

Mr Stratton & Mr Xuan Khoa Pham  
PO Box 684  
APPLECROSS WA 6153

Legal Bill for Dissenting Shareholder  
Process  
  
Recover return of capital investment

**TRUST ACCOUNT RECEIPT**

**Bank Name:** NAB  
**BSB:** 086-006 **Account No:** 75-120-4717  
**Account Name:** BBV Legal Law Practice Trust Account  
**Receipt number:** TR001621  
**Date:** 28 June 2022 **Date Received:** 27 June 2022  
**Received from:** D J & M M CLEMINSON

**The sum of:** Seven Thousand and Five Hundred Dollars Only\*\*\*\*\*  
\*\*\*\*\*  
\$7,500.00                      Electronic Funds Transfer

**For and on behalf of:** CLEMINSON SUPER FUND

<b>Matter Ref.</b>	<b>Account Name Reason</b>	<b>Matter Description</b>	<b>Amount</b>
24065FP	STRATTON, John Cash Call May 2022	NKWE Platinum Ltd	\$7,500.00

Made out by: **Miranda Stephens**  
On behalf of BBV Legal Pty Ltd



Letter asking for payment for legal processes.

Our Ref: DV:24065FP

21 June 2022

Dear Dissenting Shareholder

### **Funding of the Appraisal Action in Bermuda against Nkwe Platinum Ltd ("NKP")**

We refer to our last letter to shareholders dated 27 May 2022 which invited shareholders to make further contributions to the Fighting Fund to enable the costs of the ongoing appraisal action to continue to be funded.

Dissenting shareholders were requested to make their contributions to the Fighting Fund by 12 June 2022.

We are pleased to advise shareholders that the response to our letter was extremely positive.

**Up to and including 20 June 2022, we have received from shareholders an aggregate of \$689,288 from 220 separate contributors.**

Although shareholders were requested to make their contributions by 12 June 2022, approximately 200 shareholders are still yet to do so. Given the very strong support received to date, your authorised representatives have agreed to extend **the deadline for contributions until 5pm (WST) on Tuesday 28 June 2022.**

This extension is being granted to provide an opportunity for those shareholders to still make their pro rata contributions. **No further contributions will be accepted after the deadline date** and only contributing shareholders will subsequently be invited to take up any potential shortfall after this time.

Shareholders who have not yet contributed and still wish to do so are requested to make their contributions at the rate half a cent (\$0.005) for each share they owned in NKP at the time of the amalgamation. In simple terms, this equates to an investment of \$500 per 100,000 NKP shares held.

Shareholders are requested to make their contribution to the Fighting Fund into the following bank account:

**Name of Account: BBV Legal Law Practice Trust Account**  
**Bank: NAB**  
**BSB: 086-006**  
**Account Number: 75 120 4717**  
**EFT Reference: NKP "Name of your Entity that held NKP shares"**

In summary therefore, shareholders who have not yet contributed are given a further opportunity to do so until **5pm on Tuesday 28 June 2022** after which date no further contributions will be accepted.

Thereafter, any shortfall will be calculated and a further letter sent inviting contributing shareholders to participate in that shortfall opportunity. This will effectively enable contributing shareholders to increase their pro-rata distribution of any final settlement or court ordered increase of the appraised fair value.

We confirm that an official trust receipt will be issued by our firm for each contribution made.

If shareholders have any queries please contact either Mims Haggerty or the writer.

Finally, this letter is protected by legal professional privilege and confidentiality which are not waived if you are not the intended recipient of this letter.

Yours sincerely



**David Vilensky**  
Managing Director  
[dvilensky@bbvlegal.com.au](mailto:dvilensky@bbvlegal.com.au)

BOWEN BUCHBINDER VILENSKY

L A W Y E E R S



The dissenting shareholder letter from FY 2020.

Our Ref: DV:24065FP

17 July 2019

Dear Dissenting Shareholder

**Nkwe Platinum Ltd (NKP)**

I refer to my letter to dissenting shareholders dated 5 July 2019.

Thank you to those many dissenting shareholders who responded promptly and provided their bank account details for the purpose of the distribution of the \$19,700,642.20 ("**Settlement Sum**") when received.

To those dissenting shareholders who have not yet provided their bank details can you please still do so by emailing them to [mhaggerty@bbvlegal.com.au](mailto:mhaggerty@bbvlegal.com.au)

Those dissenting shareholders whose bank account details we do not have will receive their payments by cheque.

Since my letter dated 5 July 2019, Computershare informed us that they received instructions from NKP not to accept any appointment as the payment agent in respect of the Settlement Sum due to potential conflicts of interest. This means that the Settlement Sum will be distributed by our firm based on the records we currently have which will be matched with the records of Computershare which have been provided to us.

I am pleased to advise that the Settlement Sum has now been paid pursuant to the Consent Order.

The process of the distribution of these funds will commence immediately and could take between 7 to 10 days to be completed.

**Attached** is a settlement statement showing the amount to be distributed to the dissenting shareholders which, after deductions, will amount to the equivalent of 9.92 cents per NKP share.

When dissenting shareholders do receive their respective payments we would be grateful if you would acknowledge receipt in the form of a short email to [mhaggerty@bbvlegal.com.au](mailto:mhaggerty@bbvlegal.com.au)

Yours sincerely

**David Vilensky**

Managing Director

[dvilensky@bbvlegal.com.au](mailto:dvilensky@bbvlegal.com.au)

Encl.



**TO DISSENTING SHAREHOLDERS OF NKWE PLATINUM LIMITED**

**SETTLEMENT & DISTRIBUTION OF SETTLEMENT SUM IN RELATION  
TO SUPREME COURT OF BERMUDA CLAIM NO. 101 OF 2019**

SETTLEMENT SUM		\$19,700,642.20
LESS		
Appleby – amount owing on outstanding invoices	\$66,475.00	
BBV – agreed fee inclusive of GST (includes fee to distribute funds)	\$40,000.00	
John Stratton – refund of fee paid for SRK Report & incidental costs	\$48,100.00	
Amount for distribution to dissenting shareholders	\$19,546,067.20	
<b>TOTAL:</b>	<b>\$19,700,642.20</b>	<b>\$19,700,642.20</b>



Our Ref: DV:24065FP

**E-MAILED**  
5-7-19

5 July 2019

Dear Dissenting Shareholder

### **Nkwe Platinum Ltd (NKP)**

You are receiving this letter because you are one of more than 400 dissenting shareholders in Nkwe Platinum Ltd ("**NKP**") who collectively own 197,006,422 shares in NKP comprising close to 20% of its issued share capital.

I am sending this letter to provide a detailed update of developments regarding the ongoing disputes between the collective group of dissenting shareholders on the one hand and Zijin Mining Group Co. Ltd, (**Zijin**), the state owned Chinese company which now owns and controls close to 80% of the shares in NKP, on the other.

### **Background**

On 19 March 2018 NKP announced to the ASX that it received from Zijin an indicative non-binding proposal for amalgamation under Bermuda Law to acquire 100% of the issued shares in NKP which it did not already own for a cash consideration of 8 cents per share ("**Takeover Proposal**").

Since the announcement of the Takeover Proposal our firm ("**BBV**") has had the conduct of this matter on behalf of the dissenting shareholders duly instructed by John Stratton and Xuan Pham as the properly authorised representatives of the dissenting shareholders. The disputes between the dissenting shareholders on the one hand, and NKP and Zijin on the other, have included the right of the dissenting shareholders to be paid the offer price (which was originally 8 cents per NKP share), as well the right to seek payment of an additional sum which reflects the true value value of their NKP shares.

Largely through the efforts of John & Xuan, sufficient pressure was placed upon NKP which resulted in Zijin increasing their original offer from 8 cents to 10 cents per NKP share in July 2018. This 20% increase in the offer price in itself was a significant achievement.

### **What is an amalgamation under Bermuda Law?**

Under Bermuda law there are 4 ways of effecting the acquisition of a publicly listed company such as NKP. An amalgamation is one of these four methods under the relevant provisions of the *Bermuda Companies Act* ("**BCA**"). Under Bermuda law, two or more companies may amalgamate and continue as one company. The effect of an amalgamation is that by statute the assets and liabilities of the amalgamating companies become the assets and liabilities of the resulting amalgamated company. The advantages of

this procedure ( from the perspective of the bidder) is that an amalgamation can be completed relatively quickly, requires a lower threshold to effect a squeeze out of minority shareholders (including dissenting shareholders) and the approval of the Bermuda Supreme Court is not required.

An amalgamation is achieved by the amalgamating companies entering into what is called an amalgamation agreement which agreement must be approved by the shareholders of each amalgamating company. The notice of special general meeting of shareholders to be convened for this purpose must state the fair value of the shares as determined by NKP and also that a dissenting shareholder is entitled to be paid the fair value for their shares.

The amalgamating companies were NKP and a 100% Zijin controlled Bermuda registered company called Gold Mountains (Bermuda) Investments Limited ("**BidCo**").

As voting exclusions do not exist in Bermuda, Zijin were able to approve the amalgamation using its own votes by a simple majority. What this resulted in was a classic squeeze out of all of the minority shareholders, including the dissenting shareholders. The approval process was largely illusory because there was no voting exclusion and Zijin through its controlling stake in NKP (61%) was able to have the amalgamation approved using its own votes. Put simply, Zijin were able to achieve the approval of the amalgamation and the Amalgamation Agreement (see below) by making use of the liberal amalgamation procedures available under Bermudan law.

In essence the proposed amalgamation was a forced acquisition of the minority interests in NKP achieved by means of a contrived amalgamation which allowed the controlling shareholder (Zijin) to disenfranchise minority shareholders including the dissenting shareholders completely.

Dissenting shareholders should be aware that Bermuda is a completely de-regulated corporate jurisdiction which does not have the equivalent in Australia of a Takeovers Panel, ASIC, voting exclusions and a regulatory regime which adequately protects the interests of minority shareholders. Also, as a Bermuda registered company NKP is not subject to the *Corporations Act* of Australia even though it was listed on the ASX.

Even though the provisions of the BCA relating to amalgamation of companies in Bermuda are loose and imprecise, once the Amalgamation Agreement has been approved by the NKP shareholders (requiring only a simple majority) it is deemed to have been adopted and the terms of the Amalgamation Agreement are then binding and enforceable on all NKP shareholders provided they are not inconsistent with the provisions of the BCA.

### **The Amalgamation Agreement**

The required Amalgamation Agreement between NKP and the Zijin controlled entities including BidCo was dated 16 August 2018 ("**Amalgamation Agreement**"). A copy of it was circulated to all NKP shareholders with the notice of special general meeting on 13 September 2018

The formal resolution to approve the Amalgamation Agreement was passed by the requisite majority of NKP shareholders at the shareholders meeting in Bermuda on 24 October 2018.

This majority of course included Zijin who (through their subsidiary Jin Jiang) already owned 61% of the shares in NKP. This meant that the passing of the resolution was a *fait accompli*.

It is important for the dissenting shareholders to understand that by them voting against the resolution and commencing the appraisal action against NKP it meant that the dissenting shareholders were not entitled to payment of their 10 cents per share until 30 days after the appraisal action has been completed. Given the appraisal action itself is not likely to be heard for at least another 18 months, dissenting shareholders for all intents and purposes agreed to wait up to 2 years for their money in circumstances where the non-dissenting shareholders, that is those shareholders who did not oppose the resolution supporting the amalgamation and did not commence the appraisal action, were paid their 10 cents immediately.

Once the resolution was passed by the majority of NKP shareholders in Bermuda on 24 October 2018, the terms of the Amalgamation Agreement became binding on the dissenting shareholders. This meant that the 2 class system of shareholders that was created in the Amalgamation Agreement, dissenting and non-dissenting, was binding and enforceable on the dissenting shareholders even though they voted against the resolution to approve the Amalgamation Agreement.

Another important fact for the dissenting shareholders to understand is that until we had the opportunity to review the terms of the Amalgamation Agreement in or around 15 September 2018, the two stage payment system attempted by Zijin was revealed for the first time. Prior to this it had never been disclosed by either NKP or Zijin in any of their announcements or written communications that dissenting shareholders would be discriminated against in terms of the timing of their entitlement to payment of the 10 cents per share.

In other words, the dissenting shareholders in good faith committed themselves to the appraisal action before they found out they would be potentially prejudiced by doing so.

At all times we have considered the term in the Amalgamation Agreement that forced the dissenting shareholders to have to wait until after the appraisal action was completed before they were paid their 10 cents per share to be unlawful and in breach of the BCA. This view was supported by the opinion of a London based QC with substantial experience in off shore jurisdictions, including Bermuda. On the other hand, the position taken by the lawyers acting for Zijin was that the Amalgamation Agreement was enforceable and the term in the Amalgamation Agreement that allowed Zijin to delay payment to the dissenting shareholders yet claim ownership of their shares so they could assert ownership of 100% of the shares in NKP was entirely lawful.

The requisite Certificate of Amalgamation was eventually issued by the Registrar of Companies in Bermuda on 14 March 2019. This completed the formalities in respect of the amalgamation. The significance of this date was that it obliged Zijin to pay sufficient money to cover the entire Amalgamation Consideration, that is, the total amount required to pay all NKP shareholders, dissenting and non-dissenting, their 10 cents per share as and when they fell due. In the case of the non-dissenting shareholders the 10 cents per share was

paid to them in accordance with the Amalgamation Agreement soon after the Certificate of Amalgamation was issued.

In the case of the dissenting shareholders their 10 cents is payable only after the appraisal action is completed, or sooner by agreement or Court order.

### **The appraisal rights action**

Under Bermuda Law the only remedy available to the dissenting shareholders who considered the Takeover Offer for their shares to be inadequate and wished to seek an improved offer is what is called an appraisal action. An appraisal action is a process following an amalgamation where a shareholder may seek an independent appraisal by a Judge of the Bermuda Supreme Court as to the true value of the shares. In other words a Judge determines what the proper price of the NKP shares should have been. The decision of the Judge is final and binding and there is no appeal from such a decision.

An appraisal action is conducted largely as a contest of expert witnesses adduced by each party with the Judge making an independent ruling after hearing all of the evidence.

It is well established that the dissenting shareholders of NKP considered even the increased offer of 10 cents per NKP share to be inadequate and grossly undervalued the true value of the shares in NKP and the platinum assets it owns in South Africa. It is for this reason that an appraisal action was commenced in Bermuda on behalf of the dissenting shareholders in the prescribed time allowed for it to occur being by 18 September 2018. In reality the appraisal action is akin to a class action.

The appraised action currently on foot in the Bermuda Supreme Court is a completely separate action to the declaratory relief application which has now been settled (see below). The appraisal action is in the nature of a trial requiring steps such as discovery, pleadings, expert evidence and witness statements. It is a complex and protracted litigation process .

If the Bermuda Supreme Court determines following the hearing of the appraisal action that 10 cents for each NKP share was inadequate, it will make a ruling forcing Zijin to pay the additional sum it determines does represent the fair value. This is the primary outcome we are seeking on behalf of the dissenting shareholders.

The dissenting shareholders are also seeking from Zijin the costs of the appraisal action.

It is worth noting at this juncture that there has never been an appraisal action that has been determined by the Bermuda Supreme Court. While appraisal actions in Bermuda are not uncommon, in every case they have been settled before the actual court hearing.

We do not consider that the appraisal action currently on foot will be overly complicated given that NKP has never traded as a going concern and has never produced or sold any minerals or resources.

### **The declaratory relief application**

The amalgamation provisions of the BCA do not say specifically when the amalgamation consideration is to be paid to dissenting shareholders who have commenced an appraisal action. The law in Bermuda is unsettled on this discrete but important point. However, several factors support an argument that dissenting shareholders should receive their amalgamation consideration at the same time as non-dissenting shareholders, while preserving their right to receive additional consideration if the fair value as finally appraised by the Supreme Court exceeds the amalgamation consideration of 10 cents per share.

The contrary argument is that because there is no explicit provision in the BCA requiring payment to dissenting and non-dissenting shareholders at the same time, the Amalgamation Agreement which provides for a two stage payment process should be allowed to operate in accordance with its terms. To this end, clause 10.6 of the Amalgamation Agreement clearly states that no payment is to be made to dissenting shareholders until after the Bermuda Supreme Court has issued its fair value appraisal.

Relentless pressure was brought to bear on Zijin for force it to depart from the Amalgamation Agreement and pay the 10 cents per share to the dissenting shareholders immediately without them having to wait for the completion of the appraisal action. It is not necessary for the purposes of this letter to outline each and every action that was taken in multiple jurisdictions. Suffice to say that it included an application for declaratory relief seeking in the Bermuda Supreme Court an order to compel Zijin to pay the 10 cents per share to the dissenting shareholders forthwith.

The declaratory relief application was commenced on 28 March 2019 and was programmed to be heard during September 2019. Our advice was that the dissenting shareholders, who are the plaintiff's in the declaratory relief application in the same manner that they are the plaintiffs in the separate appraisal action, had good prospects of success. However, there is no guarantee of success in any litigation in any jurisdiction and there is also an appeal available to the losing party which would delay the matter further and incur further costs.

### **Transfer of Mining Right in South Africa**

Subsequent to the issue of the Certificate of Amalgamation on 14 March 2019 which finalised the amalgamation between NKP and BidCo, we had occasion to examine the manner in which the Mining Right to the Garatau Project in South Africa was held by NKP.

We ascertained that the Holder of the Mining Right was described as "Nkwe Platinum Limited and Genorah Resources (Pty) Ltd, Registration No. / Identification No. 105979646". The latter number is the Australian registered business number (ARBN) of NKP, the company that was formally listed on the ASX and whose Bermuda Registration number is 32747. However, the entity that was formed following the amalgamation of NKP and BidCo was a company, also called Nkwe Platinum Limited, but with Registration No. 53596.

Based on expert advice we received from lawyers in South Africa, it was determined that the newly formed entity that came about as a result of the amalgamation needed to be shown as the Holder of the Mining Right in place of the current holder. To achieve this, requires an application pursuant to section 11 (1) of statute in South Africa known as the *Mineral and*

*Petroleum Resource Development Act 2002*, an application which requires the consent of the relevant Minister.

We were able to convince the Department of Mineral Resources (“DMR”) in South Africa that the amalgamated entity known as Nkwe Platinum Limited was not the Holder of the Mining Right and needed to take steps to achieve this via the application process referred to above. We also made it clear that the dissenting shareholders would oppose such an application on the basis that Zijin could not claim to own 100% of the shares in NKP unless and until they actually paid for them in full. Given the dissenting shareholders had not been paid this created an obvious but unexpected problem for Zijin which we exposed.

Put simply, for Zijin to transfer Mining Right to the amalgamated entity, which they were eventually required to do by the DMR, would have been impossible to achieve without payment to the dissenting shareholders.

We have little doubt that the pressure that was brought to bear on DMR to ensure that their processes for the transfer of the relevant Mining Right were properly adhered to was an important contributory factor to the phase one outcome.

#### **The settlement of the declaratory relief application**

On 20 June 2019 a without prejudice settlement offer was made by the solicitors in Bermuda acting for Zijin in the declaratory relief application. The terms of the offer were very simple. Zijin offered to pay the 10 cents per share immediately on the basis that each party pays their own costs of the declaratory relief application. Even though a refund of the costs incurred in the declaratory relief application could have been insisted upon as part of the settlement, on my strong recommendation the settlement offer as presented was accepted.

The terms of the agreed settlement are as follows:

1. The number of dissenting shares collectively owned by the dissenting shareholders has been agreed as 197,006,422. This number has been verified by Computershare and by your representatives. This translates to a payment of \$19,700,642.20 (“**Settlement Sum**”).
2. The settlement and payment of the Settlement Sum will be formalised by way of a Consent Order.
3. The Settlement Sum shall be paid by Zijin to the BBV Trust Account within 14 days of the date on which the Consent Order is approved by the Bermuda Supreme Court. The Consent Order was signed by our lawyers in Bermuda (Appleby) as well as by Conyers Dill & Pearman who act for Zijin. I am pleased to advise that the Consent Order was approved by the Bermuda Supreme Court on 3 July 2019. Assuming that Zijin take the full 14 days to pay the Settlement Sum it is expected to be paid on or before 17 July 2019. This will bring to an end to the declaratory relief application which is phase one.

4. The settlement of the declaratory relief application has no impact whatsoever and is without prejudice to the appraisal action currently on foot which will be continued by the dissenting shareholders who are the plaintiffs in such action. This is phase 2. It is important that the dissenting shareholders understand this.
5. The payment of the Settlement Sum is in full settlement of the obligations of NKP and Zijin to the dissenting shareholders pursuant to the Amalgamation Agreement. The shares which the dissenting shareholders collectively still own in NKP will vest in Zijin giving them 100%. Upon payment of the Settlement Sum the shares in NKP owned by the dissenting shareholders will be cancelled.

The settlement of the declaratory relief application (phase one) is an absolutely outstanding outcome which should not be underestimated or underappreciated by the dissenting shareholders. The settlement for all intents and purposes brings forward the payment of the Settlement Sum to the dissenting shareholders by up to two years and saves the dissenting shareholders hundreds of thousands of dollars in legal fees.

#### **What happens when the funds are paid to the BBV trust account**

Upon receipt of the Settlement Sum certain fees and disbursements will be deducted that are owing to law firms and third parties that have acted in the matter to date including BBV, Appleby and Werksmans. In other words, payment of fees and disbursements that will be due and payable in relation to the matter will be deducted from the Settlement Sum.

The disbursements also include refunds of payments made by John Stratton to SRK to fund the SRK Report and out of pocket expenses incurred by Zijin.

The funds comprising the Settlement Sum will then be paid to each of the dissenting shareholders, a process that could take a week or so to complete.

#### **Your authorised representatives**

As pointed out, my instructions in this matter to date have come from John Stratton & Xuan Pham as your lawfully appointed representatives. I cannot commend these gentlemen highly enough for their tireless efforts on your behalf. Hundreds of hours of their time has been spent on this matter involving meetings, telephone conferences, emails and general communications and attendances. Their commitment and steadfast determination to achieve a better outcome for the dissenting shareholders arising from the Takeover Offer has been inspirational and unrelenting. These 2 gentlemen deserve an enormous amount of credit for the outcomes achieved to date which I consider to be significant achievements.

It has been a pleasure working with John and Xuan and I look forward to my continued association with them as we turn our attention and focus on the appraisal action itself and achieving a third good outcome for the dissenting shareholders in that battle which is phase two.

Since about September 2018 Luke Matthews and Phillip Matthews from Oracle Capital joined the team as consultant advisors. Their respective input, in particular that of Luke, has been invaluable and they are also owed a debt of gratitude by shareholders for their efforts.

It has truly been an outstanding team effort.

**The conduct and costs of the appraisal action**

As mentioned above, the appraisal action is in the nature of a trial requiring steps such as discovery, pleadings, expert evidence and witness statements. It is a complex protracted litigation process that we are informed could take up to 18 months possibly longer to get to a hearing.

The ongoing costs of the appraisal action going forward are likely to be substantial with such costs largely being payable to Appleby who are our lawyers in Bermuda and have the conduct of the appraisal action. While Appleby are a dominant firm in the Bermuda legal market, they are not the cheapest based on their hourly rates. Their initial estimate of costs for the appraisal action going forward was, in our view, excessive. Steps have already been taken to secure an estimate of costs and capability details from another firm in Bermuda.

A more detailed and comparative estimate of the costs of the appraisal action will be provided separately to dissenting shareholders on a confidential basis when such information is to hand.

The question of fair value of the NKP shares is therefore for the Bermuda Supreme Court to determine with the assistance of expert evidence from professionals with experience in platinum mining and the valuation of platinum assets. In this regard on or about 13 September 2018 on behalf of the dissenting shareholders we engaged SRK Consulting in South Africa to review and provide its independent and objective comments on the assessed value of 10 cents per NKP share as offered by Zijin.

SRK produced an independent expert report dated 11 October 2018 ("**SRK Report**") which provided in it, inter alia, a valuation of NKP shares substantially more than the 10 cent per share recommended by the independent directors of NKP and with substantially higher values in the low, high and midpoint categories. The midpoint value given by SRK for a share in NKP is 19.4 cents with a high of 24 cents per share and a low of 14 cents per share.

As mentioned above, the costs of engaging SRK including the SRK Report have largely been funded by John Stratton from his own funds.

It is interesting to note that the Fairness Opinion provided by NKP to support the Takeover Offer showed the midpoint at 11.4 cents for NKP shares. Despite this Zijin only offered 10 cents per share and were never prepared to increase this offer. Put simply, the assertion by the former independent directors of NKP that the conclusion of the Fairness Opinion that 10 cents per share constituted fair value for each NKP share has been challenged.

In essence, the dissenting shareholders view that Zijin's offer of 10 cents for each NKP share was unjustifiably low and represents a significant undervaluation of the company has been justified and confirmed by the SRK Report.

Our expectations are that the appraisal action will be satisfactorily settled at some point in the future and the estimate of costs, still to be finalised, will not ultimately be incurred to the fullest extent.

It is important to emphasise that the payment of the Settlement Sum which resolves the declaratory relief application (phase one) has no impact whatsoever on the appraisal action (phase 2) which remains on foot and will be pursued by the dissenting shareholders. Based on the quality of the expert evidence obtained to date , it is not impossible that the Bermuda Supreme Court could order Zijin to pay a further 10 cents per NKP share, possibly even more. This would require Zijin to make a further payment of close to \$20 million to fund the additional payment. At the end of the day it is this additional payment per NKP share that the long suffering dissenting shareholders are seeking via the appraisal action.

#### **Costs incurred to date and going forward**

To get to this point since we were first instructed in March 2018, fees and disbursements in the aggregate sum of \$457,540 have been incurred by the dissenting shareholders as a collective. The source of these funds has been the fighting fund comprising your respective contributions over time facilitated mainly by Xuan and managed by Stephen Watts of Tilbrook Rasheed, a firm of chartered accountants in Adelaide.

The said sum of \$457,540 which is inclusive of GST has been allocated as follows:

1. \$128,192 paid to Appleby (no GST is payable in Bermuda).
2. \$301,230 paid to this firm for fees and disbursements.
3. \$11,008 payable to Leigh Warnick of Counsel.
4. \$8,568 payable to SRK Consulting.
5. \$8,550 payable to Werksmans, Attorneys in South Africa

**\$457,540**

More detailed particulars of the payment of fees and disbursements as above including copies of all invoices, receipts and trust account statements are available on request by any dissenting shareholder.

In addition to the sums above, as at the date of this letter there are further amounts due and payable to Appleby, BBV and Werksmans in respect of unpaid invoices. Outstanding fees payable on the date of receipt of the Settlement Sum will also be deducted including a refund of the costs of the SRK Report to John Stratton and the out of pocket expenses incurred by Xuan . At the end of the day, John and Xuan cannot be left exposed to be personally liable for the fees and costs incurred on behalf of the cause of the dissenting shareholders.

The process above will ensure that all payments of fees, costs and disbursements for phase one of this legal process are paid in full.

#### **Achievements to date**

What has been achieved to date on behalf of the dissenting shareholders is the following:

- (a) A 20% increase in the offer price of each NKP share from 8 cents to 10 cents;
- (b) The settlement of the declaratory relief application requiring Zijin to pay the sum of \$19,700,642.20 to dissenting shareholders within the next 14 days;
- (c) The preservation of the rights of dissenting shareholders to seek a further payment from Zijin to reflect the true value of the NKP shares via the appraisal action.

Based on their investment in the funding of this saga to date, it is fair to say that the dissenting shareholders have received outstanding value for money and at a fraction of the costs that would have been incurred had a major law firm been engaged instead of a boutique corporate law firm such as BBV.

By way of a general observation, in more than 35 years of practice in corporate law, I have seldom encountered corporate behaviour of the kind exhibited by the boards of NKP and Zijin. It is largely as a result of their respective belligerence and aversion to the commercial realities pointed out to them from the outset that firstly the appraisal action, and secondly the declaratory relief application, had to be commenced – both at considerable expense to the dissenting shareholder. Much of these costs could have avoided had common sense prevailed over corporate intransigence and intimidation.

To date we have been successful in holding NKP and Zijin to account. Dissenting shareholders can rest assured that this same accountability will be enforced on Zijin and NKP in the appraisal rights action which is phase two of the process.

#### **What happens if a dissenting shareholder no longer wishes to participate in the appraisal action**

Dissenting shareholders who wish to remain in the appraisal action but not contribute any further fees and rely on other dissenting shareholders to cover the costs of the appraisal action going forward may elect to do so. In such event a formula will be worked out such that dissenting shareholders who choose this option will receive a lesser sum from any proceeds of the appraisal action than the other dissenting shareholders who have funded the action appraisal going forward.

The formula to be agreed will factor in the contributions made by those dissenting shareholders towards the costs incurred at the time of their election not to contribute further funds.

#### **Summary**

In summary therefore:

1. The declaratory relief application has been settled and we are currently awaiting payment from Zijin of the Settlement Sum of \$19,700,642.20 expected to be received on or about 17 July 2019.

2. Upon receipt of the Settlement Sum there will be deductions made for fees and disbursements owing at that time including outstanding payments to third parties already referred to with the balance then being distributed to dissenting shareholders via BBV as the payment agent with the possible assistance of Computershare. For this purpose we ask each dissenting shareholder to email their banking details to us urgently to [mhaggerty@bbvlegal.com.au](mailto:mhaggerty@bbvlegal.com.au).
3. The appraisal action currently on foot will continue to be pursued and is not affected by the settlement of the declaratory relief application. Those dissenting shareholders who wish to remain as plaintiffs in the appraisal action will be separately asked for further contributions to the fighting fund towards the costs of the appraisal action so it is properly funded.
4. Other than the deductions foreshadowed in paragraph 2 above, no additional funds will be deducted from the Settlement Sum to fund the appraisal action or to fund future fees and disbursements. Separate communications will be circulated to dissenting shareholders after they have received their money from the Settlement Sum.

The purpose of this letter is to inform dissenting shareholders exactly where things are at. If any dissenting shareholder has any queries or comments or wish to contact me directly they are free to do at my email address below.

Yours sincerely



**David Vilensky**  
Managing Director  
[dvilensky@bbvlegal.com.au](mailto:dvilensky@bbvlegal.com.au)