

**Regional Court in Ostrava**  
Havlíčkovo náměstí. No. 34  
728 81 Ostrava 1

3 May 2016

**Debtor/Petitioner:** OKD, a.s., company identification No.: 268 63 154,  
registered office Stonavská 2179, Doly, 735 06 Karviná,  
incorporated at the **Regional Court in Ostrava under file  
No. B 2900**

**Represented by:** Petr Kuhn, Attorney-at-Law, CBA certificate No. 10624,  
registered office: BADOKH – Kuhn Dostál advokátní  
kancelář s.r.o., Prague 1, 28. října 12, post code: 110 00

**INSOLVENCY PETITION  
PETITION FOR APPROVAL OF RESTRUCTURING**

*1 copy*

In person to the Court filing room

Annexes: according to the list of annexes

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## I. Summary

1. The debtor hereby files an insolvency petition against itself under Section 103 Insolvency Act, with respect to the fact that it is insolvent under Section 3 par. 3 Insolvency Act, because:
  - i. it has at least seventeen creditors, whose claims in the debtor exceed thirteen billion CZK,<sup>1</sup> and
  - ii. the sum of all liabilities (debts) of the debtor is at least seventeen billion CZK<sup>2</sup> and the value of the debtor's property is below seven billion CZK<sup>3</sup>, whereby the sum of the debtor's liabilities exceeds the value of its property by at least ten billion CZK<sup>4</sup>, and the debtor is overindebted, and
  - iii. the debtor is a legal person and an entrepreneur.
2. The debtor is aware that it is not illiquid and finds itself in a situation, which could from the perspective of over indebtedness (notwithstanding the above stated opinion) be considered as borderline. Whats more, the declaration of bankruptcy due to overindebtedness does not occur very often. The Debtor makes the insolvency petition for over indebtedness for reasons of legal precaution (to prevent delays which could give rise to reasons in respect of which a decision of bankruptcy would be given). In case the insolvency court does not identify with the debtor's opinion regarding its insolvency situation, the debtor claims declaration of bankruptcy due to impending bankruptcy under Section 3 par. 4 Insolvency Act.
3. Together with the insolvency petition, the debtor files the petition for the approval of restructuring under Section 316 Insolvency Act, because:
  - i. the debtor's restructuring is admissible under Section 316 Insolvency Act, whereas:
    - a. the debtor is an entrepreneur, not in liquidation, nor a securities broker or trader on the commodity exchange,
    - b. the debtor's net turnover for the past accounting period exceeded sixteen billion CZK<sup>5</sup>, and the debtor employs staff of more 9,700 on the basis of employment contracts, and
    - c. a petition for restructuring has not been filed before, no decision has been issued with respect thereto, nor does it pursue a dishonest intent.
  - ii. restructuring is the most suitable resolution of the debtor's insolvency, in that restructuring shall:
    - a. enable further operation of the debtor's business plant while the high demands on operation safety shall be maintained,

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<sup>1</sup> The debtor has altogether over 650 creditors, of which seven creditors and their claims from financial relations in the debtor are described in clauses 12 to 18 hereof, in the total amount of CZK 13.370.642.966, and ten creditors with the highest claims in the debtor from business relations in the total amount of CZK 369.617.019,99 are specified in clause 19.

<sup>2</sup> Namely CZK 17.246.248.966, as further mentioned in clause 21 hereof.

<sup>3</sup> Namely CZK 6.748.568.000, as further mentioned in clause 24 hereof.

<sup>4</sup> Namely CZK 10.497.680.966, as further mentioned in clause 28 hereof.

<sup>5</sup> Namely CZK 16.940.606.000, as further mentioned in clause 35 hereof.

- b. enable the continuity of relations with employees, customers and suppliers,
  - c. create legal framework for negotiating additional financial means by third persons,
  - d. contribute to the stable situation of the debtor's employees,
  - e. protect the bankrupt's estate from offsets and speculative behavior of third persons,
  - f. increase the creditors' trust thanks to the control by creditors' institutions, insolvency court and insolvency trustee over the disposal of the estate,
  - g. facilitates an effective restructuring of the debtor's liabilities.
4. The debtor files the insolvency petition and petition for the approval of restructuring for the purpose of protection of integrity of the debtor's business plant and securing the highest possible satisfaction of creditors through efficient restructuring of the debtor's business plant as well as protection of legitimate interests of the debtor's employees after all the other (extra-judicial) methods of resolution of the debtor's difficult situation have been exhausted.
5. The material and territorial jurisdiction of the above court is determined by Section 7a letter a) Insolvency Act, and Section 7b par. 1 Insolvency Act.
6. The facts concerning the debtor's insolvency are stated and proved in clause II, the facts concerning the admissibility of restructuring are mentioned in clause III and the final proposal in clause IV hereof.

## II.

### **Insolvency and Impending Bankruptcy of the Debtor**

7. The debtor is a legal person, an entrepreneur, and is insolvent due to overindebtedness, because it has more creditors and the sum of its liabilities (debts) exceeds the value of its property. The operations of the debtor's business plant may continue only if the debtor seeks protection by the Insolvency Act.
8. For the event that the insolvency court does not assess the debtor's situation as sufficiently meeting the statutory requirements for insolvency, the debtor states that with regard to circumstances described in clauses 26 to 29 hereof, it may be reasonably assumed that due to all current circumstances, the debtor shall not be able to properly and in time fulfill a substantial part of its financial liabilities, and thus the legal characteristics of minimally impending bankruptcy under Section 3 par. 4 Insolvency Act have been met.
9. The petition for the declaration of bankruptcy and petition for the approval of restructuring may be filed by the debtor both for the reason of the debtor's insolvency and for the reason of impending bankruptcy under Sections 106 and 318 Insolvency Act.

#### ***Legal person, entrepreneur***

10. The debtor is a joint stock company with the registered office at Stonavská 2179, Doly, 735 06 Karviná, incorporated in the Companies Register kept by the Regional Court in Ostrava, file No. B 2900, company identification No.: 268 63 154.

11. With regard to the above facts and to Sections 420 and 421 Civil Code, the debtor is a legal person and an entrepreneur.

Evidence: Certificate of Incorporation

***Number of creditors***

12. As of 2 May 2016, the debtor has debts towards at least 650 different creditors in a total amount of approximately CZK 17 billion. The following clauses 13 to 18 describe the legal relations with seven of the biggest creditors of the debtor amounting to approximately CZK 13.4 billion. Clause 19 sets out 10 creditors of payables from the ordinary course of trade with the highest receivables towards the debtor.
13. The most important creditors are listed in the table below:

<b>Creditor's company</b>	<b>Total amount of creditor's claim as of 31 March 2016</b>
<b>Deutsche Bank AG, London Branch</b> , registration No. BR000005, registered office 1 Great Winchester Street, EC2N 2DB, London, United Kingdom and <b>CITIBANK N.V., London Branch</b> registration number BR1018, registered office at Citigroup Center, Canada Square, London E14 5LB, United Kingdom (in their capacity as the security agent of bond owners and joint and several creditor of all bond owners)	CZK 10,286,678,619 (EUR 380,988,097)
<b>Natixis Zweigniederlassung Deutschland</b> , registration No. HRB 81938, registered office Im Trutz Frankfurt 55, D-60322, Frankfurt am Main, Federal Republic of Germany	CZK 538,137,847 (EUR 19,931,031)
<b>Česká spořitelna, a. s.</b> , company identification No. 452 44 782, registered office Prague 4, Olbrachtova 1929/62, post code 140 00	CZK 330,617,700 (EUR 12,245,100)
<b>Československá obchodní banka, a.s.</b> , company identification No. 01 350, registered office Prague 5, Radlická 333/150, post code 150 57	CZK 241,844,400 (EUR 8,957,200)
<b>KBC Bank Deutschland AG</b> registration No. HRB 4188, registered office Wachtstraße 16, 28195 Bremen, Federal Republic of Germany	CZK 241,844,400 (EUR 8,957,200)
<b>NWR Holdings B.V.</b>	CZK 794,646,308.02 (EUR 29,371,513.88)

<b>New World Resources N.V.</b>	CZK 956,820,742.04 (EUR 35,365,763.89)
<b>IN TOTAL</b>	<b>CZK 13,390,590,016.06</b>

14. The description and amount of the above creditors are specified in clauses 15 to 18 hereof. More detailed identification of the below mentioned entities forming the concern with the debtor is contained in clauses 49 to 53 below.
15. On the basis of issue of bonds "*€300,000,000 Senior Secured PIK Toggle Notes due 2020*" issued by New World Resources N.V., of 7 October 2014, in which the company Deutsche Bank AG, London Branch and CITIBANK N.V., London Branch registration number BR1018, registered office at Citigroup Center, Canada Square, London E14 5LB, United Kingdom (in their capacity as the security agent of bond owners and joint and several creditor of all bond owners) act as the agents of bond owners, the debtor (together with NWR Holdings B.V. and NWR KARBONIA S.A.) guaranteed the liabilities of New World Resources N.V. up to the amount of the principal of EUR 300 million (i.e. approximately CZK 8 billion). The bonds concerned are not mature yet, and the debtor's obligation from the guarantee thus has not been asserted; nevertheless we may expect it shall be asserted and shall become mature due to:
- (a) the breach of the terms of bonds issue "*Super Senior Term Facility Agreement €35,000,000*" (clause 17 below), which impose a duty on NWR Group (as defined in clause 51) to maintain the minimal level of liquidity, and expiry of the period for reaching an arrangement on support between the Government of the Czech Republic and the creditors, which was a precondition for temporary and conditional waiver of observing the duty of maintaining the minimal level of liquidity; and
- (b) the fact that New World Resources N.V. is not and shall not be able to settle the mentioned liabilities in the full amount, because its ability to settle the liabilities is contingent upon the economic result of the debtor and its financial standing and is determined by the debtor's ability to settle liabilities from intercompany loans (inter alia specified in clause 18) and by the possibility to pay out dividend. This follows from the fact that the debtor is almost the only material property of New World Resources N.V., conducting the main business activity of NWR Group, whose revenues serve for the settlement of liabilities of NWR Group, including liabilities from the above mentioned issue of bonds.

Evidence: Terms of Issue of Bonds "*€300,000,000 Senior Secured PIK Toggle Notes due 2020*", issued by New World Resources N.V., of 7 October 2014  
 Press release of NWR Group of 1 April 2016 ("*Extension of Deadline in SSCF Waiver Agreement*")  
 Press release of NWR Group of 14 April 2016 ("*Extension of the First Milestone in SSCF Waiver*")  
 Press release of NWR Group of 25 April 2016 ("*Expiry of SSCF Waiver Agreement*")

16. Under "*ECA Loan Agreement*" entered into on 29 June 2009 by and between New World Resources N.V., as the debtor, and the Debtor, as the co-debtor, on the one hand, and (among other) Natixis Zweigniederlassung Deutschland, as the Creditors' Agent, KBC Bank Deutschland AG, Česká spořitelna a.s., Československá obchodní banka a.s., as the Creditors, on the other hand, as amended by subsequent amendments, the Debtor and New World Resources N.V. have an outstanding principal amount of debt of EUR 49 million (i.e. approx. CZK 1.3 billion). The liability under the agreement above is not yet payable, however it can be expected that it will be asserted and will become payable as a result of:

(a) The breach of the agreement above arising from the violation of the terms of "*Super Senior Term Facility Agreement €35,000,000*" (given in clause 17 below) specifying an obligation of the NWR Group to keep a minimum liquidity level and as a result of an expiry of the deadline to reach an agreement for the provisions of aid between the Government of the Czech Republic and the Creditors that served as a precondition for temporary and conditional release from the said obligation to keep a minimum liquidity level; and

(b) The fact that New World Resources N.V. is not and will not be able to pay the liabilities above in full as its ability to settle the said liabilities is dependent on the economic result of the Debtor and its financial situation as it is determined by the debtor's ability to pay for liabilities from intercompany loans (specified i.e. in clause 18 below) and an option to pay the dividend. In fact, the Debtor remains to be the sole major asset of New World Resources N.V., conducting main business activities of the NWR Group, the revenues of which serve exclusively to settle the liabilities of the NWR Group, including the debt under the loan agreement above.

Evidence: "*ECA Loan Agreement*" as of 29 June 2009.

17. Under "*Super Senior Term Facility Agreement €35,000,000*" entered into on 9 September 2014 by and between NWR Holdings B.V., as the Debtor, Deutsche Bank AG, London Branch, as the Creditors' Agent, CITIBANK N.V., London Branch registration number BR1018, registered office at Citigroup Center, Canada Square, London E14 5LB, United Kingdom, as the Security Agent and NWR KARBONIA S.A., New World Resources N.V., and the Debtor, as Guarantors, the Debtor provided a guarantee for the liabilities of NWR Holdings B.V. up to the principal amount of approx. EUR 35 million (i.e. approx. CZK 1 billion). The said loan under the agreement above is not yet payable and the liability under the guarantee has not yet been asserted, however it can be expected that it will be asserted and will become payable as a result of:

(a) The breach of the loan agreement above specifying an obligation of the NWR Group to keep a minimum liquidity level and as a result of the expiry of the deadline to reach an agreement for the provision of aid between the Government of the Czech Republic and the Creditors that was a precondition for temporary and conditional release from the said obligation to keep a minimum liquidity level; and

(b) The fact that NWR Holdings B.V. is not and will not be able to pay the said liabilities in full when its ability to settle the liabilities above is dependent on the economic result of the Debtor and its financial situation as it is determined by the debtor's ability to pay for liabilities from intercompany loans (specified i.e. in

clause 18 below) and an option to pay the dividend. In fact, the Debtor remains to be is the sole major asset of NWR Holdings B.V., conducting main business activities of the NWR Group, the revenues of which serve exclusively to settle the liabilities of the NWR Group, including the debt under the loan agreement above.

Evidence: "Super Senior Term Facility Agreement €35,000,000" entered into on 9 September 2014;

18. Under "Master Loan Agreement" of 7 October 2014 entered into by and between New World Resources N.V., NWR Holdings B.V., New World Resources Plc, NWR KARBONIA, S.A. and the Debtor, and under the relevant draw-down requests issued by the Debtor, a loan by NWR Holdings B.V., as the Creditor, in the principal amount of EUR 29 million (approx. CZK 785 million) was provided. This loan has not been paid by the Debtor even in part, and the loan from New World Resources N.V., as the Creditor, in the principal amount of EUR 35 million (approx. CZK 947 million), and the loan has not been paid even in part. The obligation under the agreement above is not yet payable, however it can be expected that the Creditors will make the liability under the loan agreement above payable immediately due to the fact that other liabilities under the loans of the NWR Group have been made immediately payable by other creditors.

Evidence: "Master Loan Agreement" of 7 October 2014;  
"Form of request"

19. The number of Debtor's creditors with regard to payables from the ordinary course of trade exceeds 650 entities. As of 29 April 2016, these are the creditors of payables from the ordinary course of trade with the highest receivables against the Debtor:

Creditor's name	Receivables past maturity <sup>6</sup>	Total amount of receivables
<b>Advanced World Transport a.s.</b> , Company ID 476 75 977, with the registered office at Ostrava - Moravská Ostrava, Hornopolská 3314/38, postcode 702 62	CZK 30,956,312.65	CZK 110,506,088.33
<b>KOPEX MACHINERY SPÓŁKA AKCYJNA</b> , Company ID 6480001817, with the registered office at Katowice – ul. Grabowa 1, postcode 40-172, Republic of Poland	CZK 23,663,090	CZK 33,549,602
<b>OKD, HBZS, a.s.</b> , Company ID 47676019, with the registered office at Ostrava – Radvanice, Lihovarská 10/1199, postcode 716 00	CZK 18,659,778.02	CZK 40,493,177.57
<b>Minova Bohemia s.r.o.</b> , Company ID 633 21 238, with the registered office at Lihovarská 1199/10, Radvanice, postcode 716 00, Ostrava	CZK 11,130,550.97	CZK 20,683,408.89

<sup>6</sup> Details of the amount of overdue receivables noted for the sake of completeness only.



<b>REPAX, spol. s r.o.</b> , Company ID155 04 069, with the registered office at Orlová – Lutyně, Okružní 1346, postcode 735 14	CZK 9,913,517.90	CZK 18,467,693
<b>T R A N S L , v.o.s.</b> , Company ID 253 85 470, with the registered office at Příborská 333, Místek, postcode 738 01, Frýdek-Místek	CZK 8,184,719.59	CZK 30,224,180.68
<b>RPS Ostrava a.s.</b> , Company ID253 71 738, with the registered office at Ostrava – Moravská Ostrava, Cihelní 1191/95, postcode 702 00	CZK 9,054,780	CZK 11,673,639
<b>FAMUR Spółka akcyjna</b> , Company ID 6340126246, with the registered office at Katowice – ul. Armii Krajowej 51, postcode 40-698, Republic of Poland	CZK 7,695,842	CZK 35,322,449
<b>HEWLETT-PACKARD s.r.o.</b> , Company ID 170 48 851, with the registered office at Praha 4, Vyskočilova 1/1410, postcode 140 21	CZK 6,856,909.90	CZK 13,870,565.36
<b>Eickhoff Polonia Ltd, Sp. z o.o.</b> , Company ID 272153030, with the registered office at Katowice, ul. Lwowska 38, postcode 40-389, Republic of Poland	CZK 6,393,717.79	CZK 65,560,283.75
<b>TOTAL</b>	<b>CZK 132,509,218.82</b>	<b>CZK 380,351,087.58</b>

Evidence: List of liabilities with details of the creditors;  
Invoices of creditors with the highest receivables

***Summary of the Debtor's liabilities***

20. In total, the amount of the Debtor's liabilities exceeds CZK 17 billion, namely CZK 17,246,248,966<sup>7</sup>.

Evidence: List of the Debtor's liabilities with details of the creditors.

21. The structure and amount of the list of liabilities (debts) corresponds to the following overview:

<b>Liability Type</b>	<b>Total Amount of Liabilities as of 31 March 2016</b>
Guarantees for group entities	CZK 10,286,678,619 (EUR 380,988,097)
Received loans from group entities	CZK 1,751,467,050.07 (EUR 64,737,277.77)

<sup>7</sup> Without inclusion of future liabilities connected with the shut down of mining operations (as set out in paragraph 22 below)

Joint debts with group entities	CZK 1,352,444,347
Other liabilities to group entities	CZK 1,032,645,949.93
Other received loans and similar liabilities	CZK 103,000
Labour-law liabilities	CZK 250,599,000
Payables from the ordinary course of trade	CZK 2,284,717,000
Other liabilities	CZK 287,594,000
<b>TOTAL</b>	<b>CZK 17,246,248,966</b>

Evidence: Summary of assets and liabilities as of 31 March 2016.

22. According to in-house calculations of the Debtor it is assumed that the expected amount of liabilities related to the phase out of mining activities in the mines operated by the Debtor, which is not included in the above list, will amount to approx. CZK 5,751,000,000. Of these, social costs (including the severance pays - under the Act, higher-level collective agreement and collective agreement, special bonus to miners, wage compensation arising from the risk of occupation disease and loyalty bonuses to miners) amount to approx. CZK 3,767,000,000 and costs of technical liquidation amount to approx. CZK 1,984,000,000.

#### *Value of Debtor's Assets*

23. In total, the value of the Debtor's assets does not exceed CZK 7 billion, namely it amounts to CZK 6,748,568,000.

Evidence: List of the Debtor's assets;

Summary of assets and liabilities as of 31 March 2016.

24. The structure and value of assets corresponds to the following overview:

<b>Asset Type</b>	<b>Asset Accounting Value as of 31 March 2016</b>
Cash and cash equivalents	CZK 980,812,000 <sup>8</sup>
Trade receivables	CZK 1,340,391,000
<b>Inventories</b>	CZK 1,195,497,000
Equipment	CZK 941,028,000
Real property	CZK 1,503,698,000
Other assets	CZK 787,142,000
<b>CELKEM</b>	<b>CZK 6,748,568,000</b>

Evidence: List of the Debtor's assets including receivables with details of debtors;  
Summary of assets and liabilities as of 31 March 2016.

<sup>8</sup> Including assets on blocked accounts.

25. As of 29 April 2016, the Debtor's held funds in the operating accounts, i.e. the funds that can be used to settle payable trade liabilities, in the amount of approx. CZK 194,052,000<sup>9</sup>. At the same time, the Debtor assumes that the amount of payable liabilities over the next weeks will exceed the amount of funds of the Debtor held in the operating accounts.

Evidence: Debtor's bank account statements.

***Comparison of the sum of liabilities and assets value***

26. The Debtor made an analysis of the assets value and the sum of liabilities with a view to the future operation of the Debtor's enterprise (including social and technical costs related to the phase out of mining activities, specified in clause 22 above). The Debtor concluded that it may only continue to operate the enterprise should it seek the protection under the Insolvency Act, and therefore:

(a) When establishing the value of the Debtor's assets, the net positive future flows generated by its assets may not be taken into account and thus the value of the Debtor's assets may not be deemed to be higher than the one posted in the Debtor's financial reports, i.e. the value of the Debtor's assets does not exceed CZK 7 billion, and

(b) When assessing the summary of the Debtor's debts, also liabilities arising from guarantees for debts of third parties must be taken into account, and with regard to the ongoing operation of the Debtor's enterprise within the meaning of Section 3 (3) (third sentence) of the Insolvency Act, their reduction may not be expected, i.e. the summary of the Debtor's liabilities is higher than CZK 17 billion.<sup>10</sup>

27. The Debtor arrived at the conclusions above particularly with regard to the following:

(a) The value of the Debtor's assets calculated while taking into account the ongoing operation of the Debtor's enterprise (the so-called *going concern value*) is adversely impacted by the continuing significant slump in prices of coal and related products on global markets, as well as reduced sales of the Debtor's products by its clients and high costs of operation of some mines. In the Debtor's opinion, no change in the trend above can be expected in the period, in which the Debtor is able to keep the operation of its enterprise going without the protection under the Insolvency Act;

(b) In 2015 and 2016, the Debtor and its controlling entities held negotiations with the main creditors and contractors of the Debtor and the Government of the Czech Republic in an attempt to reach an agreement regarding further restructuring of the Debtor, or the NWR Group respectively. The negotiations lead to temporary and conditional release from certain obligations to keep the specified liquidity level of the NWR Group from some of the creditors with one of the conditions of such release being to reach a non-binding agreement with the Government of the Czech Republic regarding the provision of aid to the Debtor in the specified

<sup>9</sup> Excluding assets on blocked accounts, whereas there is approximately CZK 316 million on blocked accounts.

<sup>10</sup> In other words, when establishing the value of the Debtor's assets forming an going concern value, we may not base our estimate on the assumption of a sustainability of its further operation and thus the values must be reduced to an approximate level of their accounting values and at the same time, the total amount of the debt consisting also in guarantees for group entities must be matched against them.

period. Nevertheless, the deadline for such preliminary agreement lapsed on 22 April 2016 and the deadline for a binding agreement lapsed on 30 April 2016 and was not renewed by the creditors of the NWR Group giving rise to the breach of "Super Senior Term Facility Agreement €35,000,000" (given in clause 17 above). The Government of the Czech Republic declared publicly that it would not accommodate the requirements of the entities controlling the Debtor and requirements of the Debtor's creditors. The Debtor deems that there is a very little probability that a consensus between the creditors, the NWR Group and the Government of the Czech Republic will be reached;

- (c) The sole shareholder of the Debtor, as well as other entities from the Debtor's group informed the Debtor that they would not provide the Debtor with any funds and thus the Debtor without any additional funds provided over the next weeks would not be able to keep the operation of its enterprise going.
28. In the Debtor's opinion, the sum of liabilities (debts) of the Debtor amounts to at least CZK 17,246,248,966<sup>11</sup> and the value of the Debtor's assets amounts to CZK 6,748,568,000 at maximum, meaning that the sum of the Debtor's liabilities exceeds the value of the Debtor's assets by at least CZK 10,497,680,966 and the Debtor is overindebted.
29. From the time perspective, the Debtor arrived at the conclusion regarding its overindebtedness immediately when the Debtor found that there was a very little chance to resolve its financial and debt situation in a consensual manner following the public statements of the officials of the Government of the Czech Republic and statements of its controlling entities and representatives of its creditors.
30. Pursuant to Section 98 of the Insolvency Act and due to the above the Debtor is under an obligation to file an insolvency petition against itself without undue delay, which it hereby does.

### III.

#### Petition for Approval of Restructuring

##### *Description of the debtor*

31. The Debtor conducts the following business activities, including but not limited to the following:
- i. mining activities within the meaning of Section 2 letters a), b), c), d), e), f) g), h), and i) of Act No. 61/1988 Coll., of the Czech National Council on Mining Activities, Explosives and Mining State Administration, as amended (hereinafter also the "**The Mining Act**");
  - ii. activities performed using mining methods within the meaning of Section 3 letters a), c) e), h), i) and Section 5 of The Mining Act;
  - iii. designing and planning of facilities and equipment for mining activities or activities performed using mining methods;
  - iv. provision of health services, health care in the field of remedial and physical therapy, physiotherapy;

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<sup>11</sup> Without inclusion of future liabilities connected with the shut down of mining operations.

- v. provision of telecommunication services under Act No. 127/2005 Coll., on Electronic Communications and Amendment to Some Related Acts (The Electronic Communications Act);
- vi. manufacture, installation, repairs of electrical machines and devices, electronic and telecommunications equipments;
- vii. hostelry trade;
- viii. installation, repairs, inspections and tests of electrical equipment;
- ix. installation, repairs, inspections and tests of pressure equipment and pressure vessels for gas;
- x. tooling;
- xi. locksmithery, toolmaking;
- xii. installation, repairs, inspections and test of lifting equipment;
- xiii. performance of surveying activities;
- xiv. activities of accounting consultants, bookkeeping, keeping of tax records;
- xv. purchase and sale of explosives and performance of blasting works;
- xvi. keeping of records office;
- xvii. manufacture, trade and services not given in Annexes 1 to 3 of the Trade Licensing Act;
- xviii. manufacture of hazardous chemical substances and chemical compounds and sale of chemical substances and chemical compounds classified as highly toxic and toxic.

Evidence: Certificate of Incorporation of the Debtor.

32. The Debtor is the only black-coal mining company in the Czech Republic. The operational activities of the Debtor are organised in individual establishments and departments. The main operations of the Debtor are organised in the following organisational units, or establishments, kept as separate accounting units:

(a) The Důlní závod 1 mining plant

The Důlní závod 1 mining plant was created by merging the Důl Darkov and Důl Karviná mining plants as of 1<sup>st</sup> January 2015. Důlní závod 1 is the biggest underground mine in the Czech Republic. The site is located 25 km northeast of Ostrava.

In 2014 Důlní závod 1 yielded 5,243,000 tons of coal. In 2015 the mine yielded 4,660,000 tons of coal; the total of 22,040 m of tunnels were prepared. The total area of the Důlní závod 1 mining field is currently 58.12 km<sup>2</sup>. In 2015 Důlní závod 1 employed 5,921 workers on average, of which 1,476 were sub-contractors' workers.

The organizational structure of Důlní závod 1 consists of 4 mining locations:

i. *The Lazy and ČSA locations*

The Lazy location can be found in the southwest part of the Karviná sub-basin; the mining space is located in the cadastral areas of the Orlová and Karviná municipalities. The ČSA (*Czechoslovak Army*) location can be found in two mining spaces – the Karviná Doly I mining space and the Doubrava u Orlové mining space. The Lazy and ČSA locations used to be parts of the former Důl Karviná plant, which was created in 2008 by merging the former Důl Lazy and Důl ČSA plants into one organizational unit.

In 2014 the Lazy and ČSA locations yielded 3,047,900 tons of coal. In 2014 the Lazy and ČSA locations employed 3,707 workers on average, of which 863 were sub-contractors' workers.

ii. *The Darkov and 9. květen locations*

The Darkov location consists of the Darkov, Karviná, Doly II and Stonava separate mining spaces. The Darkov location includes a modern processing plant with the charge capacity of 800 tons/hour (the plant is a part of the Závod úpraven plant). The Darkov and 9. květen locations used to be parts of the former Důl Darkov plant.

In 2014 the Darkov and 9. květen locations yielded 2,195,100 tons of coal. In 2014 the Darkov and 9. květen locations employed 2,948 workers on average, of which 905 were sub-contractors' workers.

Mining activities in the 9. květen location ended as of 31<sup>st</sup> March 2016; technical liquidation of the locality has been in progress.

(b) *The Důlní závod 2 mining plant*

The Důlní závod 2 mining plant was created by renaming the original Důl ČSM plant as of 1<sup>st</sup> January 2015 and is located in the eastern part of the Karviná sub-basin. It is territorially divided into two mining areas – North and South, with separate pairs of opening and upcast shafts, which are connected under the ground. The North location includes a processing plant with the charge capacity of 1,100 tons/hour (the plant is a part of the Závod úpraven plant). The mining space is located in the cadastral areas of the Stonava, Karviná, Albrechtice u Českého Těšína and Chotěbuz municipalities. The utility life of Důlní závod 2 has been substantially prolonged due to vast investments in the 1990s and then particularly after 2000.

In 2014 Důlní závod 2 yielded 2,236,000 tons of coal. In 2015 the mine yielded 2,324,000 tons of coal; the total of 14,150 m of tunnels were prepared. The total area of the Důlní závod 2 mining field is currently 22.1 km<sup>2</sup>. In 2015 Důlní závod 2 employed 3,913 workers on average, of which 1,187 were sub-contractors' workers.

The exploitation conditions and related costs of Důlní závod 2 has been affected by difficult mining and geological conditions in the long term –

they have negative impact on operational costs and revenues from mining. In 2015 a pilot operation of a new mining method took place - in that year more than 60,000 tons of coals were extracted by that method and no work-related injury was observed or recorded. The pilot operation takes place in co-operation with leading experts on geo-mechanics and under the supervision of the State Mining Authority.

(c) The Důlní závod 3 mining plant

The Důlní závod 3 mining plant was created by renaming the original Důl Paskov plant as of 1<sup>st</sup> January 2015 (Důl Paskov was created in 1994 by merging the Paskov and Staříč plants). Důlní závod 3 is located approximately 20 km south of Ostrava. The plant currently consists of the Sviadnov, Staříč and Chlebovice mining locations. It is the only working mine in the Ostrava part of the mining district. The premises of the original Důl Paskov include a processing plant with the charge capacity of 550 tons/hour (the plant is a part of the Závod úpraven plant).

In 2014 Důlní závod 3 yielded 862,000 tons of coal. In 2015 the mine yielded 656,000 tons of coal; the total of 7,400 m of tunnels were prepared. The total area of the Důlní závod 3 mining field is currently 42.5 km<sup>2</sup>. In 2015 Důlní závod 3 employed 2,256 workers on average, of which 523 were sub-contractors' workers.

Důlní závod 3 primarily produces high-quality coking coal. This commodity has been substantially affected by the long-term drop of prices on global markets. For that reason the operation of Důlní závod 3 has shown loss in the long term. Following several unsuccessful internal restructuring measures adopted by the debtor with an aim to restore the profitability of Důlní závod 3, the debtor decided to close the plant. For that purpose the debtor has continuously implemented measures lowering mining costs since 2014.

In order to mitigate social impacts caused by the scheduled closing of Důlní závod 3, the debtor, the Czech Ministry of Industry and Commerce, New World Resources N. V. and New World Resources Plc. (as defined below) entered into an agreement in which the Czech Republic undertook to give the debtor support covering extraordinary costs of the closing of Důlní závod 3 (hereinafter also referred to as "**the Agreement**").<sup>12</sup> The Agreement includes a condition that Důlní závod 3 (in order words, **Důl Paskov**) will be permanently closed by 31<sup>st</sup> December 2017. With regard to the continuing drop in coal prices and contractual arrangements of the parties, the Agreement ceased to be effective. However, subsequent negotiations of the parties have not resulted into a new agreement. The debtor currently intends to end mining activities in Důlní závod 3 at the end of 2016 or the

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<sup>12</sup> It was a public support provided in accordance with the Council Decision of 10 December 2010 on state aid to facilitate closure of noncompetitive coal mines (2010/787/EU). The Treaty was approved by the Czech Republic Government resolution of 28 April 2014 No. 309, and subsequently ratified by the European Commission Resolution on compatibility of state aid No. SA.39570 (2014/N). The Treaty uses the old designation of Důlní závod 3 mining plant, that is „Důl Paskov“.

beginning of 2017; however, the debtor has not made an official decision on the final closing date of Důlní závod 3.

(d) The Závod úpraven plant

The Závod úpraven plant manages the operation of processing facilities of all mining plants of the debtor. The headquarters of Závod úpraven is located on the premises of the Darkov mining location (Důlní závod 1). Závod úpraven primarily focuses on the processing of extracted coal and non-mining resources for various products produced by the debtor. The central management of processing plants resulted into a substantial improvement in the efficiency and optimization of Závod úpraven's production. In 2015 Závod úpraven employed 797 workers of the debtor on average, without any need for subcontractors' workers.

Individual processing plants that are parts of Závod úpraven are located at the following places: Důlní závod 1 – a processing plant on the premises of the Darkov mine; Důlní závod 2 – a processing plant on the premises of the ČSM Sever mine; and Důlní závod 3 – a processing plant on the premises of the Paskov mine. Dry operations of the processing plant can be found in the Lazy location (Důlní závod 1).

(e) The Závod servisních služeb plant

The Závod servisních služeb plant provides centralized surface services for all mining plants and Závod úpraven in the field of repairs, storage and handling of material as well as scrap metal management. Závod servisních služeb includes separate technical operations (former VOJ Zásobování), i.e. warehouse management operations, Pila Salma, a plant producing flotation agents and anti-freeze mixtures for coal processing plants (Flotalex), scrap metal management operations and internal transportation operations. Závod servisních služeb also operates the Golf Resort Lipiny site. Závod servisních služeb enables the debtor to increase the share of the repairs of the debtor's assets in the in-house fashion in the long term, i.e. to decrease needs for repairs by sub-contractors.

In 2015 Závod servisních služeb employed 1,071 workers on average, of which 134 were sub-contractors' workers.

33. To sum it up, as of 31<sup>st</sup> December 2015 the debtor employed the total of 10,131 employees and also used 3,147 sub-contractors' workers. The debtor is one of the biggest private employers in the Czech Republic. The debtor's total yield for 2015 was 7,640,000 tons of coal; the debtor's total sales in 2015 amounted to 7,952,000 tons of coal.

Evidence: The debtor's Annual Reports for 2014 and 2015;  
The debtor's organizational chart valid since 1<sup>st</sup> March 2016.

***Admissibility of restructuring under Section 316 Insolvency Act***

34. The debtor is an entrepreneur under Sections 420 and 421 Civil Code.

Evidence: Debtor's Certificate of Incorporation



35. During the last accounting period before the insolvency petition (i.e. in 2015) the debtor had an average of 10.423 employees and currently it employs more than 9.700 employees.

Evidence: List of debtor's employees

36. For the last accounting period before the insolvency petition (i.e. in 2015) the debtor had a total annual net turnover of CZK 16.940.606.000.

Evidence: Debtor's financial statements as of 31 December 2015 (as part of the debtor's Annual Report for 2015).

37. The debtor is not in liquidation.

Evidence: Debtor's Certificate of Incorporation

38. The debtor is neither a securities broker nor a trader on the commodity exchange.

39. With view to the above facts, the debtor satisfies all the conditions for admissibility of restructuring under Section 316 Insolvency Act.

***Non-existence of grounds for dismissal of insolvency petition under Section 326 Insolvency Act***

40. No petition for approval of restructuring of the debtor has been filed and no decision on such a petition made in the past.

41. The debtor hereby declares that the petition for the approval of restructuring does not pursue a dishonest intent.

42. In the last 5 years no insolvency proceeding or other bankruptcy-related proceeding was instituted in relation to the debtor, its legal representative, statutory body or a member of a collective statutory body.

43. In the last 5 years prior to the opening of the insolvency proceedings no criminal proceeding resulting in a final conviction for a crime of property or economic nature was instituted in relation to the debtor, its legal representative, statutory body or a member of a collective statutory body.

Evidence: Criminal register statements for the debtor and the members of the debtor's board of directors

***Persons authorized to act for the debtor***

44. Authorized to independently act for the debtor is the chairman of the board of directors, Mr. Dale Raymond Ekmark, or some other member of the board authorized by the board's resolution or the chairman of the board in writing, always within the scope determined by such authorization.

45. Apart from the persons mentioned above, the debtor may in particular be represented by persons acting on the ground of statutory authorization or under granted powers of attorney.

46. Within the scope of the attached procedural power of attorney, Mr. Petr Kuhn is authorized to represent the debtor in the insolvency proceeding.

Evidence: Debtor's Certificate of Incorporation;  
Debtor's Articles of Association.

***Manner of restructuring***

47. The debtor will continue to carry on its business as effectively as possible, to implement further austerity measures and at the same time preserve a substantial part of the job positions for its employees. In this context it has to be mentioned that in order to stop any further growth of its loss the debtor in particular intends to implement the following measures:
- i. termination of mining operations at the Paskov mine by the end of 2016 or beginning of 2017;
  - ii. termination of mining operations at the Lazy mining site by the end of 2018;
  - iii. reduction of mining operations at the Darkov mining site while preserving the operation of the coal preparation plant in the related technical infrastructure;
  - iv. reduction or partial reduction of mining operations at the ČSM Sever mining site (OKD 2) while preserving the operation of the coal preparation plant and the related technical infrastructure closely linked to the ČSM Jih mining site (OKD 2);
  - v. winning the public support for the closure of uncompetitive mines;
  - vi. sale of part of the debtor's bankruptcy estate.
48. As regards the manner of performing the restructuring of the debtor, the debtor tentatively proposes, in pursuance of the provision of Section 341 Insolvency Act, the implementation of the following measures:
- i. restructuring of creditors' claims;
  - ii. sale of part of debtor's bankruptcy estate;
  - iii. ensuring funds for the operation of part of debtor's business, in particular by ensuring the public support for the closure of uncompetitive mines and obtaining funds primarily from potential major business partners of the debtor;
  - iv. use of a substantial part of debtor's future profits in the following years to settle the debts vis-à-vis its creditors;
  - v. sale of part of debtor's business or obtaining a third-party investment to increase the registered capital;

***Information on the capital structure and the assets of the entities controlling or forming a group with the debtor***

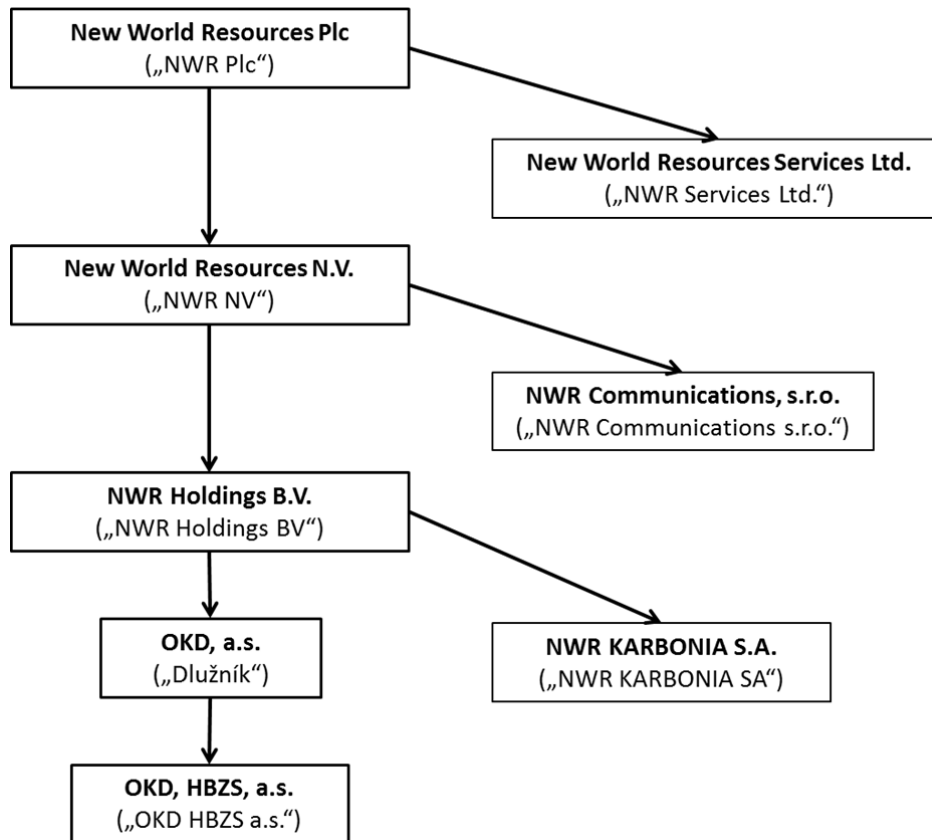
49. The entity having a direct control over the debtor is NWR Holdings B.V., established and existing under the laws of the Nizozemska, with the registered office at Herengracht 448, 1017 CA Amsterdam, Nizozemsko, registration number 61294179 ("NWR Holdings BV")

50. The entity with the ultimate control over the group of which the debtor is a member is New World Resources Plc., established and registered in Anglii a Walesu, with the registered office at c/o Hackwood Secretaries Limited, One Silk Street, London EC2Y 8HQ, Velká Británie, registration number 7584218 (“**NWR Plc.**”);

51. Other entities in the debtor’s group include:

- (a) New World Resources N.V., established and existing under the laws of the Nizozemska, with the registered office at 115 Park Street, London W1K7AP, Velká Británie, and registered in the holandském companies register with the Chamber of Commerce under number 34239108 and registered as a foreign company in the britském companies register with a britským registration number BR016952 (“**NWR NV**”), an entity under a 100% control of NWR Plc. and at the same an entity with a 100% control over NWR Holdings BV;
- (b) OKD, HBZS, a.s., established and existing under the laws of the České republiky, with the registered office at Lihovarská 1199/10, Radvanice, 716 00 Ostrava, Company ID no. 476 76 019, incorporated in the Companies Register kept by the Krajským soudem v Ostravě, spis. zn. B 766 (“**OKD HBZS a.s.**”), a subsidiary of the debtor and an entity under a 100% control of the debtor;
- (c) NWR KARBONIA S.A., established and existing under the laws of the Polské republiky, with the registered office at 44-230 Czerwionka-Leszczyny, ul. 3-go Maja 44, Polsko, registration number 0000379573 (“**NWR KARBONIA SA**”), an entity under a 100% control of NWR Holdings BV;
- (d) New World Resources Services Ltd., established and registered in Anglii a Walesu, delivery address 115 Park Street, London W1K7AP, Velká Británie, registration number 08235592 (“**NWR Services Ltd.**”), an entity under a 100% control of NWR Plc.; and
- (e) NWR Communications, s.r.o., established and existing under of the laws of the České republiky, with the registered office at Pernerova 676/51, Karlín, 186 00 Praha 8, Company ID no. 241 22 726, incorporated in the Companies Register kept by the Městským soudem v Praze, spis. zn. C 180604 (“**NWR Communications s.r.o.**”), an entity under a 100% control of NWR NV.

52. Below the debtor provides an overview of the entities in the debtor's group and their relation to the debtor (the indicated ownership interests make up a 100% interest in the registered capital):



(the said group is hereinafter also referred to as “Skupina NWR”)

Evidence: The annual report and financial statements (*Annual Report and Accounts*) of New World Resources Plc. for 2015.

53. The debtor states that it has knowledge of the following information on the assets of the above-listed entities:
- NWR Plc. is a holding company with a 100% interest in NWR NV and NWR Services Ltd. NWR Plc. performs in particular the management of the NWR group. The shares of NWR Plc. are tradable at the stock exchanges in London, Prague and Warsaw. The assets of NWR Plc. consist primarily of the shares of NWR NV.
  - NWR NV is a holding company with a 100% interest in NWR Holdings BV and NWR Communications s.r.o. NWR NV is the major debtor in relation to the liabilities towards the Skupiny NWR, primarily on the ground of the issue of the „€300,000,000 Senior Secured PIK Toggle Notes due 2020“ (see clause 15 above), the „ECA Loan Agreement“ (see clause 16 above), and also on the ground of the issue of the „€150,000,000 Convertible Notes“ and the „Contingent Value Rights“ agreement of 7 October 2014. NWR NV is also one of the major creditors of the debtor, under a loan agreement (see clause 18 above). The assets of NWR NV consist primarily of the ownership interest in NWR Holdings BV.

- (c) NWR Holdings BV is a holding company possessing 100 % shares of the debtor and NWR KARBONIA SA. At the same time, NWR Holdings BV is the debtor under the „*Super Senior Term Facility Agreement*“ (see clause 17 above). NWR Holdings BV is also one of the major creditors of the debtor under a loan agreement (see clause 18 above). The assets of NWR Holdings BV consist primarily of the shares of the debtor and the shares of NWR KARBONIA SA.
  - (d) NWR Services Ltd. provides auxiliary, consultancy and administrative services to NWR Plc. and services relating to the corporate funding of the Skupiny NWR.
  - (e) NWR Communications s.r.o. provides auxiliary, consultancy and administrative services.
  - (f) NWR KARBONIA SA is a mining company which has been authorized within the Skupiny NWR to prepare mining projects on the territory of the Republic of Poland in the area of Debiensko and Morcinek. NWR KARBONIA SA is a holder of a mining license for the Debiensko mining site (the licence was granted in 2008 for the period 50 years). The assets of NWR KARBONIA SA consist primarily of the said mining license.
  - (g) OKD HBZS a.s. provides mining rescue services for the debtor and is an integral part of the debtor's mining operations. OKD HBZS a.s. also deals in waste management (including hazardous wastes). The assets of OKD HBZS a.s. consist primarily of the technology and equipment for the performance of its rescue activities.
54. The debtor has no knowledge of any pending insolvency proceeding in relation to the above-listed entities as of the insolvency petition filing date.

#### **IV. Conclusion**

55. Having regard to the above, the debtor proposes that the court renders the following resolution:

- I. The debtor, i.e. OKD, a.s., Company ID no. 268 63 154, with the registered office at Stonavská 2179, Doly, 735 06 Karviná, incorporated with the Krajského soudu v Ostravě under file no. B 2900, is found to be bankrupt.
- II. The restructuring of the debtor, i.e. OKD, a.s., Company ID no. 268 63 154, with the registered office at Stonavská 2179, Doly, 735 06 Karviná, incorporated with the Krajského soudu v Ostravě under file no. B 2900, is approved.

**OKD, a.s.**