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\$200m) (2015)

Best Queensland Firm (2016)

Financial Review Client Choice Awards



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LAWYERS

13 October 2016

Australian Securities Exchange  
Company Announcement Platform  
**By facsimile: 1300 135 638**

Our ref: 1689959 - Luke Dawson

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Dear Sir/Madam

**Drake Private Investments LLC - On-Market Takeover Bid for BBX Minerals Limited ACN 089 221 634 – First Supplementary Bidder's Statement**

We are the solicitors for Drake Private Investments LLC (**Drake** or **Company**).

Pursuant to section 647(3)(b) of the *Corporations Act 2001* (Cth), please find **attached** a copy of Drake's First Supplementary Bidder's Statement dated 13 October 2016, which relates to its on-market takeover bid for all of the fully paid ordinary shares in BBX Minerals Limited ACN 089 221 634 (**BBX**) which are not already held by Drake (or its Associates).

Yours faithfully

**HopgoodGanim Lawyers**

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# DRAKE PRIVATE INVESTMENTS LLC

## FIRST SUPPLEMENTARY BIDDER'S STATEMENT

### **Important information**

This is the first supplementary bidder's statement (**First Supplementary Bidder's Statement**) prepared pursuant to section 643 of the *Corporations Act 2001* (Cth) (**Corporations Act**) in connection with the on-market takeover bid by Drake Private Investments LLC (**Drake**) to acquire all of the ordinary shares in BBX Minerals Limited ACN 089 221 634 (**BBX**).

The First Supplementary Bidder's Statement supplements, and should be read together with the Bidder's Statement dated 6 September 2016. The First Supplementary Bidder's Statement prevails to the extent of any inconsistency with the Bidder's Statement.

Unless the context requires otherwise, terms defined in the Bidder's Statement have the same meaning in this First Supplementary Bidder's Statement.

A copy of this First Supplementary Bidder's Statement was lodged with ASIC on 13 October 2016. Neither ASIC nor any of its officers take any responsibility for the content of this First Supplementary Bidder's Statement.

### **BEST AND FINAL OFFER**

**THE INCREASED OFFER PRICE IS DRAKE'S BEST AND FINAL OFFER AND WILL NOT BE INCREASED**  
(SUBJECT TO NO SUPERIOR OFFER EMERGING)

**UNLESS REQUIRED BY LAW, THE OFFER PERIOD WILL NOT BE EXTENDED**  
(SUBJECT TO NO SUPERIOR OFFER EMERGING)

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## 1. Increase in Offer price

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Pursuant to the announcement made by Morgans Financial Limited on behalf of Drake today (**Drake Broker Announcement**), the Offer price has been increased from \$0.045 to \$0.046 per BBX Share.

**Important note: the Offer price will not be further increased (subject to no superior offer emerging). Drake expressly reserves the right to vary the terms of the Offer and/or extend the Offer Period in the event that a superior offer is made.**

The Independent Expert's Report contained within the Target's Statement provides that Drake's previous Offer of 4.5 cents per BBX Share to BBX Shareholders not associated with Drake, was both **fair and reasonable** to BBX Shareholders.<sup>1</sup>

BBX Shareholders should note that the Independent Expert appointed by BBX determined the estimated fair value of a BBX Share to be within the range of 0.824 cents per BBX Share and 1.29 cents per BBX Share, with a preferred value of 1.055 cents per BBX Share.<sup>2</sup> Accordingly, Drake's previous Offer price of 4.5 cents per BBX Share constituted a premium for control of between **446% to 249%**.<sup>3</sup>

Using the same values derived in the Independent Expert's Report in respect of Drake's previous Offer price, the revised Offer price of \$0.046 (4.6 cents) constitutes a premium for control (rounded) of between **458% to 256%**.

The revised Offer price of \$0.046 (4.6 cents) per BBX Share constitutes a 24.3% premium to the closing share price on 5 September 2016 (the day prior to lodgement of Drake's Bidder's Statement) of \$0.037, and a 26.2% premium to the volume weighted average share price over the 90 Trading Days from and including 3 May 2016 to and including 5 September 2016.<sup>4</sup>

A copy of the Drake Broker Announcement is **attached** as Annexure A.

## 2. No extension of Offer Period

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Unless required by law,<sup>5</sup> **the Offer Period will not be extended** (subject to no superior offer emerging). This means that the Offer will close as scheduled at 4pm (Sydney time) on **21 October 2016** (unless extended or withdrawn in accordance with the Corporations Act).

## 3. Observations in respect of Target's Statement issued by BBX

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Drake notes that BBX Directors Michael Schmulian and Will Dix recommend that BBX Shareholders (**Relevant Directors**) reject Drake's Offer in the absence of a superior offer.

<sup>1</sup> Source: BBX ASX Announcement "Targets Statement" released on ASX on 4 October 2016 (**Target's Statement**) in compliance with ASIC Class Order [CO 13/521] – refer to page 4 of Schedule 1 Independent Expert's Report. Drake would encourage BBX Shareholders to read the Target's Statement and Independent Expert's Report in full as these documents contain important qualifications, limitations and information to that presented within this document.

<sup>2</sup> Refer to Footnote 1 – Target's Statement pages 14 and 15 of Schedule 1 Independent Expert's Report.

<sup>3</sup> Refer to Footnote 2.

<sup>4</sup> Source: Iress market data, as at 6 September 2016 in compliance with ASIC Corporations (Consents to Statements) Instrument 2016/72.

<sup>5</sup> For example, under section 624(2) of the Corporations Act, if a bidder's voting power in a target increases to more than 50%, then the offer period is automatically extended so that it ends 14 days after the day on which that voting power threshold is reached.

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Drake finds it curious that such a recommendation was ultimately made by the Relevant Directors having regard to:

- the Independent Expert's Report contained within the Target's Statement providing that in the absence of a more superior offer, Drake's previous Offer of 4.5 cents per BBX Share to BBX Shareholders not associated with Drake was both **fair and reasonable** to BBX Shareholders;<sup>6</sup>
- the Independent Expert's estimated fair value of a BBX Share to be within the range of 0.824 cents per BBX Share and 1.29 cents per BBX Share, with a preferred value of 1.055 cents per BBX Share.<sup>7</sup> Accordingly, Drake's previous Offer price of 4.5 cents per BBX Share constituted a premium for control of between **446%** to **249%**.<sup>8</sup>
- the fundamental basis of the recommendation appearing to be a statement made in the Independent Technical Valuation that "there is a moderate to high **likelihood** that a significant Gold discovery **could** be made via systematic ongoing exploration". Drake does not consider this particularly compelling given the uncertainty applicable to exploration projects generally, and the qualifications attached to this statement (bolded for reference). When considering the basis for this recommendation, Drake would encourage BBX Shareholders to refer to the risk factors included in the Target's Statement, particularly those sections (or parts thereof) extracted below:<sup>9</sup>

- o **Section 2.5 BBX Risks – 2.5.1 Specific risks (b) Additional requirements for funding**

*BBX will be required to raise additional funds in the future in the event exploration costs exceed BBX's estimates and to effectively implement its business and operations plans in the future, to take advantage of opportunities, and to meet any unanticipated liabilities or expenses which BBX may incur.*

*BBX may seek to raise further funds through equity or debt financing, joint ventures, production sharing arrangements or other means. Failure to obtain sufficient financing for BBX's activities and future projects may result in delay and indefinite postponement of exploration, or even loss of a property interest. There can be no assurance that additional finance will be available when needed, or if available, the terms of the financing might not be favourable to BBX and might involve substantial dilution to Shareholders.*

...

- o **Section 2.5 BBX Risks – 2.5.1 Specific risks (c) Exploration risks**

*The mineral tenements of the Company are at various stages of exploration, and potential investors should understand that mineral exploration and development are high-risk undertakings.*

...

*There can be no assurance that exploration of these tenements, or any other tenements that may be acquired in the future, will result in the discovery of an economic ore deposit. Even if an apparently viable deposit is identified, there is no guarantee that it can be economically exploited.*

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<sup>6</sup> Refer to Footnote 1 – Target's Statement page 4 of Schedule 1 Independent Expert's Report.

<sup>7</sup> Refer to Footnote 2.

<sup>8</sup> Refer to Footnote 2.

<sup>9</sup> Refer to Footnote 1 – Target's Statement pages 9,10 and 11 of Schedule 1 Independent Expert's Report.

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...

o **Section 2.5 BBX Risks – 2.5.1 Specific risks (f) Gold – development risks**

*The Company's ability to achieve development cost and capital expenditure estimates on a timely basis cannot be assured. The business of gold development involves many risks and may be impacted by factors including overall availability of free cash to fund continuing development activities...*

Coupled with the above, Drake notes the following excerpt from the Independent Expert's Report:

*BBX is in a poor financial state in that current liabilities exceed current assets (estimated at approximately \$259,000) and an urgent capital raising is required (probably over \$1 million) to pay outstanding debts and provide new working capital for the remainder of 2016 and early 2017.<sup>10</sup>*

While Drake acknowledges that some of the liabilities are amounts due to directors (which may, subject to shareholder approval be converted to equity), and that some "in the money" options are currently outstanding or may shortly be exercised (having regard to the undertakings given by the Relevant Directors),<sup>11</sup> it is clear that BBX will require additional funding. BBX Shareholders should consider the potential dilutive impact that additional funding will have on their holding in BBX when compared to the immediate cash exit offered by Drake.<sup>12</sup>

The Independent Expert's Report also notes that:<sup>13</sup>

*Other than for Drake and maybe several other shareholders, it is unlikely that shareholders would fully support a rights issue and a placement of shares to new investors (with Drake and several other shareholders) would be required. **This would dilute the shareholdings in BBX for most shareholders.***

*The success of a future capital raising may be heavily dependent on exploration success in the near future and whilst still having shareholders other than Drake, the support of Drake.*

***BBX's main project being the Juma East Gold/Copper Project is still some way from generating cash flows and are subject to numerous risks including, gold and copper prices, exchange rates, increases in costs, financing, legal and environmental. Currently, the Juma East Gold/Copper Project has no announced resources and is a long way off from any potential commercialisation.***

*...the ability of junior exploration companies to raise cash funds over the past year or so is extremely difficult and no guarantee can take place that BBX could raise further capital at a price above the range of share prices as traded on ASX over the past few months.*

***It is noted that Drake has been a significant financial supporter of BBX over the past several years...Without the support of Drake, the Company may not have***

<sup>10</sup> Refer to Footnote 1 – Target's Statement page 17 of Schedule 1 Independent Expert's Report.

<sup>11</sup> Refer to Footnote 10.

<sup>12</sup> Refer to Footnote 14.

<sup>13</sup> Refer to Footnote 1 – Target's Statement page 17 and 18 of Schedule 1 Independent Expert's Report.

***survived as a going concern and could not have spent and would not have the ability to spend large sums of money on the Juma East Gold/Copper Project.***

[emphasis added]

Taking all of the above into account, and particularly the fact that:

- BBX's main project is a long way off any potential commercialisation (and as a general observation only, Drake notes that ordinarily large amounts of capital are required for an exploration entity to transition to a production entity); and
- BBX is in a poor financial state,

Drake invites shareholders to consider the potential dilutive effect on their BBX Shareholding if successive equity raisings were to be undertaken by BBX.<sup>14</sup>

Drake notes the assertion of the Relevant Directors that:

- the Independent Expert's conclusion as to whether or not the Offer is fair and reasonable; and
- the Independent Technical Valuer's assessment of the value of BBX's mineral assets,

in each case, does not take into account exploration upside.

However, notwithstanding the assertions of the Relevant Directors as to what the Independent Expert and Independent Technical Valuer did not take into account when reaching their respective conclusions, Drake believes that given the control premium that its Offer includes, its Offer clearly does reflect exploration upside. In any event, Drake notes that its Offer is well above the range provided by the Independent Expert.

Additionally, while Drake acknowledges that in forming their recommendation, the Relevant Directors were free to form an opinion that differs to that of the Independent Expert and the Independent Technical Valuer, Drake is bemused that such an opinion was ultimately formed having regard to:

- a) the matters listed above;
- b) the Offer being considered both fair and reasonable by the Independent Expert; and
- c) the substantial premium for control being offered by Drake.

Drake also notes that BBX Director Alastair Smith has made no recommendation to BBX Shareholders in relation to the Offer, and has elected to resign as a director of BBX at the conclusion of the takeover or when BBX chooses to raise further capital.<sup>15</sup>

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<sup>14</sup> BBX Shareholders should note that BBX may elect to raise funds through other means (such as debt funding) and it may be the case that some or all of any equity raisings could occur on a pro-rata basis, in which case provided that BBX Shareholders were to participate in the relevant equity raising, their holding would likely either not be diluted or be diluted to a lesser extent.

<sup>15</sup> Refer to Footnote 1 – Target's Statement page 5.

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#### 4. Voting Power

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As at close of trading on 12 October 2016, being the last Trading Day prior to lodgement of this First Supplementary Bidder's Statement, Drake had a Relevant Interest in 106,457,928 BBX Shares, representing a Voting Power of approximately 36.75%.

#### 5. Additional Information

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Drake has relied on the modification to section 636(3) of the Corporations Act set out in ASIC Class Order [CO 13/521] to include, without obtaining specific consent, statements which are made in, or based on, statements made in documents lodged with ASIC or ASX. Under the terms of ASIC Class Order [CO 13/521], the parties making those statements are not required to consent to, and have not consented to, the inclusion of those statements in this First Supplementary Bidder's Statement. A list of all such documents is set out below:

BBX's announcements lodged with the ASX:

<b>Date lodged</b>	<b>Announcement</b>
04/10/2016	Target's Statement

No person who has made any of these statements has consented to the statement being included in or accompanying this First Supplementary Bidder's Statement in the form and context in which it is included. Drake will within 2 business days of a request made during the Offer Period, provide a copy of the above documents (or part thereof) free of charge to any holder of bid class securities free of charge pursuant to ASIC Class Order [CO 13/521]. Please contact Drake at [drakeops@drakemanagement.com](mailto:drakeops@drakemanagement.com).

As permitted by ASIC Corporations (Consents to Statements) Instrument 2016/72, this First Supplementary Bidder's Statement contains security price trading data sourced from Iress Market Data without its consent.

Drake has not obtained from ASIC any other modifications or exemptions from the Corporations Act in relation to the Offer.

#### 6. Approval of First Supplementary Bidder's Statement

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This First Supplementary Bidder's Statement has been approved by a resolution of the directors of Drake.

This First Supplementary Bidder's Statement is dated 13 October 2016.

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For and on behalf of Drake Private Investments LLC

A handwritten signature in black ink, appearing to read 'Scott Riley', written over a horizontal dotted line.

Scott Riley

**ANNEXURES**

**Annexure A – Drake Broker Announcement**

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Company Announcements Office  
 ASX Limited  
 Exchange Centre  
 20 Bridge Street  
 Sydney NSW 2000

13 October 2016

## ASX ANNOUNCEMENT

For Immediate Release

### INCREASE IN ON-MARKET OFFER BY DRAKE PRIVATE INVESTMENTS LLC FOR ALL ORDINARY SHARES OF BBX MINERALS LIMITED ACN 089 221 634

#### HIGHLIGHTS

**THE INCREASED OFFER PRICE IS THE BIDDER'S BEST AND FINAL OFFER AND WILL NOT BE INCREASED**  
 (SUBJECT TO NO SUPERIOR OFFER EMERGING)

**UNLESS REQUIRED BY LAW, THE OFFER PERIOD WILL NOT BE EXTENDED**  
 (SUBJECT TO NO SUPERIOR OFFER EMERGING)

**THE BIDDER IS OFFERING AN INCREASED OFFER PRICE OF \$0.046 PER BBX SHARE, WHICH CONSTITUTES A PREMIUM FOR CONTROL OF BETWEEN 458% TO 256% TO THE VALUES DERIVED IN THE INDEPENDENT EXPERT'S REPORT OF BBX<sup>1</sup>**

**THE BIDDER IS OFFERING AN IMMEDIATE CASH EXIT AT A SUBSTANTIAL PREMIUM, WHICH THE BIDDER NOTES SHOULD BE COMPARED TO THE POTENTIAL DILUTIVE EFFECT ON BBX SHAREHOLDERS OF BBX RAISING ADDITIONAL FINANCING<sup>2</sup>**

Pursuant to a Bidder's Statement dated on or about 6 September 2016 (the **Bidder's Statement**), Drake Private Investments LLC (**Bidder**) made an on-market takeover bid for all of the fully paid ordinary shares (**Shares**) in the capital of BBX Minerals Limited ACN 089 221 634 (**BBX**), that it did not then own (the **Offer**).

Morgans Financial Limited (the **Bidder's Broker**) refers to its own announcement on 6 September 2016 concerning the Offer, and hereby announces that **the Offer price has been increased to \$0.046**.

<sup>1</sup> BBX Shareholders should refer to Section 1 of the Bidder's First Supplementary Bidder's Statement dated 13 October 2016. BBX Shareholders should also read this statement in the context of the BBX Target's Statement and the Independent Expert's Report contained within it, which contains important information, qualifications and limitations to the values derived by the Independent Expert. This number is also subject to the effects of rounding.

<sup>2</sup> BBX Shareholders should refer to Section 3 of the Bidder's First Supplementary Bidder's Statement dated 13 October 2016. BBX Shareholders should note that BBX may elect to raise funds through other means (such as debt funding) and it may be the case that some or all of any equity raisings could occur on a pro-rata basis, in which case provided that BBX Shareholders were to participate in the relevant equity raising, their holding would likely either not be diluted or be diluted to a lesser extent.

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The increased Offer price represents a 24.3% premium to the closing Share price on 5 September 2016 (the day prior to lodgement of the Bidder's Statement) of \$0.037, and a 26.2% premium to the volume weighted average share price over the previous 90 Trading Days from and including 3 May 2016 to and including 5 September 2016.

The Bidder has advised that subject to no superior offer emerging:

- the increased Offer price is the Bidder's **BEST AND FINAL** and **WILL NOT BE FURTHER INCREASED**; and
- unless required by law, the Offer Period **WILL NOT BE EXTENDED**.

No other terms of the Offer have changed, and accordingly **the Offer will remain open for acceptance until the close of trading on ASX (approximately 4.00pm AEST) on 21 October 2016** (unless extended or withdrawn in accordance with the *Corporations Act 2001* (Cth) (*Corporations Act*)).

As at 12 October 2016, the last practicable day before the date of the announcement the Bidder has a Relevant Interest (as that term is defined in the Corporations Act) in approximately 106,457,928 BBX Shares, representing a Voting Power (as that term is defined in the Corporations Act) in BBX of approximately 36.75%.

Signed for and on behalf of Morgans Financial Limited



John Polinelli  
Director, Corporate Advisory

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