

**MERLIN DIAMONDS LIMITED**  
**ABN 86 009 153 119**

**NOTICE OF GENERAL MEETING**

NOTICE IS HEREBY GIVEN that a General Meeting of Merlin Diamonds Limited (the "Company") will be held at Pullman Albert Park, 65 Queens Road Melbourne Vic 3004 Australia, on 14 June 2017, commencing at 9.00 am for the following purposes:

**AGENDA**

**SPECIAL BUSINESS**

**ORDINARY RESOLUTIONS**

To consider and, if thought fit, to pass the following resolutions as ordinary resolutions.

**1. Approve an issue of up to 752,773 Convertible Notes and 115,597,807 Options over Ordinary Shares.**

"To approve the Company, in accordance with ASX Listing Rule 7.1 and for all other purposes, issuing 752,773 convertible notes at a price of \$1 per convertible note and 115,597,807 Options over Ordinary Shares and on the terms and conditions as set out in the Explanatory Statement to the Notice of Meeting dated 8 May 2017."

**2. Approve an issue of up to 960,000 Convertible Notes and 93,076,923 Options over Ordinary Shares.**

"To approve the Company, in accordance with ASX Listing Rule 7.1 and for all other purposes, issuing up to 960,000 convertible notes at a price of \$1 per convertible note and 93,076,923 Options over Ordinary Shares on the terms and conditions as set out in the Explanatory Statement to the Notice of Meeting dated 8 May 2017."

**3. Ratify Issue of Shares**

**To consider and, if thought fit, to pass the following resolution as an ordinary resolution:**

"That, for the purpose of ASX Listing Rule 7.4 and for all other purposes, shareholders ratify and approve the issue and allotment of 97,036,857 Shares to the persons set out in the Explanatory Statement, on the terms and conditions and in the manner set out in the Explanatory Statement to the Notice of Meeting dated 8 May 2017."

**4. Approve the Issue of Shares**

**To consider and, if thought fit, to pass the following resolution as an ordinary resolution:**

"That, for the purpose of ASX Listing Rule 7.1 and for all other purposes, shareholders approve the issue of 17,500,000 Shares to Everblu Pty Ltd or its nominees, on the terms and conditions and in the manner set out in the Explanatory Statement to the Notice of Meeting dated 8 May 2017."

**5. Approve the Issue of Shares**

**To consider and, if thought fit, to pass the following resolution as an ordinary resolution:**

"That, for the purpose of ASX Listing Rule 7.1 and for all other purposes, shareholders approve the issue of 6,666,666 Shares to Key Mining Pty Ltd or its nominees, on the terms and conditions and in the manner set out in the Explanatory Statement to the Notice of Meeting dated 8 May 2017."

**6 Approve the Issue of Shares**

**To consider and, if thought fit, to pass the following resolution as an ordinary resolution:**

“That, for the purpose of ASX Listing Rule 7.1 and for all other purposes, shareholders approve the issue of 7,881,805 Shares to Foundation Resources Pty Ltd or its nominees, on the terms and conditions and in the manner set out in the Explanatory Statement to the Notice of Meeting dated 8 May 2017.”

**7 Ratify the Issue of Options**

**To consider and, if thought fit, to pass the following resolution as an ordinary resolution:**

“That, for the purpose of ASX Listing Rule 7.4 and for all other purposes, shareholders ratify the issue of 20,000,000 Options to Triple C Consulting Pty Ltd or its nominees, on the terms and conditions and in the manner set out in the Explanatory Statement to the Notice of Meeting dated 8 May 2017.”

**8 Approve an issue of up to 2,000,000 Convertible Notes and 153,846,153 Options over Ordinary Shares.**

“To approve the Company, in accordance with ASX Listing Rules 10.11 and for all other purposes, issuing up to 2,000,000 convertible notes at a price of \$1 per convertible note and 153,846,153 Options over Ordinary Shares to Edensor Holdings Pty Ltd ATF Prolific Enterprises Trust on the terms and conditions as set out in the Explanatory Statement to the Notice of Meeting dated 8 May 2017.”

By Order of the Board and dated this 8<sup>th</sup> day of May 2017.

A handwritten signature in black ink, appearing to read 'Peter Lee', written in a cursive style.

PETER LEE  
Company Secretary

## VOTING EXCLUSION STATEMENT

### Resolution 1

The Company will disregard any votes cast on Resolution 1 by (a) any person who may participate in the issue; any person who may obtain a benefit; and (b) and associate of that person.

However, the Company need not disregard a vote on the resolution if (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or (b) it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### Resolution 2

The Company will disregard any votes cast on Resolution 2 by (a) any person who may participate in the issue; any person who may obtain a benefit; and (b) and associate of that person.

However, the Company need not disregard a vote on the resolution if (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or (b) it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### Resolution 3

The Company will disregard any votes cast on Resolution 3 by (a) any person who participated in the issue and (b) and associate of that person.

However, the Company need not disregard a vote on the resolution if (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or (b) it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### Resolution 4

The Company will disregard any votes cast on Resolution 4 by (a) any person who may participate in the issue; any person who may obtain a benefit; and (b) and associate of that person.

However, the Company need not disregard a vote on the resolution if (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or (b) it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### Resolution 5 and 6

The Company will disregard any votes cast on Resolution 5 and 6 by (a) any person who may participate in the issue; any person who may obtain a benefit; and (b) and associate of that person.

However, the Company need not disregard a vote on the resolution if (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or (b) it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### Resolution 7

The Company will disregard any votes cast on Resolution 7, by (a) any person who participated in the issue of the securities and (b) and associate of that person.

However, the Company need not disregard a vote on the resolution if (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or (b) it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

### Resolution 8

The Company will disregard any votes cast on Resolution 8 by (a) any person who is to receive the securities and (b) and associate of that person.

However, the Company need not disregard a vote on the resolution if (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or (b) it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

#### **NOTES TO THE NOTICE OF GENERAL MEETING**

1. A Member entitled to attend and vote at the aforementioned meeting is entitled to appoint not more than two other persons as his/her proxy or proxies to attend and vote, in certain circumstances, instead of the Member at the meeting.
2. If a Member appoints one proxy, that proxy may vote on a show of hands.
3. If a Member appoints two proxies neither may vote on a show of hands. However, if you appoint two proxies to represent you at the Meeting, you must show in the space provided either the percentage of your Shareholding or the number of votes (you are entitled to one vote for each Share you own upon a poll being declared) those proxies are to represent. If you do not complete this section then each proxy may, on a poll, vote half of your Shareholding. A separate proxy form must be submitted for each proxy you appoint.
4. A proxy need not be a Member of the Company.
5. If you appoint a proxy to represent you and vote on your behalf at the Meeting and that person is also a Member or has already been appointed as a proxy for another Member, your vote may not be counted on a show of hands. This is because, on a show of hands, your proxy's vote is only counted once irrespective of the number of Members that that person represents. However, if a poll is taken and your proxy votes, your vote will be counted in full in reaching a decision.
6. The Proxy Form together with the Power of Attorney (if any) or a certified copy of the Power of Attorney (if any) under which it is signed must be lodged at either Level 12, 680 George Street, Sydney, NSW 2000, mailed to Locked Bag A14, Sydney South, NSW 1235 or the Registered Office of the Company or by being sent by fax to (+61) 02 9287 0309, not less than forty-eight (48) hours before the time of the commencement of the meeting.
7. Signing Proxies
  - (i) Joint Holding - All holders must sign.
  - (ii) Shares in Company Names - Companies must execute this form in the way provided by Law.
  - (iii) Individual - Must be signed by the Member or their attorney.
8. For the purpose of the Meeting, Shares will be taken to be held by the persons who are registered holders at 7pm, on 12 June 2017. Accordingly, share transfers registered after that time will be disregarded in determining entitlements to attend and vote at the Meeting.

#### **COMPANY REPRESENTATIVE**

If Shares are held in a company name and it is intended that a representative of the company attend the Meeting rather than lodge a proxy prior to the Meeting, the person attending the Meeting must present authority from the company director/s signed in the way provided by law.

## EXPLANATORY MEMORANDUM TO SHAREHOLDERS

This Explanatory Statement provides shareholders of the Company with information in respect of the resolutions to be considered at the General Meeting of the Company to be held at at Pullman Albert Park, 65 Queens Road Melbourne Vic 3004 Australia on 14 June 2017 at 9.00 am. Shareholders should carefully review this Explanatory Statement and the associated Notice of General Meeting (**Notice**) to which this Explanatory Statement is attached.

***If you have difficulty in properly understanding this documentation, you should consult your financial or legal adviser.***

### **RESOLUTION 1. APPROVE ISSUE OF CONVERTIBLE NOTES TO REPLACE EXISTING NOTES; AND APPROVE AN ISSUE OF OPTIONS.**

#### ***Preamble***

The Company has entered into a secured note deeds (Deeds) with Regals Fund LP (Regal). Under the terms of the Deeds, Regal has provided \$1,502,773 to the Company to be used for development, exploration and working capital purposes. The Company has issued 1,502,773 notes to Regal. For the purpose of this narrative, notes also mean convertible notes if shareholder approval is received to change the notes to convertible notes. Regal have converted 750,000 notes into ordinary shares (under the Company's 15% rule capacity) leaving a balance of 752,773 notes outstanding. The Company intends to replace these notes with convertible notes. No further consideration will be received by the Company as a result of this approval. Following shareholder approval, the notes automatically convert into convertible notes. The notes will accrue interest at 10% per annum which will be paid half yearly in arrears or accrued, and the interest may be converted into ordinary shares. The convertible notes will be for a period of 3 years and can be converted at any time at a conversion price of 1.3 cents per note; or the 5 day VWAP up to the day prior to conversion, whichever is lower by the holder.

Under s. 606 of the Corporations Act, Regal is prohibited from converting any of the convertible notes into ordinary shares in the Company if that would result in Regal, or someone else's voting power in the Company, increasing from 20% or below to more than 20%, or from a starting point that is above 20% and below 90% subject to several exemptions set out in s. 611 of the Corporations Act and the table thereto.

Those exemptions most relevantly include shareholder approval pursuant to item 7 of s. 611 and what is usually referred to as the "3% creep" exemption as set out in item 9 of s. 611. Attached to this explanatory memorandum is a copy of s. 611 and the full table of exemptions there set out.

No shareholder approval under item 7 of s. 611 has been obtained and it is not sought at the General Meeting to which this explanatory memorandum relates.

The exemptions in items 7 and 9 respectively read as follows:

#### **Item 7**

##### ***"Approval by resolution of target***

7 *An acquisition approved previously by a resolution passed at a general meeting of the company in which the acquisition is made, if:*

(a) *no votes are cast in favour of the resolution by:*

(i) *the person proposing to make the acquisition and their associates; or*

- (ii) *the persons (if any) from whom the acquisition is to be made and their associates; and*
- (b) *the members of the company were given all information known to the person proposing to make the acquisition or their associates, or known to the company, that was material to the decision on how to vote on the resolution, including:*
  - (i) *the identity of the person proposing to make the acquisition and their associates; and*
  - (ii) *the maximum extent of the increase in that person's voting power in the company that would result from the acquisition; and*
  - (iii) *the voting power that person would have as a result of the acquisition; and*
  - (iv) *the maximum extent of the increase in the voting power of each of that person's associates that would result from the acquisition; and*
  - (v) *the voting power that each of that person's associates would have as a result of the acquisition."*

## **Item 9**

### ***"Manner of acquisition***

*3% creep in 6 months*

- 9 *An acquisition by a person if:*
- (a) *throughout the 6 months before the acquisition that person, or any other person, has had voting power in the company of at least 19%; and*
  - (b) *as a result of the acquisition, none of the persons referred to in paragraph (a) would have voting power in the company more than 3 percentage points higher than they had 6 months before the acquisition.."*

Shareholders are also again informed that on 13 December 2016 the Australian Takeovers Panel made an order in the following terms:

- "2. *For twelve months from the date of this order, Regals and its associates must not exercise, or allow the exercise of, and Merlin must disregard, voting rights attached to:*
- a. *if Regals and its associates have a relevant interest in more than 50,000,000 shares in Merlin – 50,000,000 of those shares or*
  - b. *if Regals and its associates have a relevant interest in 50,000,000 or less shares in Merlin – all of those shares."*

In respect of that order, shareholders are referred to the ASX announcement made by the Company on 19 December 2016. A copy of that announcement is also attached.

The Deeds also have a requirement that the notes may be reconstructed in accordance with the requirements of the Listing Rules in the case of a reorganisation of the Company's ordinary shares on issue; and also state that if prior to the maturity date the Company agrees to issue further convertible notes comprising part of the notes (or another equity or debt facility) which in the reasonable opinion of the noteholder has terms more favourable than the terms applicable to these notes (from time to

time), at the election of the noteholder the more favourable terms (as nominated by the noteholder) shall also apply to these notes and all other terms applicable to these notes at that time remain applicable. Without limiting the generality of the foregoing, the more favourable terms that the noteholder may elect to adopt include a higher coupon rate, higher interest rate, increased higher rate and a lower conversion price. The notes may be are secured by a charge over the assets of the Company. Attaching to each note are 76.923 options which are exercisable into ordinary shares at a price of 1.3 cents per option. Currently, this equates to 1,502,773 notes times 76.923 which equals 115,597,807 options. The terms and condition of the options are set out in Appendix 1.

ASX Listing Rule 7.1 provides that a company must not, without shareholder approval (but subject to certain exceptions), issue during any 12 month period any equity securities or other securities with rights of conversion to equity (such as an option) if the number of those securities exceeds 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period. In order to ensure that the Company has the capacity to issue the ordinary shares upon conversion of the convertible notes, which may occur anytime within the term of the convertible note, the Company has decided to seek shareholder approval to the issue of the convertible notes immediately.

**ASX Listing Rule 7.3**

ASX Listing Rule 7.1 prohibits a listed company from issuing, or agreeing to issue, equity securities (which includes shares) that exceed 15% of the total number of fully paid ordinary securities on issue in any 12 month period, unless approval is obtained from the holders of the company’s ordinary securities. ASX Listing Rule 7.3 provides that the approval of holders of the company’s ordinary securities may be obtained to the issue of equity securities. The effect of such ratification is to restore the company’s discretionary power to issue further securities up to 15% of the number of fully paid ordinary securities on issue at the beginning of the relevant 12 month period without obtaining shareholder approval.

For the purposes of Australian Stock Exchange ("ASX") Listing Rules 7.3, the Company also advises:

The number of securities to be issued is 752,773 convertible notes at a price of \$1 per convertible note (which if converted at 1.3 cents equals 57,905,615 ordinary shares) and 115,597,807 options. The convertible notes may be converted into ordinary shares at a price of 1.3 cents or the 5 day VWAP up to the day prior to conversion, whichever is lower; and the options at a price of 1.3 cents. The options will have a latest expiry date of 23 March 2021 and the Company will apply for quotation of the options.

Should Regal (subject to the prohibition and exemptions set out in, respectively, s. 606 and s. 611 of the Corporations Act referred to above), ultimately convert all the convertible notes and options, the Regal holding of ordinary shares will be as follows subject to the below Note:

	Regal holding	Issued capital	Regal %
Current holding	75,163,000	1,307,619,394	5.75
Upon conversion of 100% of convertible notes	133,068,615	1,365,525,009	9.74
Upon exercise of 100% of options *	248,666,422	1,481,122,816	16.79

Note –

(a) This assumes that no further ordinary shares are issued or none of the existing convertible notes and options on issue are converted/exercised.

(b) Furthermore, Resolutions 2, 5, 6 and 7 to this notice of general meeting seeks approval for the issue of further securities.

(c) If any of the existing convertible notes and options on issue are converted/exercised; or the securities in point b above are issued, the percentage holding of Regal will change.

1. The conversion price of the convertible notes into ordinary shares will be 1.3 cents per note or the 5 day VWAP up to the day prior to conversion, whichever is lower and the exercise price of the options is 1.3 cents or the 5 day VWAP up to the day prior to conversion, whichever is lower. The options will have a latest expiry date of 23 March 2021 and the Company will apply for quotation of the options.
2. The convertible notes and options will be issued to Regal, or its nominee or any assignee.
3. The convertible notes and the options will not be issued to a related party.
4. The date by which the Company will issue the convertible notes and the options are no later than 3 months after the date of approval by shareholders.
5. The ordinary shares to be issued upon conversion of the convertible notes and/or the exercise of the options will be fully paid and rank pari passu with existing ordinary shares on issue, from the date of issue upon exercise of the convertible notes or options.
6. The Company anticipates that it will allot the ordinary shares in one tranche however it may allot in several tranches.
7. The funds raised by the note issue have been utilised for Merlin mine development and operations and working capital for the Company however the conversion of the convertible notes into ordinary shares will not raise any funds. Further funds will be received if the options are exercised and it is anticipated that the funds raised upon exercise of the options will also be utilised for development, exploration and working capital for the Company

### **Directors Recommendation**

The Board unanimously recommends that Shareholders vote in favour of the resolution as it allows the Company to raise necessary finance for the development of its operations.

### **RESOLUTION 2. APPROVE ISSUE OF CONVERTIBLE NOTES TO REPLACE EXISTING NOTES; AND APPROVE AN ISSUE OF OPTIONS.**

#### ***Preamble***

The Company has entered into a secured note deeds (**Deeds**) a number of parties, **none of whom are related parties**, on the same terms and conditions as the convertible notes with Regal as set out in Resolution 1. Under the terms of the Deeds, the parties have provided \$960,000 to the Company to be used for Merlin mine operations, exploration and working capital purposes. The Company has issued 960,000 notes to the parties.

The parties whom have taken the notes are Ledger Holdings Pty Ltd, BSUT Pty Ltd, Gramview Pty Ltd and Riveck Nominees Pty Ltd.



The convertible notes and options will have the same terms and conditions as those to be issued to Regal as set out in Resolution 1. Further details of the terms and conditions are set out in the narrative under Resolution 1 in this Explanatory Statement,

ASX Listing Rule 7.1 provides that a company must not, without shareholder approval (but subject to certain exceptions), issue during any 12 month period any equity securities or other securities with rights of conversion to equity (such as an option) if the number of those securities exceeds 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period. In order to ensure that the Company has the capacity to issue the ordinary shares upon conversion of the convertible notes, which may occur anytime within the term of the convertible note, the Company has decided to seek shareholder approval to the issue of the convertible notes immediately.

### **ASX Listing Rule 7.3**

ASX Listing Rule 7.1 prohibits a listed company from issuing, or agreeing to issue, equity securities (which includes shares) that exceed 15% of the total number of fully paid ordinary securities on issue in any 12 month period, unless approval is obtained from the holders of the company's ordinary securities. ASX Listing Rule 7.3 provides that the approval of holders of the company's ordinary securities may be obtained to the issue of equity securities. The effect of such ratification is to restore the company's discretionary power to issue further securities up to 15% of the number of fully paid ordinary securities on issue at the beginning of the relevant 12 month period without obtaining shareholder approval.

The prohibition and exemptions set out in, respectively, s. 606 and s. 611 of the Corporations Act referred to above also apply to each of Ledger Holdings Pty Ltd, BSUT Pty Ltd, Gramview Pty Ltd and Riveck Nominees Pty Ltd.

For the purposes of Australian Stock Exchange ("ASX") Listing Rules 7.3, the Company advises:

1. The number of securities to be allotted is 960,000 convertible notes at a price of \$1 per convertible note (which if converted at 1.3 cents equals 73,846,153 ordinary shares) and 73,846,153 options. The convertible notes may be converted into ordinary shares at a price of 1.3 cents or the 5 day VWAP up to the day prior to conversion, whichever is lower and the exercise price of the options is 1.3 cents. The options will have a latest expiry date of 23 March 2021 and the Company will apply for quotation of the options.
2. The conversion price of the convertible notes into ordinary shares will be 1.3 cents or the 5 day VWAP up to the day prior to conversion, whichever is lower per note and the exercise price of the options is 1.3 cents. The Deeds also states that if prior to the maturity date the Company agrees to issue further convertible notes comprising part of the notes (or another equity or debt facility) which in the reasonable opinion of the noteholder has terms more favourable than the terms applicable to these notes (from time to time), at the election of the noteholder the more favourable terms (as nominated by the noteholder) shall also apply to these notes and all other terms applicable to these notes at that time remain applicable. Without limiting the generality of the foregoing, the more favourable terms that the noteholder may elect to adopt include a higher coupon rate, higher interest rate, increased higher rate and a lower conversion price.
3. The convertible notes and options will be issued to Ledger Holdings Pty Ltd, BSUT Pty Ltd, Gramview Pty Ltd and Riveck Nominees Pty Ltd, or their nominee or any assignee.
4. The date by which the Company will issue the convertible notes and the options is no later than one month after the date of approval by shareholders.

5. The ordinary shares to be issued upon conversion of the convertible notes and/or the exercise of the options will be fully paid and rank pari passu with existing ordinary shares on issue, from the date of issue upon conversion of the convertible notes or exercise of the options.
6. The Company anticipates that it will allot the ordinary shares in one tranche however it may allot in several tranches.
7. The funds raised by the note issue will be utilised for Merlin mine operations, exploration and working capital for the Company however the conversion of the convertible notes into ordinary shares will not raise any funds. Further funds will be received if the options are exercised and it is anticipated that the funds raised upon exercise of the options will also be utilised for development, exploration and working capital for the Company

#### Directors Recommendation

The Board unanimously recommends that Shareholders vote in favour of the resolution as it allows the Company to raise necessary finance for the development of its operations.

#### **RESOLUTION 3. RATIFY THE ISSUE OF SHARES**

The Company issued 37,423,076 shares on 15 December 2016 in a private placement to clients of Triple C Consulting Pty Ltd; 6,666,666 shares on 21 December 2016 from the conversion of convertible notes, 15,384,615 shares on 21 December 2016 in a private placement and 17,562,500 for corporate promotional work on 21 December 2016; and 20,000,000 shares on 21 December 2016 from the conversion of convertible notes. The ratification of the issue and allotment of the shares issued pursuant to those placements is sought under Resolution 3 in accordance with the requirements of ASX Listing Rule 7.4.

#### **ASX Listing Rule 7.4**

ASX Listing Rule 7.1 prohibits a listed company from issuing, or agreeing to issue, equity securities (which includes shares) that exceed 15% of the total number of fully paid ordinary securities on issue in any 12 month period, unless approval is obtained from the holders of the company's ordinary securities. ASX Listing Rule 7.4 provides that the approval of holders of the company's ordinary securities may be obtained after the issue of equity securities. The effect of such ratification is to restore the company's discretionary power to issue further securities up to 15% of the number of fully paid ordinary securities on issue at the beginning of the relevant 12 month period without obtaining shareholder approval.

#### **ASX Listing Rule Disclosure Requirements**

The following information is provided in accordance with ASX Listing Rule 7.5:

(a) *Number of securities allotted*

97,036,857 fully paid ordinary shares.

(b) *Price at which the securities were issued*

- 37,423,076 shares at 1.3 cents
- 6,666,666 shares at 1.3 cents
- 15,384,615 shares at 1.5 cents
- 17,562,500 shares for corporate promotional work which have a nominal value of \$230,070
- 20,000,000 shares at 1.3 cents

(c) *Terms of the securities*

The Shares issued are fully paid ordinary shares ranking equally in all respects with all other Shares on issue and are or will be listed on ASX.

*(a) The names of the allottees or the basis upon which the allottees were determined*

The names of the allottees are:

- 37,423,076 shares were to clients of Triple C Consulting Pty Ltd
- 6,666,666 shares were to Ledger Holdings Pty Ltd
- 15,384,615 shares were to Yonas Medfu and Hinu Sadamo
- 17,562,500 shares were to Ben Jarvis, Boyd Cohen, S3 Consortium Pty Ltd, Luchenstein Pty Ltd, Mikhail Denisov, Kushkush Investments Pty Ltd and Australian Share Nominees Pty Ltd.
- 20,000,000 shares were to Ledger Holdings Pty Ltd.

None of these allottees are related parties of the Company or their associates.

*(b) Use (or intended use) of the funds raised*

The net funds raised were used for:

- Merlin diamond mine operations;
- Corporate promotional work; and
- working capital requirements of the Company.

### **Directors' Recommendation**

The Board unanimously recommends that Shareholders vote in favour of Resolution 3, as it allows the Company to retain the flexibility to issue further securities representing up to 15% of the total number of Shares on issue in any 12 month period during the next 12 months without Shareholder approval.

### **RESOLUTION 4. APPROVE ISSUE OF SHARES.**

#### **Preamble**

ASX Listing Rule 7.1 provides that a company must not, without shareholder approval (but subject to certain exceptions), issue during any 12 month period any equity securities or other securities with rights of conversion to equity (such as an option or convertible note) if the number of those securities exceeds 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period.

Everblu Capital Pty Ltd (**Everblu**) has assisted the Company with marketing and equity capital market services. The Company has agreed to issue a total of 17,500,000 ordinary shares for services rendered representing 1.34% of the current issued ordinary shares in the Company.

To the best knowledge and belief of the Company the issue is not prohibited by s. 606 of the Corporations Act.

The object of the resolution is to pay Everblu for the assistance he has provided whilst conserving the cash resources of the Company.

If Shareholder approval is obtained for the resolution, the shares will be granted within one month of the receipt of Shareholder approval.

#### **ASX Listing Rule 7.3**

ASX Listing Rule 7.1 prohibits a listed company from issuing, or agreeing to issue, equity securities (which includes shares) that exceed 15% of the total number of fully paid ordinary securities on issue in any 12 month period, unless approval is obtained from the holders of the company's ordinary securities. ASX Listing Rule 7.3 provides that the approval of holders of the company's ordinary securities may be obtained to the issue of equity securities. The effect of such ratification is to restore the company's discretionary power to issue further securities up to 15% of the number of fully paid

ordinary securities on issue at the beginning of the relevant 12 month period without obtaining shareholder approval.

### **ASX Listing Rule Disclosure Requirements**

The following information is provided in accordance with ASX Listing Rule 7.3:

(a) *Number of securities allotted*

17,500,000 fully paid ordinary shares.

(b) *Price at which the securities were issued*

The shares to be issued are for services rendered and therefore do not have a cash value. Using the closing price of the Company's shares at 4 May 2017, the shares have a value of \$227,500.

(c) *Terms of the securities*

The Shares issued are fully paid ordinary shares ranking equally in all respects with all other Shares on issue and are or will be listed on ASX.

(c) *The names of the allottees or the basis upon which the allottees were determined*

The names of the allottees are Everblu Capital Pty Ltd or its nominee.

Everblu Capital Pty Ltd is not a related party of the Company or their associates.

(d) *Use (or intended use) of the funds raised*

The shares to be issued are for services rendered and therefore no funds will be raised by the issue.

### **Directors Recommendation**

The Directors recommend that, for the reasons set out above, Shareholders vote in favour of the resolution.

### **RESOLUTION 5. APPROVE ISSUE OF SHARES.**

#### **Preamble**

ASX Listing Rule 7.1 provides that a company must not, without shareholder approval (but subject to certain exceptions), issue during any 12 month period any equity securities or other securities with rights of conversion to equity (such as an option or convertible note) if the number of those securities exceeds 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period.

Key Mining & Civil Pty Ltd (**KMC**) have conducted mining operations at the Merlin diamond mine and the Company has agreed to issue a total of 6,666,666 ordinary shares as part payment of the services rendered representing 0.51% of the current issued ordinary shares in the Company.

To the best knowledge and belief of the Company the issue is not prohibited by s. 606 of the Corporations Act.

The object of the resolution is to pay KMC for the services they have provided whilst conserving the cash resources of the Company.

If Shareholder approval is obtained for the resolution, the shares will be granted within one month of the receipt of Shareholder approval.

### **ASX Listing Rule 7.3**

ASX Listing Rule 7.1 prohibits a listed company from issuing, or agreeing to issue, equity securities (which includes shares) that exceed 15% of the total number of fully paid ordinary securities on issue in any 12 month period, unless approval is obtained from the holders of the company's ordinary securities. ASX Listing Rule 7.3 provides that the approval of holders of the company's ordinary securities may be obtained to the issue of equity securities. The effect of such ratification is to restore the company's discretionary power to issue further securities up to 15% of the number of fully paid ordinary securities on issue at the beginning of the relevant 12 month period without obtaining shareholder approval.

### **ASX Listing Rule Disclosure Requirements**

The following information is provided in accordance with ASX Listing Rule 7.3:

(a) *Number of securities allotted*

6,666,666 fully paid ordinary shares.

(b) *Price at which the securities were issued*

The shares to be issued are for services rendered with an agreed value of \$100,000 which equates to an issue price of \$0.015.

(c) *Terms of the securities*

The Shares issued are fully paid ordinary shares ranking equally in all respects with all other Shares on issue and are or will be listed on ASX.

(e) *The names of the allottees or the basis upon which the allottees were determined*

The names of the allottees are Key Mining & Civil Pty Ltd or its nominee.

Key Mining & Civil Pty Ltd is not a related party of the Company or their associates.

(f) *Use (or intended use) of the funds raised*

The shares to be issued are for services rendered and therefore no funds will be raised by the issue.

### **Directors Recommendation**

The Directors recommend that, for the reasons set out above, Shareholders vote in favour of the resolution.

### **RESOLUTION 6. APPROVE ISSUE OF SHARES.**

#### **Preamble**

ASX Listing Rule 7.1 provides that a company must not, without shareholder approval (but subject to certain exceptions), issue during any 12 month period any equity securities or other securities with rights of conversion to equity (such as an option or convertible note) if the number of those securities exceeds 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period.

Foundation Resources Pty Ltd have assisted the Company with the planning and recommencement of the mining operations at the Merlin diamond mine and the Company has agreed to issue a total of 7,881,805 ordinary shares for the services rendered representing 0.60% of the current issued ordinary shares in the Company.

To the best knowledge and belief of the Company the issue is not prohibited by s. 606 of the Corporations Act.

The object of the resolution is to pay Foundation Resources Pty Ltd for the assistance it has provided whilst conserving the cash resources of the Company.

If Shareholder approval is obtained for the resolution, the shares will be granted within one month of the receipt of Shareholder approval.

### **ASX Listing Rule 7.3**

ASX Listing Rule 7.1 prohibits a listed company from issuing, or agreeing to issue, equity securities (which includes shares) that exceed 15% of the total number of fully paid ordinary securities on issue in any 12 month period, unless approval is obtained from the holders of the company's ordinary securities. ASX Listing Rule 7.3 provides that the approval of holders of the company's ordinary securities may be obtained to the issue of equity securities. The effect of such ratification is to restore the company's discretionary power to issue further securities up to 15% of the number of fully paid ordinary securities on issue at the beginning of the relevant 12 month period without obtaining shareholder approval.

### **ASX Listing Rule Disclosure Requirements**

The following information is provided in accordance with ASX Listing Rule 7.3:

(a) *Number of securities allotted*

7,881,805 fully paid ordinary shares.

(b) *Price at which the securities were issued*

The shares to be issued are for services rendered with an agreed value of \$118,227 which equates to an issue price of \$0.015.

(c) *Terms of the securities*

The Shares issued are fully paid ordinary shares ranking equally in all respects with all other Shares on issue and are or will be listed on ASX.

(d) *The names of the allottees or the basis upon which the allottees were determined*

The names of the allottees are Foundation Resources Pty Ltd or its nominee.

Foundation Resources Pty Ltd is not a related party of the Company or their associates.

(e) *Use (or intended use) of the funds raised*

The shares to be issued are for services rendered and therefore no funds will be raised by the issue.

### **Directors Recommendation**

The Directors recommend that, for the reasons set out above, Shareholders vote in favour of the resolution.

### **RESOLUTION 7. RATIFY THE ISSUE OF OPTIONS.**

#### **Preamble**

On 6 April, 2017, the Company issued 20,000,000 options to Triple C Consulting Pty Ltd for corporate advisory services under a mandate letter.

## **ASX Listing Rule 7.4**

ASX Listing Rule 7.1 prohibits a listed company from issuing, or agreeing to issue, equity securities (which includes shares) that exceed 15% of the total number of fully paid ordinary securities on issue in any 12 month period, unless approval is obtained from the holders of the company's ordinary securities. ASX Listing Rule 7.4 provides that the approval of holders of the company's ordinary securities may be obtained to the issue of equity securities. The effect of such ratification is to restore the company's discretionary power to issue further securities up to 15% of the number of fully paid ordinary securities on issue at the beginning of the relevant 12 month period without obtaining shareholder approval.

## **ASX Listing Rule Disclosure Requirements**

The following information is provided in accordance with ASX Listing Rule 7.3:

(a) *Number of securities allotted*

20,000,000 options over fully paid ordinary shares.

(b) *Price at which the securities were issued*

The options issued were for promotional services rendered which have a nominal value based on the market price of the date of issue of \$300,000 which equates to an issue price of \$0.015.

(c) *Terms of the securities*

The options have the same terms and conditions as the options listed on ASX under the code MEDOB. The key terms are an exercise price of \$0.013 and an expiry date of 23 March 2021.

(g) *The names of the allottees or the basis upon which the allottees were determined*

The names of the allottees are Triple C Consulting Pty Ltd or its nominee.

Triple C Consulting Pty Ltd is not a related party of the Company or their associates.

(h) *Use (or intended use) of the funds raised*

The options were issued for services rendered and therefore no funds will be raised by the issue.

## **Directors Recommendation**

The Directors recommend that, for the reasons set out above, Shareholders vote in favour of the resolution.

## **RESOLUTION 8. APPROVE ISSUE OF CONVERTIBLE NOTE AND OPTIONS.**

### ***Preamble***

The Company has entered into a secured note deed (**Deed**) with Edensor Holdings Pty Ltd ATF Prolific Enterprises Trust (**Edensor**) on the same terms and conditions as the convertible note with Regal as set out in Resolution 1. Stera Gutnick is a shareholder and director of Edensor. Under the terms of the proposed Deed, Edensor will provide up to \$2,000,000 to the Company to be used for mine operations, exploration and working capital purposes. The Company will issue 2,000,000 notes to Edensor.

The convertible notes and options will have the same terms and conditions as those to be issued to Regal as set out in Resolution 1 and the parties named in Resolution 2. Furthermore, the price of the

convertible notes corresponds to the price of the recent entitlements offer to shareholders including the exercise price of the options.

Further details of the terms and conditions are set out in the narrative under Resolution 1 in this Explanatory Statement.

Under s. 606 of the Corporations Act, Edensor is prohibited from converting any of the convertible notes into ordinary shares in the Company if that would result in Edensor, or someone else's voting power in the Company, increasing from 20% or below to more than 20%, or from a starting point that is above 20% and below 90% subject to several exemptions set out in s. 611 of the Corporations Act and the table thereto.

Those exemptions most relevantly include shareholder approval pursuant to item 7 of s. 611 and what is usually referred to as the "3% creep" exemption as set out in item 9 of s. 611. Attached to this explanatory memorandum is a copy of s. 611 and the full table of exemptions there set out.

No shareholder approval under item 7 of s. 611 has been obtained and it is not sought at the General meeting to which this Explanatory Memorandum relates.

The exemptions in items 7 and 9 are set out above.

#### **ASX Listing Rule 10.11**

ASX Listing Rule 10.11 provides that an entity must not issue or agree to issue equity securities to any of the following persons without the approval of holders of ordinary securities:

- A related party
- A person whose relationship with the entity or a related party is, in ASX's opinion, such that approval should be obtained.

Stera Gutnick is a director of the Company and as such is a related party.

Equity securities include convertible notes and options.

For the purposes of Australian Stock Exchange ("ASX") Listing Rules 7.3 and 10.13, the Company also advises:

1. The number of securities to be allotted is 2,000,000 convertible notes at a price of \$1 per convertible note (which if converted at 1.3 cents equals 153,846,153 ordinary shares) and 153,846,153 options. The convertible notes may be converted into ordinary shares at a price of 1.3 cents or the 5 day VWAP up to the day prior to conversion, whichever is lower and the exercise price of the options is 1.3 cents. The options will have a latest expiry date of 23 March 2021 and the Company will apply for quotation of the options.

Should Edensor (subject to the prohibition and exemptions set out in, respectively, s. 606 and s. 611 of the Corporations Act referred to above), ultimately convert all the convertible notes and options, the Edensor holding of ordinary shares will be as follows subject to the below Note:

Table 1

	Edensor holding	Issued capital	Edensor %
Current holding	0	1,307,619,394	0
Upon conversion of 100% of convertible notes	153,846,153	1,461,465,547	10.5



Upon exercise of 100% of options	307,692,306	1,615,311,700	19.05
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Note –

- a) This assumes that no further ordinary shares are issued or none of the existing convertible notes and options on issue are converted/exercised.
- b) Furthermore, resolution 1, 2, 5 and 6 to this notice of general meeting seeks approval for the issue of further securities.
- c) If any of the existing convertible notes and options on issue are converted/exercised; or the securities in point 4 above are issued, the percentage holding of Edensor will reduce.

The following companies and person hold shares, options and/or convertible notes in the Company. Joseph Gutnick is the husband of Stera Gutnick and Mordechai Gutnick is their son.

Table 2

Name	Holding	Shareholders	Directors
Chabad Properties Pty Ltd	2,000,000 convertible notes 133,334,000 options	Stera Gutnick Mordechai Gutnick Joseph Gutnick	Stera Gutnick
Hoydu International Enterprises Pty Ltd	250,000 convertible notes	Stera Gutnick	Stera Gutnick
Mazil Pty Ltd	32,307,692 shares	Stera Gutnick Joseph Gutnick	Stera Gutnick
Great Central Gold Limited	14,615,385 shares	Stera Gutnick Joseph Gutnick	Stera Gutnick Han Cheun Soh Joseph Gutnick
Atlantic Holdings (Aust) Pty Ltd	3,076,923 shares	Mordechai Gutnick	Mordechai Gutnick
Morzev Pty Ltd	76,923 shares	Mordechai Gutnick	Mordechai Gutnick
Mordechai Gutnick	1,500,000 incentive options exercisable at 15 cents		

The Company has been advised by these companies and persons that they will not vote on this resolution.

In addition, Trinity Management Group Pty Ltd (TMG) is the trustee of the Merlin Diamonds Employee Share Trust under the Merlin Diamonds Employee Share Trust Deed. It is the registered holder of 18,000,000 ordinary shares in the Company. Prior to his bankruptcy, Joseph Gutnick had a right to direct the trustee to vote the said shares represented by his Share Units (as defined in the Trust Deed) which meant that he had a relevant interest in the 18,000,000 shares. In a notice of change of interests of substantial holder in the Company dated 15 January 2015, Joseph Gutnick included the issue of these 18,000,000 shares in his total holding.

Upon his bankruptcy, Joseph Gutnick's Share Units vested in his trustees in bankruptcy and it is arguable that he no longer has a relevant interest in the underlying shares or power to direct their

voting. Mr Gutnick has told the Company that he will not, in any event, seek to direct the voting of the shares at the General Meeting.

If all of the convertible notes and options referred to in Table 1 and Table 2 were converted/exercised (subject to the prohibition and exemptions set out in, respectively, s. 606 and s. 611 of the Corporations Act referred to above), the cumulative holding would be as follows:

Table 3

	Holding	Issued capital	%
Current holding	50,076,923	1,307,619,394	3.83
Upon conversion of 100% of convertible notes	376,999,999	1,634,542,470	23.06
Upon exercise of 100% of options	511,833,999	1,769,376,470	28.93

Note –

- a) This assumes that no further ordinary shares are issued or none of the existing convertible notes and options on issue are converted/exercised.
  - b) Furthermore, resolution 1, 2, 5 and 6 to this notice of general meeting seeks approval for the issue of further securities.
  - c) If any of the existing convertible notes and options on issue are converted/exercised; or the securities in point 4 above are issued, the percentage holding of the abovementioned entities will reduce.
2. The conversion price of the convertible notes into ordinary shares will be 1.3 cents or the 5 day VWAP up to the day prior to conversion, whichever is lower per note and the exercise price of the options is 1.3 cents. The Deed also states that if prior to the maturity date the Company agrees to issue further convertible notes comprising part of the notes (or another equity or debt facility) which in the reasonable opinion of the noteholder has terms more favourable than the terms applicable to these notes (from time to time), at the election of the noteholder the more favourable terms (as nominated by the noteholder) shall also apply to these notes and all other terms applicable to these notes at that time remain applicable. Without limiting the generality of the foregoing, the more favourable terms that the noteholder may elect to adopt include a higher coupon rate, higher interest rate, increased higher rate and a lower conversion price.
  3. The convertible notes and options will be issued to Edensor, or its nominee or any assignee.
  4. The date by which the Company will issue the convertible notes and the options is no later than one month after the date of approval by shareholders.
  5. The ordinary shares to be issued upon conversion of the convertible notes and/or the exercise of the options will be fully paid and rank pari passu with existing ordinary shares on issue, from the date of issue upon conversion of the convertible notes or exercise of the options.
  6. The Company anticipates that it will allot the ordinary shares in one tranche however it may allot in several tranches.
  7. The funds raised by the note issue will be utilised for Merlin mine operations, exploration and working capital for the Company however the conversion of the convertible notes into ordinary shares will not raise any funds. Further funds will be received if the options are exercised and it is anticipated that the funds raised upon exercise of the options will also be utilised for development, exploration and working capital for the Company.

## Chapter 2E of the Corporations Act

Section 208 of the Corporations Act provides that a public company must not, subject to certain exceptions, give a financial benefit to a related party without approval of the company's members. Section 228 of the Corporations Act defines a 'related party' for the purposes of Chapter 2E to include:

- Directors of the public company (section 228(2)(a)); and
- An entity controlled by directors of the public company (section 228 (4)).

Edensor is a related party of the Company for the purposes of Chapter 2E of the Corporations Act. A 'financial benefit' is defined in section 229 of the Corporations Act and includes issuing shares or granting an option to a related party.

Section 210 of the Corporations Act provides an exception to the requirement to obtain shareholder approval for giving a financial benefit to a related party, where the financial benefit is on terms which would be reasonable in the circumstances if the public company and the related party were dealing at arm's length.

The Company considers that the proposed issue of securities the subject of Resolution 8 will be on arm's length terms as it is on the same terms as issue of convertible notes and options to Regal (Resolution 1) and the parties set out in Resolution 2. Furthermore, the issue price of the convertible notes and the exercise price of the options are the same as the recent Entitlements Offer made to investors who are not related parties of the Company. As such, the Company considers that the proposed issue falls within the exception set out in section 210 of the Corporations Act.

The nature of the financial benefit to be given to Edensor is the interest in the ordinary shares upon conversion of the convertible notes and the options which are to be issued to Edensor.

### Directors Recommendation

Mr Mordechai Gutnick declines to make a recommendation on resolution 3.

The Board (other than Mr Mordechai Gutnick) unanimously recommends that Shareholders vote in favour of the resolution as it allows the Company to raise necessary finance for the development of its operations.

By Order of the Board and dated this 8<sup>th</sup> day of May 2017



PETER LEE  
Company Secretary

## Option Terms

Each Option entitles the holder (**Option Holder**) to subscribe for and be issued one fully paid ordinary share (**Ordinary Share**) in Merlin Diamonds Limited ACN 009 153 119 (**Company**) on the following terms:

1. Each Option is exercisable at any time after the date on which the Option issues (**Vesting Date**), until and including their expiry date, namely 4 years from the Vesting Date (**Expiry Date**). Any Options not exercised by the Expiry Date will automatically lapse on the Expiry Date.
1. An Option may be exercised by the Option Holder giving written notice (**Notice of Exercise**) to the Company at its registered office prior to the Expiry Date.
2. The exercise price for each Option (which is payable immediately on exercise) is AUD\$0.013 per Ordinary Share (**Exercise Price**).
3. On receipt by the Company of the Notice of Exercise and payment of the Exercise Price, the Company must, within 2 Business Days and if the Ordinary Shares are listed on the Australian Stock Exchange (**ASX**) within the time period prescribed by the Listing Rules of the ASX (**ASX Listing Rules**):
  - (a) allot to the Option Holder one Share in the Company for each Option exercised by the Option Holder;
  - (b) cause to be dispatched to the Option Holder the relevant acknowledgement of issue, a holding statement or share certificate (as applicable) as soon as is reasonably practicable detailing the issue of the relevant Ordinary Share/s; and
  - (c) issue (if applicable) a new holding statement (or Option Certificate) for the balance of the Options that remain unexercised.
4. Ordinary Shares allotted on the exercise of Options will rank equally in all respects with the then existing issued ordinary fully paid shares in the capital of the Company (except in respect to any dividends which shall have been declared but not yet distributed before the actual exercise of an Option) and will be subject to the provisions of the Constitution of the Company.
5. The Options are transferable by an Option Holder on written notice to the Company, and where the Ordinary Shares are quoted, in accordance with the ASX Listing Rules. The transferor of an Option remains the holder of that Option until the name of the transferee is recorded in the Option Register as the holder of that Option.
6. In the event of a pro rata issue of Ordinary Shares by the Company, the Exercise Price for each Option will be adjusted in accordance with Listing Rule 6.22.2 of the ASX Listing Rules (which adjustment formula will apply even where the Company is not admitted to the ASX Official List).
7. If any reorganisation (including consolidation, subdivision, reduction, return or cancellation) of the issued capital of the Company occurs before the expiry of any Options, the number of Options to which each Option Holder is entitled or the Exercise Price of his or her Options or both must be reorganised in accordance with the ASX Listing Rules applying to a reorganisation at the time of the reorganisation (which adjustment formula will apply even where the Company is not admitted to the ASX Official List).
8. An Option does not confer the right to participate in new issues of capital offered to holders of Ordinary Shares (**Rights Entitlement**) during the currency of the Options without exercising the Options. However, the Company will ensure that for the purpose of determining Rights Entitlements to any such issue, the Option Holder is to receive written notice from the

Company of the pending closing or record date and sufficient time for the Option Holder to exercise the Options prior to that closing or record date in order to qualify for the participation in the Rights Entitlement.

9. If the Ordinary Shares are listed for quotation on the ASX, the Company will apply to the ASX for, and will use its best endeavours to obtain, quotation or listing of all Ordinary Shares allotted on the exercise of any Options within 10 Business Days (as defined in the Listing Rules of the ASX) of allotment.
10. In the event of the liquidation of the Company, all unexercised Options will lapse upon the occurrence of that liquidation.
11. The Options do not provide any entitlement to dividends paid to ordinary shareholders.
12. The Options do not entitle the Option Holder to vote at any meeting of shareholders.
13. To the extent that any of these Option Terms and Conditions are inconsistent with or contrary to the ASX Listing Rules (if any), the ASX Listing Rules provisions will prevail and these Option Terms and Conditions are deemed to incorporate the relevant ASX Listing Rules provisions as an amendment to these terms; and
14. These terms and conditions are governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.