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Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
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A handwritten signature in blue ink, reading "Warwick Soden".

Registrar

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AFFIDAVIT

No. VID of 2016

Federal Court of Australia
District Registry: Victoria
Division: Corporations List

IN THE MATTER OF ARRIUM LIMITED (ADMINISTRATORS APPOINTED) ACN 004 410 833 (AND EACH OF THE COMPANIES LISTED IN SCHEDULE ONE)

MARK FRANCIS XAVIER MENTHA, CASSANDRA ELYSIUM MATHEWS, MARTIN MADDEN AND BRYAN WEBSTER IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF ARRIUM LIMITED (ADMINISTRATORS APPOINTED) ACN 004 410 833 (AND EACH OF THE COMPANIES LISTED IN SCHEDULE ONE)

First Plaintiffs

ARRIUM LIMITED (ADMINISTRATORS APPOINTED) ACN 004 410 833 (AND EACH OF THE COMPANIES LISTED IN SCHEDULE ONE)

Second Plaintiffs

Affidavit of: **BRYAN WEBSTER**
Address: Level 24, 333 Collins Street, Melbourne, Victoria
Occupation: Certified Practising Accountant
Date: 21 October 2016

Contents of Exhibit "BW-1"

Tab	Description
Tab 1	ASX announcement dated 7 April 2016
Tab 2	Affidavit of Kamal Farouque affirmed on 11 April 2016 (without exhibits)
Tab 3	Orders of the Honourable Justice Davies dated 11 April 2016

Filed on behalf of: the Plaintiffs
Prepared by: Leon Zwier Ref: 011900793
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Tab 4	Orders of the Honourable Justice Davies dated 12 April 2016
Tab 5	Circular to creditors dated 7 April 2016
Tab 6	Letter from ABL to ASIC dated 15 April 2016
Tab 7	Spreadsheet of Arrium Committee of Creditors' claims
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Tab 25	Extract of the ARITA Code of Professional Practice
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Tab 27	Email from Leon Zwier to ASIC dated 18 August 2016
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Tab 29	Email from Leon Zwier to ASIC dated 7 October 2016
Tab 30	Email from Leon Zwier to ASIC dated 15 October 2016
Tab 31	Email from Leon Zwier to ASIC dated 18 October 2016
Tab 32	Email from ASIC to Leon Zwier dated 18 October 2016
Tab 33	Email exchange between Leon Zwier and ASIC dated 20 October 2016
Tab 34	Email from Leon Zwier to ASIC dated 20 October 2016 with attachments
Tab 35	Email from Leon Zwier to ASIC dated 20 October 2016
Tab 36	Email from Leon Zwier to Kamal Farouque dated 18 October 2016
Tab 37	Email from Kamal Farouque to Leon Zwier dated 19 October 2016

I, **BRYAN WEBSTER** of Level 24, 333 Collins Street, Melbourne, in the state of Victoria, Certified Practising Accountant, **AFFIRM** that:

- 1 I am, together with Mark Mentha, Cassandra Mathews and Martin Madden, the joint and several voluntary administrator of the Second Plaintiffs, being Arrium Limited (Administrators Appointed) (**Arrium Ltd**) and the 93 other companies listed in Schedule One to this affidavit (together with Arrium Ltd, the **Arrium Administration Group**).
- 2 I make this affidavit on behalf of myself, Mr Mentha, Ms Mathews and Mr Madden. References in this affidavit to "we", "us", "our" or "ourselves" are references to me, Mark Mentha, Cassandra Mathews and Martin Madden. In this affidavit, I refer to me, Mr Mentha, Ms Mathews and Mr Madden together as the **Administrators**.




- 3 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.
- 4 Now produced and shown to me marked "**BW-1**" is a folder of the documents to which I refer in this affidavit. Each document is separated by a numbered tab. References in this affidavit to a numbered tab in square brackets are references to the relevant tab in the folder marked "BW-1".

Introduction

- 5 I am a Registered Liquidator, Certified Practising Accountant and a Partner of KordaMentha, an advisory and investment firm that provides restructuring and turnaround advice and services. I have been practising in the area of corporate insolvency and financial reconstructions for approximately 20 years.
- 6 I make this affidavit in support of the orders sought by the Administrators in the Originating Process. I briefly summarise below the key issues raised by this application. Later in my affidavit, I refer to those matters in more detail.
- 7 The Arrium Administration Group forms part of a large and complex group of companies that are direct or indirect subsidiaries of Arrium Limited (the **Arrium Group**). The broader Arrium Group also includes a number of subsidiary entities (the **Moly-Cop Entities**) that are not subject to insolvency proceedings, most of which are domiciled in foreign jurisdictions and are trading profitably. This application does not directly concern the Moly-Cop Entities. The references to Arrium Administration Group in this affidavit does not include a reference to the Moly-Cop Entities.
- 8 The Arrium Administration Group has over 6,000 employees in Australia and operates its businesses across all States and Territories in Australia and the Moly-Cop Entities operates its businesses in Australia and in about 12 locations across the world. The Arrium Administration Group has complex inter-company financing arrangements including under two ASIC Deeds of Cross Guarantee. In the financial year ending 30 June 2015, the Arrium Group (including the Moly-Cop Entities) generated revenues in excess of AU \$6.1 billion and is estimated to owe actual and contingent creditors in excess of AU \$3.5 billion.
- 9 The Arrium Administration Group carries on a very large and complex integrated mining, iron ore export, steel manufacturing, steel recycling and steel distribution



business under a number of separate business divisions. Although the Arrium Administration Group constitutes a group of 94 companies, only 25 of those companies in administration together with Arrium Mining Services Asia Pte Ltd (which is not in administration) carry on those business divisions or hold property that is included the sale and realisation process we are pursuing (which I define later in this affidavit as the **Arrium Sales Entities**). However the various business divisions have not been operated on an entity-by-entity basis. The Arrium Administration Group historically carried on business without regard to the corporate entity structure and this has presented insuperable difficulties for the Administrators in developing a sales and realisation strategy that maximise the chances of Arrium Administration Group companies continuing in existence and maximizing returns to creditors.

- 10 In the early days of the administrations of the Arrium Administration Group, prior to fully appreciating the complexities of the operations, the Administrators contemplated selling or realising the Arrium Administration Group companies or businesses either as voluntary administrators or with the approval of creditors at the second creditors' meetings to be convened pursuant to section 439A of the *Corporations Act 2001* (Cth) (**Act**) (**Second Creditors' Meetings**). The Administrators sought and obtained orders extending the convening period for these purposes. However, after conducting a more detailed investigation into the business and operations of the Arrium Group and after more analysis and careful consideration the Administrators have formed the view that it is in the best interests of the creditors to transact sales and realizations of the Arrium Sales Entities after the creditors have resolved to enter into the Transaction Support DOCAs and Arrium Distribution DOCA (collectively the **DOCAs**) that I explain further below. By propounding the DOCAs the Administrators will give effect to the objects of Part 5.3A of the Act.

Purpose of the Application

- 11 This application seeks orders and directions under sections 439A, 447A and 447D of the Act, prior to the Second Creditors' Meetings, so that:
- (a) the Administrators may send out a single section 439A report to all creditors of all Arrium Administration Group companies that may not strictly comply with the provisions of the Act and which may not contain all the information recommended by the Australian Restructuring Insolvency & Turnaround Association (**ARITA**) in its non-binding code of practice, but which contains

sufficient information to enable creditors of each Arrium Administration Group company to make an informed decision at the Second Creditors' Meeting;

- (b) The National Secretary of the Australian Workers' Union (**AWU**) may vote at the Second Creditors' Meeting on behalf of all Arrium Administration Group AWU employees other than those who vote in person or by proxy (like relief was granted in relation to the first creditors' meeting by Justice Davies pursuant to orders dated 11 April 2016, see [Tab 3]);
- (c) the Administrators are justified in voting the Arrium Administration Group inter-company debt in favour of the DOCAs in circumstances where many of those companies have no external creditors; and
- (d) the administrators may bring to the attention of the Court prior to the Second Creditors' Meeting a number of unusual aspects of the proposed Second Creditors' Meeting which arise because of the size and complexity of the Arrium Group.

Appointment of Voluntary administrators to Arrium Group (Administrators Appointed)

- 12 On 7 April 2016, the directors of the Arrium Administration Group entities passed resolutions appointing Messrs Paul Billingham, Said Jahani, Matthew Byrnes and Michael McCann of Grant Thornton (the **First Administrators**) as voluntary administrators of the Arrium Administration Group entities.
- 13 A copy of the ASX announcement in relation to the appointment of the First Administrators published on 7 April 2016 is at [Tab-1].

AWU voting application in relation to the First Creditors' Meeting

- 14 On 11 April 2016, the AWU made an application to the Federal Court of Australia seeking orders under section 447A of the Act to the effect that at the first meetings of creditors of the Arrium Administration Group convened pursuant to section 436E of the Act, the National Secretary of the AWU could vote on behalf of members of the AWU (other than those who attended the meeting in person or who appointed a proxy to attend the meeting on their behalf).
- 15 The AWU application was supported by an affidavit of Kamal Farouque, a Principal of Maurice Blackburn Lawyers, affirmed 11 April 2016 a copy of which (without the exhibits) is at [Tab-2]. The Administrators seek to rely on that Affidavit in this

proceeding. The gravamen of the issue is that the AWU employees work in many different worksites across Australia and generally are unable to complete proxies on a timely basis.

- 16 On 11 April 2016, the Honourable Justice Davies made the orders sought by the AWU permitting the AWU to vote at the first creditors' meetings on behalf of members of the AWU [Tab-3]. The Administrators now seek precisely the same orders for the purposes of the Second Creditors' Meeting.

Appointment of KordaMentha Administrators

- 17 On 12 April 2016, the AWU, the US holders of private placement notes issued by certain Arrium Group entities (**US Noteholders**), and certain lenders to the Arrium Group applied to the Federal Court of Australia for orders appointing us as voluntary administrators of the Arrium Administration Group companies with effect from the date and time that the First Administrators gave written notice of their resignations.
- 18 On 12 April 2016, Justice Davies of the Federal Court of Australia made orders that we be appointed as Administrators of the Arrium Administration Group companies with effect as and from the date and time that the First Administrators gave notice in writing of their resignations as administrators. A copy of the orders made on 12 April 2016 is at [Tab-4].
- 19 Later on 12 April 2016, the First Administrators gave written notice of their resignations and we were appointed as joint and several administrators of each of the 94 companies in the Arrium Administration Group pursuant to the orders made on 12 April 2016.

First Creditors' Meetings

- 20 On 7 April 2016, the First Administrators sent a circular to about 22,500 creditors of the Arrium Administration Group giving notice of the first meetings of creditors to be held on 19 April 2016 (**First Creditors' Meetings**). A copy of the circular to creditors in relation to the First Creditors' Meetings is at [Tab-5]. As a result of orders made by Justice Davies on 10 May 2016 (which I discuss further below), we are now able to send the section 439A report electronically to all creditors who have provided us with their email addresses.




- 21 On 19 April 2016, the First Creditors' Meetings were held concurrently at the Wesley Conference Centre, 220 Pitt Street, Sydney, New South Wales. Had we been required to convene and hold 94 separate meetings, we expected it may have taken in excess of 15 minutes per company, or in excess of 23 hours.
- 22 A live audio webcast of the First Creditors' Meetings was streamed to creditors who were registered, and therefore able to vote and ask questions, from the Westland Hotel, 110 McDougall Stuart Avenue, Whyalla, South Australia. The audio webcast facility was made available to other creditors who pre-registered for the service. However, those creditors were not registered and were therefore not able to vote or otherwise participate in the meetings.
- 23 At the First Creditors' Meetings, Cassandra Mathews, one of the other Administrators, made a statement foreshadowing an application to extend the convening period for the Second Creditors' Meeting which we subsequently made.

Establishment of an Arrium Group Composite Committee of Creditors

- 24 On 19 April 2016, at the First Creditors' Meetings, the creditors of the Arrium Administration Group voted in favour of a resolution establishing a composite Committee of Creditors in respect of Arrium Limited (**Arrium Committee of Creditors**) made up of creditors from any company in the Arrium Administration Group as we had foreshadowed we would do in communications between our lawyers, Arnold Bloch Leibler (**ABL**), and ASIC. A copy of ABL's letter to ASIC dated 15 April 2016 is at **[Tab-6]**.
- 25 Following a vote on a show of hands at the First Creditors' Meetings, the following representatives were appointed as members of the Arrium Committee of Creditors:
- (a) Steve Cook (representing non-union employees);
 - (b) the AWU;
 - (c) the ACTU;
 - (d) BIS Industries;
 - (e) Lucas Total Contract Solutions;
 - (f) K&S Corporation Limited;



- (g) Morgan Lewis as agent for the US Noteholders;
- (h) Banco Bilbao Vizcaya Argentaria, S.A. (**BBVA**);
- (i) Westpac;
- (j) NAB;
- (k) CBA;
- (l) ANZ;
- (m) State Government of South Australia;
- (n) the Commonwealth of Australia; and
- (o) Morgan Stanley Bank NA (**Morgan Stanley**);

(collectively **the Arrium Committee of Creditors**).

- 26 Morgan Stanley subsequently resigned from the Arrium Committee of Creditors.
- 27 The Arrium Committee of Creditors was appointed to Arrium Ltd only. However, the Arrium Committee of Creditors is composite in the sense that it is made up of members that include creditors with claims against one or more of other Arrium Administration Group companies and not just creditors of Arrium Ltd.
- 28 Leanne Chesser of KordaMentha has prepared a spreadsheet [**Tab-7**] listing the members of the Arrium Committee of Creditors which shows the relevant Arrium Administration Group companies against which the members of the Arrium Committee of Creditors have claims, whether directly or by way of guarantees, including under the 1999 and 2008 Deeds of Cross Guarantee (which I discuss further below).
- 29 The Administrators have since consulted with, and given reports to, the Arrium Committee of Creditors in relation to all Arrium Administration Group matters. On 14 October 2016, we sent the Arrium Committee of Creditors our twenty-ninth (29th) such report.
- 30 We have also reported to the Arrium Committee of Creditors for the purposes of having our remuneration agreed to and allocated between the Arrium Administration

Group companies by the Arrium Committee of Creditors pursuant to sections 449E(1)(a) and 449E(1)(5) of the Act and in accordance with the orders made by Justice Davies on 10 May 2016 (which I discuss further below).

Previous Orders re Second Creditors' Meetings

- 31 Pursuant to section 439A of the Act, we were required to convene the Second Creditors' Meetings of the Arrium Administration Group by 6 May 2016 and to hold the meetings within five business days of that date.
- 32 On 2 May 2016, we made an application to the Federal Court of Australia seeking, amongst other things, orders to extend the convening period in relation to the Second Creditors' Meetings and modifying the manner in which we were able to give creditors notice of the Second Creditors' Meetings. That application was supported by an affidavit I affirmed on 2 May 2016, a copy of which (without exhibits) is at **[Tab-8]**.
- 33 On 10 May 2016, Justice Davies made orders sought by the Administrators that, amongst other things:
 - (a) extended the convening period for the Second Creditors' Meetings until midnight on 28 February 2017 under section 439A(6) of the Act;
 - (b) permitted the Administrators to convene the Second Creditors' Meetings of the Arrium Administration Group at any time up to, or within five business days after, the end of the convening period as extended;
 - (c) modified the manner by which we would otherwise be required to give notice of the Second Creditors' Meetings of the Arrium Administration Group under section 439A of the Act;
 - (d) modified section 449E of the Act to allow the Arrium Committee of Creditors to approve and allocate our remuneration across the various Arrium Administration Group companies; and
 - (e) relieved us from complying with the provisions of rule 1.34 of the *Federal Court Rules 2011 (Commonwealth)* (**Rules**) and rule 1.3 of the *Federal Court (Corporations) Rules 2000 (Commonwealth)* (**Corporations Rules**) which would otherwise require us to file ASIC searches of each Arrium Administration Group company each time we make applications to this Court in relation to them.




- 34 A copy of the orders made by Justice Davies on 10 May 2016 is at [Tab-9].
- 35 A full set of the company searches in respect of each of the 94 Arrium Administration Group companies has been uploaded to a dedicated page on the ABL website in respect of the administration of the Arrium Administration Group, accessible via the following link: <http://www.abl.com.au/Arrium/Company-Information/ASIC-Searches>

Corporate Structure of the Arrium Group - limited operating companies

- 36 The Arrium Administration Group consists of 94 separate entities. However the only companies in the Arrium Group which carry on the Arrium businesses or hold property are as follows:

- (a) Southern Iron Pty Ltd;
- (b) Central Iron Pty Ltd;
- (c) Arrium Mining Services Asia Pte Limited (not under external administration);
- (d) Whyalla Ports Pty Ltd;
- (e) OneSteel Manufacturing Pty Ltd;
- (f) OneSteel NSW Pty Ltd;
- (g) OneSteel Reinforcing Pty Ltd;
- (h) OneSteel Wire Pty Ltd
- (i) The Australian Steel Company (Operations) Pty Ltd;
- (j) SSX Services Pty Ltd;
- (k) OneSteel Recycling Pty Ltd;
- (l) Austube Mills Pty Ltd;
- (m) OneSteel Trading Pty Ltd;
- (n) XMS Holdings Pty Ltd;

(the companies from (a) to (n) operate businesses)

- (o) OneSteel Recycling Holdings Pty Ltd;
- (p) J. Murray-Moore (Holdings) Pty Ltd;
- (q) OneSteel MBS Pty Ltd;
- (r) Tubemakers of Australia Pty Ltd;
- (s) Tube Estates Pty Ltd;
- (t) Palmer Tube Mills Pty Ltd;
- (u) P&T Tube Mills Pty Ltd;
- (v) Zinctek Pty Ltd;
- (w) OneSteel NZ Limited (not under external administration);
- (x) OneSteel NZ Holdings Limited (not under external administration); and
- (y) Palmer Tube Mills (NZ) Limited (not under external administration);
(the companies from (o) to (v) hold properties).

(collectively **the Arrium Sales Entities**).

- 37 At **[Tab-10]** is an overview of the operations of each of the Arrium Sales Entities that carry on businesses.

ASIC Class Orders and Deeds of Cross Guarantee

- 38 A number of Arrium Group entities are party to deeds of cross guarantee executed for the purpose of obtaining relief from reporting requirements under ASIC class order 98/1418, namely:

- (a) a deed of cross guarantee for SSX Holdings dated 25 June 1999 (**1999 DOCG**) (a copy of which deed is at **[Tab-11]**); and
- (b) a deed of cross guarantee for Arrium Ltd dated 10 June 2008 (**2008 DOCG**) (a copy of which deed is at **[Tab-12]**).

- 39 There are seven (7) Arrium Group entities that are party to the 1999 DOCG and twenty-eight (28) Arrium Group entities that are party to the 2008 DOCG. At **[Tab 13]**

is a listing of the Arrium Group entities that are party to the 1999 DOCG and the 2008 DOCG (**Obligor and Debtor Listing**).

40 Relevantly:

- (a) under the 1999 DOCG and the 2008 DOCG (together, the **DOCGs**), all parties guarantee the obligations to creditors of the other parties to the relevant DOCG;
- (b) the DOCGs become enforceable if the relevant debtor goes in liquidation;
- (c) the DOCGs create two separate cross-guarantor groups within the Arrium Group (as demonstrated in the Obligor and Debtor Listing);
- (d) Arrium Administration Group entities that are party to the 2008 DOCG are shaded in purple in the column titled '10-Jun-08: ASIC Cross Guarantee' of the Obligor and Debtor Listing; and
- (e) Arrium Administration Group entities who are party to the 1999 DOCG are shaded in purple in the column titled '24-Jun-99: ASIC Cross Guarantee' of the Obligor and Debtor Listing.

41 A copy of ASIC Class Order [CO 98/1418] is at **[Tab-14]**.

42 ASIC has advised us that it is concerned that the Assumption Deed by which SSG No 2 Pty Ltd, Austube Mills Holdings Pty Ltd and Austube Mills Pty Ltd joined the 1999 ASIC Class order and the 1999 DOCG did not comply with the amended rules. We have sought to rectify this procedural defect. At Tab-31 (referred to below) we have included our communications with ASIC in relation to this procedural defect.

Arrium Lenders - Unsecured Debt

43 The total amount of outstanding unsecured debt owed by the Arrium Group entities to the lenders to the Arrium Group, including the US Noteholders (**Arrium Lenders**) is approximately AU \$2.8 billion.

44 The obligations of the borrowers and issuers in respect of the Syndicated Facilities, the Bilateral Facilities and the US Noteholders are also guaranteed by certain subsidiaries of Arrium Ltd under two "group guarantees" (together, the **Group Guarantees**) as follows:

- (a) A Deed Poll dated 28 March 2011 executed by Arrium Ltd and certain of its subsidiaries in favour of the "Beneficiaries" (**2011 Group Guarantee**), pursuant to which the relevant guarantors guarantee the obligations of the "primary debtors" under documents that are nominated by Arrium Ltd as "Guaranteed Documents" for the purposes of the 2011 Group Guarantee. The "Guaranteed Documents" include the Syndicated Facilities, the Bilateral Facilities, the 2011 Noteholders and the Interim Facility. A copy of the 2011 Group Guarantee including guarantor accessions executed after 28 March 2011 is at **[Tab-15]**; and
 - (b) A Deed of Guarantee dated 9 July 2008 (**2008 Group Guarantee**), pursuant to which the relevant guarantors guarantee the obligations of the issuers of the 2008 USPP Notes. A copy of the 2008 Group Guarantee including guarantor accessions executed after 9 July 2008 is at **[Tab-16]**.
- 45 Certain of the Moly-Cop Entities are also guarantors under each of the Group Guarantees against whom the Arrium Lenders may enforce their rights under the Syndicated Facilities, Bilateral Facilities and US Notes. It is only the Arrium Lenders and not any other Arrium Administration Group creditors whose debts have been guaranteed by the Moly-Cop Entities.
- 46 At **[Tab-17]** is an Arrium Group corporate structure chart that identifies, amongst other things, the Arrium Group entities that are party to the Group Guarantees and the DOCGs (collectively, the **Arrium Guarantors**).

Arrium Lenders - Limited Secured Debt

- 47 Arrium Ltd and certain of its subsidiaries have approximately US \$100 million secured finance debt borrowed by four Arrium Group companies from ANZ, Westpac, NAB and CBA (**the Australian Banks**) and secured by the Moly-Cop Entities under a new facility entered into by those Arrium companies and used to discharge a pre-appointment secured Arrium Group borrowing from GSO Capital Partners, LP (**GSO Interim Facility**).
- 48 If we had not been able to refinance the GSO Facility, GSO threatened to enforce its rights against some of the currently solvent Moly-Cop Entities which may have led to their financial collapse. There are ongoing disputes with GSO in relation to the

Interim Facility. These disputes are currently set down for trial before Justice Davies in proceeding no. VID 527/2016 on 27 October 2016.

Arrium Dormant Companies

- 49 Save for the Arrium Sale Entities (25), the Arrium Administration Companies that are parties to the 1999 DOCG (8) and the 2008 DOCG (28) and the Arrium Guarantors (many of which overlap), the remaining Arrium Administration Group companies are non-operating and dormant. Many of these non-operating and dormant entities only have Arrium Group inter-company liabilities and no external creditors. These inter-company debts we intend to vote in favour of the DOCAs.

Arrium Group business conducted by six business divisions but not on an entity basis

- 50 The Arrium Administration Group operates the following businesses in Australia through six separate divisions:

- (a) **Whyalla.** This business division includes the Arrium Group's export iron ore business, which exports over 10Mtpa of hematite iron ore. Arrium Mining has operations in the Middleback Ranges, South Australia as well as a wholly-owned port at Whyalla, South Australia. It is the leading iron ore producer in the State of South Australia. In addition to the export iron ore business, Whyalla also supplies iron ore to Arrium's integrated steelworks at Whyalla. The Whyalla Steelworks include a blast furnace and steel rolling mills. These steelworks produce steel billets which are sold to OneSteel, long products (structural steel) and rail products.
- (b) **East Coast Steel.** This business division includes recycling, steel manufacturing, rod and bar mills (Laverton Victoria, Newcastle NSW and Rooty Hill NSW), steel wire mills, reinforcing and metals product distribution. Along with the Whyalla Steelworks, these OneSteel steelworks are the only current Australian manufacturer of steel long products (such as structural steel). The OneSteel business operates in all States and Territories in Australia. The OneSteel business has two electric arc furnaces in New South Wales and Victoria. The OneSteel business also has a national distribution network for its steel products. The OneSteel business directly or indirectly supplies approximately 70% of the steel reinforcing bar and mesh used by the Australian building and construction industry, making that industry highly dependent on the OneSteel business.

- 51 At [Tab-18] is a chart prepared by KordaMentha that summarises the Arrium Administration Group's integrated steel supply chain from the raw materials stage through manufacturing and to distribution.
- 52 The operations of the Arrium Administration Group's business divisions are highly integrated and intermingled as between the various corporate entities. At [Tab-19] is a chart prepared by KordaMentha which provides a summary of the business operations, the location of the operations, number of employees associated with, the major suppliers of, the number of customers of, each of the six Whyalla and East Coast Steel business divisions, namely:
- (a) Mining and Port;
 - (b) Whyalla Steelworks;
 - (c) Manufacturing;
 - (d) Distribution;
 - (e) Recycling; and
 - (f) Head office/shared services.
- 53 These Arrium Group business divisions are carried on by the Arrium Sales Entities but not on an entity-by-entity basis. For example:
- (a) a number of legal entities hold the assets and operations of more than one division;
 - (b) about 430 employees are employed by an entity which does not operate the business division in which they work;
 - (c) there are multiple Enterprise Bargaining Agreements that do not apply on an entity basis but apply to the employees based on their geographic location;
 - (d) there are 1,074 specific items of Arrium Group intellectual property but 154 of those items span multiple business divisions;
 - (e) there are 150 national contracts managed by a centralised manufacturing procurement team and 70 of these national contracts operate in relation to a number of different divisions;

- (f) OneSteel Manufacturing Pty Ltd operates a sales team in Newcastle that sells steel products emanating from the Arrium Administration Group's manufacturing operations, including from the Laverton, Sydney and Newcastle operations conducted by other business divisions. The proceeds of all sales are banked into the same bank account without an allocation as to which entity is entitled to those proceeds and which entity is responsible for expenses associated with the generation of the revenue;
- (g) the corporate and shared services division is substantially operated by OneSteel Trading Pty Ltd. Corporate and service functions such as accounts payable, accounts receivable, human resources, treasury, payroll, insurance, information technology and safety are provided to all of the six business divisions and are either fully or partially recharged to the business divisions based on an allocation of costs.

54 At [Tab-20] is a chart which describes, by way of example only, that OneSteel Manufacturing Pty Ltd (Administrators Appointed) is the owner of assets and employer of employees that relate to four of the six Arrium Group business divisions

55 The intermingling of the operations of the Arrium Administration Group is another reason why we believe that the DOCAs' proposed aggregation of the administrations is necessary. It may be impossible to reconstruct the Arrium Administration Group accounts on an entity-by-entity basis and apportion sale proceeds accurately.

Arrium Administration Group Employees

56 The Arrium Administration Group employs about 6,000 employees (and an additional 3,000 contractors) in Australia.

57 About 3,500 of the Arrium Group employees are not affiliated with the unions. About 2,500 of the Arrium Group employees are members of unions, including the AWU (approximately 2,000 members), CFMEU, AMWU, CEPU/ETU and NUW. The majority of the union affiliated employees are members of the AWU. (The ACTU currently plays a role of supervising the administration in the interests of the Unions generally).

58 The Arrium Group employees and contractors based in Australia are located in the following areas:

- (a) the Whyalla region of South Australia - approximately 1,500 employees and a further 1,600 contractors;
- (b) New South Wales - approximately 3,000 employees and hundreds of contractors;
- (c) Victoria - approximately 1,000 employees and hundreds of contractors; and
- (d) Queensland - approximately 1,000 employees and hundreds of contractors.

59 The employees are each employed by one of nine of the Arrium Sale entities. A number of employees work across multiple business divisions. Further, there also a number of employees who have transferred roles within the Arrium businesses; however, the legal employing entity has not changed to reflect the transfer.

60 The head office of the Arrium Group is located at St Leonard's in New South Wales. The treasury and administration functions of the Arrium Group was centralised to the head office.

61 The Arrium Group carries on its businesses from approximately 160 sites in Australia and overseas, comprising iron ore mine sites, ports, large steel production facilities, metal distribution sites and recycling sites. There is at least one Arrium Group site in every State and Territory of Australia.

62 The Arrium Group has approximately 30,000 customers and 10,000 suppliers. Due to the vast number of customers and suppliers, we have formed the view that it may be impractical to sell businesses operated or assets owned by the Arrium Group. Based on our experience in selling businesses, we estimate that the transfer of the numerous customer and supplier agreements may take in excess of 6 months to complete and may create uncertainty, which is unattractive to a potential bidder.

Moly-Cop Entities

63 The Moly-Cop Business is carried on by the Moly-Cop Entities which are incorporated in jurisdictions outside Australia, with the exception of Commonwealth Steel Company Pty Limited (**CommSteel**). A list of the Moly-Cop Entities and their place of domicile is set out below:

Moly-Cop Entity	Place of incorporation or registration
Altasteel Limited	Alberta, Canada
Alta Steel Chile SA	Chile
Arrium Mining Services Asia Limited	Hong Kong
Commonwealth Steel Company Pty Limited (ACN 000 007 698)	New South Wales
GST Philippines Inc	Philippines
Genalta Recycling Inc	
Litesteel Technologies America, LLC	United States
Maple Leaf Metals	A partnership registered in Alberta Canada
Moly-Cop Adesur S.A.	Peru
Moly-Cop Brasil Participacoes Ltda	Brazil
Moly-Cop Canada	Alberta, Canada
Moly-Cop Chile S.A.	Chile
Moly-Cop Finance UK Limited	United Kingdom
Moly-Cop Group	
Moly-Cop Mexico S.A. DE C.V.	Mexico
Moly-Cop Peru SAC	Peru
Molycop Steel Inc	Canada
Moly-Cop USA LLC	United States

Onesteel Group (US Holdings) Inc	United States
Onesteel Recycling Hong Kong Limited	Hong Kong
Onesteel Recycling Inc.	United States
Onesteel US Investments	United States
OneSteel UK Holdings Limited	United Kingdom
PT Commonwealth Steel Indonesia	Indonesia
Servicios Moly-Cop SA DE CV	

- 64 None of the operating Moly-Cop Entities are in voluntary administration or subject to any other insolvency or external administration proceedings in the jurisdictions in which they are domiciled. Each of the operating Moly-Cop Entities is currently trading on a business-as-usual basis. The Arrium Lenders have entered into a Standstill Agreement with the Moly-Cop Entities to enable the Moly-Cop Entities to continue operating as going concerns.
- 65 The Moly-Cop Business contributed over 50% of all EBITDA of the Arrium Group in FY2015 (A\$211 million of A\$371 million).
- 66 OneSteel Americas Holdings Pty Ltd (Administrators Appointed), SSX International Pty Ltd (Administrators Appointed) and Comsteel Pty Ltd (Administrators Appointed) (all of which are Arrium Administration Group companies) have appointed Deutsche Bank to either sell the Moly-Cop Entities or list the business on the Australian Stock Exchange by an initial public offering of shares (**IPO**). The sale or IPO of the Moly-Cop Entities is currently intended to be completed by the end of this calendar year. Based on advice which we have received from Deutsche Bank, the value of the Moly-Cop Entities is less than the Moly-Cop Entities' indebtedness to the Lenders.

Arrium Creditors and Capital Structure

- 67 Arrium Ltd is admitted to the official list of the ASX and its securities are quoted for trading on the stock market conducted by ASX. Arrium Limited has been suspended from trading.

68 At the date of our appointment, the Arrium Administration Group contingently owed employee entitlements of approximately AU \$620 million. But this amount will not crystallise unless all the employees' employment is terminated. As stated above, we are seeking to sell the Arrium Sale Entities as going concerns which may ensure continuity of employment for all Arrium Group employees. Approximately \$6.6 million of employee claims have crystallised since our appointment. We further estimate that the Arrium Administration Group presently owes contingent employee entitlements of approximately \$605 million that have not crystallised.

69 The other creditors of the Arrium Group comprise:

- (a) general creditors with claims estimated to be in excess of AU \$500 million;
- (b) contingent creditors with claims that may be brought against the Arrium Group, which are estimated to be in excess of AU \$500 million.

70 There are in excess of 16,000 ordinary unsecured creditors of the Arrium Administration Group. In addition there are approximately 6,000 employee priority creditors of the Arrium Administration Group.

71 Accordingly, there are approximately 22,500 identified creditors of the Arrium Administration Group, but there may be more.

72 We have also received communications from shareholders of Arrium Ltd claiming to be subordinated creditors within the meaning of section 563A of the Act. We have not investigated how many other shareholders may have like subordinated claims to those who have given notice to us. We are also required to provide those subordinated creditors a copy of the section 439A Report if requested by them to do so.

Difficulties with sale and realisation process

73 When we first sought an extension of the convening period we did not fully appreciate the difficulties we would encounter in seeking to establish a clean and functional process to sell or realise the Whyalla and East Coast Steel Business. As explained above, after a more detailed analysis we formed the view that it may not be practical to sell those businesses or their assets because of their size, location and the number of supplier contracts and customer contracts that would need to be assigned to a new purchaser of them. Moreover, selling businesses without an attempt to maintain the

existence of Arrium Administration Group companies is also inconsistent with the objects of Part 5.3A of the Act.

- 74 We then gave consideration to selling the Arrium Sales Entities, that is the Arrium Administration Group entities that carried on the Whyalla and East Coast Steel Businesses or entities that owned related property. However, as set out above, we became aware that some of the entities themselves carry on parts of the six Arrium business divisions but not any one business division. In other words, if the Arrium Sales Entities are to be sold to one or more purchasers, we would need to move assets into and out of the Arrium Sales Entities and similarly transfer employees into and out of Arrium Sales Entities and extinguish pre-administration debt to attract and then meet the particular requirements of a successful bidder. We also formed the view that it would be premature to transfer any assets or employees into or out of one of the Arrium Sales Entities because each bidder may have different aspirations for the businesses they may seek to acquire.
- 75 We also gave careful consideration as to how we could maximise the chances of the Arrium Sales Entities remaining in existence and also maximise returns to creditors. We, together with our advisers, gave consideration to a transaction from a bidder's perspective. We concluded that:
- (a) Bidders will be more likely to acquire companies rather than the businesses or assets owned by the companies. Bidders would conclude that sales of businesses would be too complex and lengthy to complete.
 - (b) Bidders will be more attracted to acquire the Arrium Group operating companies if assets can be moved into and out of them so that they may acquire the operating company and the assets required to carry on the business divisions.
 - (c) Bidders may not wish to pay for valuable assets owned by an Arrium Sales Entity but which are not required to carry on the business division (for example, OneSteel Manufacturing Pty Ltd (Administrators Appointed) owns land in Newcastle surplus to the requirements of any business and a bidder may not wish to pay for it).

- (d) Bidders will require that employees needed for the Arrium Group entities being acquired by them will be transferred to the correct employer companies or made available to them.
- (e) Bidders will not be prepared to discharge the \$3.3 billion+ pre-administration claims of Arrium Lenders and other creditors.
- (f) The Arrium Sales Entities being acquired by the bidder will be required to release those Lenders' and creditors' claims prior to completion.
- (g) Bidders will seek assurances from the Administrators and advice from their lawyers and advisers that the Administrators can provide certainty of closure of the transactions that they enter into.
- (h) Bidders will be disinclined to bid on such a complex transaction if they can later be outbid because of a cumbersome closure process such as court approval or approval by a majority of creditors' debts.

76 We concluded that the only way to maximise the value of the Arrium Sales Entities was to enter into DOCAs that provided the flexibility and powers to meet the requirements of Bidders. We cannot undertake the sale of the Arrium Sales Entities as Voluntary Administrators because we may be unable to move assets into and out of the entities and we do not have a power to extinguish, novate or release debts.

Appointment of Morgan Stanley

77 On 29 July 2016, the Administrators mandated Morgan Stanley to conduct a sale and realisation process of the Arrium Sales Entities and the Arrium Businesses (in one line), but if that is not possible a sale of different Arrium Sales Entities or parts of the Arrium Businesses to different bidders.

78 Morgan Stanley has sent out eighty-nine teasers. Morgan Stanley has engaged with about 70 different interested parties. Some of them are interested in the whole of the Arrium Group Businesses and some only parts of them. Bidders have recently submitted indicative non-binding offers and preferred bidders will be selected to complete due diligence and submit binding bids.

79 We are continuing to operate and trade the Arrium Sales Entities and the Arrium Businesses on a 'going concern' basis to maximise the chances of the Arrium




Administration Group companies and/or as much as possible of the Arrium Businesses continuing in existence and that will otherwise maximise the returns to creditors. To that end, we have been working with Morgan Stanley to complete the sale / realisation process by late January 2017. At [Tab-21] is a copy of a table setting out the transaction timetable for the sale and realisation process in relation to the Arrium Sales Entities.

Development of Transaction Support DOCAs and Arrium Distribution DOCA

- 80 In view of the complexities and difficulties we faced in selling or realising the Arrium Sales Entities, we have proposed DOCAs to facilitate the realisation, sale or recapitalisation of the Arrium Sale Entities and distribution of proceeds to creditors of the Arrium Administration Group on an aggregated basis.
- 81 The Administrators have developed 94 cross-conditioned DOCAs that they will recommend to creditors to vote upon at the Second Creditors' Meetings. In summary, the Administrators propose that:
- (a) 93 of the Arrium Administration Group companies and their creditors will enter into identical DOCAs which will facilitate sales or realisation transactions and maximise returns (**Transaction Support DOCAs**); and
 - (b) SSX Pty Limited (**Administrators Appointed**) (which will be renamed "The Arrium Creditors Distribution Company Pty Ltd") will enter into a distribution DOCA in which the proceeds of all of the sales/realisations will be aggregated into a fund (**Arrium Distribution Fund**) and distributed to creditors of the Arrium Administration Group creditors from that fund (**Arrium Distribution DOCA**).
- 82 The DOCAs do not identify a particular sale or recapitalisation transaction but will operate interdependently to facilitate any eventual sale or recapitalisation transaction(s) that may arise from the process being undertaken by Morgan Stanley. The DOCA structure is designed to provide the flexibility to bidders to acquire particular Arrium Group businesses, including by allowing assets, employees and liabilities to be moved between the Arrium Administration Group companies and empowering the Administrators to extinguish creditors' debts and claims or novate them.
- 83 Some of the key features of the DOCAs are as follows:

- (a) the Administrators will be appointed Deed Administrators under the DOCAs;
- (b) the DOCAs provide for the appointment of an Arrium creditors' committee which will comprise the members of the Arrium Committee of Creditors appointed at the First Creditors' Meetings (**DOCA Creditors' Committee**). Save for a limited exception that I explain below, the DOCA Creditors' Committee will vote on resolutions in which a poll is called in precisely the same manner as creditors voting in a meeting of creditors under Part 5.3A of the Act, namely, on poll the members will vote on the basis of those creditors they represent in number and value. The number and value of the creditors' votes will be determined by the number and value of their votes at the Second Creditors' Meeting. The Deed Administrators will have a casting vote in the event of a deadlock between number and value, except in the circumstances where there is a deadlock between number and value in relation to a resolution:
 - (i) to make payments to priority creditors following a liquidation of an Arrium Group company; and
 - (ii) to liquidate an Arrium Group company.

In the event of a deadlock between the number and value of votes of members of DOCA Creditors' Committee in these circumstances, the Deed Administrators will apply to the Court for directions, rather than exercising the casting vote;

- (c) the DOCAs will be cross-conditioned in the sense that each DOCA will be conditional upon the execution of each of the other DOCAs;
- (d) the Deed Administrators will have broad powers to implement the sale and restructure transactions in the best interests of creditors and stakeholders subject always to the consent of the DOCA Creditors' Committee for transactions in excess of \$20 million;
- (e) the Arrium Distribution DOCA provides that the Deed Administrators must transfer all proceeds of sale or realisation assets to the Arrium Distribution Company as part of the Arrium Distribution Fund;

- (f) the proceeds of sale from the Moly-Cop Entities will be assigned to an Arrium Group company and will not form part of the Arrium Distribution Fund due to the fact that the value of the Moly-Cop Entities' and their assets is less than value of their indebtedness to the Arrium Lenders; and
- (g) the Arrium Distribution DOCA will provide a 'waterfall' for payment of creditors' claims as against the Arrium Distribution Fund that broadly reflects the priority regime in Division 6 of Part 5.6 of the Act subject to a discretion of the Deed Administrators to apply the Arrium Distribution Fund in a way that ensures that unsecured creditors of the Arrium Administration Group companies are not unfairly prejudiced when compared to the position they would be in if they were proving their claims in a liquidation of any individual Arrium Administration Group company.

84 At [Tab-22] is a summary of the key features of the proposed Transaction Support DOCAs and the Arrium Distribution DOCA (**Arrium DOCA Summary**).

85 In order to enable a sale or realisation to occur in accordance with the transaction timetable that we are pursuing with Morgan Stanley, we have formed the view that it is in the best interests of creditors that the Arrium Administration Group companies enter into the Transaction Support DOCAs and the Arrium Distribution DOCA as soon as reasonably practicable so as to facilitate any transaction or transactions that may emerge from the sale and realisation process. The reasons for this recommendation are expanded below.

Second Creditors' Meeting and Voting Issues

86 The Administrators plan to convene the Second Creditors' Meetings on 4 November 2016 in Sydney. We plan to hold the Second Creditors' Meetings on a concurrent basis in a like manner to the way we conducted the First Creditors' Meetings. If the Second Creditors' Meetings are to be held on 4 November 2016, we will need to provide creditors with the notices of meetings by no later than 27 October 2016. At [Tab-23] is a chart that KordaMentha has prepared setting out the timetable for the necessary steps that will need to be taken to convene and hold the Second Creditors' Meetings and execute the DOCAs.




Quorum

- 87 The Administrators' investigations indicate that all the dormant Arrium Administration Group companies have inter-company debt. All Arrium Administration Group ASIC fees have been paid from a centralised treasury account but the historical accounts have not recorded the debt created on a company-by-company basis in relation to such fees. The accounts of the Arrium Administration Group have not been re-stated to record the precise amount of the inter-company debt. In these circumstances and similarly to the process adopted at the First Creditors' Meeting the Administrators will therefore assume at the Second Creditors' Meeting that there is a quorum present for all 94 Arrium Administration Group companies. Due to the cross-conditionality of the DOCAs, it is fundamental that even the apparently dormant entities resolve to enter into the Transaction Support DOCAs.
- 88 We have raised this issue of assumption of quorum with ASIC through our lawyer, Leon Zwier of ABL. As explained in emails between Mr Zwier and representatives of ASIC that I refer to below, the Administrators intend to deal with the quorum issue at the Second Creditors' Meeting in the same manner as at the First Creditors' Meeting (which was summarised in ABL's letter to ASIC dated 15 April 2016 a copy of which is at [Tab-6]). ASIC has informed ABL that it does not object to this course.

Voting inter-company debt

- 89 The Administrators also intend to vote the inter-company debt owed as between Arrium Administration Group companies in favour of the DOCAs.
- 90 There is some complexity and uncertainty associated with the Administrators voting the inter-company debt particularly in circumstances where it may have the effect of carrying the vote by value and number in opposition to the majority of external creditors by value and number. But in this administration, some of the Arrium Administration Group companies have no external creditors but only related Arrium Administration Group company creditors, and if the inter-company debt is not voted the dormant Arrium Administration Companies would remain in an artificial limbo. Given that the Administrators will become the Deed Administrators under the DOCAs, the Administrators are concerned they may be later criticised for voting the inter-company debt in favour of the DOCAs.

- 91 Because of the cross-conditionality of the DOCAs, regardless of the Administrators' vote in relation to the inter-company debt in the dormant Arrium Administration Group companies, the Arrium Administration Group DOCAs will only become effective if the external creditors of the Arrium Administration Group companies pass the requisite resolutions in favour of the DOCAs. In other words, the Arrium Administration Group Second Creditors' Meeting will be determined by the votes of the external creditors and not the Administrators.
- 92 Nevertheless, for reasons outlined above, the Administrators are concerned that voting the inter-company debt in favour of the DOCAs may expose them to criticism or claims of conflict. Accordingly, the Administrators also seek a direction under section 447D of the Act that they are justified in causing the Arrium Administration Group companies to vote in favour of resolutions that the Arrium Administration Group companies execute the proposed DOCAs.

AWU representative voting

- 93 By this application, the Administrators also seek orders under section 447A of the Act that the AWU may vote at the Second Creditors' Meeting on behalf of all Arrium Administration Group AWU employees other than those who vote in person or by proxy.
- 94 As explained in the affidavit of Kamal Farouque affirmed 11 April 2016 (a copy of which is produced at [Tab 2] above), there are approximately 2,000 AWU members that are employed by various entities in the Arrium Administration Group. These employees are located at various different sites of the Arrium Administration Group's operations across Australia. In these circumstances, there are practical difficulties in arranging all of the AWU employees to sign the necessary proxy forms for the Second Creditors' Meetings. Accordingly, we seek the orders in the Originating Process that will permit the AWU to vote on behalf of all Arrium Administration Group AWU employees other than those who vote in person or by proxy.

439A Report

- 95 Pursuant to section 439A(4) of the Act, we would be required to provide creditors of each Arrium Administration Group company with a report about each Arrium Administration Group company's business, property, affairs and financial circumstances. This would involve the preparation and distribution to creditors of 94

separate reports as prescribed by section 439A(4) of the Act. This would be a costly, time-consuming and complex task.

- 96 In view of the complexity, intermingling and integration of the business divisions of the Arrium Administration Group, and having regard to the interdependent nature of the DOCAs, and the proposed aggregation, we also seek orders in the Originating Process under section 447A of the Act, that section 439A(4) of the Act be modified in such a way that we can provide creditors with a single aggregated report in relation to the Arrium Administration Group companies' businesses, property, affairs and financial circumstances.
- 97 A copy of the current draft of the 439A report in relation to the Arrium Administration Group companies (**Arrium 439A Report**) is at **[Tab-24]**. The Arrium 439A Report explains the proposed Transaction Support DOCAs and the Arrium Distribution DOCA so as to enable creditors of each Arrium Administration Group company to make an informed decision at the Second Creditors' Meeting as to whether to vote in favour of the proposed resolution that the Arrium Administration Group companies enter into the DOCAs. We have also included a link in the Arrium 439A Report to these Court documents so that the Arrium Administration Group creditors can read this Affidavit and any Orders and directions that this Court may make.
- 98 Due to the complexities of the Arrium Administration Group that I have outlined above, we are not able to prepare an aggregated section 439A report that provides to creditors all of the information recommended in the guidelines set out in the ARITA Code of Professional Practice (**ARITA Code**) in relation to the preparation of section 439A reports. At **[Tab-25]** is an extract of the ARITA Code including part 25 of the ARITA Code in relation to reports under section 439A of the Act. The ARITA Code does not have legislative force but is intended to be used by Regulators, tribunals and courts to assist them in enforcing acceptable insolvency practice and proper professional standards (page 2 of the ARITA Code). The ARITA Code also acknowledges (at page 2) that practitioners may obtain Court directions and orders that differ from the guidance and requirements in the ARITA Code. In the circumstances of this Court process, the Administrators are strictly complying with the ARITA Code.

- 99 Set out at **[Tab-26]** is a summary table of aspects of the aggregated Arrium 439A Report that do not comply (at least to an extent) with the guidelines and requirements of the ARITA Code, save for the making of this application.
- 100 We have recommended all creditors to vote in favour of the DOCAs because we are of the unanimous view that they will achieve a better return under the DOCAs than from a liquidation of the Arrium Administration Group, even though we have not included in the Arrium 439A Report a comparative of estimated returns to creditors for each as recommended by ARITA and as we would usually provide. Let me explain why. First, the DOCAs provide the most flexible, speedy and certain process to transact a sale of the Arrium Sales Entities or their assets. Morgan Stanley agrees with us. A liquidator appointed to the Arrium Administration Group would not be able to replicate that process. So without quantifying the precise benefit of the superior sale process, we are confident the process will result in a superior outcome to that which would arise in a liquidation. Second, the DOCA process increases the likelihood of a sale of the Arrium Sales entities as going concerns. If we are able to achieve a sale of all the Arrium Sales Entities as going concerns we will avoid crystallising the priority claims of the employees. In a liquidation of the Arrium Administration Group those employee claims will crystallise and rank to a priority over ordinary unsecured creditors. Third, if we are able to maintain the Arrium Sales Entities as going concerns the ordinary trade creditors will have a greater prospect of continuing to do future business with them. Fourth, by conducting the Arrium administrations on an aggregated basis we will be able to avoid costly intra-creditor disputes and circumvent the need to conduct 94 separate administrations. In a liquidation of the Arrium Administration Group, each company will be administered separately. Fifth, under the DOCAs we have sought to bind creditors to mediate all disputes that may arise prior to litigation. This may reduce legal costs. A liquidator cannot impose a requirement on creditors to mediate. Sixth, because the Administrators may subsequently recommend that any one or more of the Arrium Administration Group be placed into liquidation if there are specific reasons to do so, say for example the pursuit of legal claims only available to a liquidator of that company, then the Administrators will be able to achieve that outcome but only with the support of the DOCA Creditors' Committee. The DOCAs are so flexible that liquidators claims are currently preserved. A liquidation of the Arrium Administration Group provides no equivalent flexibility.

- 101 Even if we could provide a general guide as to estimated comparative returns we are loath to do so because those estimates will reveal to the parties interested in acquiring the Arrium Administration Group businesses our estimate of a low and high value of the businesses we are selling. This may severely prejudice the outcome of the sale particularly if a bidder has estimated the synergies of an acquisition or other benefits far more generously than we may have done (in our capacity as insolvency practitioners). In most other administrations, when estimated comparative returns are provided by the Administrators to creditors, it is in the context of a sale for which approval of creditors is being sought. The Arrium Administration Group issues are bespoke in that respect.
- 102 In all these circumstances, we also seek a direction under section 447D of the Act that we may properly and justifiably provide creditors of the Arrium Administration Group companies with the Arrium 439A Report in substantially the same form as the Report at [Tab 24] referred to above.

Communications with Stakeholders and ASIC

ASIC

- 103 On 18 August 2016, Leon Zwier of ABL, the Administrators lawyer, sent an email to Hugh Copley of ASIC and copied to other ASIC representatives notifying ASIC that we had developed an Arrium Administration Group DOCA concept that we wished to discuss with ASIC. A copy of Leon Zwier's email to ASIC dated 18 August 2016 is at [Tab-27].
- 104 Patricia Hu of ASIC and Leon Zwier exchanged emails between 22 August 2016 and 30 August 2016 in relation to the proposed DOCAs and the Administrators' proposal in relation to the 439A reports. Those emails are at [Tab-28].
- 105 I am informed by Leon Zwier and believe that on 1 September 2016 he and Susanna Ford of ABL met with Patricia Hu and Carl Sibilia of ASIC in Sydney and explained the proposed DOCAs and the Administrators' intention to provide creditors of the Arrium Administration Group companies with an aggregated 439A report. At that meeting ASIC requested that we provide a summary of the proposed DOCAs as soon as we reasonably could.
- 106 On 7 October 2016, Leon Zwier of ABL sent a further email to Patricia Hu, Carl Sibilia and Adrian Saggors of ASIC. The email attached a working draft DOCA synopsis

and sought a further meeting with ASIC to discuss the issues regarding the proposed DOCAs, the Second Creditors' Meeting and the section 439A report. A copy of Leon Zwier's email to ASIC dated 7 October 2016 is at [Tab-29].

- 107 On 15 October 2016, Leon Zwier of ABL sent a further email to Patricia Hu, Carl Sibilia and Adrian Saggars of ASIC in relation to the DOCAs and the Second Creditors' Meetings, a copy of which is at [Tab-30].
- 108 On 17 October 2016, Leon Zwier of ABL further discussed the DOCAs and our proposed approach to the Second Creditors' Meeting on a telephone conference with representatives of ASIC. I am informed by Leon Zwier and believe that ASIC has not raised any objection to the orders sought in this application or the approach that we intend to take to the Second Creditors' Meetings or the preparation of a single section 439A report.
- 109 On 18 October 2016, Leon Zwier of ABL sent emails to Paul Davine, Carl Sibilia, Patricia Hu and Adrian Saggars of ASIC which attached, amongst other things, the draft originating process in this application, copies of which are at [Tab-31].
- 110 On 18 October 2016, Carl Sibilia of ASIC sent an email to Leon Zwier of ABL setting out ASIC's attitude to the issues we have raised in relation to the Arrium 439A Report and our approach to the Second Creditors' Meetings. ASIC does not oppose any of the relief sought in this application. Mr Sibilia summarised ASIC's position as follows:

"Section 439A report – we advised that if the s439A report is unable to provide comparison analysis of returns to creditors to assist them in making an informed decision, the administrators should make application to the Court for directions as previously indicated. We note that you will consider whether the administrators will make this application.

Voting issues – AWU and union – we advised that we believe it is prudent and appropriate to seek directions from the Court to allow the representative voting.

Voting issues – administrators to vote inter-company debt in favour of DOCAs – we advised that if there is inter-company debt, the administrators should vote in a way which is for the benefit of the creditors.

Quorum – we advised that we have no objections to the proposal if it follows the same procedure as for the first creditors' meeting.

Concurrent meetings – we advised that we have no objections to the proposal if it follows the same procedure as for the first creditors' meeting."

- 111 A copy of ASIC's email to ABL dated 18 October 2016 is at **[Tab-32]**.
- 112 On 20 October 2016, Patricia Hu of ASIC sent Leon Zwier of ABL a further email stating that, on the basis of information ASIC had received to date, ASIC had no further comments in relation to the draft originating process. Leon Zwier responded to Patricia Hu's email the same day. Copies of these emails are at **[Tab-33]**.
- 113 On 20 October 2016, Leon Zwier sent an email **[Tab-34]** to Patricia Hu and other ASIC representatives that attached:
- (a) a working draft of this affidavit; and
 - (b) an updated synopsis of the DOCAs.
- 114 Patricia Hu responded to Leon Zwier's email on 20 October 2016 confirming that ASIC was content to receive copies of the exhibits to this affidavit in electronic format in the first instance. In response, Leon Zwier sent a further email to Patricia Hu on 20 October 2016 with an electronic to the exhibits to a draft of this affidavit (as at that time). A copy of Leon Zwier's email to ASIC dated 20 October 2016 is at **[Tab-35]**.

Arrium Committee of Creditors

- 115 On 6 October 2016, we provided the draft DOCA summary (that had been provided to ASIC) to the Arrium Committee of Creditors together with our presentation for the tenth meeting of the Arrium Committee of Creditors. At the meeting of the Arrium Committee of Creditors held on 6 October 2016 we outlined the nature and purpose of the Transaction Support DOCAs and the Arrium Distribution DOCA to the members of the Arrium Committee of Creditors. No one in attendance at the meeting of the Arrium Committee of Creditors on 6 October 2016 raised any substantive objection to the DOCAs or our proposed approach to the Second Creditors' Meetings.
- 116 On 20 October 2016 we held a further meeting of the Arrium Committee of Creditors to, amongst other things, update them on the sale process and the drafting of the DOCAs. At this meeting Leon Zwier told the Arrium Committee of Creditors that we

would be making this application to the Federal Court on 25 October 2016. Leon Zwier also explained the reasons why we were doing so. Leon Zwier reported on discussions and communications with ASIC and other stakeholders. We also answered questions asked by members of the Committee. At the end of the meeting Mark Korda asked if any members of the Arrium Committee of Creditors had any objections to this process. There were none. Mark Korda also said that we would advise the Court accordingly.

AWU

- 117 On 18 October 2016, Leon Zwier of ABL sent an email to Kamal Farouque of Maurice Blackburn, who act for the AWU, notifying the AWU of this application and attaching a copy of the draft originating process. The email also asked whether the AWU had any concerns about the Administrators seeking a replication of the voting order made in relation to the First Creditors' Meeting. A copy of Leon Zwier's email to Kamal Farouque dated 18 October 2016 is at [Tab-36].
- 118 On 19 October 2016, Kamal Farouque of Maurice Blackburn replied to Leon Zwier by email [Tab-37] and confirmed that Maurice Blackburn continued to represent the AWU and that the AWU consented to the voting order set out in paragraph 1 of the draft originating process.

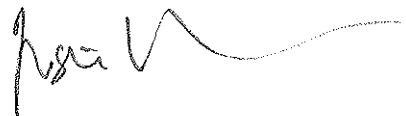
Service

- 119 We intend to serve this application and affidavit on ASIC, the AWU and the ACTU.

AFFIRMED by **BRYAN WEBSTER** at
Melbourne in the State of Victoria on 21
October 2016

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Before me:



Print name:

JUSTIN TAEDE VAATSTRA
Arnold Bloch Leibler
Level 21, 333 Collins Street, Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

SCHEDULE 1

- 1 A.C.N. 006 769 035 Pty Limited (ACN 006 769 035)
- 2 Akkord Pty Limited (ACN 060 486 991)
- 3 ANI Construction (W.A.) Pty. Limited (ACN 008 670 871)
- 4 Arrium Finance Pty Limited (ACN 093 954 940)
- 5 Arrium Iron Ore Holdings Pty Limited (ACN 152 752 844)
- 6 Arrium Limited (ACN 004 410 833)
- 7 Atlas Group Employees Superannuation Fund Pty. Limited. (ACN 060 568 998)
- 8 Atlas Group Staff Superannuation Fund Pty. Limited. (ACN 059 654 241)
- 9 Atlas Group Superannuation Plan Pty Limited (ACN 065 649 050)
- 10 Australian National Industries Pty Limited (ACN 000 066 071)
- 11 Australian Wire Industries Pty Limited (ACN 064 267 456)
- 12 Austube Mills Holdings Pty Limited (ACN 123 160 172)
- 13 Austube Mills Pty Limited (ACN 123 666 679)
- 14 AWI Holdings Pty Limited (ACN 004 157 475)
- 15 B.G.J. Holdings Proprietary Limited (ACN 004 859 536)
- 16 Bradken Consolidated Pty Limited (ACN 000 011 932)
- 17 Central Iron Pty Limited (ACN 143 503 397)
- 18 Cockatoo Dockyard Pty Limited (ACN 000 025 918)
- 19 Comsteel Pty. Limited (ACN 006 218 524)
- 20 Coober Pedy Resources Pty Limited (ACN 151 599 905)

- 21 Eagle & Globe Pty Limited (ACN 000 122 305)
- 22 Email Accumulation Superannuation Pty Limited (ACN 065 263 658)
- 23 Email Executive Superannuation Pty Limited (ACN 065 263 818)
- 24 Email Holdings Pty Limited (ACN 092 348 555)
- 25 Email Management Superannuation Pty Limited (ACN 065 263 710)
- 26 Email Metals Pty. Limited. (ACN 004 574 681)
- 27 Email Pty Limited (ACN 000 029 407)
- 28 Email Superannuation Pty Limited (ACN 065 263 603)
- 29 Emwest Holdings Pty. Limited. (ACN 001 992 123)
- 30 Emwest Properties Pty Limited (ACN 003 146 334)
- 31 GSF Management Pty Limited (ACN 064 116 874)
- 32 J. Murray-More (Holdings) Pty Limited (ACN 000 158 412)
- 33 John McGrath Pty Limited (ACN 000 004 937)
- 34 Kelvinator Australia Pty Limited (ACN 007 873 734)
- 35 Litesteel Products Pty Limited (ACN 109 854 677)
- 36 Litesteel Technologies Pty Limited (ACN 113 101 054)
- 37 Metals Properties Pty. Limited. (ACN 000 040 040)
- 38 Metalstores Pty Limited (ACN 000 267 112)
- 39 Metpol Pty Limited (ACN 000 927 373)
- 40 N.K.S. (Holdings) Proprietary Limited (ACN 004 321 313)
- 41 O Dee Gee Co. Pty. Limited. (ACN 004 208 191)
- 42 Onesteel Americas Holdings Pty Limited (ACN 147 067 016)

- 43 Onesteel Building Supplies Pty Limited (ACN 000 045 349)
- 44 Onesteel Coil Coaters Pty Limited (ACN 123 138 732)
- 45 OneSteel Manufacturing Pty Limited (ACN 004 651 325)
- 46 Onesteel MBS Pty Limited (ACN 096 273 979)
- 47 Onesteel Nsw Pty Limited (ACN 003 312 892)
- 48 Onesteel Queensland Pty Limited (ACN 010 558 871)
- 49 Onesteel Recycling Holdings Pty Limited (ACN 059 240 952)
- 50 Onesteel Recycling Overseas Pty Limited (ACN 105 479 356)
- 51 Onesteel Recycling Pty Limited (ACN 002 707 262)
- 52 Onesteel Reinforcing Pty Limited (ACN 004 148 289)
- 53 Onesteel Stainless Australia Pty Limited (ACN 004 610 851)
- 54 Onesteel Stainless Pty Limited (ACN 006 362 652)
- 55 Onesteel Technologies Pty Limited (ACN 096 380 219)
- 56 Onesteel Trading Pty Limited (ACN 007 519 646)
- 57 Onesteel US Investments 1 Pty Limited (ACN 131 211 606)
- 58 Onesteel US Investments 2 Pty Limited (ACN 131 211 571)
- 59 Onesteel Wire Pty Limited (ACN 000 010 873)
- 60 Overseas Corporation (Australia) Pty Limited (ACN 004 242 086)
- 61 P & T Tube Mills Pty Limited (ACN 010 469 977)
- 62 Palmer Tube Mills Pty Limited (ACN 010 469 879)
- 63 Pipeline Supplies of Australia Pty Limited (ACN 008 573 475)
- 64 Reosteel Pty Limited (ACN 000 142 094)

- 65 Roentgen Ray Pty Limited (ACN 000 028 106)
- 66 Southern Iron Pty Limited (ACN 119 611 068)
- 67 SSG Investments Pty Limited (ACN 085 490 526)
- 68 SSG No.2 Pty Limited (ACN 087 840 720)
- 69 SSG No.3 Pty Limited (ACN 087 840 515)
- 70 SSGL Share Plan Nominees Pty Limited (ACN 085 943 540)
- 71 SSX Acquisitions Pty Limited (ACN 090 574 520)
- 72 SSX Employees Superannuation Fund Pty Limited (ACN 064 431 116)
- 73 SSX Holdings Pty Limited (ACN 087 813 116)
- 74 SSX International Pty Limited (ACN 084 990 947)
- 75 SSX Pty Limited (ACN 082 181 726)
- 76 SSX Retirement Fund Pty Limited (ACN 064 431 303)
- 77 SSX Services Pty Limited (ACN 083 090 831)
- 78 SSX Staff Superannuation Fund Pty Limited (ACN 064 431 072)
- 79 Tasco Superannuation Management Pty Limited (ACN 071 901 712)
- 80 The ANI Corporation Pty Limited (ACN 000 421 358)
- 81 The Australian Steel Company (Operations) Pty Limited (ACN 069 426 955)
- 82 Tube Estates Pty. Limited. (ACN 010 449 939)
- 83 Tube Street Pty Limited (ACN 004 785 157)
- 84 Tube Technology Pty. Limited. (ACN 010 469 986)
- 85 Tubemakers of Australia Pty Limited (ACN 000 005 498)
- 86 Tubemakers Somerton Pty Limited (ACN 004 595 546)

- 87 Western Consolidated Industries Pty Limited (ACN 001 185 913)
- 88 Whyalla Ports Pty Limited (ACN 153 225 364)
- 89 X.C.E. Pty Limited (ACN 004 081 903)
- 90 XEM (Aust) Pty Limited (ACN 004 158 025)
- 91 XLA Pty Limited (ACN 004 239 392)
- 92 XLL Pty Limited (ACN 006 301 266)
- 93 XMS Holdings Pty Limited (ACN 008 742 014)
- 94 Zinctek Pty limited (ACN 010 474 790)