<sup>7</sup> Only required where clause 11.8(c) of the Joint Venture Agreement applies.

## Deed of Guarantee

(b) [Clause 2.2:

- (i) extends to cover the Called Sum Obligations as amended, varied or replaced, whether with or without the consent of the Guarantor in its capacity as guarantor including, for the avoidance of doubt, where such amendment, variation or replacement increases the obligations guaranteed by the Guarantor under this Deed; and
- (ii) is a continuing guarantee and remains in full force and effect until the earliest of:
  - (A) the Obligor ceasing to be an Owner in accordance with the Joint Venture Agreement;
  - (B) the Guarantor being entitled to be released from its obligations in relation to Called Sums in accordance with clause 11.8(d) of the Joint Venture Agreement; and
  - (C) the Guarantor being entitled to be released from its obligations under this Deed in accordance with clause 10.10(e) of the Joint Venture Agreement,

at which point the Guarantor will automatically be released from its obligations under clause 2.2 but without prejudice to any accrued liabilities of the Guarantor under this Deed.]<sup>8</sup>

### 2.5 Exclusion of moratorium

To the extent permitted by law, a provision of any legislation which at any time directly or indirectly:

- (a) lessens or otherwise varies or affects in favour of the Guarantor any of its obligations under or any provision of this Deed; or
  - (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by a Beneficiary of any Power,
- is negated and excluded from this Deed and all relief and protection conferred on the Guarantor by or under that legislation is also negated and excluded.

### 3. Enforcement of this Deed

At any time when there is more than one Beneficiary:

- (a) \* \* \*; and
- (b) it may do so on behalf of each other Beneficiary.

### 4. Conflict

Where any Power under this Deed is inconsistent with the powers conferred by an applicable law then, to the extent not prohibited by that law, the powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

### 5. Costs and Stamp Duty

- (a) The Guarantor shall bear its own costs arising out of the preparation and execution of this Deed.

<sup>8</sup> Only required where clause 11.8(c) of the Joint Venture Agreement applies.

\* \* \* Pursuant to a request for confidential treatment filed with the Securities and Exchange Commission, confidential portions of this exhibit have been omitted and filed separately with the Securities and Exchange Commission

## **Deed of Guarantee**

- (b) All stamp duty (including fines, penalties and interest) payable on or in connection with this Deed must be borne by the Guarantor. The Guarantor must indemnify each Beneficiary on demand against any liability for those costs and that stamp duty.

### **6. Notices**

Any notice, demand, consent, certificate, approval, nomination, waiver or other similar communication given or made in connection with this Deed (a **notice**):

- (a) will be in writing and signed by the sender or a person duly authorised by the sender;
- (b) will be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Deed:

Guarantor

Address:           [#]

Fax:               [#]

Attention         [#]

- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

### **7. Governing Law and Jurisdiction**

#### **7.1 Governing Law**

- (a) This Deed is governed by the laws of Western Australia, Australia.
- (b) The Guarantor irrevocably and unconditionally:
  - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agrees that it may not object to any suit, action or proceeding commenced under or in connection with this Deed on the basis that the courts of Western Australia are not an appropriate forum.

#### **7.2 Final judgment conclusive and enforceable**

The Guarantor agrees that a final judgment in any suit, action or proceeding commenced under or in connection with this Deed in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

#### **7.3 Dispute resolution**

Any dispute, controversy, claim or difference of whatever nature arising under, out of, or in connection with this Deed will be resolved in accordance with clause 19.3 of the Joint Venture Agreement.

### **8. Service of Process**

- (a) The Guarantor agrees that service of all writs, process and summonses in any suit, action or proceeding under or in connection with this Deed brought in Western Australia may be made on its registered or principal office for the time being in Australia.

## **Deed of Guarantee**

- (b) Nothing contained or implied in this Deed will in any way be taken to limit the ability of a party to:
  - (i) serve any writs, process or summonses; or
  - (ii) obtain jurisdiction over a party in other jurisdictions,  
in any manner permitted by Law.

### **9. Severance**

If any of the provisions of this Deed is or becomes invalid, illegal or unenforceable, in whole or in part, under the law of any jurisdiction, the validity, legality or enforceability of such provision or part under the law of any other jurisdiction and the validity, legality and enforceability of the remaining provisions of this Deed will not in any way be affected or impaired. If any provision of this Deed, or its application to any person or entity or any circumstance, is invalid or unenforceable, the Guarantor will make such suitable and equitable provision as is necessary in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision.

### **10. Counterparts**

This Deed may be executed in any number of counterparts and by the parties on separate counterparts, each of which will be an original but all of which together will constitute one and the same instrument. This Deed will not take effect until each party has executed at least one counterpart.



## **Deed of Guarantee**

**Executed and delivered as a deed poll in [\*].**

*[Where any party wishes to execute this Deed by attorney]* Each attorney executing this Deed states that he or she has no notice of the revocation or suspension of his or her power of attorney.

*[Note: Insert appropriate execution clauses for each party.]*

**West Australian Iron Ore  
Production Joint Venture Agreement**

**Schedule 17**

**Parent Assumption Deed**

**West Australian Iron Ore Joint  
Venture—Parent Assumption  
Deed**

*[Insert name of relevant Owner Ultimate Holding Company]*

*[Insert names of other parties to the Joint Venture Agreement]*

**West Australian Iron Ore Joint Venture—  
Parent Assumption Deed**

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# West Australian Iron Ore Joint Venture— Parent Assumption Deed

## Date

## Parties

1. *[Insert name and details of Ultimate Holding Company of Relevant Owner]* (the *Ultimate Holding Company*).
2. *[Insert name and details of each other party to the Joint Venture Agreement (including the Relevant Owner)]* (collectively the *Other Parties*).

## Recitals

- A Clause 10.10(b) of the Joint Venture Agreement provides that any Owner of which an Issuer is a Subsidiary must, in certain circumstances, procure that its Ultimate Holding Company assumes the Parent Undertakings by executing a Parent Assumption Deed in the form set out in schedule 17 of the Joint Venture Agreement.
- B By virtue of *[insert details of relevant event triggering the requirements of clause 10.10(b)]*, *[Insert name of relevant Owner]* (the *Relevant Owner*) is an Owner to which clause 10.10(b) applies.
- C *[Insert name of Ultimate Holding Company of the relevant Owner]* is the Ultimate Holding Company (as defined in the Joint Venture Agreement) of the Relevant Owner.
- D In order to give effect to clause 10.10(b) of the Joint Venture Agreement, and in satisfaction of the requirement to enter into a Parent Assumption Deed, the Ultimate Holding Company and the Other Parties have agreed to enter into this Deed.

It is agreed as follows.

## 1. Definitions and interpretation

### 1.1 Joint Venture Agreement definitions to apply

Subject to a contrary meaning being specified in clause 1.2, words and expressions defined in the Joint Venture Agreement have the same meaning when used in this Deed.

### 1.2 Definitions

In this Deed, the following terms have the following meanings unless the context requires otherwise.

*Effective Date* means the date on which the last party executes this Deed.

*Joint Venture Agreement* means the West Australian Joint Venture Agreement dated [#].

*Relevant Owner* has the meaning given in Recital B.

### 1.3 Joint Venture Agreement interpretive provisions to apply

Items 1.2 to 1.5 (inclusive) of schedule 1 to the Joint Venture Agreement will apply, *mutatis mutandis*, in the interpretation of this Deed.

## 2. Ultimate Holding Company to assume liability

- (a) The Ultimate Holding Company covenants and agrees with each of the Other Parties as from the Effective Date to observe, perform and be bound by all of the undertakings, liabilities and obligations in respect of, or attaching to, the Parent Undertakings in respect of the Relevant Owner under the Joint Venture Agreement to the extent that those undertakings, liabilities and obligations are capable of applying to the Ultimate Holding Company.

## **West Australian Iron Ore Joint Venture— Parent Assumption Deed**

- (b) On and from the Effective Date, the Ultimate Holding Company will be deemed to be a party to the Joint Venture Agreement for the sole purpose of providing the Parent Undertakings on behalf of the Relevant Owner.

### **3. Consent of the Other Parties**

On and from the Effective Date, each Other Party:

- (a) unconditionally and irrevocably consents to the Ultimate Holding Company becoming a party to the Joint Venture Agreement for the purposes of the Parent Undertakings in respect of the Relevant Owner; and
- (b) agrees that the Ultimate Holding Company will be entitled to exercise all of the rights, privileges and benefits of the Owner Parent in respect of the Relevant Owner under the Joint Venture Agreement as if that Ultimate Holding Company was named as a party to the Joint Venture Agreement.

### **4. Address of Ultimate Holding Company for Notices**

For the purposes of the Joint Venture Agreement, the address of the Ultimate Holding Company to which all notices must be delivered is:

to *[Insert details of Ultimate  
Holding Company]*:

[#]  
Attention [#]  
Address: [#]  
Fax No: [#]

### **5. Costs and stamp duty**

- (a) Each party will bear the costs arising out of the negotiation, preparation, execution and enforcement of this Deed.
- (b) Subject to the Joint Venture Agreement, all stamp duty (including fines, penalties and interest) which may be payable on or in connection with this Deed and any instrument executed under this Deed will be borne by the Ultimate Holding Company. The Ultimate Holding Company will indemnify the Other Parties on demand against any liability for that stamp duty.

### **6. Governing Law and Jurisdiction**

#### **6.1 Governing Law**

- (a) This Deed will be governed by the laws of Western Australia, Australia.
- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this Deed on the basis that the courts of Western Australia are not an appropriate forum.

#### **6.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this Deed in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

## **West Australian Iron Ore Joint Venture— Parent Assumption Deed**

### **6.3 Dispute Resolution**

Any dispute, controversy, claim or difference of whatever nature arising under, out of, or in connection with this Deed will be resolved in accordance with clause 20.3 of the Joint Venture Agreement.

### **6.4 Service of Process**

- (a) Each party agrees that service of all writs, process and summonses in any suit, action or proceeding under or in connection with this Deed brought in Western Australia may be made on its registered or principal office for the time being in Australia.
- (b) Nothing contained or implied in this Deed will in any way be taken to limit the ability of a party to:
  - (i) serve any writs, processes or summonses; or
  - (ii) obtain jurisdiction over a party in other jurisdictions, in any manner permitted by Law.

### **7. General Provisions**

The provisions of clauses 19, 21.1 (subject to clause 4 of this Deed) to 21.7, 21.9 and 21.11 to 21.13 of the Joint Venture Agreement will apply, *mutatis mutandis*, in this Deed unless the context requires otherwise.

**West Australian Iron Ore Joint Venture—  
Parent Assumption Deed**

**Executed** as a Deed

[Insert relevant execution clauses.]



**West Australian Iron Ore  
Production Joint Venture Agreement**

**Schedule 18**

**Deed of Accession (Sole Risk Entity)**

**West Australian Iron Ore Joint  
Venture—Deed of Accession  
(Sole Risk Entity)**

*[Insert name of Manager]*

*[Insert name of Sole Risk Entity]*

# **West Australian Iron Ore Joint Venture— Deed of Accession**

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## West Australian Iron Ore Joint Venture— Deed of Accession

### Date

### Parties

1. [#] [(ACN [#])] (on its own behalf and on behalf of each of the Existing Parties) (the *Manager*).
2. [#] [(ACN [#])] (the *Sole Risk Entity*).

### Recitals

*[Drafting Note: Recitals A to D (Option 1) to be used where a Sole Funding Party elects to nominate a Sole Risk Entity to undertake a Sole Risk Development or Sole Risk Opportunity pursuant to item 4(a) of schedule 4. Recitals A to C (Option 2) to be used where a Sole Risk Entity disposes of the whole of its Participating Interest pursuant to item 4(f) of schedule 4.]*

#### *(Option 1)*

- A [Items 4(a) and (b) of schedule 4 of the Joint Venture Agreement provide that a Sole Funding Party that becomes entitled to proceed with a Sole Risk Development or Sole Risk Opportunity may nominate a Sole Risk Entity to undertake that Sole Risk Development or Sole Risk Opportunity (as applicable) on its behalf, provided that the Sole Risk Entity first enters into a Deed of Accession in the form set out in schedule 18 of the Joint Venture Agreement.
- B *[Insert Name of relevant Sole Funding Party]* (the *Sole Funding Party*) has elected to proceed with a *[Sole Risk Development / Sole Risk Opportunity]* pursuant to clause *[8.3(b) / 8.4(g)]* of the Joint Venture Agreement in respect of *[Insert description of Sole Risk Development or Sole Risk Opportunity]* (the *[Sole Risk Development / Sole Risk Opportunity]*).
- C In accordance with item 4(a) of schedule 4, the Sole Funding Party has exercised its right to nominate *[Insert name of Sole Risk Entity]* to undertake the *[Sole Risk Development / Sole Risk Opportunity]* on its behalf.
- D In order to give effect to the arrangements referred to in Recital C, and in satisfaction of the requirement to enter into a Deed of Accession under item 4(b) of schedule 4 of the Joint Venture Agreement, the Manager (on behalf of each Existing Party) and the Sole Risk Entity have agreed to enter into this Deed.]

#### *(Option 2)*

- A [Item 4(f) of schedule 4 of the Joint Venture Agreement provides that a Sole Risk Entity is entitled to Dispose of the whole, but not part, of its rights under the Joint Venture Agreement,

provided that the transferee Sole Risk Entity first enters into a Deed of Accession in the form set out in schedule 18 of the Joint Venture Agreement.

- B *[Insert Name of existing Sole Risk Entity]* (the *Existing Sole Risk Entity*) has elected to Dispose of its rights under the Joint Venture Agreement in respect of *[Insert description of Sole Risk Development or Sole Risk Opportunity]* (the *[Sole Risk Development / Sole Risk Opportunity]*).
- C In order to give effect to the arrangements referred to in Recital B, and in satisfaction of the requirement to enter into a Deed of Accession under item 4(f) of schedule 4 of the Joint Venture Agreement, the Manager (on behalf of each Existing Party) and the transferee Sole Risk Entity have agreed to enter into this Deed.]

## West Australian Iron Ore Joint Venture— Deed of Accession

It is agreed as follows.

### 1. Definitions and interpretation

#### 1.1 Joint Venture Agreement definitions to apply

Subject to a contrary meaning being specified in clause 1.2, words and expressions defined in the Joint Venture Agreement have the same meaning when used in this Deed.

#### 1.2 Definitions

In this Deed, the following terms have the following meanings unless the context requires otherwise.

**Effective Date** means the later of:

- (a) the date on which the last party executes this Deed; and
- (b) the date on which the Sole Funding Party obtains the last of the Authorisations and third party approvals required by item 4.(g) of schedule 4 of the Joint Venture Agreement.

**Existing Parties** means each party to the Joint Venture Agreement.

**[Existing Sole Risk Entity]** has the meaning given in Recital B. (Option 2)]

**Joint Venture Agreement** means the West Australian Joint Venture Agreement dated [#].

**[Sole Funding Party]** has the meaning given in Recital B. (Option 1)]

**[Sole Risk Development]** has the meaning given in Recital B. / **Sole Risk Opportunity** has the meaning given in Recital B.]

#### 1.3 Joint Venture Agreement interpretive provisions to apply

Items 1.2 to 1.5 (inclusive) of schedule 1 to the Joint Venture Agreement will apply, *mutatis mutandis*, in the interpretation of this Deed.

### 2. Sole Risk Entity to assume liability

- (a) The Sole Risk Entity covenants and agrees with each of the Existing Parties as from the Effective Date to observe, perform and be bound by all of the undertakings, liabilities and obligations of the [Sole Funding Party (Option 1) / Existing Sole Risk Entity (Option 2)] in respect of, or attaching to, the [Sole Risk Development / Sole Risk Opportunity] under the Joint Venture Agreement (including undertakings, liabilities and obligations that arise before the Effective Date) to the extent that those undertakings, liabilities and obligations are capable of applying to the Sole Risk Entity with respect to the [Sole Risk Development / Sole Risk Opportunity].
- (b) On and from the Effective Date, the Sole Risk Entity will be deemed to be a party to the Joint Venture Agreement with the rights set out in the Joint Venture Agreement in respect of the [Sole Risk Development / Sole Risk Opportunity].

### 3. Address of Sole Risk Entity for Notices

For the purposes of the Joint Venture Agreement, the address of the Sole Risk Entity to which all notices must be delivered is:

to *[Insert details of Sole Risk Entity]*:

[#]

Attention [#]

Address: [#]

Fax No: [#]

## **West Australian Iron Ore Joint Venture— Deed of Accession**

### **4. Costs and stamp duty**

- (a) Each party will bear the costs arising out of the negotiation, preparation, execution and enforcement of this Deed.
- (b) All stamp duty (including fines, penalties and interest) which may be payable on or in connection with this Deed and any instrument executed under this Deed will be borne by the Sole Risk Entity. The Sole Risk Entity will indemnify the Existing Parties on demand against any liability for that stamp duty.

### **5. Governing Law and Jurisdiction**

#### **5.1 Governing Law**

- (a) This Deed will be governed by the laws of Western Australia, Australia.
- (b) The parties irrevocably and unconditionally:
  - (i) submit to the non-exclusive jurisdiction of the courts of Western Australia; and
  - (ii) agree that they may not object to any suit, action or proceeding commenced under or in connection with this Deed on the basis that the courts of Western Australia are not an appropriate forum.

#### **5.2 Final judgment conclusive and enforceable**

The parties agree that a final judgment in any suit, action or proceeding commenced under or in connection with this Deed in any court of competent jurisdiction is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

#### **5.3 Dispute Resolution**

Any dispute, controversy, claim or difference of whatever nature arising under, out of, or in connection with this Deed will be resolved in accordance with clause 20.3 of the Joint Venture Agreement.

#### **5.4 Service of Process**

- (a) Each party agrees that service of all writs, process and summonses in any suit, action or proceeding under or in connection with this Deed brought in Western Australia may be made on its registered or principal office for the time being in Australia.
- (b) Nothing contained or implied in this Deed will in any way be taken to limit the ability of a party to:
  - (i) serve any writs, processes or summonses; or
  - (ii) obtain jurisdiction over a party in other jurisdictions, in any manner permitted by Law.

### **6. General Provisions**

The provisions of clauses 19, 21.1 (subject to clause 3 of this Deed), 21.2, 21.4 to 21.6, 21.9 and 21.11 to 21.13 of the Joint Venture Agreement will apply, *mutatis mutandis*, in this Deed unless the context requires otherwise.

**West Australian Iron Ore Joint Venture—  
Deed of Accession**

**7. Amendments**

Notwithstanding clause 21.3 of the Joint Venture Agreement, the Sole Risk Entity acknowledges that:

- (a) any change to the parties to the Joint Venture Agreement as expressly provided for in the Joint Venture Agreement; or
- (b) any amendment or variation to the Joint Venture Agreement that affects the rights and obligations of the Existing Parties, but does not affect the rights and obligations of the Sole Risk Entity,

will not require the Sole Risk Entity's consent. Any amendment or variation to which this clause 7 applies will take effect despite the Sole Risk Entity not having executed that amendment or variation.

**West Australian Iron Ore Joint Venture—  
Deed of Accession**

**Executed** as a Deed

[Insert relevant execution clauses.]



**West Australian Iron Ore  
Production Joint Venture Agreement**

**Executed** by the parties  
[Insert relevant execution clauses.]

## Implementation Agreement

### Executed by the parties

Each attorney executing this Agreement states that he or she has no notice of revocation or suspension of his or her power of attorney.

**EXECUTED** by **RIO TINTO LIMITED** by its duly  
constituted attorney pursuant to a Power of Attorney  
dated 2009

Signature of Attorney

Signature of Witness

Name of Attorney

Name of Witness

**EXECUTED** by **RIO TINTO PLC** by its duly  
constituted attorney pursuant to a Power of Attorney  
dated 2009

Signature of Attorney

Signature of Witness

Name of Attorney

Name of Witness

**EXECUTED** by **BHP BILLITON LIMITED**  
by its authorised signatory:

Authorised signatory

Witness

Print Name

Print Name

**Implementation Agreement**

**EXECUTED** by **BHP BILLITON PLC**  
by its authorised signatory:

Authorised signatory

Print Name

Witness

Print Name

## List of subsidiaries of BHP Billiton Limited and BHP Billiton Plc

No.	Company Name	Country
1	101102166 Saskatchewan Ltd.	Canada
2	141 Union Company	United States
3	A & BP Co Pty Ltd.	Australia
4	African Metals Limited	South Africa
5	Albion Downs Pty Limited	Australia
6	Aluminium Consortium Venezuela B.V.	Netherlands
7	Anglo Potash Limited	Canada
8	Araguaia Participações Ltda.	Brazil
9	Astra Explorations & Mining Company (Proprietary) Limited (Submitted for deregistration in March 2007)	Botswana
10	Athabasca Potash Inc.	Canada
11	Athabasca Resources Partnership	Canada
12	Atlas Steels Company Limited	Canada
13	Auvernier Limited (In liquidation 30.06.2004)	United Kingdom
14	Baniettor Mining (Proprietary) Limited	South Africa
15	BHP Billiton WA Iron Ore Mt Newman Pty Ltd.	Australia
16	BHP Billiton (BVI) Limited	Virgin Islands, British
17	BHP Billiton (China) Pty Ltd (In Liquidation w.e.f. 30 June 2010)	Australia
18	BHP Billiton (Liberia) Inc.	Liberia
19	BHP Billiton (Nouvelle-Caledonie) SAS	New Caledonia
20	BHP Billiton (Philippines) Inc.	Philippines
21	BHP Billiton (Trinidad - 2C) Ltd.	Canada
22	BHP Billiton (Trinidad) Holdings Limited	Saint Lucia
23	BHP Billiton (Trinidad-3A) Ltd.	Trinidad and Tobago
24	BHP Billiton (Trinidad-3B) Corp.	Canada
25	BHP Billiton (UK) Limited	United Kingdom
26	BHP Billiton Aluminium (RAA) Pty Ltd.	Australia
27	BHP Billiton Aluminium (Worsley) Pty Ltd.	Australia
28	BHP Billiton Aluminium Australia Pty Ltd.	Australia
29	BHP Billiton Aluminium Limited	United Kingdom
30	BHP Billiton Aluminium Technologies Limited	Jersey
31	BHP Billiton Aluminium Vietnam Jersey Limited	Jersey
32	BHP Billiton Aluminium Vietnam UK Limited	United Kingdom
33	BHP Billiton Australia Investment 3 Pty Ltd.	Australia
34	BHP Billiton Australia UK Finance Limited	Virgin Islands, British
35	BHP Billiton Boliviana de Petroleo Inc.	United States
36	BHP Billiton Brasil Investimentos Ltda.	Brazil
37	BHP Billiton Brasil Ltda.	Brazil
38	BHP Billiton Canada Inc.	Canada

39	BHP Billiton Canadian Finance Inc.	Canada
40	BHP Billiton Capital Inc.	United States
41	BHP Billiton CBM Investments Pty Ltd	Australia
42	BHP Billiton Chile Inversiones Limitada	Chile
43	BHP Billiton China Limited	Hong Kong
44	BHP Billiton Community Limited	Australia
45	BHP Billiton Company B.V.	Netherlands
46	BHP Billiton Development 1 (Australia) Pty Ltd	Australia
47	BHP Billiton Development 1 (Canada) Ltd.	Canada
48	BHP Billiton Development 1 (Netherlands) B.V.	Netherlands
49	BHP Billiton Development 1 (UK) Limited	United Kingdom
50	BHP Billiton Development 2 (Canada) Ltd.	Canada
51	BHP Billiton Development 2 (UK) Limited	United Kingdom
52	BHP Billiton Diamonds (Belgium) N.V.	Belgium
53	BHP Billiton Diamonds (Eurasia) LLC	Russian Federation
54	BHP Billiton Diamonds Australia Pty Ltd (in liquidation)	Australia
55	BHP Billiton Diamonds Holdings Limited (In liquidation 12/04/2010)	Virgin Islands, British
56	BHP Billiton Direct Reduced Iron Pty Limited	Australia
57	BHP Billiton Employee Plan Pty Ltd	Australia
58	BHP Billiton Energy Coal (UK) Limited	United Kingdom
59	BHP Billiton Energy Coal Australia Pty Ltd	Australia
60	BHP Billiton Energy Coal Chile Limited	United Kingdom
61	BHP Billiton Energy Coal Inc.	United States
62	BHP Billiton Energy Coal South Africa Limited	South Africa
63	BHP Billiton Eurasia B.V.	Netherlands
64	BHP Billiton Executive Services Company Pty Limited	Australia
65	BHP Billiton Finance (USA) B.V.	Netherlands
66	BHP Billiton Finance (USA) Limited	Australia
67	BHP Billiton Finance Australia Limited	Virgin Islands, British
68	BHP Billiton Finance B.V.	Netherlands
69	BHP Billiton Finance Limited	Australia
70	BHP Billiton Finance Plc	United Kingdom
71	BHP Billiton Finance South Africa Limited	Virgin Islands, British
72	BHP Billiton Foreign Holdings Inc.	United States
73	BHP Billiton Freight Singapore Pte Limited	Singapore
74	BHP Billiton Great Boulder Mines Pty Ltd	Australia
75	BHP Billiton Group (BVI) Limited	Virgin Islands, British
76	BHP Billiton Group Limited	United Kingdom
77	BHP Billiton Group Operations Pty Ltd	Australia
78	BHP Billiton Holdings B.V.	Netherlands
79	BHP Billiton Holdings Limited	United Kingdom
80	BHP Billiton Innovation Pty Ltd	Australia
81	BHP Billiton International Development Limited	United Kingdom

82	BHP Billiton International Metals B.V.	Netherlands
83	BHP Billiton International Services Limited	United Kingdom
84	BHP Billiton International Trading (Shanghai) Co., Ltd.	China
85	BHP Billiton Investment Holdings Limited	United Kingdom
86	BHP Billiton Iron Ore Holdings Pty Ltd.	Australia
87	BHP Billiton Iron Ore Pty Limited	Australia
88	BHP Billiton Japan Limited	Japan
89	BHP Billiton Jersey Limited	Jersey
90	BHP Billiton Korea Co., Ltd.	Korea, Republic of
91	BHP Billiton LNG International Inc.	United States
92	BHP Billiton Lonsdale Investments Pty Ltd.	Australia
93	BHP Billiton Marine & General Insurances Pty Ltd.	Australia
94	BHP Billiton Marketing AG	Switzerland
95	BHP Billiton Marketing Asia Pte Ltd.	Singapore
96	BHP Billiton Marketing B.V.	Netherlands
97	BHP Billiton Marketing Inc.	United States
98	BHP Billiton Marketing Investments ApS	Denmark
99	BHP Billiton Marketing Investments Limited	United Kingdom
100	BHP Billiton Marketing Services India Pvt Ltd.	India
101	BHP Billiton Marylebone B.V.	Netherlands
102	BHP Billiton Metais SA	Brazil
103	BHP Billiton Metall GmbH (in liquidation)	Germany
104	BHP Billiton Minerals Pty Ltd.	Australia
105	BHP Billiton Named Corporation	Canada
106	BHP Billiton Nickel Nouvelle Caledonie SAS	New Caledonia
107	BHP Billiton Nickel Operations Pty Ltd.	Australia
108	BHP Billiton Nickel West Pty Ltd.	Australia
109	BHP Billiton Olympic Dam Copper Pty Ltd.	Australia
110	BHP Billiton Olympic Dam Corporation Pty Ltd.	Australia
111	BHP Billiton Olympic Dam Gold Pty Ltd.	Australia
112	BHP Billiton Olympic Dam Marketing Pty Ltd.	Australia
113	BHP Billiton Olympic Dam Operations Pty Ltd.	Australia
114	BHP Billiton Olympic Dam Uranium Pty Ltd.	Australia
115	BHP Billiton Overseas Holdings Limited (in liquidation 30.06.2004)	United Kingdom
116	BHP Billiton Paddington Limited	United Kingdom
117	BHP Billiton Petroleum (Americas) Inc.	United States
118	BHP Billiton Petroleum (Australia) Pty. Ltd.	Australia
119	BHP Billiton Petroleum (Bass Strait) Pty. Ltd.	Australia
120	BHP Billiton Petroleum (China) Corp.	Canada
121	BHP Billiton Petroleum (Colombia) Corporation	Canada
122	BHP Billiton Petroleum (Deepwater) Inc.	United States
123	BHP Billiton Petroleum (Denmark) ApS	Denmark
124	BHP Billiton Petroleum (Falkland) Corporation	Canada

125	BHP Billiton Petroleum (GOM) Inc.	United States
126	BHP Billiton Petroleum (India) Corporation	Canada
127	BHP Billiton Petroleum (International Exploration) Pty. Ltd.	Australia
128	BHP Billiton Petroleum (Laurentian) Corporation	Canada
129	BHP Billiton Petroleum (Netherlands) B.V.	Netherlands
130	BHP Billiton Petroleum (New Ventures) Corporation	Canada
131	BHP Billiton Petroleum (North West Shelf) Pty. Ltd.	Australia
132	BHP Billiton Petroleum (Philippines) Corporation	Canada
133	BHP Billiton Petroleum (Pilbara LNG) Pty Ltd.	Australia
134	BHP Billiton Petroleum (Pipelines Investments) Pty. Ltd.	Australia
135	BHP Billiton Petroleum (Sabah) Corporation	Canada
136	BHP Billiton Petroleum (South Africa) LLC	Saint Kitts and Nevis
137	BHP Billiton Petroleum (Victoria) Pty. Ltd.	Australia
138	BHP Billiton Petroleum (Vietnam) Corporation	Canada
139	BHP Billiton Petroleum Great Britain Limited	United Kingdom
140	BHP Billiton Petroleum Holdings (USA) Inc.	United States
141	BHP Billiton Petroleum Holdings LLC	United States
142	BHP Billiton Petroleum International Pty. Ltd.	Australia
143	BHP Billiton Petroleum Investments (Great Britain) Pty Ltd.	Australia
144	BHP Billiton Petroleum Limited	United Kingdom
145	BHP Billiton Petroleum Pty Ltd.	Australia
146	BHP Billiton Petroleum Trading and Marketing Inc.	United States
147	BHP Billiton Petroleum Trading and Marketing Pty. Ltd.	Australia
148	BHP Billiton PNG Services Limited	Papua New Guinea
149	BHP Billiton Properties (Proprietary) Limited	South Africa
150	BHP Billiton RBM Holdings (Proprietary) Limited	South Africa
151	BHP Billiton Resources (China) Pty Ltd (In Liquidation w.e.f. 30 June 2010)	Australia
152	BHP Billiton Resources Exploration Pty Ltd.	Australia
153	BHP Billiton Resources International (RSA) Pty Ltd.	Australia
154	BHP Billiton Resources Marketing Pty Ltd.	Australia
155	BHP Billiton SA Holdings Limited	South Africa
156	BHP Billiton SA Investments Limited	United Kingdom
157	BHP Billiton SA Limited	South Africa
158	BHP Billiton Services Jersey Limited	Jersey
159	BHP Billiton Shared Business Services Pty Ltd.	Australia
160	BHP Billiton Shared Services Malaysia Sdn. Bhd.	Malaysia
161	BHP Billiton South Africa (Jersey) Limited	Jersey
162	BHP Billiton South Africa Holdings B.V.	Netherlands
163	BHP Billiton SSM Development Pty Ltd.	Australia
164	BHP Billiton SSM Indonesia Holdings Pty Ltd.	Australia
165	BHP Billiton SSM Indonesia Pte Ltd.	Singapore
166	BHP Billiton SSM International Pty Ltd.	Australia
167	BHP Billiton SSM Technology Pty Limited	Australia

168	BHP Billiton Sustainable Communities	United Kingdom
169	BHP Billiton Taiwan Limited	Taiwan
170	BHP Billiton UK Holdings Limited	Virgin Islands, British
171	BHP Billiton UK Investments Limited	Virgin Islands, British
172	BHP Billiton Uranium Holding Company Pty Ltd.	Australia
173	BHP Billiton WA Iron Ore Issuer Pty Ltd.	Australia
174	BHP Billiton WA Iron Ore Marketing Pty Ltd.	Australia
175	BHP Billiton WA Iron Ore Owner Pty Ltd.	Australia
176	BHP Billiton WAIO Pty Ltd.	Australia
177	BHP Billiton Wesminco Oil Pty Ltd.	Australia
178	BHP Billiton Western Mining Holdings Pty Ltd.	Australia
179	BHP Billiton Western Mining Innovation Pty Ltd.	Australia
180	BHP Billiton Western Mining Resources International Pty Ltd.	Australia
181	BHP Billiton Westmin Talc Pty Ltd.	Australia
182	BHP Billiton World Exploration Inc.	Canada
183	BHP Billiton Worsley Alumina Pty Ltd.	Australia
184	BHP Billiton Yakabindie Nickel Pty Ltd.	Australia
185	BHP Billiton Yeelirrie Development Company Pty Ltd.	Australia
186	BHP Billiton Yeelirrie Management Services Pty Ltd.	Australia
187	BHP Billiton Zambia Limited	Zambia
188	BHP Canadian Diamonds Company	Canada
189	BHP Capital No. 20 Pty Limited	Australia
190	BHP Chile Inc.	United States
191	BHP Coal Holdings Pty Limited	Australia
192	BHP Coal Pty Ltd.	Australia
193	BHP Copper Inc.	United States
194	BHP Development Finance Pty Ltd.	Australia
195	BHP Escondida Inc.	United States
196	BHP Finance (International) Inc.	United States
197	BHP Finance (Investments) USA Inc.	United States
198	BHP Finance Investments (I) Pty Ltd (in liquidation 30/06/2004)	Australia
199	BHP Financial Services (UK) Limited	Guernsey
200	BHP Group Resources Pty. Ltd.	Australia
201	BHP Hawaii Inc.	United States
202	BHP Holdings (International) Inc.	United States
203	BHP Holdings (Resources) Inc.	United States
204	BHP Holdings (USA) Inc.	United States
205	BHP Holdings International (Investments) Inc.	United States
206	BHP Internacional Participacoes Ltda.	Brazil
207	BHP International Finance Corp.	United States
208	BHP Iron Ore (Jimblebar) Pty Ltd.	Australia
209	BHP Khanij Anveshana Pvt Limited	India
210	BHP Mineral Resources Inc.	United States



211	BHP Minerals Asia Inc.	United States
212	BHP Minerals Asia Pacific Pty Ltd.	Australia
213	BHP Minerals Europe Limited	United Kingdom
214	BHP Minerals Exploration Inc.	United States
215	BHP Minerals Ghana Inc.	United States
216	BHP Minerals Holdings Proprietary Limited	Australia
217	BHP Minerals India Pvt Limited	India
218	BHP Minerals International Exploration Inc.	United States
219	BHP Minerals International LLC	United States
220	BHP Minerals Pacific Inc.	United States
221	BHP Minerals Service Company	United States
222	BHP Mitsui Coal Pty. Ltd.	Australia
223	BHP Navajo Coal Company	United States
224	BHP Nominees Investments No 3 Pty Ltd (in liquidation 30/06/2003)	Australia
225	BHP Peru Holdings Inc.	United States
226	BHP Petroleum (Argentina) S.A.	Argentina
227	BHP Petroleum (Ashmore Operations) Pty Ltd.	Australia
228	BHP Petroleum (Cambodia) Pty. Ltd.	Australia
229	BHP Petroleum (Pakistan) Pty. Ltd.	Australia
230	BHP Petroleum (Tankers) Limited	Bermuda
231	BHP Petroleum (U.K.) Corporation	United States
232	BHP Petroleum North Sea Limited (in liquidation 4 July 2007)	United Kingdom
233	BHP Queensland Coal Investments Pty Limited	Australia
234	BHP Queensland Coal Limited	United States
235	BHP Resources Inc.	United States
236	BHP Titanium Minerals Pty Ltd.	Australia
237	BHP Venezuela DRI Limited (In liquidation 30/04/2008)	United Kingdom
238	BHP Venezuela Inc.	United States
239	BHPB Freight Pty Ltd.	Australia
240	Billiton (RA) B.V.	Netherlands
241	Billiton Aluminium SA Limited	South Africa
242	Billiton Argentina B.V.	Netherlands
243	Billiton Australia Finance Pty Ltd	Australia
244	Billiton Australia Holdings B.V.	Netherlands
245	Billiton Chile B.V.	Netherlands
246	Billiton Coal Australia Holdings B.V.	Netherlands
247	Billiton Coal SA Limited	South Africa
248	Billiton Development (Zambia) Limited	Zambia
249	Billiton Development B.V.	Netherlands
250	Billiton E & D 3 B.V.	Netherlands
251	Billiton Executive Pension Scheme Trustee Limited	United Kingdom
252	Billiton Exploration and Mining Indonesia B.V. (Submitted for deregistration)	Netherlands
253	Billiton Exploration Australia Pty Limited	Australia

254	Billiton Guinea B.V.	Netherlands
255	Billiton Indonesia Holdings B.V. (Submitted for deregistration)	Netherlands
256	Billiton Intellectual Property B.V.	Netherlands
257	Billiton Investment 1 B.V.	Netherlands
258	Billiton Investment 12 B.V.	Netherlands
259	Billiton Investment 13 B.V.	Netherlands
260	Billiton Investment 15 B.V.	Netherlands
261	Billiton Investment 2 B.V.	Netherlands
262	Billiton Investment 3 B.V.	Netherlands
263	Billiton Investment 7 B.V.	Netherlands
264	Billiton Investment 8 B.V.	Netherlands
265	Billiton Investment 9 B.V.	Netherlands
266	Billiton Investments Ireland Limited	Ireland
267	Billiton Manganese Australia Pty Ltd.	Australia
268	Billiton Manganese Holdings B.V.	Netherlands
269	Billiton Marketing France SARL	France
270	Billiton Marketing Holding B.V.	Netherlands
271	Billiton Marketing Investments B.V.	Netherlands
272	Billiton Nickel (Ravensthorpe) Pty Limited	Australia
273	Billiton Nickel Holdings B.V.	Netherlands
274	Billiton Suriname Holdings B.V.	Netherlands
275	Broadmeadow Mine Services Pty Limited	Australia
276	Broken Hill Proprietary (USA) Inc.	United States
277	Broken Hill Proprietary Billiton Mongolia LLC	Mongolia
278	Bulkers Limited	Liberia
279	Carson Hill Gold Mining Corporation	United States
280	Central Queensland Services Pty Limited	Australia
281	Cerro Matoso Holdings (BVI) Limited	Virgin Islands, British
282	Cerro Matoso SA	Colombia
283	Chaco Valley Energy LLC	United States
284	Coal Mines Australia Pty Ltd.	Australia
285	Compania Minera Cerro Colorado Limitada	Chile
286	Conicol BVI Limited	Virgin Islands, British
287	Consolidated Nominees (Proprietary) Limited	South Africa
288	Consórcio Santos Luz de Imóveis Ltda.	Brazil
289	Corridor Sands Limitada	Mozambique
290	County Shipping Company Limited	Hong Kong
291	Dampier Coal (Queensland) Pty Limited	Australia
292	Dendrobium Coal Pty Ltd.	Australia
293	Dendrobium Community Enhancement Program Pty Ltd.	Australia
294	Dia Met Minerals (Africa) Limited	Cayman Islands
295	Donkerpoort Iron Limited	South Africa
296	Douglas Colliery Limited	South Africa

297	Douglas Colliery Services Limited	South Africa
298	Electrolytic Metal Corporation (Proprietary) Limited	South Africa
299	Emaswati Holding Company (Pty) Limited	Swaziland
300	Empresa de Mineracao Jacui Ltda.	Brazil
301	Empresa de Mineracao Seara Ltda.	Brazil
302	Endeavour Coal Pty Ltd.	Australia
303	Ermelo Mines Services (Proprietary) Limited	South Africa
304	Gard Australia Pty Ltd.	Australia
305	Gard Holdings Limited	Virgin Islands, British
306	Gengro Limited	South Africa
307	Global BHP Copper Ltd.	Cayman Islands
308	Groote Eylandt Mining Company Pty Ltd.	Australia
309	Hamilton Brothers Corporation	United States
310	Hamilton Brothers Exploration Company	United States
311	Hamilton Brothers Oil and Gas Corporation	United States
312	Hamilton Brothers Petroleum Corporation	United States
313	Hamilton Oil Company Inc.	United States
314	Hard Carbon Limited	Jersey
315	Hay Point Services Pty Limited	Australia
316	Hillside Aluminium Limited	South Africa
317	Honeybourne Investments Pty Ltd.	Australia
318	Hotazel Manganese Mines (Proprietary) Limited	South Africa
319	Hunter Valley Energy Coal Pty Ltd.	Australia
320	Illawarra Coal Holdings Pty Ltd.	Australia
321	Illawarra Services Pty Ltd.	Australia
322	Ingwe Housing Association	South Africa
323	Ingwe Surface Holdings Limited	South Africa
324	IPS USA, Inc.	United States
325	Jenipapo Recursos Naturais S.A.	Brazil
326	Kangwane Anthracite (Proprietary) Limited	South Africa
327	Keliney Closed Joint Stock Company	Russian Federation
328	Lubilanji Mining SPRL a.k.a <<Lumi SPRL>>	Congo, The Democratic Republic of the
329	Main Street 58 (Proprietary) Limited	South Africa
330	Manhattan Syndicate Limited	South Africa
331	Manitoba Potash Corporation	Canada
332	Marcona International, S.A.	Panama
333	Middelburg Mine Services (Proprietary) Limited	South Africa
334	Middelplaats Manganese Limited	South Africa
335	Minera BHP Billiton, S.A. de C.V.	Mexico
336	Minera Escondida Ltda.	Chile
337	Minera Spence SA	Chile
338	Mineracao Wesminas Ltda. (in liquidation)	Brazil
339	Minsaco Investments Pty Ltd.	Australia

340	Mt Arthur Coal Pty Limited	Australia
341	Mt Arthur Underground Pty Ltd	Australia
342	Natural Diamond Company Limited	Jersey
343	Newcoal Generacion S.A.	Chile
344	Noumea Entreprises S.A.	New Caledonia
345	Oy Alwima Limited	Finland
346	P & DP Co Pty Ltd.	Australia
347	P R I Eastern Limited	Cook Islands
348	Pering Mine Services Holdings (Proprietary) Limited	South Africa
349	Pilbara Gas Pty Limited	Australia
350	Prairie Potash Corporation	Canada
351	PT BHP Billiton Indonesia	Indonesia
352	PT BHP Billiton Services Indonesia	Indonesia
353	PT Billiton Indonesia	Indonesia
354	PT Juloi Coal	Indonesia
355	PT Kalteng Coal	Indonesia
356	PT Lahai Coal	Indonesia
357	PT Maruwai Coal	Indonesia
358	PT Pari Coal	Indonesia
359	PT Ratah Coal	Indonesia
360	PT Sumber Barito Coal	Indonesia
361	QNI International Pty Ltd.	Australia
362	QNI Nickel (WA) Pty Limited	Australia
363	QNI Philippines Inc.	Philippines
364	QNI Western Australia Pty Ltd	Australia
365	RAL Cayman Inc.	Cayman Islands
366	Rietspruit Mine Services (Pty) Limited	South Africa
367	Rio Algom Exploration Inc. (or French Name Form - Exploration Rio Algom Inc.)	Canada
368	Rio Algom Investments (Chile) Inc.	Canada
369	Rio Algom Ireland Limited (in liquidation w.e.f. 21.05.2008)	Ireland
370	Rio Algom Limited	Canada
371	Rio Algom Mining LLC	United States
372	Rio Algom Namibia (Proprietary) Limited	Namibia
373	Riocerro Inc.	Cayman Islands
374	Riochile Inc.	Cayman Islands
375	Samancor AG	Switzerland
376	Samancor Gabon SA	Gabon
377	Samancor Holdings (Proprietary) Limited	South Africa
378	Samancor Manganese (Proprietary) Limited	South Africa
379	San Felipe Mining Limited	Virgin Islands, British
380	San Juan Coal Company	United States
381	San Juan Transportation Company	United States
382	San Manuel Arizona Railroad Company	United States

383	Southeastern Petroleum Sales Corporation	United States
384	Stein Insurance Company Limited	Guernsey
385	Tasmanian Electro Metallurgical Company Pty Ltd.	Australia
386	Terra Nominees (Proprietary) Limited	South Africa
387	The Broken Hill Proprietary Company Pty Ltd.	Australia
388	The Norwegian Oil Corporation (DNO-U.S.)	United States
389	The World Marine & General Insurance Plc	United Kingdom
390	Transkei Granite Holdings (Proprietary) Limited	South Africa
391	Transvaal and Delagoa Bay Investment Company Limited	South Africa
392	UMAL Consolidated Pty Limited	Australia
393	United Iron Pty Ltd.	Australia
394	United Minerals Corporation NL	Australia
395	Venezuela Aluminium Holding B.V.	Netherlands
396	Westchester Insurance Company (Proprietary) Limited	South Africa
397	Western Complex Coal (Pty) Ltd.	South Africa
398	Western Hog Ranch Company	United States
399	Western Venture, Inc.	United States
400	Westminer Insurance Pte Ltd.	Singapore
401	WMC (Argentina) Inc.	United States
402	WMC (Liberia) Limited	Hong Kong
403	WMC (Mineral Sands) Limited	Jersey
404	WMC (Peru) Inc.	United States
405	WMC Corporate Services Inc.	United States
406	WMC Exploration Inc.	United States
407	WMC Finance (USA) Limited	Australia
408	WMC Finance Limited	Australia
409	WMC Mineracao Ltda.	Brazil
410	WMC Pty Ltd.	Australia
411	WMC Resources (Namibia) (Proprietary) Limited	Namibia
412	WMC Resources Marketing Limited	Canada
413	WMC Securities Pty Ltd.	Australia

**FORM 20-F FOR SECTION 302 AND 404 CERTIFICATION****CEO Certification**

I, Marius Kloppers, certify that:

1. I have reviewed this annual report on Form 20-F of BHP Billiton Plc and BHP Billiton Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the companies as of, and for, the periods presented in this report;
4. The companies' other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the companies and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the companies, including their consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the companies' disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the companies' internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the companies' internal control over financial reporting; and
5. The companies' other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the companies' auditors and the audit committee of the companies' board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the companies' ability to record, process, summarise and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the companies' internal control over financial reporting.

/s/ Marius Kloppers

Name: Marius Kloppers

Title: Chief Executive Officer

Date: 21 September 2010

**FORM 20-F FOR SECTION 302 AND 404 CERTIFICATION****CFO Certification**

I, Alex Vanselow, certify that:

1. I have reviewed this annual report on Form 20-F of BHP Billiton Plc and BHP Billiton Limited;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the companies as of, and for, the periods presented in this report;
4. The companies' other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the companies and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the companies, including their consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the companies' disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the companies' internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the companies' internal control over financial reporting; and
5. The companies' other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the companies' auditors and the audit committee of the companies' board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the companies' ability to record, process, summarise and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the companies' internal control over financial reporting.

/s/ Alex Vanselow

Name: Alex Vanselow

Title: Chief Financial Officer

Date: 21 September 2010

**FORM 20-F FOR SECTION 906 CERTIFICATION**

**CEO Certification**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code) in connection with the Annual Report on Form 20-F of BHP Billiton Plc and BHP Billiton Limited, (the “Companies”) for the annual period ended [Date] as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned officer of the Companies, hereby certifies, to such officer’s knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Companies.

/s/ Marius Kloppers

Name: Marius Kloppers

Title: Chief Executive Officer

Date: 21 September 2010

This certification accompanies the Report pursuant to § 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed “filed” by the Company for purposes of §18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section.



**FORM 20-F FOR SECTION 906 CERTIFICATION**

**CFO Certification**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code) in connection with the Annual Report on Form 20-F of BHP Billiton Plc and BHP Billiton Limited, (the “Companies”) for the annual period ended [Date] as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned officer of the Companies, hereby certifies, to such officer’s knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Companies.

/s/ Alex Vaneslow

Name: Alex Vanselow

Title: Chief Financial Officer

Date: 21 September 2010

This certification accompanies the Report pursuant to § 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed “filed” by the Company for purposes of §18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section.

**Consent of Independent Registered Public Accounting Firms**

The Board of Directors  
BHP Billiton Limited and BHP Billiton Plc:

We consent to the incorporation by reference in the registration statement (No. 333-162380) on Form F-3 of BHP Billiton Finance (USA) Limited and the registration statements (Nos. 333-100496, 333-141531 and 333-160636) on Form S-8 of BHP Billiton Limited of our reports dated 21 September 2010, with respect to the consolidated balance sheets of the BHP Billiton Group (comprising BHP Billiton Plc, BHP Billiton Limited and their respective subsidiaries) as of 30 June 2010 and 2009, and the related consolidated income statements, consolidated statements of comprehensive income, consolidated statements of changes in equity and consolidated cash flow statements for each of the years in the three-year period ended 30 June 2010, and the effectiveness of internal control over financial reporting as of 30 June 2010, which reports appear in the 30 June 2010 Annual Report on Form 20-F of the BHP Billiton Group.

/s/ KPMG Audit Plc

KPMG Audit Plc  
London, United Kingdom  
21 September 2010

/s/ KPMG

KPMG  
Melbourne, Australia  
21 September 2010