

Attachment C – Comments on Compensation

The Bill contemplates that an independent arbitrator receives and assesses claims for compensation submitted by persons who claim to have suffered financial loss as a consequence of the cancellation of Exploration Licence 7270. Under the Bill, “persons” includes natural persons and entities. The assessment process for compensation claims could therefore be conducted on one of two bases. First, a claim could be made by NuCoal (one entity only) on behalf of its shareholders. Any lump sum received by way of compensation would then be distributed among the relevant shareholders. Alternatively, individual claims could be made by NuCoal shareholders, both past and present (potentially 5000 persons) who have suffered loss.

How to establish Loss

First option – gross lump sum

NuCoal considers the following options are available to the independent arbitrator to consider any relevant financial loss:

- a) Determination of a gross compensation amount via top down valuation method.
 - The top down valuation method would involve establishing the reduction in the market capitalisation value of the company as a whole following the cancellation of EL 7270.
- b) Determination of a gross compensation amount via bottom up valuation method.
 - The bottom up method of valuation would involve taking the amount of cash expended by the company to progress the Doyles Creek Project.
 - This method allows for a simple calculation of the value of the losses incurred. It is understood that this method was the basis of the settlements reached in the cases of BHP for Caroon and Shenua for Watermark.
- c) A mix of a) and b)
- d) 3rd party valuation method
 - In September 2012 an existing investor in the NSW Coal industry, Mitsui Matsushima International Pty Limited (**Mitsui**), entered in a joint venture with NuCoal to develop the DC Project.
 - Mitsui valued EL 7270 at September 2012 in the amount of \$360 million for a minority interest.¹ This is equivalent to approximately \$500 million for a controlling interest at the prevailing rate of a 30% premium and accounting for the funds expended by NuCoal in good faith on the Doyles Creek project.
 - This valuation was based on NuCoal’s exploration and development activities carried out within the project, not its value when EL 7270 was granted in December 2008.

Second option – individual claims for compensation

If the view is taken that individual claims for compensation should be made by NuCoal shareholders, an individual shareholder’s loss could be determined by calculating the reduction in value of a shareholder’s interest in the company. The reduction in value could be calculated from the highest value of the shareholder’s interest prior to the cancellation of EL 7270, versus the value of the shareholder’s interest immediately following the cancellation of EL 7270.

¹ NuCoal ASX Announcement dated 17 September 2012, entitled "Finalisation of Contractual Documents for the Development of the Doyles Creek Coal Project".

Who should be entitled to make a claim

With respect to which persons should be entitled to make a claim, the list is extensive as the loss shareholders experienced directly relating to the cancellation of the EL occurred over an extended period of time from the announcement of an ICAC enquiry in November 2011 to the announcement of the cancellation in January 2014.

Given this, NuCoal considers there are a number of “Groups” of shareholders who have experienced similar loss, and these can be categorised as follows:

- Group 1 – persons who held shares after the last capital raising done by the company (April 2012) and who still retain those shares today. These persons currently still hold the majority of NuCoal’s shares. These persons are the biggest losers in this matter and they are (by and large) the persons who contributed the cash that was used to progress the DC Project. These persons are easily identifiable and include the majority of US investors.
- Group 2 – persons who held shares after the last capital raising done by the company (April 2012) and who sold shares after the EL was cancelled.
- Group 3 – persons other than Groups 1 and 2 who have suffered financial loss as a consequence of the cancellation of the licence. This Group would be further subdivided after detailed analysis.

Conclusion

Ultimately, any determinations of loss and those who should receive compensation will be up to the independent arbitrator.

The above are suggestions only and the independent arbitrator may consider other possible methods of compensation as well as levels of compensation.