



# Kingsgate

Consolidated Limited

1 February 2012

**Via ASX Online**

Manager  
Company Announcements Office  
Australian Securities Exchange

**Notice of right of buy out to holders of convertible securities following takeover bid**

Kingsgate Consolidated Limited (ASX: KCN) ("Kingsgate") refers to its off-market takeover offer for certain securities in Laguna Resource NL (ASX: LRC) ("Laguna") which closed on 13 January 2012 ("Offer").

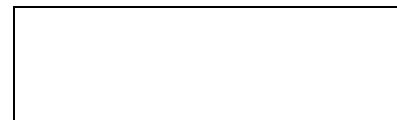
The Offer did not extend to Laguna "Equity Participation Shares", a form of convertible security. Under section 663A(1) of the Corporations Act 2001 (Cth) Kingsgate must offer to buy out the holders of the Equity Participation Shares in accordance with section 663B and 663C of the Corporations Act.

Enclosed, pursuant to section 663B(1) of the Corporations Act, is a copy of a notice that informs holders of Equity Participation Shares of their right to be bought out and a copy of an independent expert's report in relation to the Equity Participation Shares. A copy of the notice was given to the Australian Securities & Investments Commission today. Personalised notices and the independent expert's report will be sent to affected securityholders today.

Yours sincerely,

**Ross Coyle**  
Company Secretary

Enc.



# Notice of right of buy out to holders of convertible securities following a takeover bid

If there is insufficient space in any section of the form, you may attach an annexure and submit as part of this lodgement

## Lodgement details

Who should ASIC contact if there is a query about this form?

Name

Mr Ross Coyle

ASIC registered agent number (if applicable)

Not applicable

Company/entity name

Kingsgate Consolidated Limited

ACN/ABN/ARBN/ARSN

ABN 42 000 837 472

Telephone number

+61 2 8256 4800

Postal address

Suite 801, Level 8, 14 Martin Place, Sydney NSW 2000

Email address (optional)

## Notice

Name and address of holder

To:

Name

ACN (if applicable)

At the office of, C/- (if applicable)

Office, unit, level

Street number and Street name

Suburb/City

State/Territory

Postcode

Country (if not Australia)

Name of target company

Securities of:

Name ('the Company')

Laguna Resources NL

ACN/ARBN/ARSN

ABN 36 008 460 366


## Continued... Notice

Tick one box

1.	Under an
	<input checked="" type="checkbox"/> Off Market Bid <input type="checkbox"/> Market Bid
Name of bidder.	offers were made by <input type="text" value="Kingsgate Consolidated Limited"/>
Insert description of class of securities to which the bid related	in respect of the acquisition of <input type="text" value="fully paid ordinary shares, partly paid shares paid up to \$251.70 with \$996.21 unpaid and partly paid shares paid up to \$417.32 with \$181.99 unpaid"/> in the Company.
2.	You are the holder of securities that are convertible into securities in the bid class.
3.	The bidder hereby gives you notice under subsection 663B(1) of the Corporations Act 2001 ("the Act") that the bidder and their associates have relevant interests in at least 90% of the securities (by number) in the bid class.
4.	Under subsection 663C(1) of the Act, within one month after this notice is given, you, (or anyone who acquires the securities after the day on which this notice is given) as the holder of securities that are convertible into bid class securities, may give the bidder a notice requiring the bidder to acquire your convertible securities.
5.	If you serve a notice on the bidder under subsection 663C(1), the acquisition will be effected on such terms as are agreed, or as are ordered by the Court on your application.
6.	The details of the consideration for which, and the other terms on which the bidder is now prepared to acquire the convertible securities are: <input type="text" value="\$0.01 for each Equity Participation Share you hold."/> <input type="text"/> <input type="text"/>

Insert the consideration and other terms on which the holder may be bought out

## Signature

Name of person signing
<input type="text" value="Mr Ross Coyle"/>
Capacity
<input type="text" value="Company Secretary, Kingsgate Consolidated Limited"/>
Signature

Date signed
<input type="text" value="0"/> <input type="text" value="1"/> / <input type="text" value="0"/> <input type="text" value="2"/> / <input type="text" value="1"/> <input type="text" value="2"/>
[D] [D] [M] [M] [Y] [Y]

## Lodgement

Send completed and signed forms to:  
Australian Securities and Investments Commission,  
PO Box 9827 in your capital city.

Or lodge the form in person at an ASIC Service Centre  
(see [www.asic.gov.au/servicecentres](http://www.asic.gov.au/servicecentres))

## For more information

Web [www.asic.gov.au](http://www.asic.gov.au)  
Need help? [www.asic.gov.au/question](http://www.asic.gov.au/question)  
Telephone 1300 300 630

The Directors  
Kingsgate Consolidated Limited  
Suite 801, Level 8, 14 Martin Place  
Sydney NSW 2000

31 January 2012

**Subject: Valuation of Equity Participation Shares**

Dear Sirs

**Background**

- 1 On 31 October 2011 Kingsgate Consolidated Limited (Kingsgate) announced an off-market takeover offer for all the issued fully paid ordinary shares and certain partly paid shares of Laguna Resources NL (Laguna) not already owned by Kingsgate (the Offer). The consideration under the Offer was as follows:
  - (a) \$3.75 cash for each Laguna fully paid ordinary share
  - (b) \$0.001 cash for each Type 1 Laguna Partly Paid Share (as defined in Kingsgate's Bidder's Statement related to the Offer dated 2 November 2011)
  - (c) \$0.0055 cash for each Type 2 Laguna Partly Paid Share (as defined in Kingsgate's Bidder's Statement related to the Offer dated 2 November 2011).
- 2 Laguna is a mineral exploration company focused on the exploration and development of gold and silver projects in the Maricunga District of Northern Chile. Laguna's shares are listed on the Australian Securities Exchange (ASX) but are likely to be delisted during the course of the compulsory acquisition process or shortly thereafter.
- 3 At the time of the Offer Kingsgate held a relevant interest in 69.9% of Laguna's ordinary shares. This interest was acquired pursuant to a previous takeover offer which closed on 15 February 2011.
- 4 The Offer was successful with Kingsgate having a relevant interest in 98.14% of bid class securities on issue as at 12 January 2012. This interest will allow Kingsgate to compulsorily acquire all remaining bid class securities.

- 5 In addition to the above securities, Laguna has 18,306 Equity Participation Shares (EPS) on issue. No separate offer was made for these securities at the time of the recent Offer. However, Kingsgate now wishes to compulsorily acquire these shares and has proposed a purchase price of 1 cent per EPS.
- 6 As at the date of this report the total number of shares on issue in Laguna and the extent to which they are owned by Kingsgate is shown below:

	<b>Number held by Kingsgate</b>	<b>Total on issue</b>
Fully paid ordinary	9,719,669	9,901,751
Partly paid – Type 1	68	1,029
Partly paid – Type 2	25	764
EPS	-	18,306

## Scope

- 7 Under Section 663A of the Corporations Act, Kingsgate must offer to buy out the holders of securities that are convertible into bid class securities and must include with the Buy Out Notice an expert's report under section 667A.
- 8 Consequently, the Directors of Kingsgate have requested that we prepare an independent expert's report which sets out our opinion on:
- (a) the fair value of the EPS, pursuant to Section 667C of the Corporations Act;
  - (b) whether the terms proposed in the Buy Out Notice give a "fair value" for the EPS.

## Terms of the EPS

- 9 EPS were issued to employees and directors of Laguna and are partly paid up. Upon completion of three years service with Laguna or a change of control transaction the holder can apply to have the shares "converted" to fully paid ordinary shares by paying up the unpaid amount.
- 10 Kingsgate has been unable to provide us with the precise details of the amounts paid up and owing on the EPS. However, based on the records available we have been instructed that:
- (a) the EPS were originally issued at prices of up to 25.5 cents per share (although it is possible that some EPS could have been issued at higher amounts). Because of a subsequent 1 for 25 share consolidation and a 1 for 125 share consolidation, the adjusted issue price (on a post share consolidation basis) is now up to \$796.88 per share<sup>1</sup>
  - (b) the EPS were originally paid up to only 1 cent per share (prior to the abovementioned share consolidations)
  - (c) Laguna has no record of any EPS holder paying up any additional amount on the EPS

<sup>1</sup> Being 25.5 cents multiplied by 25, multiplied by 125 (to allow for the impact of the share consolidations).

- (d) even if the amount unpaid was only 1 cent per share prior to the share consolidations, the minimum unpaid amount would now be \$31.25 per EPS<sup>2</sup>. However, it appears that some EPS could have unpaid amounts of up to \$765.63 per EPS<sup>3</sup>.

11 We also understand that the EPS have:

- (a) no dividend rights
- (b) limited voting rights, in that they only have voting rights “*in respect of resolutions changing or having the effect of changing the members of the board where the directors believe that there must be a change in control of the company; or where shares are allotted and issued to persons after 24 April 2002*”. Further, in such circumstances the EPS only entitle the holder to the right to vote at any general meeting in proportion to the amount paid up on the EPS
- (c) no right to receive a distribution in excess of the amount paid up on the shares at the time of winding up.

12 Further, we understand that Laguna has no rights to redeem the EPS if they are not converted, as EPS are perpetual. However, pursuant to Section 254P of the Corporations Act, Laguna can make a call on EPS holders requesting that the unpaid amount owing on the EPS be paid<sup>4</sup>.

## Basis of Assessment

### Section 667C of the Corporations Act

13 Section 667C (1) of the Corporations Act sets out the steps for determining the “fair value” of securities, as follows:

- “(a) *first, assess the value of the company as a whole; and*
- (b) *then allocate that value among the classes of issued securities in the company (taking into account the relative financial risk, and voting and distribution rights, of the classes); and*
- (c) *then allocate the value of each class pro rata among the securities in that class (without allowing a premium or applying a discount for particular securities in that class).”*

14 In addition, Section 667C(2) of the Corporations Act states that:

*“Without limiting subsection (1), in determining what is fair value for securities for the purposes of this Chapter, the consideration (if any) paid for securities in that class within the previous six months must be taken into account.”*

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<sup>2</sup> Being 1 cent multiplied by 25, multiplied by 125 (to allow for the impact of the share consolidations).

<sup>3</sup> Being 24.5 cents multiplied by 25, multiplied by 125 (to allow for the impact of the share consolidations).

<sup>4</sup> The consequences for EPS holders of not paying a call are discussed further below.

**Fair value**

- 15 “Fair value” is not defined in the Corporations Act. However, the weight of judicial authority is that an expert should not reflect:
- (a) “special value” that might accrue to an acquirer; or
  - (b) any premium for forcible divestment.
- 16 Consequently, we have valued the EPS by reference to the standard definition of value which is “fair market value”.
- 17 Fair market value is normally defined as the price which would be negotiated in an open and unrestricted market between a knowledgeable, willing but not anxious buyer and a knowledgeable, willing but not anxious seller acting at arm’s length.

**The value of the company as a whole**

- 18 Australian Securities and Investments Commission (ASIC) Regulatory Guide 111 “Content of Expert Reports” outlines the appropriate methodologies that a valuer should consider when valuing assets or securities for the purposes of, amongst other things, share buy-backs, selective capital reductions, schemes of arrangement, takeovers and prospectuses. These include:
- (a) the discounted cash flow (DCF) methodology
  - (b) the application of earnings multiples appropriate to the businesses or industries in which the company or its profit centre’s are engaged, to the estimated future maintainable earnings or cash flows of the company, added to the estimated realisable value of any surplus assets
  - (c) the amount that would be available for distribution to shareholders in an orderly realisation of assets
  - (d) the quoted price of listed securities, when there is a liquid and active market and allowing for the fact that the quoted market price may not reflect their value on a 100% controlling interest basis
  - (e) any recent genuine offers received by the target for any business units or assets as a basis for valuation of those business units or assets.
- 19 We note that the Independent Expert which was appointed by Laguna to opine on whether the Offer was fair and reasonable<sup>5</sup> concluded that:
- (a) the value of Laguna on a net asset basis was between \$17.7 million to \$40.6 million, with a preferred value of \$28.5 million<sup>6</sup>
  - (b) the value of Laguna based on a review of ASX trading in its shares prior to the Offer, adjusted to reflect an appropriate takeover premium, ranged from \$21.4 million to \$29.6 million.

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<sup>5</sup> The Independent Expert’s Report was dated 16 November 2011.

<sup>6</sup> These values were assessed based on an independent market valuation of Laguna’s exploration assets by a technical mining consultant.

- 20 The Offer by Kingsgate implied a value for the whole company of approximately \$37.1 million, and was therefore toward the upper end (or above) the valuation ranges assessed by the Independent Expert.
- 21 However, in our opinion, more regard should be had to the price paid by Kingsgate in its recent takeover offer. This is because the Offer was successful and resulted in Kingsgate increasing its relevant interest in Laguna from 69.9% to over 98%, and is therefore the best indicator of Laguna's value. Accordingly, in our opinion, it is appropriate to adopt a value for the company (i.e. Laguna) as a whole of \$37.1 million.

### **The fair value of the EPS**

- 22 From a commercial perspective the value of an EPS is a function of the value of a fully paid ordinary share. This is because the holder of an EPS has limited voting rights and no dividend rights until such time as the EPS are converted to a fully paid ordinary share.
- 23 Our assessed value of Laguna as a whole implies a value for the fully paid ordinary shares in Laguna of \$3.75 per share. This is consistent with the Offer price under the most recent takeover offer from Kingsgate.
- 24 As stated above the unpaid amount owing on each EPS is no less than \$31.25 per share. Accordingly, the value of Laguna fully paid ordinary shares would have to increase significantly from \$3.75 to above \$31.25 (or more) in order for each EPS to be worth converting. In fact, even if the value of a fully paid ordinary share in Laguna increased by 10% per annum (compounded), it would take over 22 years before it would be worth converting those EPS with unpaid amounts of \$31.25 per share. EPS with higher unpaid amounts per share would take even longer before they would be worth converting.
- 25 In the meantime no return is paid on the EPS as they have no dividend rights. While they have some entitlements on a winding up, such an outcome is considered unlikely given Kingsgate's ownership.
- 26 Further, Laguna could make a call on the EPS at any time for the full amount unpaid on the shares pursuant to Section 254P of the Corporations Act. Should this occur holders of EPS would have 14 days to pay the call<sup>7</sup>. However, for the reasons stated above, it would not be economically rational for EPS holders to pay such a call.
- 27 As Laguna is a "no liability" company, EPS holders are not liable for outstanding calls. However, if calls are not paid the shares are forfeited and sold, with the proceeds applied to pay:
- (a) first, the expenses of the sale
  - (b) then, any expenses necessarily incurred in respect of the forfeiture; and
  - (c) then, the calls on the share that are due and unpaid<sup>8</sup>.

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<sup>7</sup> Source: Section 254P of the Corporations Act.

<sup>8</sup> Source: Section 254Q of the Corporations Act.



- 28 While the balance (if any) is paid to the holder of the shares forfeited, in our opinion, it is clear that EPS holders would not receive any payment due to the high unpaid amount per share.
- 29 Accordingly, we have concluded that the EPS have no material value, and have therefore assessed their value at less than 1 cent per EPS.

**Comparison with proposed offer price**

- 30 As stated above, Kingsgate has proposed a purchase price of 1 cent per EPS in the Buy Out Notice.
- 31 As the proposed consideration is above our assessed valuation range, in our opinion, the terms proposed in the Buy Out Notice give a fair value for the EPS.

Yours faithfully



Craig Edwards  
Director  
(02) 8235 7502  
cedwards@lonerganedwards.com.au

## Appendix A

### Financial Services Guide

#### Lonergan Edwards & Associates Limited

- 32 Lonergan Edwards & Associates Limited (ABN 53 095 445 560) (LEA) is a specialist valuation firm which provides valuation advice, valuation reports and [Independent] Expert's Reports (IER) in relation to takeovers and mergers, commercial litigation, tax and stamp duty matters, assessments of economic loss, commercial and regulatory disputes.
- 33 LEA holds Australian Financial Services Licence No. 246532.

#### Financial Services Guide

- 34 The Corporations Act 2001 authorises LEA to provide this Financial Services Guide (FSG) in connection with its preparation of an IER to accompany the Buy Out Notice to be sent to EPS holders.
- 35 This FSG is designed to assist retail clients in their use of any general financial product advice contained in the IER. This FSG contains information about LEA generally, the financial services we are licensed to provide, the remuneration we may receive in connection with the preparation of the IER, and if complaints against us ever arise how they will be dealt with.

#### Financial services we are licensed to provide

- 36 Our Australian financial services licence allows us to provide a broad range of services to retail and wholesale clients, including providing financial product advice in relation to various financial products such as securities, derivatives, interests in managed investment schemes, superannuation products, debentures, stocks and bonds.

#### General financial product advice

- 37 The IER contains only general financial product advice. It was prepared without taking into account your personal objectives, financial situation or needs.
- 38 You should consider your own objectives, financial situation and needs when assessing the suitability of the IER to your situation. You may wish to obtain personal financial product advice from the holder of an Australian Financial Services Licence to assist you in this assessment.

#### Fees, commissions and other benefits we may receive

- 39 LEA charges fees to produce reports, including this IER. These fees are negotiated and agreed with the entity who engages LEA to provide a report. Fees are charged on an hourly basis or as a fixed amount depending on the terms of the agreement with the person who engages us. In the preparation of this IER, LEA is entitled to receive a fee estimated at \$4,500 plus GST.
- 40 Neither LEA nor its directors and officers receives any commissions or other benefits, except for the fees for services referred to above.

## Appendix A

- 41 All of our employees receive a salary. Our employees are eligible for bonuses based on overall performance and the firm's profitability, and do not receive any commissions or other benefits arising directly from services provided to our clients. The remuneration paid to our directors reflects their individual contribution to the company and covers all aspects of performance. Our directors do not receive any commissions or other benefits arising directly from services provided to our clients.
- 42 We do not pay commissions or provide other benefits to other parties for referring prospective clients to us.

### Complaints

- 43 If you have a complaint, please raise it with us first, using the contact details listed below. We will endeavour to satisfactorily resolve your complaint in a timely manner.
- 44 If we are not able to resolve your complaint to your satisfaction within 45 days of your written notification, you are entitled to have your matter referred to the Financial Ombudsman Services Limited (FOS), an external complaints resolution service. You will not be charged for using the FOS service.

### Contact details

- 45 LEA can be contacted by sending a letter to the following address:

Level 27  
363 George Street  
Sydney NSW 2000  
(or GPO Box 1640, Sydney NSW 2001)

## Appendix B

### Qualifications and declarations

#### Qualifications

- 46 LEA is a licensed investment adviser under the Corporations Act. LEA's authorised representatives have extensive experience in the field of corporate finance, particularly in relation to the valuation of shares and businesses and have prepared many hundred independent expert's reports.
- 47 This report was prepared by Mr Craig Edwards, who is an authorised representative of LEA. Mr Edwards has over 17 years experience in the provision of valuation advice.

#### Declarations

- 48 This report has been prepared at the request of Kingsgate to accompany the Buy Out Notice to be sent to EPS holders. It is not intended that this report should serve any purpose other than as an expression of our opinion as to whether the proposed terms of the acquisition notice give a "fair value" for the EPS.

#### Interests

- 49 At the date of this report, neither LEA nor Mr Edwards have any interest in the outcome of the proposal. With the exception of the fee shown in Appendix A, LEA will not receive any other benefits, either directly or indirectly, for or in connection with the preparation of this report.
- 50 LEA has had no prior business or professional relationship with Kingsgate or Laguna prior to the preparation of this report.

#### Indemnification

- 51 As a condition of LEA's agreement to prepare this report, Kingsgate agrees to indemnify LEA in relation to any claim arising from or in connection with its reliance on information or documentation provided by or on behalf of Kingsgate which is false or misleading or omits material particulars or arising from any failure to supply relevant documents or information.