

## ATTACHMENT A – LINKS BETWEEN HUME COAL, POSCO, DAEWOO AND POSCO E&C

### Hume Coal & POSCO

- Hume Coal was formed in 2010, as a joint venture between POSCO Australia and Cockatoo Coal Limited.<sup>1</sup>
- In 2014 Cockatoo Coal Limited sold their 30% share in Hume Coal Pty Limited, granting POSCO Australia 100% ownership of Hume Coal Pty Limited.<sup>2</sup>
- POSCO Australia is a subsidiary of POSCO.<sup>3</sup>
- POSCO is a holding company registered in Korea.

### POSCO & Daewoo

- POSCO Daewoo Corporation (**Daewoo**) (formerly Daewoo International)<sup>4</sup> is a subsidiary of the POSCO Group.<sup>5</sup>
- POSCO owns 60.31% of shares in Daewoo, making it the majority shareholder.<sup>6</sup>

### POSCO & POSCO E&C

- POSCO Engineering & Construction Co Ltd (**POSCO E&C**) is a member of the POSCO Group, making it a subsidiary company under POSCO.<sup>7</sup>
- In 2013, POSCO owned 89.53% of POSCO E&C.<sup>8</sup>

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<sup>1</sup> *Hume Coal Project Preliminary Environmental Assessment* (July 2015), page 5. Available at <https://majorprojects.affinitylive.com/public/79cf95e64c909518507777ebb052062f/Hume%20Coal%20Project%20Preliminary%20Environmental%20Assessment.pdf>.

<sup>2</sup> *Cockatoo Coal Limited Annual Report 2014*, page 7. Available at [http://www.cockatoocoal.com.au/cok/assets/File/AnnualReports/2014/COK\\_ar2014\\_web\\_interactive.pdf](http://www.cockatoocoal.com.au/cok/assets/File/AnnualReports/2014/COK_ar2014_web_interactive.pdf).

<sup>3</sup> *Hume Coal Project Preliminary Environmental Assessment* (July 2015), page 5.

<sup>4</sup> See media release regarding recent name change at [http://www.daewoo.com/eng/cyberpr/dwic\\_news\\_view.jsp](http://www.daewoo.com/eng/cyberpr/dwic_news_view.jsp).

<sup>5</sup> *POSCO and Subsidiaries Condensed Consolidated Interim Financial Statements* (March 2015), page 18. Available at <http://www.posco.com/homepage/docs/eng5/jsp/s91a0000001i.jsp>.

<sup>6</sup> See [http://www.daewoo.com/eng/investor/investment/shareholder\\_2015.jsp](http://www.daewoo.com/eng/investor/investment/shareholder_2015.jsp).

<sup>7</sup> *POSCO and Subsidiaries Condensed Consolidated Interim Financial Statements* (March 2015), page 10.

<sup>8</sup> *POSCO and Subsidiaries Consolidated Financial Statements* (December 2013), page 13. Available at <http://www.posco.com/homepage/docs/eng5/jsp/s91a0000001i.jsp>.

## ATTACHMENT B – THE CASE FOR SUSPENSION / CANCELLATION OF MINING RIGHTS

### ***Criminal conduct (section 380A(2)(a))***

Under section 380A(2)(a) of the *Mining Act 1992*, one of the tests for being a fit and proper person is whether the person or (in the case of a body corporate) a director of the body corporate or of a related body corporate has compliance or criminal conduct issues.

Compliance or criminal conduct issues are defined in section 380A(3) as arising where:

- (a) the decision-maker is satisfied that the person or body corporate has contravened any relevant legislation, whether or not the person or body corporate has been prosecuted for or convicted of an offence arising from the contravention, or*
- (b) in the previous 10 years, the person or body corporate has been convicted in New South Wales or elsewhere of a serious offence or an offence involving fraud or dishonesty, or*
- (c) the person or body corporate has held a mining right, or any other instrument issued or granted under relevant legislation, that has been suspended, cancelled or revoked.*

### **Bid Rigging and Bribery in South Korea**

Our client instructs that POSCO has a history in South Korea of bid rigging and bribery, particularly relating to its construction arm, POSCO E&C.

In 2013 the USD 19.8 billion Four River Refurbishment Project in South Korea was investigated for bid rigging amongst 11 companies. 22 executives of these companies were indicted in the scandal. POSCO E&C and Daewoo E&C were amongst the companies involved. This was reported in South Korea:<sup>9</sup>

*In order to help a construction company win a certain job, the other 10 companies played tricks to ensure they wouldn't win, such as submitting shoddy blueprints or setting bidding prices too high. Even when they lost bids they received compensation from the government.*

In March 2014, the Korean Fair Trade Commission announced corrective orders and fines totalling USD11million on two companies including POSCO E&C for rigging bids in relation to two water treatment projects.<sup>10</sup>

In April 2014, penalties of USD58,000 were imposed on Daewoo E&C and POSCO E&C by the Seoul District Central Court for colluding to win construction orders in relation to the construction of a road connecting Yeosu and Goheung, South Jeolla Province.<sup>11</sup>

<sup>9</sup> '22 Indicted in Four-Rivers Collusion', *Korea JoongAng Daily*, 25 September 2013, available at <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=2977950>.

<sup>10</sup> 'POSCO and E&C, Kolon Fined for Price Rigging', *The Korea Herald*, 3 March 2014, available at <http://www.koreaherald.com/view.php?ud=20140303001200>.

<sup>11</sup> 'Daewoo, POSCO E&C Fined for Bid-Rigging Again', *The Korea Times*, 4 April 2014, available at [http://www.koreatimes.co.kr/www/news/biz/2016/04/123\\_201850.html](http://www.koreatimes.co.kr/www/news/biz/2016/04/123_201850.html).

In July 2014 it was reported that:<sup>12</sup>

*...POSCO E&C has been caught in collusions every month in the first half of this year. Not only did they collude in the bidding for the sewerage treatment plant in Daegu, but also for a subway construction project in Incheon, a sewerage treatment plant in the Cheonga District in Incheon, a water quality restoration center project in Gwangju, and an urban railway construction project in Daegu.*

In 2015 prosecutors banned ex-POSCO Group Chairman Chung Joon-yang and several other former and incumbent executives from leaving the country as part of an investigation into allegations of slush funds involving POSCO E&C. This related to USD8.9million paid in Vietnam between 2009 and 2012 in inflating the costs of local expressways. The investigation 'is likely to expand to the entire group over possible tax evasion and dubious deals related to the acquisition of other companies.'<sup>13</sup>

### ***Not of good repute and not of good character (sections 380A(2)(f)-(i))***

Under section 380A(2)(f) of the Mining Act, the test for being a fit and proper person includes whether, in the opinion of the decision-maker, the person is not of good repute. Section 380A(2)(g) includes the test of whether, in the opinion of the decision-maker, a director of the body corporate or a related body corporate is not of good repute.

Under section 380A(2)(h), the decision-maker can consider whether the person is not of good character, with particular regard to honesty and integrity. Section 380A(2)(i) enables the same test to occur to assess whether a body corporate, a director of the body corporate or a related body corporate is not of good character, with particular regard to honesty and integrity.

In addition to the following specific concerns, the concerns outlined in relation to section 380A(2)(a) above are also relevant for consideration under sections 380A(2)(f)-(i) in relation to Hume Coal.

### **Human Rights Violations by POSCO in Relation to Steel Plant and Port in Odisha, India**

Our client instructs that POSCO has a poor record in relation to human rights violations in relation to its attempts to gain approval from Indian regulators for an integrated steel plant and captive port in Odisha in India. POSCO has been attempting to obtain, for the past 10 years, approval for the USD12billion project, which would be the largest single foreign investment in Indian history.

The project has been fraught with issues, in particular the attempt over 8 years to illegally forcibly evict 22,000 itinerant betel leaf farmers off the land they have lived on for many years and disrupt the lives of thousands more. A report by the New York University Law School International Network for Economic, Social and Cultural Rights found in a 2013 report that the project is:<sup>14</sup>

*...in many ways emblematic of a global human rights crisis, induced by mega-*

<sup>12</sup> 'POSCO E&C Exposing Disgrace at Home and Aboard [sic]', *Business Korea*, 28 July 2014, available at <http://businesskorea.co.kr/english/news/industry/5624-shameful-conduct-posco-ec-exposing-disgrace-home-and-aboard>.

<sup>13</sup> 'Slush Fund Allegations Hit POSCO', *The Korea Times*, 3 March 2015, available at [http://www.koreatimes.co.kr/www/news/nation/2015/03/116\\_175259.html](http://www.koreatimes.co.kr/www/news/nation/2015/03/116_175259.html).

<sup>14</sup> *The Price of Steel: Human Rights and Forced Evictions in the POSCO-India Project* (June 2013), available at <http://chrgj.org/wp-content/uploads/2013/06/The-Price-Of-Steel-Full-English.pdf>, at page v.

*development projects that lead to the forced migration of more people today than conflict or environmental disasters combined...POSCO represents, in that context, a story of lessons not learnt, of dispossession of people and communities being seen as an acceptable price to pay for the “development” of a modern nation.*

The report called on POSCO to:<sup>15</sup>

*Prevent and mitigate adverse human rights impacts that are directly linked to POSCO’s operations in India...Ensure full compliance with Indian laws and regulations...Ensure that the corporation’s commitment to upholding international human rights standards is clearly communicated to all those with whom it has a business relationship and ensure that company officials receive detailed instructions concerning full implementation of this commitment...[and] Provide for or cooperate in the remediation of any adverse impacts to date*

In 2013 United Nations independent experts called on the Indian Government to immediately halt construction on the project, following allegations of human rights abuses and potential negative human rights impacts linked to the project.<sup>16</sup>

Our client contends that this poor record and disregard exhibited for human rights standards and laws is sufficient to cast doubt over Hume Coal’s standing as a person of good repute and good character to carry out mining operations within NSW.

#### Forced Labour and Child Labour in Uzbekistan Cotton Industry

Our client instructs that Daewoo has a 20 year history of involvement in the cotton industry in Uzbekistan and has 3 cotton processing plants in the country. It processes approximately 20% of Uzbek cotton, exporting to Russia, China, Iran and Turkey. It is the largest cotton processor in Uzbekistan.<sup>17</sup>

It has been documented that the Uzbek Government forcibly mobilises farmers to grow cotton and forces more than 1 million men, women and children to harvest it. Some estimates put the number of people in forced labour as high as 5 million. The International Labour Organisation, UN Committee on the Rights of the Child and UN Committee Against Torture have all reported concern of forced labour and child labour and urged the Uzbek Government to end the practice.

Daewoo admits openly that it acquires cotton picked through forced and child labour in Uzbekistan. The company pays lip service to the issue but has not taken any concrete action to stop the practice.<sup>18</sup> The National Human Rights Commission of Korea commissioned a 2013 field investigation report which concluded that “they [a number of Korean corporations including Daewoo] must be held responsible for being complicit in this violation of Human

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<sup>15</sup> *Ibid*, p 76.

<sup>16</sup> Press release at

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13805&LangID=E>.

<sup>17</sup> *Alternative Report to the United Nations Human Rights Committee: Republic of Korea*, 113<sup>th</sup> Session, KTNC Watch, available at

[http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KOR/INT\\_CCPR\\_ICO\\_KOR\\_19182\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KOR/INT_CCPR_ICO_KOR_19182_E.pdf), and ‘Korean Government Breaks with the OECD, United Nations with Assertion That Companies Have No Responsibility for Human Rights in their Supply Chains’, *Cotton Campaign*, 3 August 2015, available at <http://www.cottoncampaign.org/korean-government-breaks-with-the-oecd-united-nations-with-assertion-that-companies-have-no-responsibility-for-human-rights-in-their-supply-chains.html>.

<sup>18</sup> ‘POSCO Admits Using Cotton From Forced and Child Labor’, *The Wall Street Journal*, 13 August 2014, available at <http://www.wsj.com/articles/daewoo-faces-criticism-for-use-of-uzbekistan-cotton-made-with-forced-labor-1407918539>.

*Rights*".<sup>19</sup>

Norway's largest life insurance company, Kommunal Landspensjonskasse, excluded Daewoo from their funds' portfolios in 2014, on the basis that it is associated with serious and systematic violations of international norms. It summarises the basis for this exclusion as follows:<sup>20</sup>

*Daewoo International is one of the largest buyers of cotton from Uzbekistan. The Uzbek state maintains a monopoly on the sale of cotton abroad and the use of child labor during the cotton harvest has long been confirmed by international sources. The use of child labor has steadily declined, but has been replaced with a corresponding increase in the use of adult forced labor. The companies are aware of the risk, but have no plans to change their sourcing practices and have not implemented measures designed to ensure that forced labor and child labor are not used in their supply chain in the future.*

Our client contends that this complicity of a related corporation of Hume Coal in regards to human rights violations further casts doubt over Hume Coal's standing as a person of good repute and good character to carry out mining operations within NSW.

In 2015 the US Department of State placed Uzbekistan in the Tier 2 Watch List category in their *Trafficking in Persons Report*, which is an indication that Uzbekistan is failing to meet US human trafficking standards and, despite some efforts being made to address this, there is still significant concern whether progress will be made.<sup>21</sup> The US Department of Homeland Security and the Department of Justice undertook a criminal investigation into Daewoo in 2013, on the grounds that anyone obtaining cotton from Daewoo may be knowingly benefiting from forced labour, an offence in the US.<sup>22</sup> This included deciding whether to halt imports of forced-labour cotton goods manufactured by Daewoo into the US.

#### Destruction of Unique Tropical Rainforest in West Papua, Indonesia

Our client instructs that Daewoo has two concessions of native rainforest totalling approximately 68,700 hectares for development into palm oil plantations in West Papua, Indonesia. One concession totalling 32,500 hectares lies in an area "*which is considered to be one of the Earth's most biologically valuable areas*" according to the Council on Ethics for the Government Pension Fund Global (the Norwegian Sovereign Wealth Fund).<sup>23</sup> Conversion of the rainforest into plantations reportedly commenced in 2012 and will be completed by 2018.

This 'conversion' involves the felling of trees and the removal of other vegetation, which will result in "*plantations [that] are monocultures with little ecological value compared to natural*

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<sup>19</sup> Available at <http://www.apil.or.kr/attachment/cfile7.uf@2137684452AAA61E0A2FE4.docx>.

<sup>20</sup> From the Kommunal Landspensjonskasse as of June 21 2016, available at <http://english.klp.no/about-klp/corporate-responsibility/exclusion-and-dialogue#tab7-8019>.

<sup>21</sup> Available at <http://www.state.gov/j/tip/rls/tiprpt/2015/index.htm>. Uzbekistan received a similar classification of No Advancement – Efforts Made But Complicit in the US Department of Labor 2014 *Findings on the Worst Forms of Child Labor*, available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/uzbekistan>.

<sup>22</sup> Testimony by Brian Campbell to the United States House of Representatives, Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights and International Organizations, 29 April 2014.

<sup>23</sup> Council on Ethics for the Government Pension Fund Global, *Recommendation to exclude Daewoo International Corporation and POSCO from the Government Pension Fund Global* (March 2015), available at <http://etikkradet.no/files/2015/08/Recommendation-Daewoo-270315.pdf>, page ii.

forests.”<sup>24</sup> The Council concluded that, in its Environmental Impact Assessment, Daewoo misrepresented the nature of the vegetation it was removing by claiming that it was ‘*shrubs, bushes and secondary forest*’. The Council concluded that “*the company’s activities will entail the conversion of untouched rainforest and forest in good condition into plantations*”.<sup>25</sup>

The Council states that “[t]he companies environmental impact assessment contains little information on the condition of the forest, ecosystems or species diversity in the concession area” and further that “*Daewoo is doing little to preserve biodiversity and important ecological values in the concession area*”.<sup>26</sup> The Council concludes that:<sup>27</sup>

*...the scale of the conversion and the fact that the concession area lies in a region of unusually rich and unique biodiversity entails an obvious risk that conversion will cause severe environmental damage. The lack of data reinforces this risk further. The Council has also emphasized that illegal methods appear to have been used in the clearance of the concession area, and the company appears to be doing little to reduce the environmental damage.*

Daewoo’s poor commitment to environmental and social best practice in relation to its palm oil plantations is reflected by its extremely low score on the Sustainable Palm Oil Transparency Toolkit Scorecard, administered by the Zoological Society of London.<sup>28</sup>

Our client contends that this blatant and serious environmental damage by a related corporation of Hume Coal, and the misleading and deceptive conduct associated with it, casts doubt over Hume Coal’s standing as a person of good repute and good character to carry out mining operations within NSW.

The Norwegian Sovereign Wealth Fund has subsequently divested its holdings in both POSCO and Daewoo.<sup>29</sup>

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<sup>24</sup> *Ibid*, p 2.

<sup>25</sup> *Ibid*, p 10.

<sup>26</sup> *Ibid*.

<sup>27</sup> *Ibid*, p 11.

<sup>28</sup> See entry for Daewoo at <http://www.sustainablepalmoil.org/companies>.

<sup>29</sup> See list of excluded companies at <https://www.nbim.no/en/responsibility/exclusion-of-companies>.