



McGrathNicol

Alita Resources Limited (In Liquidation)
ACN 147 393 735
(Alita) or (Company)

Statutory Report to Creditors (Report)

Pursuant to section 70-40 of the Insolvency Practice Rules (Corporations) 2016 (**IPR**), the Liquidators must provide the Report within three months after the liquidators are appointed.

The Liquidators were appointed on 27 September 2023 and the Report has been prepared to comply with the Liquidators' statutory obligations under the IPR. A copy of the Report is appended to this announcement.

If you have any queries, please contact the Liquidator at alita@mcgrathnicol.com or (08) 6363 7600.

Dated 22 December 2023

Yours faithfully

Alita Resources Limited (In Liquidation)

Rob Kirman
Liquidator



Alita Resources Limited (In Liquidation)
ACN 147 393 735
(Alita) or (Company)

Statutory Report to Creditors (Report)

I refer to the appointment of Matthew Caddy, Robert Brauer and I as Liquidators of Alita on 27 September 2023. This Report has been prepared to comply with the Liquidators' statutory obligations under section 70-40 of the Insolvency Practice Rules (Corporations) 2016 (IPR) to report to creditors within three months of their appointment as liquidators.

The purpose of this Report is to:

- provide an update on the progress of the liquidation; and
- advise the quantum of funds likely to be available for distribution in the liquidation.

1 Liquidators' Declaration of Independence and Relevant Relationships (DIRRI)

In accordance with section 506A of the Corporations Act 2001 (**Act**) and the Australia Restructuring and Turnaround Association (**ARITA**) Code, the Liquidators provided creditors with a copy of their DIRRI and lodged a copy with the Australian Securities and Investment Commission (**ASIC**). That DIRRI confirmed a funding agreement was entered into with Mineral Resources Ltd (**MinRes**) for Deed Administration and Liquidation expenses and remuneration of up to \$5.3 million.

On 26 October 2023, the limit of the MinRes funding was increased to \$6.2 million when MinRes advanced a further \$0.9m in funding pursuant to the terms of that indemnity. Consequently, the Liquidators prepared an updated DIRRI which includes details of the increased funding provided. A copy of the updated DIRRI (dated 9 November 2023) is attached to this Report.

I remain of the view that there are no real or perceived threats to the Liquidators' independence or any reason that would preclude us from continuing in our roles as Liquidators of Alita. The Liquidators will continue to monitor independence and will advise creditors should this view change.

2 Company details

2.1 Key company particulars

The key particulars of Alita as at the date of Liquidators' appointment on 27 September 2023 (based on an ASIC search) are as follows:

Company details	
Details	Description
Company name	Alita Resources Limited (formerly Alliance Mineral Assets Limited)
ACN	147 393 735
ABN	56 147 393 735
ASX listing status	Delisted on 1 October 2020
SGX listing status	Listed
Registered office	McGrathNicol, Level 19, 2 The Esplanade, Perth WA 6000
Incorporation date	6 December 2010

2.2 Office holders

The current and former office holders of Alita are as follows:



Current & former officers

Office holder	Position held	Appointment date	Retirement date
<u>Current officers</u>			
Fergus Jockel	Director	26 November 2020	n/a
Paul Vincent O'Farrell	Director	16 February 2022	n/a
<u>Former Directors</u>			
David John Pile	Director	16 November 2020	14 February 2022
Robert Scott Vassie	Director	14 December 2018	17 December 2019
Wei Xei	Director	14 December 2018	17 December 2019
Geoffrey William Mcnamara	Director	14 December 2018	17 December 2019
Kian Guan Ong	Director	20 June 2014	17 December 2019
Mark Andrew Calderwood	Director	14 December 2018	25 September 2019
Mark Barlow Turner	Director	14 December 2018	25 September 2019
Ming Fai Chan	Director	14 December 2019	11 July 2019

Mr Fergus Jockel and Mr Paul O'Farrell are the only remaining officers of Alita (**Directors**).

2.3 Shareholders

Alita has circa 7,650 shareholders registered in Australia and Singapore.

Alita was delisted from the Australian Stock Exchange (**ASX**) on 1 October 2020, but remains listed on the Catalist Board of the Singapore Exchange (**SGX**). Trading of shares on the SGX is currently suspended.

2.4 Subsidiaries

Alita was the parent company of Tawana Resources Pty Ltd (**Tawana**) through its 100% shareholding. Tawana owned 100% of the share capital in Lithco No.2 Pty Ltd (**Lithco**). Alita, Tawana and Lithco are together referred to as '**the Group**'.

As outlined at section 3.3, Alita sold its shares in Tawana on 1 November 2023 to ACN 669 538 809 Pty Ltd (**ACN669**), an entity which is part of the Mineral Resources group. Tawana and Lithco are no longer subsidiaries of Alita.

The entities of the Mineral Resources group referred to in this Report are detailed in the table below:

Mineral Resources group entities referred to in this Report

Entity	ACN	Defined name
Mineral Resources Limited	118 549 910	MinRes
Lithium Resources Investments Pty Ltd	666 427 685	LRI
ACN 669 538 809 Pty Ltd	669 538 809	ACN669



3 Background

An understanding of the background to the Liquidators' appointment is necessary for context regarding the financial position of Alita and the potential recovery actions available to a liquidator. It is explained in four sections as follows:

- Section 3.1: Events leading up to the appointment of the initial Voluntary Administrators to the Group on 28 August 2019.
- Section 3.2: Events between 28 August 2019 and 3 December 2020 when Richard Tucker and John Bumbak of KordaMentha were appointed Voluntary Administrators and subsequently Deed Administrators of the Group (**Former Administrators**) and Martin Jones, Matthew Woods and Andrew Smith of KPMG as Receivers and Managers of the Group (**Former Receivers**).
- Section 3.3: Events between 4 December 2020 and 30 August 2023 when:
 - Richard Tucker and John Bumbak of KordaMentha were appointed Receivers and Managers (**Receivers**) of Alita, and Receivers and Managers of Lithco and Tawana from 4 December 2020 to 19 March 2021; and
 - Robert Kirman and Robert Brauer were appointed Voluntary Administrators (**Administrators**) and Deed Administrators (**Deed Administrators**) of Alita, and Voluntary Administrators and Deed Administrators of Lithco and Tawana from 4 December 2020 to 19 March 2021.
- Section 3.4: Events which occurred after execution of the Implementation Deed (**ID**) by the Deed Administrators with LRI on 30 August 2023.

The steps taken by Matthew Caddy, Robert Brauer and me as Liquidators of Alita (**Liquidators**) are set out in section 4.

3.1 *Prior to the appointment of the Former Administrators*

As mentioned at section 2.4, Alita owned 100% of the share capital in Tawana until 1 November 2023. Tawana owned 100% of the share capital in Lithco.

The Group's primary asset at that time was the Bald Hill Mine (**Bald Hill**), a lithium and tantalum mine located in the Eastern Goldfields, WA.

Alita (which was formerly known as Alliance Minerals Assets Pty Ltd) and Tawana developed Bald Hill via a joint venture and commenced commercial production in July 2018. Shortly after, Alita acquired 100% of the shares in Tawana via a Scheme of Arrangement which completed in December 2018.

The Group had entered into two offtake agreements in April 2017 (restated in January 2019) with Jiangxi Bao Jiang Lithium Industrial Limited (**JBJ**), a joint venture between Burwill Lithium Company Ltd (**Burwill**) and Jiangxi Special Electric Motor Co. Ltd (**JBL Offtake Agreements**).

On 23 May 2019, JBJ notified the Group of a force majeure event and requested delay of any impending shipments in accordance with the JBL Offtake Agreements. We The Liquidators understand the Group:

- disputed the classification of the event as a force majeure event;
- advised JBJ that the temporary shutdown of JBJ's plant did not prevent JBJ from fulfilling its obligations under the JBL Offtake Agreements;
- insisted shipments continue to occur as planned; and
- notified Tribeca Investment Partners Pty Ltd (**Tribeca**) (Alita's then secured creditor) of the position with JBJ on or around 5 June 2019.

The Group negotiated with JBJ and the Liquidators understand JBJ accepted a proposal by the Group made on or around 17 June 2019 for the resumption of shipping, though JBJ later reneged on the proposal in mid July 2019 citing amongst other matters, deteriorating market prices.



In addition to the disputes with JBJ, the Group was in negotiations with potential alternate parties for the supply of product. These negotiations were ultimately unsuccessful and the position with JBJ deteriorated from late July 2019, noting:

- some shipments were significantly delayed and subject to a reduced price and/or deferred payment of the purchase price;
- formal shipment request notices for shipments scheduled in August 2019 and September 2019 appeared to go unanswered by JBJ; and
- on 21 August 2019, Burwill announced on the Hong Kong stock exchange that it had defaulted under a facility agreement with its lender and its business operations had been mostly suspended.

The alleged force majeure event and subsequent shipment delays with JBJ caused significant strain on the Group's financial position, impacting its key source of revenue. Other contributing factors which compounded the Group's financial difficulties are noted below:

- the Group had entered into a number of long-term contracts for mining services, effectively imposing a fixed operating cost structure of circa \$20m per month;
- a number of these contracts included significant termination provisions, penalties and demobilisation costs which the Group did not have the financial capacity to meet; and
- the spot market for lithium concentrate had deteriorated, impacting both potential revenue and the value of the Group's inventory.

As a result, the Group sought to secure alternative finance and negotiate with the Group's existing lender, Tribeca. The Liquidators understand proposals were explored with credible parties, but these attempts were ultimately unsuccessful, resulting in:

- the board placing Bald Hill on care and maintenance in August 2019;
- the board forming the view that the Group was, or was likely to become, insolvent and appointing the Former Administrators on 28 August 2019; and
- the appointment of the Former Receivers by Galaxy Resources Limited (**Galaxy**) on 29 August 2019 (who purchased Tribeca's debt on or around 25 August 2019).

3.2 *Former Administrators and Former Receivers' appointments (August 2019 to December 2020)*

A summary of the key events which occurred during the tenure of the Former Administrators and Former Receivers is set out below:

- The Former Receivers and Former Administrators assumed control and secured the assets and undertakings of the Group and commenced a sale and recapitalisation program.
- On or around 28 November 2019, Galaxy's debt was repaid in full by China Hydrogen Energy Limited (**CHEL**) who entered into a circa \$70m Loan Facility Agreement (**CHEL LFA**), thereby becoming the secured creditor of the Group. After Galaxy was repaid, the Former Receivers retired on 29 November 2019 leaving the Former Administrators in control of the Group.
- On 9 December 2019, a Deed of Company Arrangement (**DOCA**), proposed by Liatam Mining Pty Ltd (**Liatam**) and CHEL, was recommended to the creditors of Alita (**Previous DOCA**) by the Former Administrators.
- On 17 December 2019, at the second meeting of creditors, creditors of the Group voted in favour of the Previous DOCA and on execution, the Former Administrators became the Former Deed Administrators. The Previous DOCA was subject to certain Conditions Precedent (**CP**), including obtaining orders from the Supreme Court of Western Australia (**Court**) subject to section 444GA of the Act (to transfer Alita's shares from the existing shareholders to Liatam or its nominee for nil consideration) and obtaining approval from the Foreign Investment Review Board (**FIRB**).



- On 6 March 2020, the Former Deed Administrators' section 444GA application for the transfer of Alita's shares for nil consideration was approved by the Court. Liatam applied to FIRB for its approval to acquire the shares in Alita, but the application was withdrawn in April 2020, following feedback from FIRB, without any decision being made.
- On 14 October 2020, the Group defaulted on the repayment terms of the CHEL LFA, and on 6 November 2020, CHEL advised the Former Administrators that it was no longer prepared to forbear from enforcing its rights under its security.
- On 24 November 2020, Liatam made a successful application to the Court for orders varying the terms of the Previous DOCA such that the transfers of Alita's shares to Liatam were not required prior to completion of the Previous DOCA.
- On 2 December 2020, Austroid Corporation (**Austroid**) purchased CHEL's \$70m loan facility, becoming the secured creditor of the Group.
- On 3 December 2020, the Previous DOCA effectuated, extinguishing all claims, except for Austroid's secured debt and bringing about the retirement of the Former Deed Administrators.

3.3 *Administrators' and Receivers' appointments (4 December 2020 to 30 August 2023)*

A summary of the key events which occurred during the Administrators' and Receivers' appointment is set out below:

- On 4 December 2020, Austroid enforced its security and appointed Richard Tucker and John Bumbak of KordaMentha as Receivers to the Group. The Receivers assumed control and secured the assets and undertakings of the Group and its operations.
- Shortly after the Receivers were appointed, Austroid appointed Robert Kirman and Robert Brauer of McGrathNicol as Administrators of the Group pursuant to section 436C of the Act.
- On 16 December 2020, two separate DOCAs proposed by Austroid, one in respect of Alita (**Parent DOCA**), and a second in respect of Lithco and Tawana (**Subsidiary DOCA**), were recommended to the creditors of the Group by the Administrators.
- At the second meeting of creditors of the Group on 23 December 2020, Austroid, being the only creditor of the Group, voted in favour of the Parent DOCA and Subsidiary DOCA which resulted in the Administrators becoming the Deed Administrators of the two separate DOCAs.
- Pursuant to the terms of the Parent DOCA, its effectuation would see (in summary):
 - any creditor claims against Alita (except Austroid's secured debt) extinguished;
 - control of Alita reverting to its directors; and
 - the Deed Administrators transferring all issued shares of Alita to Austroid (or its nominee) for nil consideration.
- Pursuant to the terms of the Subsidiary DOCA, its effectuation would see (in summary):
 - provision of a \$40m loan to Tawana and Lithco post-effectuation of the Subsidiary DOCA to provide funding for ongoing expenditure; and
 - transfer of control of Tawana and Lithco to the proponent's nominated directors with a view to resuming mining operations at the Bald Hill Mine.
- At or about this time, the Receivers:
 - transferred all assets used or applied exclusively in the operation of the Bald Hill mine, including Alita's right, title and interest in any mining tenements to Lithco; and



- entered into a deed of release which had the effect, among other things, of releasing Tawana’s and Lithco’s obligations in relation to Austroid’s existing \$70m loan facility agreement with Austroid.
- On or about 2 January 2021, Lithium WA Investments Pty Ltd (**LWA**) commenced proceedings in the Court against the Deed Administrators (COR 1 of 2021) to restrain the Administrators from effectuating the Subsidiary DOCA (which was otherwise due to occur on 4 January 2021). The proceedings commenced by LWA were commercially resolved and dismissed by consent on 18 March 2021.
- On 19 March 2021, the Subsidiary DOCA effectuated and the Deed Administrators and the Receivers retired from Lithco and Tawana on the same day.
- Following effectuation of the Subsidiary DOCA, control of Tawana and Lithco passed to their directors, Mr Fergus Jockel, Mr David Pile and Mr Mike Que. On 14 February 2022, Mr Pile was replaced by Mr Paul O’Farrell as director of Tawana, Lithco and Alita.
- On 2 March 2022 (i.e. almost 12 months after effectuation of the Subsidiary DOCA), Lithco and Yihe Cleantech Material Limited (**Yihe**) entered into agreements to facilitate the future resumption of operations of Bald Hill, namely, (i) a US \$30 million loan agreement, (ii) an offtake agreement (**Yihe Offtake Agreement**), and (iii) a security deed under which Lithco granted a security interest to Yihe for payment of outstanding monies and performance of its obligations. Lithco subsequently commenced pre-conditioning operations and processed low grade lithium concentrate.
- The Receivers and the Deed Administrators remained appointed to Alita noting the Parent DOCA was subject to the following CP’s:
 - obtaining leave of Court to transfer Alita’s share capital to Austroid or its nominee for no consideration pursuant to section 444GA of the Act (**444GA Orders**).
 - obtaining the relevant government approvals for the transaction from FIRB (**FIRB Approval**).
 - obtaining section 606 relief (**606 Relief**) from ASIC for Austroid to acquire 100% of the shares in Alita.
 - the Securities Industry Council of Singapore granting such waivers or relief from the Singapore Code as necessary or convenient in connection with the transfer of shares to Austroid, or the parties being satisfied that the Singapore Code does not apply to Alita, including by reason of Alita being de-listed (**SGX De-listing**).
- On 1 September 2021, as amended on 7 September 2021, the Court granted the 444GA Orders authorising the transfer of Alita’s shares to Austroid or its nominee for nil consideration subject to Austroid obtaining FIRB Approval and the 606 Relief. Following the granting of the 444GA Orders, on 22 September 2021, Ms Jayde Williams, a shareholder of Alita filed a notice of appeal. Ms Williams subsequently filed a notice of discontinuance of the appeal on 1 November 2021.
- On 23 November 2021, the Singapore High Court (**SHC**) granted orders recognising the Parent DOCA and the 444GA Orders in Singapore as a foreign main proceeding within the meaning of Articles 2(f) and 17(2)(a) of the Third Schedule of the Insolvency, Restructuring and Despoliation Act (Act 40 of 2018). Notwithstanding this, on 16 June 2022, the SGX advised that it did not intend to consider the Deed Administrators’ SGX De-Listing application until after the ASIC 606 Relief and FIRB Approval was satisfied.
- ASIC advised it would not finalise its assessment of the 606 Relief until FIRB Approval was determined.
- Austroid submitted its application for FIRB Approval to acquire up to a 100% interest in Alita on 21 June 2021. Following preliminary feedback, Austroid withdrew and re-submitted its application on further occasions, with the most recent application being lodged on 19 April 2023. On 20 July 2023, the Treasurer made an order pursuant to section 67(1) of the Foreign Acquisitions and Takeovers Act 1975, prohibiting Austroid from acquiring a 100% interest in Alita, or otherwise increasing its interest in Alita which would result in Austroid holding more than 9.9% of Alita’s shares.



- The sunset date, being the date when each of the CP's were to be satisfied for the Parent DOCA was originally 31 January 2022 (**Sunset Date**). This date was extended five times with the final extension occurring on 17 August 2023, extending the Sunset Date to 31 August 2023.
- On 12 July 2023, the Deed Administrators received an unsolicited email from MinRes attaching an Expression of Interest letter, a non-binding Term Sheet and Confidentiality Deed. Although the Parent DOCA remained on foot at that time, the Deed Administrators considered that to properly discharge their duties to Alita, they needed to further understand and assess the transaction proposed by MinRes and its benefit to Alita and its shareholders.
- Between around 18 July 2023 and 26 August 2023 negotiations were conducted with MinRes and on 30 August 2023 the Deed Administrators executed the Implementation Deed (**ID**) with LRI. MinRes was a guarantor to the ID. The transaction contemplated under the ID could only occur in the liquidation of Alita and subject to certain conditions, such as the Liquidators having the ability to sell the assets, given the Receivers were in control of Alita's assets at that time.
- During this period, the Deed Administrators received approaches from a number of other parties regarding potential proposals in respect of Alita. While the Deed Administrators gave consideration to each approach received, the proposals presented were generally of a high level, preliminary in nature and lacked sufficient certainty for the Deed Administrators to be able to progress them, further none were offers capable of acceptance. It is worth noting for completeness, that the Deed Administrators were not looking to sell or market Alita's assets at that time because those assets were under the control of the Receivers.

3.4 ***Between execution of ID and the appointment of Liquidators (30 August 2023 to 27 September 2023)***

A summary of the key events which occurred after the ID was executed on 30 August 2023, is set out below:

- On 31 August 2023, the Deed Administrators commenced an application in the Court seeking orders to (i) restrain Austroid and others from selling or otherwise disposing of any interests in Alita, and (ii) facilitate Alita being placed in liquidation, following the expiry of the Sunset Date and the termination of the Parent DOCA by the Deed Administrators.
- The orders sought by the Deed Administrators were contested by Austroid, Yihe, the Receivers, Lithco and Tawana (collectively the **Objecting Parties**).
- Between 31 August 2023 and 27 September 2023, the Objecting Parties put on evidence as to why the orders sought by the Deed Administrators should not be granted with multiple extensions to the Court timetable during that period. The Liquidators understand confidential settlement discussions occurred between the Objecting Parties, MinRes and LRI concurrently during this period which resulted in a confidential agreement being entered into between the Objecting Parties (amongst others), MinRes and LRI. The Liquidators are not a party to and are not privy to the terms of the agreement between LRI and the Objecting Parties.
- At a final Court hearing on 27 September 2023, the Honourable Justice Hill made orders agreed by consent of the parties to the effect that:
 - once the Parent DOCA was terminated, Alita would be placed in liquidation instead of it being returned to Alita's directors (as was originally contemplated by the Parent DOCA).
 - the Liquidators (once appointed) were granted approval under section 477(2B) of the Act (i.e. to enter into agreements for more than 3 months) to enable them to enter into a share sale agreement with LRI.
- Following the hearing, on the same day, and in the order set out below:
 - the Deed Administrators gave notice to Austroid to immediately terminate the Parent DOCA.
 - Alita was placed in liquidation and Robert Kirman, Robert Brauer and Matthew Caddy of McGrathNicol were appointed liquidators.



- Richard Tucker and John Bumback of KordaMentha retired as Receivers and Managers of Alita.
- the Liquidators entered into a Share Sale Agreement (**SSA**) with MinRes (as guarantor) and its wholly-owned subsidiary ACN 669 538 809 Pty Ltd (**ACN669**), with the following key terms:
 - Alita's secured debt is repaid in full.
 - the Liquidators receive a \$50m minimum equity payment, as well as other consideration to be determined based on the outcome of an Independent Expert Report (**IER**) and other matters as set out in the SSA (refer section 4.2).
 - ACN669 will acquire:
 - (1) all of the issued share capital in Tawana;
 - (2) all the trade debts and other receivables owing to Alita as at completion of the SSA; and
 - (3) all claims, suits and causes of action and any other rights of Alita arising out of, or related to the above two matters, to the extent such rights are capable of being or permitted to be assigned on completion.
 - After the secured debt has been repaid, the amounts received from ACN669 will be made available by the Liquidators to satisfy any creditor liabilities of Alita (including tax liabilities) and other priority payments in a liquidation as required by the Act before any residual amounts are distributed to shareholders.
- Subsequent to the appointment of the Liquidators on 27 September 2023, releases were sought from the Liquidators on 20 October 2023 of any claims Alita and the Liquidators may have against several parties including the directors of Alita, the Objecting Parties and their advisors. Noting the Liquidators' investigations were not sufficiently advanced to determine what claims the Liquidators might release, nor was any consideration offered for the releases, the Liquidators declined to provide any release in favour of those parties.



4 Update on the progress of the Liquidation

As outlined at section 3.3, Robert Kirman, Robert Brauer and Matthew Caddy of McGrathNicol were appointed liquidators of Alita on 27 September 2023, being the same day (i) the Parent DOCA was terminated, and (ii) the SSA was executed.

The SSA was scheduled to complete on 1 November 2023 and between 27 September 2023 and 1 November 2023, the Liquidators undertook various workstreams necessary to enable completion of the transaction. Separately on 30 October 2023, the secured debt and securities held by Austroid and Yihe with respect to Alita and the Group were assigned to LRI and LRI acquired 16.7m shares in Alita which were previously held by Austroid resulting in LRI becoming Alita's largest shareholder.

The SSA completed on 1 November 2023, and as a result:

- Alita's secured debt of \$73.9m (which LRI had taken an assignment of) was repaid in full;
- the Liquidators received the \$50m minimum equity payment; and
- Alita's shares in Tawana were transferred to ACN669.

Since completing the SSA on 1 November 2023, the Liquidators have progressed several workstreams simultaneously to advance the Liquidation of Alita and satisfy the Liquidators' statutory obligations. This has included the following key workstreams detailed further in the following sections:

- Section 4.1 ATO: Engaging with the Australian Taxation Office (**ATO**) who had issued a section 353-10 notice (**Notice**) to Alita, as head of the Alita tax consolidated group (being Alita, Tawana and Lithco) (**Alita TCG**) on 30 May 2023. In addition to the Notice, the Alita TCG has outstanding income tax returns in respect of FY23 and FY24. The Liquidators are required to quantify and discharge any tax payable following completion of the SSA (**ATO Review**).

The Liquidators have engaged PricewaterhouseCoopers (**PWC**) jointly with ACN669 to prepare the Alita TCG's outstanding income tax returns in order to quantify Alita's tax liability (if any).

- Section 4.2 IER: Facilitating the finalisation of the IER, which included engaging with and providing information to:
 - Deloitte, who was engaged to prepare the IER for the purpose of determining the purchase price payable by ACN669 under the SSA; and
 - Behre Dolbear Australia Pty Ltd (**BDA**), who was engaged to provide advice to Deloitte on (i) the technical operating assumptions included in the life of mine cash flow prepared for Bald Hill, (ii) an assessment of the exploration tenements of Lithco, and (iii) the valuation of any residual resources not reflected in the discounted cash flow analysis.

Finalising negotiations with ACN669 to conclude the total purchase price payable under the SSA.

- Section 4.3 Court application by Directors: Considering and responding to the application commenced by Alita's directors (Messer's Jockel and O'Farrell) seeking to (i) call a meeting of shareholders, (ii) change the composition of Alita's board of directors, and (iii) terminate the liquidation of Alita with control of Alita to be returned to its directors.
- Section 4.4 Liquidators' statutory obligations: The Liquidators have taken steps to progress the Liquidators' statutory obligations, including (i) preparing this statutory report to creditors, (ii) taking steps to secure the books and records of Alita, (iii) commencing the Liquidators' preliminary investigations based on the records available, and (iv) complying with Alita's statutory obligations under the Catalist Rules of the Singapore Stock Exchange.



4.1 *ATO Review*

The ATO issued the Notice to Alita as head of the Alita TCG on 30 May 2023. The Notice is a tool available to the ATO to compel companies, including when in external administration, to produce information that might assist the ATO's enquiries into its affairs with a view to determining potential tax debts.

The Notice was issued to Alita prior to the Liquidators' appointment. Between the date of issuing the Notice and 27 September 2023, engagement with the ATO had been managed by Alita's directors, with oversight from the Receivers. Following the appointment of the Liquidators, management of communications with the ATO transitioned to the Liquidators. The Notice requested the provision of a broad range of information, some of which has been provided to the ATO. The ATO Review is ongoing.

On 15 December 2023, the ATO issued a proof of debt in the liquidation of Alita in the amount of \$203,045,626.28 stating Alita still is, justly, truly and contingently indebted to the Deputy Commissioner of Taxation for Income Tax. Although the ATO has issued a proof of debt in the amount of \$203m, further work is required to determine the actual tax liability including to (i) prepare and lodge the FY23 and FY24 tax returns for the Alita TCG, (ii) respond to information requested by the ATO, and (iii) obtain transfer pricing analysis from PWC for the purposes of engaging with the ATO.

The Liquidators and ACN669 have jointly engaged PWC to prepare the outstanding income tax returns. PWC has advised this scope of work will take between three and four months to complete and has recommended that the Alita TCG seeks an extension to the deadline for lodgement of the outstanding tax returns to Apr-24.

The Liquidators have separately engaged PWC to calculate any tax payable by the Liquidators in respect of the transactions contemplated by the SSA, as modified by the 21 November 2023 agreement discussed below (**Liquidators' Transaction Tax**). The Liquidators' Transaction Tax liability will be impacted, in particular, by (i) the availability of carried forward losses to shelter any tax payable, (ii) the outcome of the ATO Review, and (iii) the asset cost base available to the Liquidators in relation to the relevant transactions.

4.2 *Outcome of IER and consideration payable by ACN669*

Deloitte was engaged to prepare an IER providing its opinion as to the preferred value of the residual equity in Alita as at 29 August 2023, being the day before the ID was entered into with LRI (**Preferred Value**). The engagement of Deloitte was a Valuation Engagement as defined under APES 225 Valuation Services and Deloitte relied on the work of BDA who provided advice on (i) the technical operating assumptions included in the life of mine cash flow prepared for Bald Hill, (ii) an assessment of the exploration tenements of Lithco, and (iii) the valuation of any residual resources not reflected in the discounted cash flow analysis.

Although Deloitte was instructed to provide a single Preferred Value, Deloitte determined it was unable to provide this due to the uncertainty driven by the ongoing ATO Review (refer section 4.1).

The IER notes that the outcome of the ATO Review is likely to have a material impact on both the actual and future taxes payable, noting future taxes in relation to the operation of the Bald Hill mine and Yihe Offtake Agreement by Lithco would be payable by any purchaser.

As a consequence of the above assessment, and noting the binary nature of the position with the ATO (i.e. additional future tax is either payable or it is not), Deloitte's IER provided a Preferred Value in two scenarios as follows:

- Scenario 1 - where the ATO Review determines the Yihe Offtake Agreement is at arm's length; and
- Scenario 2 - where the ATO Review determines the Yihe Offtake Agreement is **not** at arm's length.

A summary of the valuation ranges identified in the IER in each scenario is set out in the table below:



Alita - IER summary (AUD million)

Item	Scenario 1		Scenario 2	
	High	Low	High	Low
Residual equity in Alita	125.0	63.4	25.0	(85.3)
Preferred Valuation	94.2		nil	

Noting the Deloitte IER provided Preferred Valuations of either \$nil or \$94.2m (after deducting Alita’s secured debt), the Liquidators engaged with ACN669 to agree a Preferred Valuation for the purposes of concluding the transaction and providing certainty to Alita and its stakeholders.

On 21 November 2023, an agreement was executed with ACN669 which resulted in the final consideration payable being \$173.9m (subject to any additional adjustments which may increase consideration under the SSA). The \$173.9m comprised (i) \$100m paid by ACN669 to the Liquidators by way of bank transfer, and (ii) the application of the remainder of that consideration towards repayment of Alita’s secured debt which LRI acquired from Austroid on 30 October 2023. This is summarised in the table below:

Consideration paid by ACN669

Item	\$m
Minimum equity payment	50.0
Top up equity payment	50.0
Agreed Preferred Value	100.0
<u>Secured debt</u>	
Alita’s secured debt to LRI	73.9
Consideration paid	173.9

The Liquidators further understand that a Mineral Resources group company also assumed the secured liabilities of Tawana and Lithco outstanding to Austroid and Yihe which totalled approximately \$86.1m.

The terms of the final transaction agreed with ACN669 provides for:

- No negative adjustment to the consideration payable by ACN669 at the conclusion of the ATO Review and following lodgement of the FY23 and FY24 income tax returns (refer section 4.1) – i.e. no element of the consideration is repayable to ACN669 on account of the \$203m ATO proof of debt and/or the final tax position of the Alita TCG.
- To the extent that there is a tax liability referable to any period or part period ending prior to completion of the SSA, which is attributable to the affairs of Lithco and Tawana (**Attributable Tax Liability**), that tax liability effectively remains a liability of Lithco and Tawana (noting the further comments below regarding the Attributable Tax Liability and the ability to recover payment from Tawana and Lithco).
- To the extent a Liquidators’ Transaction Tax liability is payable, ACN669 is required to pay further consideration as required to ensure the Liquidators have sufficient funds available to discharge any Liquidators’ Transaction Tax and have a minimum of \$25m available to Alita to satisfy any creditor liabilities and priorities as required in a liquidation before distributing residual amounts (if any) to Alita’s shareholders. ACN669’s obligation to pay is supported by a guarantee from MinRes.

The Liquidators are satisfied that agreeing a Preferred Valuation of \$100m with ACN669 which is greater than the Deloitte Preferred Valuation in both high and low scenarios is a positive outcome for Alita and its stakeholders.

The initial \$50 million was received to the liquidation bank account on 2 November 2023. The final \$50 million was received by the Liquidators into the liquidation bank account on 27 November 2023.



4.3 *Directors' Court Application*

On 12 December 2023, Fergus Jockel and Paul O'Farrell, in their capacity as directors of Alita filed an application with the Court (**Application**). The Application seeks:

- leave to issue a Notice of Meeting to the shareholders of Alita (**Meeting Application**);
- to appoint Chris Ellison, Norman Mel Ashton and Roderick John Sutton as directors of Alita (**Appointment Application**); and
- to terminate the liquidation of Alita pursuant to 90-15 of the Insolvency Practice Schedule (Corporations) (being Schedule 2 to the Corporations Act 2001 (Cth) (**Termination Application**).

The Directors initially sought to have the Application listed for an urgent hearing on 22 December 2023 however at a directions hearing before the Honourable Justice Hill on 19 December 2023, Justice Hill advised she did not consider there was any basis for the Application to be heard on an urgent basis. Following the directions hearing, the Application was programmed as follows:

- Any interested party who wishes to be heard in relation to any of the Meeting Application, Appointment Application or Termination Application file a notice of appearance by 17 January 2024. The question of whether any interested party, who files a notice of appearance, has leave to be heard will be considered at the directions hearing on 19 January 2024.
- The Directors must provide the form of the proposed Notice of Meeting by 15 January 2024.
- A hearing of the Meeting Application be listed for one hour on 30 January 2024 at 10.00am AWST.
- A hearing of the Termination Application and the Appointment Application be listed for one day on 29 February 2024 at 10.00am AWST.
- The Liquidators must cause notice of the orders to be given to shareholders:
 - by SGX announcement;
 - by publishing the orders on the Alita information page on McGrathNicol's website, by 20 December 2023; and
 - by advertisement twice in the West Australian, The Australian and the Australian Financial Review, the first by 30 December 2023 and the second by 13 January 2024.
- The Directors must give notice of the programming orders by 20 December 2023 to ASIC and the Australian Taxation Office (**ATO**).

At this stage, the Liquidators have not determined whether or not they will actively oppose the Termination Application. The Liquidators expect it will be necessary for the Liquidators to put affidavit material and submissions to the Court to ensure that the Court is fully apprised of all matters relevant to the Court's assessment of the Termination Application.

4.4 *Liquidators' statutory obligations*

Although to date the Liquidators have predominantly focused on the key transaction workstreams detailed in sections 4.1, 4.2 and 4.3, the Liquidators have also progressed their statutory obligations. These matters are discussed in further detail in section 6 of this Report and include:

- taking steps to secure access to books and records;
- commencing the Liquidators' preliminary investigations based on the information available;
- preparing and issuing this Liquidators' Statutory Report; and
- complying with Alita's statutory obligations under the Catalist Rules of the Singapore Stock Exchange.



5 **Assets and liabilities**

5.1 **Assets**

5.1.1 *Realised assets of Alita*

At the date of the Liquidators' appointment, Alita's only known asset was its 100% shareholding in Tawana. Tawana was the 100% shareholder in Lithco, the entity that owns and operates the Bald Hill Mine.

At completion of the SSA on 1 November 2023, ACN669 acquired Alita's assets which was defined in the SSA to include:

- all of the issued share capital in Tawana;
- all the trade debts and other receivables owing to Alita as at completion of the SSA; and
- all claims, suits and causes of action and any other rights of Alita arising out of, or related to the above two matters, to the extent such rights are capable of being or permitted to be assigned on completion.

Following completion of the SSA, Alita holds approximately \$100m cash at bank which is accruing interest of circa \$13k per day. The Liquidators estimate that interest of approximately \$450k has accrued between 1 November 2023 and 21 December 2023 (noting the final \$50m of proceeds was received on 27 November 2023). Accrued interest will be paid to the Liquidators' bank account on the expiry of the 90-day term deposit facility.

5.1.2 *Recoverable tax position*

Prior to completion of the SSA, Alita, Tawana and Lithco formed members of the Alita TCG. On completion of the SSA, Lithco and Tawana exited the Alita TCG and Alita has the responsibility and liability for lodging and paying the Group's tax liabilities.

Material work is still required to quantify the tax position of the Alita TCG noting (i) the tax liability of the Alita TCG (if any) remains unknown, and (ii) there were material tax losses (exceeding \$250m) carried forward from 30 June 2022 (with work needing to be undertaken to determine whether those losses are available to the Alita TCG's to shelter any taxable income in subsequent periods).

In light of the above, the terms of the SSA include a claw back mechanism where the purchaser under the SSA is required to procure that Lithco and Tawana pay any Attributable Tax Liability (being the portion of tax attributable to the affairs of Tawana and Lithco). Alita's right to recover the Attributable Tax Liability is subject to the Alita TCG having an actual tax liability and is not supported by any guarantee of payment by any other Mineral Resources group entity.

To the extent a claim arises against Lithco and Tawana in respect of an Attributable Tax Liability, the value of this right in the liquidation of Alita (i) is capped at the value of the Attributable Tax Liability, and (ii) is subject to the ability of Lithco and Tawana to meet that liability.

5.1.3 *Recoveries in the Liquidation of Alita*

Potential Liquidators' recovery actions are discussed further at section 6 of this Report.

5.2 **Liabilities**

5.2.1 *Secured creditor*

As at the date of the Liquidators' appointment, Alita's only known creditor was Austroid in respect of its circa \$73.9m of secured debt. As discussed in section 4 of this Report, on 30 October 2023, the secured debt outstanding to Austroid was assigned to LRI pursuant to the terms of a confidential settlement agreement.

At completion of the SSA on 1 November 2023, LRI's secured debt of \$73.9 was repaid in full.

5.2.2 *Other creditors*

At the date of the Liquidators' appointment, there were no known creditors of Alita.



On 15 December 2023, the Liquidators received a proof of debt issued by the ATO for \$203,045,626.28. The proof of debt relates to income tax for the year ending 30 June 2023 (**FY23**) and the period ending 31 October 2023 (**FY24**) and the proof of debt notes:

"... the company was on 27 September 2023, and still is, justly, truly and contingently indebted to the Deputy Commissioner of Taxation for Income Tax."

As detailed in section 4.1 of this Report, further work is required to quantify and confirm the ATO's actual tax liability (if any).



6 Investigations

A key role of the Liquidators is to investigate Alita's affairs and determine whether any offences under the Act, or other relevant legislation, may have transpired, and to determine if any recovery from any offences, insolvent or voidable transactions could be pursued by the Liquidators. These investigations are important because they:

- provide context to Alita's financial position and explain the conduct prior to the Liquidators' appointment;
- inform the likely quantum of funds available for distribution by the Liquidators; and
- are necessary to enable the Liquidators to prepare and lodge their section 533 report with ASIC.

As detailed further below, the Liquidators have taken steps to secure access to Alita's books and records for the purposes of conducting their detailed investigations. To date, the Liquidators have commenced preliminary investigations however it is necessary for the Liquidators to obtain access to further information to progress these investigations. Access to books and records is discussed further below.

Since being appointed on 27 September 2023, the Liquidators' time has been focused on completing a number of complex and critical workstreams including (i) completing the MinRes transaction, (ii) obtaining the IER, (iii) dealing with the ATO Review, and (iv) considering the application brought by the Directors to change Alita's board and terminate the liquidation of Alita (**Application**).

It will be necessary for the Liquidators to undertake further detailed investigations in respect of each of the items described further below to determine what actions might be available to the Liquidators to (i) pursue recoveries to increase the pool of funds available for distribution in Alita, and (ii) report any breaches or offences to ASIC in the Liquidators report pursuant to section 533 of the Act.

It is worth noting out of completeness, that if the Termination Application is successful, the Liquidators will be removed and no longer able to carry out and complete their investigations and bring any recovery claims or proceedings.

6.1 *Books and records*

Before the Liquidators can conduct detailed investigations in respect of Alita, the Liquidators require access to the books and records.

Since being appointed, the Liquidators have taken steps to recover the books and records of Alita by issuing document production requests and/or notices to a number of parties. These include the Directors, Lithco, Tawana, Mr Mike Que (former Director of Lithco and Tawana), Austroid (in its capacity as the former DOCA proponent and secured creditor of Alita), the Receivers (now retired), Liatam Mining Pty Ltd (the mining services operator of Bald Hill) and FTI Consulting (engaged to host a selection of data for the purposes of responding to the Notice).

The Liquidators are still liaising with various parties in relation to the collection of all books and records noting some of the Liquidators' requests have not been complied with. The Liquidators will continue to collect the books and records necessary for the Liquidators to finalise their investigations.

6.2 *Insolvency related Liquidators' recovery actions*

Liquidator recovery actions can take many forms. Certain claims a liquidator might take require the Liquidators to demonstrate the company was insolvent. The Act specifies that a company is solvent if, and only if, it is able to pay all of its debts as and when they fall due. A company that is not solvent is insolvent.

The tax liability as it relates to Alita is unknown and the Liquidators are unable to say at this time if Alita is solvent. This will be resolved following (i) calculation of the Alita TCG tax liability, (ii) calculation of the Attributable Tax Liability, and (iii) the recovery of the Attributable Tax Liability from Lithco and Tawana.

To the extent Alita is found to be insolvent at the conclusion of the ATO Review and after finalising the recoverable tax position detailed in section 5.1.2, the Liquidators would investigate the following claims:



6.2.1 *Insolvent trading*

In the Administrators' Report to creditors dated 16 December 2020 (**VA Report**), the Administrators' preliminary view was that the Alita Group had been insolvent from 1 June 2019 and that the possible quantum of an insolvent trading claim, based on a date of insolvency of 1 June 2019 was \$20m for the Group. This calculation was performed on a Group basis (i.e. for Alita, Lithco and Tawana noting a deed of cross guarantee existed for the Group at that time).

Subject to the assessment of Alita's solvency at the date of the Liquidators' appointment, it will be necessary for the Liquidators to consider if a further insolvent trading claim arose during the period 4 December 2020 to 27 September 2023.

The Liquidators will finalise their view as to the strategy and recoverability of any insolvent trading claim once the solvency position in respect of Alita has been determined.

6.2.2 *Voidable transactions*

Certain transactions that occurred at a time when Alita was insolvent (or caused Alita to become insolvent) and/or where the property of Alita was disposed of or dealt with inappropriately, may be recovered by the Liquidators under Part 5.7B of the Act.

This may result in, among other things, a requirement for a third party to return property to Alita and thereby increase the assets available in the liquidation. These are known as voidable transactions.

Voidable transactions may include:

- Unfair preference claims: transactions between Alita and its creditors, resulting in an unsecured creditor receiving a greater amount than it would have received in a winding up. These transactions must have occurred prior to the appointment of the Liquidators and when Alita was insolvent or if the transaction caused Alita to become insolvent;
- Uncommercial transactions: transactions which a reasonable person in the place of Alita would not have entered into, taking into account the benefits and the detriment to Alita, the respective benefits to the other parties involved and any other related matters. These transactions must have occurred when Alita was insolvent or have caused Alita to become insolvent;
- Unfair loans: a loan agreement where the interest or charges are considered to be extortionate. Unfair loans made to Alita at any time prior to the Administrators' appointment may potentially be overturned by the Liquidators, whether or not Alita was insolvent when the loan was entered into (or any time thereafter); and
- Unreasonable director-related transactions: transactions made to or on behalf or for the benefit of a director, or a close associate, which a reasonable person in the place of Alita would not have entered into, taking into account the benefits and the detriment to Alita, the respective benefits to the other parties involved and any other related matters and whether or not Alita was insolvent when the transaction was entered into.

The VA Report detailed the Administrators' preliminary views that no potentially voidable transactions were identified. The Liquidators have not subsequently identified any potentially voidable transactions relating to the period prior to our appointment on 4 December 2020, however we will consider this further before determining that no action should be taken. In addition, after receiving the books and records and finalising our investigations, the Liquidators will consider if there were any voidable transactions between 4 December 2020 and 27 September 2023.

6.3 *Non-insolvency related Liquidator actions*

In addition to claims which require the Liquidators to demonstrate Alita is insolvent, there are other claims available to a Liquidator which do not require evidence that Alita was insolvent. A summary of these types of claims is discussed below.



6.3.1 Any breach of duties by Directors and Former Directors

Pursuant to section 533 of the Act, the Liquidators must lodge a report with ASIC by 26 March 2024 which outlines whether or not the Liquidators consider any offences have been committed by a past or present officer of Alita.

The types of common offences are summarised in the table below:

Summary of common offences	
Section	Offence
180	Failure to discharge duties with a reasonable degree of care and diligence.
181	Failure to act in good faith and in the best interests of the corporation and for proper purpose.
182	Improper use of position to gain personal advantage or cause detriment to the corporation.
183	Improper use of information to gain advantage or cause detriment to the corporation.
184	Reckless or intentionally dishonest and failing to exercise powers and discharge duties in good faith and for proper purpose.
206A	Disqualified person managing corporation.
286	Failure to keep financial records.

Source: Corporations Act

The list of offences in the table above is not an exhaustive list of all potential offences under the Act, but rather a summary list of offences more commonly committed.

In the VA Report, the Administrators identified two possible instances whereby the actions of the Former Directors may have resulted in a breach of directors duties, being:

- Failure to comply with continuous disclosure obligations following inadequate disclosure of the material issues with the Group's JBL Offtake Agreements and the resulting impact on revenue and working capital of the Group; and
- potential inappropriate use of position and information following a sale of shares following the Group receiving notice of the material issues with the JBL Offtake Agreements.

The Liquidators will be required to further consider these items during our investigations.

6.3.2 Any breach of duties by other officers of Alita

In addition to the breaches identified in the VA Report, the Liquidators will be required to consider if any officer of Alita, including the Receivers, breached their duties while occupying the role of officer of Alita. The Liquidators require further information to properly undertake these investigations and to comment on the nature of any likely claims.

The Liquidators will be required to consider the claims available to the Liquidators and the commerciality of pursuing any claims identified.



7 Receipts and payments to date

A summary of the receipts and payments for Alita for the period 27 September 2023 to 22 December 2023 is set out below:

Receipts and payments from 27 September 2023 to 22 December 2023			
Item	LRI Funding	Alita Assets	\$
Cash at bank as at 27 September 2023	-	295,256	295,256
Receipts			
Consideration for the SSA	-	100,000,000	100,000,000
Funding from LRI	4,217,947	-	4,217,947
GST refund	-	100,521	100,521
Interest income to 30 November 2023 (Note 1)	-	58,287	58,287
Total receipts	4,217,947	100,454,063	104,672,011
Payments			
ASIC fee	-	(6,974)	(6,974)
Data hosting fees	(11,555)	-	(11,555)
Deed Administrators' & Liquidators' fees	(1,402,679)	(99,950)	(1,502,630)
Independent Expert Report (Mineral Resources Transaction)	(1,032,310)	-	(1,032,310)
Independent Expert Report (Deed Administrators)	-	(254,645)	(254,645)
Legal fees and disbursements	(1,740,084)	(24,772)	(1,764,856)
Other costs	(5,136)	-	(5,136)
SGX Sponsor	(24,150)	(399)	(24,549)
Total payments	(4,215,915)	(386,740)	(4,602,655)
Cash at bank as at 22 December 2023	2,032	100,067,324	100,069,356

Note 1: Excludes interest on funds held in the 90-day term deposit which will be credited at the conclusion of the term.

8 Likelihood of a dividend

Several factors affect the likelihood of a dividend being paid to creditors and subsequently a distribution to shareholders. These include:

- the size and complexity of the liquidation;
- the outcome of the ATO Review to determine Alita's tax position;
- the quantum of the Liquidators' Transaction Tax liability;
- the outcome of the Liquidators' investigations to determine the funds available for distribution;
- the statutory priority of certain claims and costs; and
- the volume of enquiries by shareholders and other stakeholders.

Before the Liquidators' may distribute any funds to shareholders, the Liquidators will be required to (i) quantify and pay the Liquidators Transaction Tax, (ii) quantify and pay Alita's tax liabilities (and any other creditors should they exist), and (iii) obtain tax clearance from the ATO. This will require finalisation of the ATO Review and a calculation of any portion of the tax liability which is attributable to Lithco and Tawana.

The Liquidators expect it will take at least three to four months before the ATO Review is complete (though it could take longer). The Liquidators expect it may then take an additional one to two months following the conclusion of the ATO Review before the Liquidators can (i) determine the final quantum of funds available to creditors/shareholders, and (ii) begin the process of distributing any funds to creditors/shareholders.



If a dividend is going to be paid, creditors and/or shareholders will be contacted before that happens and, if they have not already done so, they will be asked to lodge a proof of debt. The Liquidators will otherwise provide updates when there are further material updates.

9 **Cost of the liquidation**

The Liquidators issued a remuneration approval report on 30 October 2023 to LRI as Alita's only creditor.

On 1 November 2023 and prior to completion of the SSA, LRI approved the Liquidators prospective remuneration of \$4.5m to completion of the liquidation of Alita.

The remuneration approval report confirmed:

- That as detailed in the DIRRI provided to creditors dated 29 September 2023, funding was provided by LRI to the Deed Administrators and Liquidators up to a capped sum of \$5.3 million (increased to \$6.2 million on 26 October 2023).
- The funds are held on trust expressly for the sole purpose of meeting the costs and expenses (including professional fees) of the former Deed Administrators and the Liquidators in completing the SSA and a series of related tasks in the liquidation also agreed to be funded by LRI, including the costs of resolving the taxation position of Alita.
- Of the total (\$4.5m) value of the prospective fee approval sought, the Liquidators propose to draw a maximum amount of \$2m of Liquidators' remuneration from the recoveries made from the assets of Alita. To the extent that this quantum is insufficient to fund the work anticipated to be required, further fee approvals may be sought at that time.
- The balance of the total fee approval sought, comprising \$2.5m, will not be paid from company funds, but rather from the costs fund established by LRI for this purpose, therefore having no impact on the value of assets recovered in the liquidation.
- Both elements making up the total prospective fee claim have a strictly capped value of \$4.5 million. To the extent the actual time incurred by the Liquidators is less than the remuneration approved, the lesser amount will be billed. Should the time incurred exceed the approved amount, the Liquidators would be required to seek further approval before this can be paid.

For the reasons set out above, the Liquidators' prospective remuneration to be paid from the assets of Alita (i.e. the \$100m) totals \$2.0m absent further approval from either creditors or the Court.

10 **What happens next?**

Some of the tasks which the Liquidators are required to undertake prior to finalisation of the liquidation of Alita are detailed below:

- Continuing to liaise with the ATO in respect of the Notice.
- Continuing to engage with ACN669 and PWC to progress the ATO Review and quantify Alita's tax liability.
- Quantify the Liquidators' tax liability as a result of the SSA.
- Finalise and lodge the FY23 and FY24 tax return.
- Obtaining the books and records and conducting detailed Liquidator investigations into (i) insolvent trading, (ii) voidance transactions, and (iii) breaches of duties.
- Prepare and lodge the section 533 report to ASIC by 26 March 2024.
- Declare and pay a dividend to creditors (where relevant).
- Distribute surplus funds to shareholders (where relevant).

Notwithstanding the Termination Application, there are certain tasks listed above which the Liquidators will be required to progress while the application is being heard such as the progression of the ATO Review. The outcome



of the Termination Application will otherwise determine whether all of the above tasks are required to be completed or whether the Liquidation will come to an end.

If the Liquidators receive a request for a meeting that complies with the guidelines set out in the initial information provided to you, the Liquidators will hold a meeting of creditors.

I may write to you again with further information on the progress of the liquidation.

11 Where can you get more information?

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors; and
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact the Liquidator at alita@mcgrathnicol.com or (08) 6363 7600.

Dated 22 December 2023

Rob Kirman
Liquidator

Enclosures:

- DIRRI dated 9 November 2023
- Proof of Debt (Form 535)
- Proof of Debt Guidance Notes
- ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading



Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)

Version 4

Alita Resources Limited (In Liquidation)
ACN 147 393 735
(Alita)

Lithco No.2 Pty Ltd
ACN 612 726 922
(Lithco)

Tawana Resources Pty Ltd
ACN 085 166 721
(Tawana)

(collectively “Alita Group” or “the Companies”)

The purpose of this document is to assist creditors with understanding any relationships that the Liquidators and former Administrators have and any indemnities or upfront payments that have been provided to the Administrators. None of the relationships disclosed in this document are such that the independence of the Administrators is affected.

This information is provided to you to enable you to make an informed assessment on any independence concerns, so you have trust and confidence in our independence and, if not, can act to remove and replace us if you wish.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

A. Independence

We, Robert Kirman and Robert Brauer and Matthew Caddy, of the firm McGrathNicol have undertaken an assessment of the risks to our independence prior to accepting the appointment as Liquidators of Alita and former Administrators of the Alita Group in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting this appointment.

B. Declaration of Relationships

B1. *Circumstances of appointment*

This appointment was referred to us by Lavan, solicitors acting for Austroid Corporation (**Austroid**), the Alita Group’s secured creditor from 2 December 2020, and China Hydrogen Energy Limited (**CHEL**), the Alita Group’s secured creditor up to 2 December 2020 when the debt was assigned to Austroid. Lavan provides legal advice from time to time to assist McGrathNicol’s restructuring and advisory projects and Lavan periodically refer engagements to McGrathNicol. We believe this referral does not result in a conflict of interest or duty because:

- the referral is unconditional;
- these engagements are only commenced after full regard is given to potential conflicts of interest in relation to all interested stakeholders;
- McGrathNicol has not undertaken any previous work or had prior involvement with the Alita Group either on referral from Lavan or otherwise;



- each professional engagement referred by Lavan in relation to a particular entity is conducted on an entirely separate bases which has no bearing on this appointment; and
- referrals from lawyers, accountants and other professional advisers are commonplace and don't impact our independence in carrying out our duties as Administrators.

On 18 November 2020, Robert Kirman received a phone call from Lavan Legal, acting as advisors to CHEL, to discuss the Alita Group's ongoing Deed of Company Arrangement (**DOCA**) and the potential options for the Companies. Later that day, Robert Kirman attended a meeting with representatives from Lavan Legal and Liatam Mining Pty Ltd (**Liatam Mining**), both acting as advisors to CHEL, to discuss:

- the current status of the DOCA for the Alita Group;
- the potential need plan B voluntary administrators following the effectuation of the DOCA; and
- generally discussing the Alita Group's financial position.

On 19 November 2020, Robert Kirman attended a meeting with representatives from Lavan, Liatam Mining and PCF Capital, all acting as advisors to CHEL to discuss similar matters as at the meeting on 18 November 2020.

On 2 December 2020, Robert Kirman and a senior staff member at McGrathNicol, attended a meeting with representatives from Liatam Mining and PCF Capital, acting as advisors for Austroid, to discuss similar matters as at the meeting on 18 November 2020.

On 4 December 2020, Austroid appointed Rob Kirman and Rob Brauer as Administrators of the Alita Group.

These meetings did not involve any consideration of the effectiveness or validity of the security held by Austroid and we understand they have separate legal representation in relation to this issue.

We received no remuneration for attending these meetings or for the advice provided.

In our opinion, these meetings do not affect our independence for the following reasons:

- It is recognised by the Courts and Australian Restructuring, Insolvency and Turnaround Association's (**ARITA**)'s CoPP that advice on the insolvency process and available options is necessary and does not amount to an impediment to accepting an appointment;
- It is recognised by the Courts that developing an evolving contingency plan for the potential voluntary administration is appropriate and does not represent a threat to the independence of the potential appointees should the appointment proceed; and
- The nature of the advice provided was such that it would not be subject to review and challenge during the course of the Administration. Nor would the advice influence our ability to be able to fully comply with the statutory and fiduciary obligations associated with the Administration in an objective and impartial manner.

We have provided no other information or advice to the Alita Group, CHEL, Austroid and its advisors prior to our appointment beyond that outlined in this DIRRI.

B2. *Prior professional services to the Insolvent*

On 4 December 2020, Rob Kirman and Rob Brauer were appointed Administrators of the Alita Group. On 23 December 2020, Rob Kirman and Rob Brauer were appointed Deed Administrators of Alita, and separately as Deed Administrators of Tawana and Lithco. The Deed of Company Arrangement (**DOCA**) in respect of Lithco and Tawana effectuated on 19 March 2021. The DOCA in respect of Alita was terminated on 27 September 2023 when Rob Kirman, Rob Brauer and Matthew Caddy were appointed Liquidators of Alita.

Neither we, nor our firm, have provided any professional services to, or in relation to, the Alita Group in the previous 24 months.



B3. Relevant Relationships (excluding professional services to the Insolvent)

We, or a member of our firm, have, or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons
KPMG	Andrew Smith, Martin Jones and Matthew Woods, partners at KPMG, were appointed Receivers and Managers of the Alita Group for the period from 29 August 2019 to 29 November 2019. KPMG undertakes accounting and taxation advisory services from time to time on instructions from McGrathNicol.	We believe this relationship does not result in a conflict of interest or duty because: <ul style="list-style-type: none">▪ Each professional engagement undertaken by KPMG in relation to a particular entity or group of entities for McGrathNicol insolvency appointments is conducted on an entirely separate basis which has no bearing on this appointment.▪ These engagements are only commenced after full regard is given to potential conflicts of interest in relation to all interested stakeholders. Given these factors, our independence in acting as voluntary administrator of the Alita Group has not been affected.

B4. Group appointments

As specified on page one of this Declaration, the Administrators have been appointed as Administrators of three companies within the Alita Group.

The Administrators are of the view that the appointment to the group of companies will have significant benefits to the conduct of the administration, including cost-savings and enabling an as accurate as possible view to be obtained of the activities and financial position of the companies as a whole. The Administrators understand that the inter-company loans between the entities within the Alita Group were extinguished on completion of a Deed of Company Arrangement prior to our appointment. To the extent the inter-company loans are continuing or are expected to continue in the future, the Administrators not aware of any potential conflicts of interest arising from the appointments over the various group members. However, to the extent it becomes apparent that pre-appointment dealings between companies in the group may give rise to a conflict which may impact the outcome for creditors of a particular company, then the Administrators undertake to disclose any such conflicts to the creditors and, as appropriate, seek Court directions regarding how to resolve the potential conflict.

B5. No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the Alita Group, an associate of the Alita Group, a former insolvency practitioner appointed to the Alita Group or any person or entity that is entitled to enforce a security interest in the whole or substantially the whole of the Alita Group's property that should be disclosed.



C. Indemnities and up-front payments

We have been provided with the following loan facility agreement for remuneration and expenses incurred in the conduct of this administration:

Name	Relationship with the Alita Group	Nature of indemnity or payment
Austroid	Secured creditor of the Alita Group	<p>The Administrators executed a Loan Facility Agreement with Austroid on 7 December 2020 to provide funding up to \$5.0 million to the Administrators primarily for the payment of the Administrators' costs and expenses including legal fees and remuneration. On 29 June 2023, the limit of the LFA was increased from \$5.0 million to \$6.0 million.</p> <p>Conditions of the funding being (i) the funding be unsecured, (ii) funding be limited recourse to the assets of the Alita Group only, and (iii) funding be drawn down in accordance with required notice provisions and approved purpose.</p> <p>The Administrators have obtained approval from the Court in relation to the limited recourse aspect of the funding.</p> <p>To the extent they are available for this purpose, a request for funds under the Loan Facility Agreement will not be made to meet our remuneration until such time that it is approved as required by the Corporations Act 2001.</p>
Mineral Resources Limited (MRL)	Prospective purchaser, and party to the Implementation Deed (to purchase of Alitas' shares in Tawana). The Implementation Deed was executed on 30 August 2023.	<p>A Deed of Indemnity was agreed between the parties which extended to the remuneration, costs and expenses (including the legal fees) of the Deed Administrators (and Liquidators) incurred in the period of negotiation and implementation of the prospective purchase of Alitas' shares in Tawana to MRL.</p> <p>The indemnity has two principal elements:</p> <ol style="list-style-type: none"> 1. the ordinary costs and expenses of effecting the Implementation Agreement; and 2. a broad category of legal defence costs in relation to possible litigation instituted against Alita as a consequence of the proposed purchase of Alita's shares in Tawana. <p>The first category is capped at \$5.3M and has been paid to the Administrators, to be held on trust on account of this class of costs only. On 26 October</p>



		<p><u>2023, the cap was increased from \$5.3m to \$6.2m. The additional funds have been received and are held on trust.</u></p> <p>The second category of potential legal defence costs is not subject to any limit.</p> <p>To the extent funds are available for these purposes, a payment of costs under the Deed of Indemnity will not be made to meet our remuneration until such time that it is approved as required by the Corporations Act.</p>
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This does not include statutory indemnities. We have not received any other indemnities or upfront payments that should be disclosed.

Dated: 9 November 2023

.....
Robert Kirman

.....
Matthew Caddy

.....
Robert Brauer

Note:

If the circumstances change or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication, as well as table a copy of any replacement Declaration at the next meeting of the insolvent's creditors. For Creditors' Voluntary Liquidations and Voluntary Administrations, this document and any updated versions of this document are required to be lodged with ASIC.

Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.

FORM 535
FORMAL PROOF OF DEBT OR CLAIM (GENERAL FORM)

ACN
 "the Company"

To the Liquidator/Administrator of the Company

1. This is to state that the Company was on _____, and still is, justly and truly indebted to:
 _____ (name of creditor)
 of _____ (address of creditor)
 for \$ _____ and _____ cents (GST inclusive) GST amount _____

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: *(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount \$c	Due Date

3. Select which of the below applies (choose one):

- | | |
|--|--|
| <input type="checkbox"/> The creditor is a company and I am signing as a director of the company | <input type="checkbox"/> The creditor is a partnership and I am signing as a partner of the partnership |
| <input type="checkbox"/> The creditor is a company and I am signing as an authorised representative/duly constituted attorney of the company | <input type="checkbox"/> I am signing in my personal capacity as a member or contributory of the Company |
| <input type="checkbox"/> I am an individual and I am signing in my personal capacity (which includes employees) | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> The creditor is a sole trader and I am signing as the proprietor | |

4. If you are a related party, state your relationship _____

5. Is this debt claimed on the basis of an assignment? Yes No

If so, what consideration was paid for the debt? _____

This debt was incurred for the consideration stated and the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature Dated

Name: _____

Address: _____



Proof of Debt Guidance Notes

(Please read carefully before filling in Form 535 or Form 536)

It is a creditor's responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure:

- the proof of debt form is properly completed in every particular; and
- evidence, as set out under "Information to support your claim", is attached to the Form 535 or Form 536.

Directions for completion of a Proof of Debt

1. Insert the full name and address of the creditor.
2. Under "Consideration" state how the debt arose, for example "goods sold to the company on _____".
3. Under "Remarks" include details of any documents that substantiate the debt (refer to the section "Information to support your claim" below for further information).
4. Where the space provided for a particular purpose is insufficient to contain all the information required for a particular item, please attach additional information.

Information to support your claim

Please note that unless you provide evidence to support the existence of the debt, your debt is not likely to be accepted. Detailed below are some examples of debts creditors may claim and a suggested list of documents that should accompany a proof of debt to substantiate the debt.

Trade Creditors

- Invoice(s) and statement(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

Guarantees/Indemnities

- Executed guarantee/indemnity;
- Notice of Demand served on the guarantor; and
- Calculation of the amount outstanding under the guarantee.

Judgment Debt

- Copy of the judgment; and
- Documents/details to support the underlying debt as per other categories.

Deficiencies on Secured Debt

- Security Documents (eg. mortgage);
- Independent valuation of the secured portion of the debt (if not yet realised) or the basis of the creditor's estimated value of the security;
- Calculation of the deficiency on the security; and
- Details of income earned and expenses incurred by the secured creditor in respect of the secured asset since the date of appointment.

Loans (Bank and Personal)

- Executed loan agreement; and



- Loan statements showing payments made, interest accruing and the amount outstanding as at the date of appointment.

Tax Debts

- Documentation that shows the assessment of debts, whether it is an actual debt or an estimate, and separate amounts for the primary debt and any penalties.

Employee Debts

- Basis of calculation of the debt;
- Type of Claim (eg. wages, holiday pay, etc);
- Correspondence relating to the debt being claimed; and
- Contract of Employment (if any).

Leases

- Copy of the lease; and
- Statement showing amounts outstanding under the lease, differentiating between amounts outstanding at the date of the appointment and any future monies.

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
588G	Incurring liabilities while insolvent
588GAB	Officer's duty to prevent creditor-defeating disposition
588GAC	A person must not procure a company to make a creditor-defeating disposition
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.
596AB	Entering into an agreement or transaction to avoid employee entitlements.

Recoverable Transactions

Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

Creditor-defeating disposition

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to the benefit or detriment to the company; the respective benefits to other parties; and any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Unfair Loan

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person or from members of a corporate group (Contribution Order).

Unreasonable payments to directors

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

Voidable charges

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

Insolvent trading

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

Queries about the voluntary administration should be directed to the administrator's office.