



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP25/02

Monday 13 January 2025

Alara Resources Limited – Declaration of Unacceptable Circumstances and Costs Order

The Panel has made a declaration of unacceptable circumstances (Annexure A) and a costs order (Annexure B) in relation to an application received on 20 November 2024 by Mr Kent Bedford¹ in relation to the affairs of Alara Resources Limited (**Alara**) (see [TP24/062](#) and [TP24/063](#)).

Background

Alara is an ASX listed company with a 51% interest in a joint venture company Al Hadeetha Resources LLC (**AHRL**). Al Tasnim Infrastructure LLC (**ATI**) holds 19% of AHRL and 13.88% of Alara.

On 4 November 2024, Alara announced its intention to undertake an underwritten renounceable 5 for 8 rights issue at an issue price of \$0.034 per share² to raise up to approximately \$15.3 million (**Offer**). It was intended that the Offer would be fully underwritten by Mahe Capital Pty Limited (**Mahe**) and sub-underwritten by ATI. It was also intended that for every 2 new shares subscribed for under the Offer, shareholders would receive 1 free attaching option with an exercise price of \$0.05 and a term of 2 years.

Approximately 51.36% of Alara shares are held by shareholders with a registered address outside of Australia and New Zealand (**Ineligible Shareholders**).

According to the prospectus issued in relation to the Offer dated 1 November 2024 (**Offer Prospectus**):

- The new shares to be issued under the Offer would constitute 38.46% of Alara's share capital following the Offer.

¹ On behalf of himself, Mr Steven Dahlin, Mr Sean Reeves and Mr Jason Prichard (each of whom are Alara shareholders)

² Representing a discount of 11% to the 30-day VWAP of Alara's shares and a 30.6% discount to the last closing price

- ATI stood to obtain voting power in Alara of up to a maximum of 45.31% following completion of the Offer.
- Alara intended to use the funds raised under the Offer (1) to install two interim replacement tailings filter presses and a permanent tailings filter press at the Wash-hi Majaza copper-gold mine in Oman (owned by AHRL), (2) to make certain “*deferred vendor payments*”, (3) to partially repay a loan owing from Alara to Trafigura Pte Ltd, (4) to undertake exploration at three of Alara’s exploration projects, and (5) as working capital.
- Shareholders could apply for additional shortfall under the Offer and Mahe had agreed to use best efforts to place shortfall to persons other than ATI. However, any shortfall would be first allocated to ATI so that it would obtain voting power of 19.9%.
- Given “*the small number of Ineligible Shareholders and the cost of complying with applicable regulations outside Australia and New Zealand*”, Alara decided that it would be unreasonable to extend the Offer to Ineligible Shareholders and appointed Mahe as nominee to arrange for the sale of the Ineligible Shareholders’ entitlements.

On 19 November 2024, the Offer closed with a significant shortfall, and it was expected that ATI would obtain voting power of 41.8% of Alara pursuant to its sub-underwriting arrangements.

On 11 December 2024 (after the Panel decided to conduct proceedings), Alara announced that it had determined to withdraw the Offer “*in the context of the termination of the Underwriting Agreement and the agreement under which Al Tasnim Infrastructure LLC (ATI) agreed to fully sub-underwrite the issue.*”. The announcement also stated that, “*Alara is engaged with ATI to endeavour to reach agreement for it to act as underwriter for a new rights issue to replace the [Offer]*”.

On 24 December 2024, ATI gave to Alara a notice of initial substantial holder and two notices of change of interests of substantial holder, which disclosed (among other things) that:

- ATI became a substantial holder on 25 November 2020 with a 5.26% voting power in Alara
- ATI’s voting power in Alara increased to 10% on 2 March 2021 and reached 14.13% on 26 April 2021 and
- certain additional persons hold a substantial holding in Alara by virtue of holding voting interests above 20% in ATI.

Declaration

The Panel considered that, in the circumstances, Alara did not provide sufficient material to satisfy the Panel that:

- there was a clear need for all of the funds sought to be raised under the Offer
- it properly explored other fundraising alternatives or
- it properly sought out alternatives to ATI sub-underwriting the Offer

The Panel also considered that the disclosure in the Offer Prospectus was inadequate, including in relation to Alara's need for funds and the financial position of Alara and AHRL.

The Panel also considered that the delay in ATI disclosing its substantial holding contravened section 671B of the *Corporations Act 2001* (Cth) (**Act**).

The Panel considered that the circumstances were unacceptable:

- having regard to the effect that the Panel is satisfied they have had on:
 - the potential control of Alara or
 - the proposed acquisition by a person of a substantial interest in Alara
- in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the Act
- in the further alternative, because they constituted a contravention of a provision of Chapter 6C of the Act.

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in s657A(3).

Costs Order

The Panel has made a costs order that Alara must pay \$2,400.00 excluding GST to an account nominated by the Applicants, representing the fair and reasonable costs incurred by the Applicants in connection with these proceedings.

In relation to Alara's stated intention to undertake a new rights issue, the Panel expects that any rights issue proposed by Alara in the future will comply with the Panel's guidance in Guidance Note 17 and Chapter 6D of the Act, and hopes that this will be assisted by Alara having obtained new legal counsel.

The sitting Panel was Yasmin Allen AM (sitting President), Chris Stavrianou and Philippa Stone.

The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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Australian Government

Takeovers Panel

ANNEXURE A

CORPORATIONS ACT SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

ALARA RESOURCES LIMITED

CIRCUMSTANCES

1. Alara Resources Limited (**Alara**) is an ASX listed company.
2. Al Tasnim Infrastructure LLC (**ATI**) holds 13.88% of Alara.
3. Al Hadeetha Resources LLC (**AHRL**) is a joint venture company 51% owned by Alara.¹ Al Hadeetha Investment Services LLC (**AHIS**) holds 30% of AHRL directly and 4.39% of Alara. ATI holds 19% of AHRL directly.
4. Approximately 51.36% of Alara shares are held by shareholders with a registered address outside of Australia and New Zealand (**Ineligible Shareholders**).
5. On 4 November 2024, Alara announced its intention to undertake an underwritten renounceable 5 for 8 rights issue at an issue price of \$0.034 per share² to raise up to approximately \$15.3 million (**Offer**). It was intended that the Offer would be fully underwritten by Mahe Capital Pty Limited (**Mahe**) and sub-underwritten by ATI. It was also intended that for every 2 new shares subscribed for under the Offer, shareholders would receive 1 free attaching option with an exercise price of \$0.05 and a term of 2 years.
6. According to the prospectus issued in relation to the Offer dated 1 November 2024 (**Offer Prospectus**):
 - (a) The new shares to be issued under the Offer would constitute 38.46% of Alara's share capital following the Offer.
 - (b) Alara intended to use the funds raised under the Offer (1) to install two interim replacement tailings filter presses and a permanent tailings filter

¹ Indirectly through Alara Oman Operations Pty Limited, a wholly owned subsidiary of Alara

² Representing a discount of 11% to the 30-day VWAP of Alara's shares and a 30.6% discount to the last closing price

press at the Wash-hi Majaza copper-gold mine in Oman (owned by AHRL), (2) to make certain “*deferred vendor payments*”, (3) to partially repay a loan owing from Alara to Trafigura Pte Ltd, (4) to undertake exploration at three of Alara’s exploration projects, and (5) as working capital.

- (c) Shareholders could apply for additional shortfall under the Offer and Mahe had agreed to use best efforts to place shortfall to persons other than ATI. However, any shortfall would be first allocated to ATI so that it would obtain voting power of 19.9%.
 - (d) Given “*the small number of Ineligible Shareholders and the cost of complying with applicable regulations outside Australia and New Zealand*”, Alara decided that it would be unreasonable to extend the Offer to Ineligible Shareholders and appointed Mahe as nominee to arrange for the sale of the Ineligible Shareholders’ entitlements.
 - (e) ATI stood to obtain voting power in Alara of up to a maximum of 45.31% following completion of the Offer, assuming that only AHIS (which had agreed to subscribe for shortfall shares equivalent to its entitlement had it held a registered address in Australia or New Zealand) and ATI subscribed for shares.
7. It was not disclosed in the Offer Prospectus (1) that one of Alara’s non-executive directors, Ms Devaki Khimji, is the Managing Director of ATI³ and, as of 31 January 2022, holds a 34% shareholding in ATI⁴, (2) that Ms Khimji’s alternate director, Mr Farrokh Jimmy Masani, is the Chief Operating Officer of ATI or (3) how Alara had managed and was proposing to manage conflicts arising from ATI sub-underwriting the Offer.
8. On 19 November 2024, Alara released a Supplementary Prospectus which stated that Mr Masani had advised Alara that he would take up his entitlement under the Offer⁵ and had agreed to sub-underwrite the Offer for a further 1,150,000 new shares (comprising approximately 0.1% of Alara’s post-Offer share capital). The Supplementary Prospectus also stated that as a result of Mr Masani’s sub-underwriting commitment, ATI now stood to obtain a maximum voting power in Alara of 44.175% (if new shares were only issued to ATI, AHIS and Mr Masani).

³ The Offer Prospectus disclosed that Ms Khimji was ATI’s nominee director on the Alara board and that Mr Masani is an alternative director for Ms Khimji

⁴ According to Ms Khimji’s Appendix 3X – Initial Director’s Interest Notice dated 31 January 2022

⁵ It was noted that having changed his address on Alara’s register to an address in Australia since the Offer Prospectus was lodged, Mr Masani was an eligible shareholder on the record date

9. Also on 19 November 2024, the Offer closed with a significant shortfall, and it was expected that ATI would obtain voting power of 41.8% of Alara pursuant to its sub-underwriting arrangements.
10. On 11 December 2024 (after the Panel decided to conduct proceedings), Alara announced that it had determined to withdraw the Offer *“in the context of the termination of the Underwriting Agreement and the agreement under which Al Tasnim Infrastructure LLC (ATI) agreed to fully sub-underwrite the issue.”*. The announcement also stated that, *“Alara is engaged with ATI to endeavour to reach agreement for it to act as underwriter for a new rights issue to replace the [Offer]”*.
11. On 24 December 2024,⁶ ATI gave to Alara a notice of initial substantial holder and two notices of change of interests of substantial holder, which disclosed (among other things) that:
 - (a) ATI became a substantial holder on 25 November 2020 with a 5.26% voting power in Alara
 - (b) ATI’s voting power in Alara increased to 10% on 2 March 2021 and reached 14.13% on 26 April 2021 and
 - (c) certain additional persons hold a substantial holding in Alara by virtue of holding voting interests above 20% in ATI.
12. The Panel considers that, in the circumstances:
 - (a) Alara did not provide sufficient material to satisfy the Panel that:
 - (i) there was a clear need for all of the funds sought to be raised under the Offer
 - (ii) it properly explored other fundraising alternatives or
 - (iii) it properly sought out alternatives to ATI sub-underwriting the Offer.
 - (b) The Offer Prospectus did not adequately disclose (1) Alara’s need for funds, (2) the financial position of Alara and AHRL, and (3) the matters referred to in paragraph •. In addition, there was a material error in Alara’s pro forma statement of financial position disclosed in the Offer Prospectus.
 - (c) Alara did not take sufficient steps to mitigate the potential control effect of the Offer.

⁶ The notices were released to Alara’s ASX market announcements platform on 27 December 2024

13. In addition, the Panel considered that the delay in ATI disclosing its substantial holding contravened section 671B of the *Corporations Act 2001* (Cth) (**Act**).

EFFECT

14. As a result of the foregoing, the potential acquisition of control over voting shares in Alara would not have taken place in an efficient, competitive and informed market and all Alara shareholders would not have had a reasonable and equal opportunity to participate in any benefits accruing to ATI under the Offer.
15. It also appears to the Panel that the holders of shares in Alara did not know the identity of persons who had acquired a substantial interest in Alara.

CONCLUSION

16. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they have had on:
 - (i) the potential control of Alara or
 - (ii) the proposed acquisition by a person of a substantial interest in Alara
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the Act
 - (c) in the further alternative, because they constituted a contravention of a provision of Chapter 6C of the Act.
17. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances. It has had regard to the matters in section 657A(3) of the Act.

DECLARATION

The Panel declares that the circumstances constitute unacceptable circumstances in relation to the affairs of Alara.

Allan Bulman
Acting General Counsel
with authority of Yasmin Allen AM
President of the sitting Panel
Dated 13 January 2025



Australian Government

Takeovers Panel

ANNEXURE B

CORPORATIONS ACT SECTION 657D ORDER

ALARA RESOURCES LIMITED

The Panel made a declaration of unacceptable circumstances on 13 January 2025.

THE PANEL ORDERS

1. By no later than 15 business days from the date of this order, Alara Resources Limited must pay \$2,400.00 excluding GST to an account nominated by the Applicants, representing the fair and reasonable costs incurred by the Applicants in connection with these proceedings.

Definitions

2. In this order the following terms apply:

Applicants	Mr Kent Bedford, Mr Steven Dahlin, Mr Sean Reeves and Mr Jason Prichard
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Allan Bulman
Acting General Counsel
with authority of Yasmin Allen AM
President of the sitting Panel
Dated 13 January 2025