



**Alita Resources Limited (In Liquidation)**

**ACN 147 393 735**

**(Alita)**

**Circular to shareholders**

We refer to the Liquidators' update to shareholder dated 20 December 2023. Unless otherwise stated, all capitalised terms have the same meanings given in previous shareholder updates.

The update dated 20 December 2023 provided information to shareholders on the Application commenced by Alita's directors (**Directors**), which included three separate applications, being the:

- Termination Application;
- Appointment Application; and
- Meeting Application.

As explained in the announcement dated 29 January 2024, the hearing of the Meeting Application was vacated on the grounds that the Directors propose to seek the views of shareholders in relation to the Termination Application by way of a poll rather than a general meeting of shareholders (**Termination Poll**). The Directors no longer intend to seek orders in relation to the Appointment Application (as to which, further information is included in the enclosed explanatory memorandum).

The purpose of this circular is to provide shareholders with the Voting Form to participate in the Termination Poll, together with an explanatory memorandum containing information relevant to the Termination Application and the proposed resolution on which shareholders are asked to vote.

**Views of shareholders**

This circular includes:

- Annexure A (enclosed): Additional information by way of an explanatory memorandum, which provides information in respect of matters raised in the Termination Application and the proposed resolution on which shareholders are asked to vote.
- Annexure B (enclosed): A Voting Form.
- Annexure C (available online): The Liquidators' statutory report to creditors dated 22 December 2023 (**Liquidators' Statutory Report**) which is available [by clicking the link here](#), or by accessing the SGX announcement dated 22 December 2023 at the following webpage <https://sginvestors.io/sgx/stock/40f-alita-resources/company-announcement>.

**Material developments to the information in the enclosed explanatory memorandum to shareholders may be updated by SGX announcements as and when they arise. SGX announcements in relation to Alita can be accessed at the webpage provided above. Shareholders are advised and encouraged to monitor the SGX announcements for any updates.**

The purpose of providing the additional information and the Voting Form is to give shareholders an opportunity to express their views on the matters raised in the explanatory memorandum, and the proposed resolution that has been put forward and provide their preferred outcome / choice.

The **Liquidators** intend to provide all completed Voting Forms to the Court.

In order for the views of shareholders to be able to be considered by the Court, please complete and return the enclosed Voting Form to [Alitavote@mcgrathnicol.com](mailto:Alitavote@mcgrathnicol.com) by no later than **8 March 2024**.



**Further information**

If you require further information or clarification of the matters outlined above, please contact Shane Hurst on 08 6363 7600.

If you have any queries in relation to your legal rights regarding the above matters, you should seek independent legal advice without delay.

Date 26 February 2024

Yours faithfully

*Alita Resources Limited (In Liquidation)*

A handwritten signature in black ink, appearing to read 'Rob Kirman'.

Rob Kirman

*Liquidator*

Enclosures:

- Annexure A: Explanatory Memorandum
- Annexure B: Voting Form
- Annexure C: Liquidators' Statutory Report



## Annexure A EXPLANATORY MEMORANDUM

This Explanatory Memorandum has been prepared for the information of Alita's shareholders.

The purpose of this Explanatory Memorandum is to provide shareholders with all relevant information known to Alita which is material to a decision on how to vote on the resolution in the accompanying Voting Form (**Resolution**).

This Explanatory Memorandum should be read in conjunction with the Voting Form (Annexure B) and the Liquidators' Statutory Report (Annexure C which is available [by clicking the link here](https://sginvestors.io/sgx/stock/40f-alita-resources/company-announcement), or by accessing the SGX announcement dated 22 December 2023 at the following webpage <https://sginvestors.io/sgx/stock/40f-alita-resources/company-announcement>).

### **Resolution – Termination of liquidation of Alita**

#### **Background**

On 23 December 2020 a deed of company arrangement (**DOCA**) was entered into by Alita and Austroid. Robert Michael Kirman and Robert Conry Brauer were appointed deed administrators.

The DOCA was not effectuated, and on 27 September 2023, Alita was placed into liquidation following an order of the Honourable Justice Hill and the termination of the DOCA. Mr Kirman, Mr Brauer and Matthew Caddy were appointed as liquidators of Alita (**Liquidators**).

Control of Alita, which remains in liquidation, resides with the Liquidators.

Until 1 November 2023, Alita owned all the issued share capital in Tawana Resources Pty Ltd (**Tawana**) which in turn owned all the issued share capital in Lithco No.2 Pty Ltd (**Lithco**). Lithco held the mining tenements that comprise the Bald Hill lithium mine in Western Australia.

On 27 September 2023, after Alita was placed into liquidation, the Liquidators and a wholly owned subsidiary of MinRes (the **MinRes Purchasing Entity**) executed a share sale agreement (the **Share Sale Agreement**) for the sale of the following assets from Alita to the MinRes Purchasing Entity:

- all of the issued share capital in Tawana;
- all trade debts and receivables owing to Alita; and
- all claims, suits and causes of action and any other rights of Alita arising or related to the above to the extent that they are capable of being assigned,

with the sale of these assets being referred to as the **Transaction**.

Based on the closing price of MinRes shares on the ASX on 23 February 2024, MinRes has a market capitalisation of approximately \$12.16 billion.

On 1 November 2023, the Share Sale Agreement completed, resulting in all Alita's secured debt being repaid. Consequently, Alita no longer had any secured debts.

On 21 November 2023, the Liquidators, the MinRes Purchasing Entity and MinRes agreed that the final consideration payable was \$173.9 million, with \$73.9 million used to repay Alita's secured debt, leaving Alita with \$100 million cash at bank available:

- to pay all tax liabilities of Alita; and, subsequently
- for distribution to shareholders, to the extent there are proceeds available after repaying all liabilities.



On 12 December 2023, the Directors lodged an application in the Supreme Court of Western Australia (being COR 195 of 2023) for the liquidation of Alita to be terminated (the **Termination Application**).

In the affidavit of Paul O'Farrell filed in support of the Application, Mr O'Farrell stated that the Directors were of the view that Alita was solvent and that, amongst other things, a return of control to the Directors and the termination of the liquidation of Alita would be in the best interests of shareholders.

On 19 December 2023, a directions hearing was held which, amongst other things, concluded that a MinRes subsidiary, Lithium Resources Investments Pty Ltd, which owns 9.9% of the shares in Alita, be given leave to be heard as an interested party in the proceedings and that three separate hearings be scheduled to take place, that being:

1. **19 January 2024** – for any applications to be heard in the Application filed by any interested parties to be determined;
2. **30 January 2024** – to determine whether a notice to conduct a meeting of Alita shareholders should be issued; and
3. **29 February 2024** – to hear the Termination Application,

(the **Orders**).

On 28 December 2023, to comply with the Orders, the Liquidators published a notice of the Orders to shareholders in the following newspapers on 28 December 2023 and 11 January 2024: the West Australian, The Australian, the Australian Financial Review and the Strait Times (Singapore). The Orders were also attached to the shareholder update released on the SGX on 20 December 2023.

On 16 January 2024, one Alita shareholder filed a notice of appearance and was granted leave to appear as an interested party in the proceedings. The directions hearing for 19 January 2024 was vacated.

On 29 January 2024, orders were made, by consent, to vacate the hearing of the Meeting Application due to take place on 30 January 2024 in relation to whether a notice to conduct a meeting of Alita shareholders should be issued. This is because the Directors considered that the views of shareholders could be obtained by way of a circular resolution and poll due to the expedited timeline of the Termination Application.

On 26 February 2024, the Orders were varied by consent between the parties. Consequently, the hearing in respect of the Termination Application will now be heard on 13 March 2024.

### **Alita Tax Position**

On 15 December 2023, the Liquidators received a formal proof of debt from the ATO, stating that Alita is contingently indebted to the ATO for income tax in the amount \$203,045,626.28, with \$127,493,978.01 attributable to the year ended 30 June 2023, and the remaining \$75,551,648.27 being attributable to the period from 1 July 2023 to 31 October 2023.

On 29 January 2024, the ATO issued Alita with notices of assessment in respect of the 2019, 2022, 2023 and 2024 financial years in the amount of \$202,848,597.63 (the **Assessments**). The ATO also submitted an amended proof of debt in that amount in the liquidation of Alita. The notices of assessment and amended proof of debt are in the process of being reviewed by the Liquidators.

Under the Assessments, the amount of \$126,249,946.20 in respect of the 2023 income tax year became due and payable on 1 December 2023 (notwithstanding that the Assessment was dated 29 January 2024), whilst the amount of \$76,545,512.10 in respect of the 2024 income tax year becomes due and payable on 1 December 2024. The ATO applies a general interest charge to amounts where amounts are currently due and payable but remain unpaid.



As the former parent company and head of the Alita TCG, Alita is ultimately jointly and severally liable for the tax liabilities of the Alita TCG (which up until 1 November 2023, included Tawana and Lithco).

The Share Sale Agreement acknowledged that Tawana and Lithco (and not Alita) will be liable to the extent that any such tax liability relates to the affairs of Tawana and/or Lithco (as opposed to the affairs of Alita) (the **Attributable Tax Liability**). The payment of the Attributable Tax Liability was not guaranteed by MinRes under the Share Sale Agreement.

Further, under the terms of the Share Sale Agreement, the MinRes Purchasing Entity agreed to pay to Alita such additional amount as may be required to ensure that, after all adjustments to amounts payable to Alita have been made under the Share Sale Agreement, the purchase price is sufficient to ensure that Alita has at least \$25,000,000 (after all taxes payable by Alita, and the Alita TCG, in respect of the Transaction have been satisfied in full). That minimum amount of \$25,000,000 is available to satisfy all creditor liabilities and priorities as required in a liquidation under the Corporations Act before distributing any residual amounts (if any) to Alita's shareholders (**Top Up Payment**).

The taxes payable on the Transaction may include CGT, which is a personal liability of the Liquidators payable from the assets of Alita (being the \$100 million cash at bank). Any residual amounts remaining after payment of any CGT, and taking into account any Top-Up Payment, would be available to pay Alita's liabilities and, subsequently, for distribution to Alita's shareholders.

It is currently unknown how much of the ATO liability the subject of the notices of assessment relates to Alita as opposed to its subsidiaries Tawana and Lithco.

The notices of assessment also exclude any liability for capital gains tax (**CGT**) relating to the Transaction, the quantum of which is not yet known. Any CGT payable on the Transaction is a personal liability of the Liquidators.

MinRes and the Liquidators are in discussions with the ATO regarding the payment and security arrangements in respect of the Assessments (on the assumption that the Termination Application is successful and the liquidation of Alita is terminated) so as to seek to minimise any general interest charges that may be payable to the ATO on those amounts to the extent that they are currently due and payable by Alita (the **50/50 Arrangement**).

Under the 50/50 Arrangement, it is proposed that:

- MinRes would pay an amount of \$63,124,973.10 (being 50% of the amount the subject of the Assessment for the 2023 income tax year) to the ATO, conditional on the termination of the liquidation of Alita;
- An order be sought from the Court to the effect that the moneys held by Alita (after payment of the costs of the liquidation), less an amount which is to be retained by Alita to ensure its solvency is retained, be paid into an escrow account pending the resolution of the amount payable by Alita in respect to the 2023 and 2024 income tax years (including any CGT payable on the Transaction). If for any reason such orders are not obtained, then alternative arrangements satisfactory to the ATO are to be agreed in order to achieve the payment of such moneys into an escrow account after the termination of liquidation of Alita; and
- MinRes would provide a parent company guarantee in favour of the ATO in relation to the payment of the tax liabilities of Alita for the 2019 – 2024 income tax years (up to the date that the termination of the liquidation of Alita occurs and including any CGT payable on the Transaction), with such guarantee capable of being called upon where Alita is unable to pay such amounts (whether out of the amounts held in escrow or otherwise) without becoming insolvent.



The 50/50 Arrangement assumes that Alita will lodge objections with the ATO to the 2023 and 2024 income tax assessments in a timely manner. As these assessments have been issued by the ATO in advance of Alita submitting tax returns for those income tax years, it is anticipated that Alita will object to the assessments in due course. As part of this 50/50 Arrangement, Alita will be required to comply with their ongoing tax lodgement and payment obligations.

MinRes, the Liquidators and the ATO are currently working towards finalising the 50/50 Arrangement on a binding basis. It is expected that these arrangements will be finalised in advance of the Court considering the Termination Application. Once a binding arrangement has been reached to implement the 50/50 Arrangement, the ATO has indicated that it would be prepared to:

- enter into formal arrangements whereby the ATO agrees to defer recovery action for the amounts the subject of the Assessments, pending a final determination of the amount of the relevant tax liability owing by Alita;
- remit 50% of the general interest charge that will accrue on the outstanding balance of the tax liability for the income year ended 30 June 2023 until 14 days after final determination of an objection or appeal process; and
- enter into a formal release of the Liquidators for any personal liability for unpaid taxes prior to the termination of the liquidation of Alita.

As indicated above, the 50/50 Arrangement outlined above is conditional upon the liquidation of Alita being terminated.

Material developments to this information may be the subject of additional SGX announcements as and when they arise. SGX announcements in relation to Alita can be accessed at <https://sginvestors.io/sgx/stock/40f-alita-resources/company-announcement>. Shareholders are advised and encouraged to monitor the SGX announcements for any updates.

If for any reason the Termination Application is not successful, then Alita will need to consider what arrangements it may be able to enter into with the ATO (if any) in order to minimise the general interest charges that may be payable to the ATO in respect of the tax liabilities that are currently due and payable.

#### **What the Termination Poll will be used for**

In circumstances where a 50/50 Arrangement has been entered into on a binding basis with the ATO in regard to the Assessments, prior to the Court considering the Termination Application, the results of the poll will be put before the Court as evidence of the shareholders' view on whether the liquidation of Alita should be terminated.

In circumstances where a 50/50 Arrangement has not been able to be reached with the ATO in regard to the Assessments prior to the Court considering the Termination Application, the Liquidators will release a further SGX announcement to update shareholders, and the results of the poll will not be put before the Court as evidence of the shareholders' view on whether the liquidation of Alita should be terminated.

#### **Effect of the Court ordering the termination of liquidation**

The Court ordering that the liquidation of Alita be terminated pursuant to the Termination Application is a pre-condition to MinRes agreeing to make the relevant payments required to be paid by it, and to provide the parent company guarantee, contemplated by the proposed 50/50 Arrangement.



If the proposed orders sought pursuant to the Termination Application are made by the Court, then the Liquidators understand that the Directors intend to appoint Chris Ellison, Norman Ashton and Rod Sutton to Alita's board of directors, with Alita's shareholders having the opportunity to ratify those appointments at the next general meeting of Alita. Whilst the Liquidators understand that the Directors were previously considering whether to undertake a share buy-back in order to provide an opportunity for Alita's shareholders who wish to realise their investment to do so (or making some other distribution to Alita's shareholders), given the ATO requirement to deposit Alita's surplus cash assets into an escrow account, the Liquidators now understand that the Directors intend to defer any decision regarding the application of Alita's surplus cash assets until after the amount that Alita needs to pay the ATO in respect of its tax liabilities has been finally determined. At this time, it would appear that between \$1m-\$2.5m of the \$100m presently held by the Liquidators would be available to the newly constituted board of directors for ongoing costs and expenses, with the balance of those monies to be paid into the escrow account with the ATO on account of Alita's tax liabilities. It is accordingly unclear at this stage, if any of those monies will ultimately be distributed to shareholders.

It is important however to note that if the liquidation of Alita is to end:

- it will be up to the newly constituted board of directors of Alita, not the Liquidators, to take any further steps in relation to the proposed distribution of monies to shareholders from the Transaction (subject to the matters raised above in relation to the amount Alita needs to pay to the ATO in respect of its tax liabilities); and
- it will be up to the newly constituted board of directors of Alita, not the Liquidators, to determine whether to conduct further investigations, including of the matters identified in section 6 of the Liquidators' Statutory Report and to bring any claims for the benefit of Alita in relation to such investigations. The Liquidators have only conducted preliminary investigations into the potential matters at section 6 of the Statutory Report and, at this stage, the Liquidators have not identified any claims which could not be conducted by Alita under the control of a board.

#### **Effect of continuation of the liquidation**

Alita (and its shareholders and any creditor) will not have the benefit of the 50/50 Arrangement outlined above if the liquidation of Alita continues.

The debts claimed by the ATO remain under review by the Liquidators and are subject to finalisation. If the ATO's claim is admitted in full, then Alita does not have sufficient funds to repay the ATO in full. Alita would be reliant on its ability to claim against Tawana and Lithco to recover that portion of the assessed tax liability that properly relates to the affairs of Tawana and/or Lithco (being the Attributable Tax Liability). If the amount that is attributable to Alita is more than \$100 million, and/or Lithco or Tawana does not pay the amount of the Attributable Tax Liability, and/or there is CGT payable by the Liquidators, then it is possible that there will not be any funds to distribute to shareholders.

The vote on the Termination Poll is **advisory** only and does not bind the directors or liquidators of Alita.



**Annexure B**

**Voting Form**

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

I / we (if a firm, strike out "I" and set out the full name of the firm) \_\_\_\_\_ of \_\_\_\_\_ (insert address) is / am a shareholder of Alita and hold \_\_\_\_\_ shares in Alita on the SGX / ASX (please circle as appropriate).

<b>Voting – Termination of Liquidation</b>		<b>For</b>	<b>Against</b>	<b>Abstain</b>
1	That the liquidation of Alita be terminated, and control of Alita be returned to Alita's existing directors.			

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

Please return your completed Voting Form to [Alitavot@mcgrathnicol.com](mailto:Alitavot@mcgrathnicol.com) by not later than 8 March 2024.

Email (preferred): [Alitavote@mcgrathnicol.com](mailto:Alitavote@mcgrathnicol.com)

RETURN TO: Alita Resources Limited (In Liquidation) of care of  
McGrathNicol, GPO Box 9986, Perth WA 6848

Phone: 08 6363 7600

Fax: 08 6363 7699