



Tuesday, 28 August 2007

Consolidated Minerals Limited – Panel Decision

The Panel advises that it has made a declaration of unacceptable circumstances and orders in relation to an application dated 13 August 2007 from Pallinghurst Resources Australia Limited (**Pallinghurst**) in relation to the affairs of Consolidated Minerals Limited (**Consolidated Minerals**). Pallinghurst currently has made a cash offer for all Consolidated Minerals shares (**Pallinghurst Offer**). Territory Resources Limited (**Territory**) has announced that it intends to make a takeover bid for Consolidated Minerals (**Proposed Territory Offer**).

The Panel considered that various statements made by Territory, or its Chairman, including in relation to the value of Territory shares, the value of the Proposed Territory Offer, share entitlements of the managing director of Consolidated Minerals and the support of a substantial holder, were likely to adversely affect the efficient competitive and informed market for Consolidated Minerals shares. The Panel has made a declaration of unacceptable circumstances (See Annexure A). The Panel determined not to commence proceedings in respect of two elements of the application, see below under “Statements about timing” and “Statements about consideration”.

The Panel intends to order that Territory:

- (a) make a corrective statement on ASX Limited (**ASX**) before close of trading on Tuesday 28 August 2007 in relation to items 1, 2 and 7 below; and
- (b) make further corrective statements in Territory’s bidder’s statement in relation to the value of the Proposed Territory Offer (including in relation to items 1-7 below),

to protect the interests of Consolidated Minerals shareholders and to ensure that the Pallinghurst Offer and the Proposed Territory Offer proceed in the manner that they would if the unacceptable circumstances had not occurred.

Unacceptable circumstances – Territory statements

The unacceptable circumstances that the Panel has found in relation to the Territory statements include:

1. Territory’s failure to clarify the meaning of its statements to the media that Palmary Enterprises Ltd (or the controllers of Palmary) (**Palmary**), as a 13% shareholder in Consolidated Minerals, is "supportive of the Territory initiative";
2. the Territory Chairman's representation in the analyst presentation at Kalgoorlie on 7 August 2007 of Palmary's support for the Proposed Territory Offer;

3. Territory's use of the 16 July 2007 closing market price of Territory shares when representing the value of the Proposed Territory Offer in the letter Territory sent to Consolidated Minerals shareholders dated 7 August (**7 August letter**), without also stating the value of the Proposed Territory Offer by reference to the most recently available Territory share price at 7 August;
4. the use of the valuation of \$0.98 to \$1.08 per Territory share from the 31 July 2007 valuation report from BDO Consultants (WA) Pty Ltd (**BDO Report** and **BDO** respectively), in the 7 August letter without clearly disclosing the methodology that BDO had used to derive the valuation (being a "Quoted Market Price Basis" methodology), and the other lower values which BDO had derived in its consideration of the value of Territory shares;
5. the reference in the 7 August letter to the 26 July 2007 report by Snowden Mining Industry Consultants Pty Ltd (**Snowden Report**) as "supporting" the \$0.98 to \$1.08 BDO valuation referred to above, when it did not provide that support;
6. the reference in the 7 August letter to the Snowden Report without clearly setting out the use BDO had made of the value derived from the Snowden Report, and disclosing the value per Territory share derived from the Snowden Report, which was lower than the \$0.98 to \$1.08 BDO valuation referred to in the 7 August letter;
7. statements by the Territory Chairman in a media conference and an analyst presentation at Kalgoorlie on 7 August 2007 relating to share entitlements of the Consolidated Minerals Managing Director under the Consolidated Minerals Managing Director's Long Term Share Plan.

Unacceptable circumstances requiring immediate corrective disclosure

Palmary support statements

The Panel considered that statements concerning the intentions or support of Palmary would be seen as material in the context of the two rival bids and Palmary becoming a substantial holder during the contest for control of Consolidated Minerals.

The Panel considered that the expression "*supportive of the initiative*" was ambiguous and that Consolidated Minerals shareholders would be uncertain as to its meaning. In submissions, Territory submitted to the Panel that "*supportive of the initiative*" could refer to nothing other than Palmary was supportive of Territory's announcement of a takeover bid. The Panel considered that this interpretation was not clear from media reports of the Territory Chairman's interviews, and was not an interpretation that a reasonable Consolidated Minerals shareholder would likely take.

The Panel considered that where a person chooses to make statements concerning the position of a substantial holder that person should ensure that the statements are clear and unambiguous, and not open to widely different interpretation or spin. For example, once Territory chose to make a public statement about Palmary, it would have been preferable if Territory had:

- (a) made the statement on ASX¹ rather than through media conferences. This would have ensured maximum exposure, not been subject to reporters' interpretation, and observable for a longer period than daily media reports;
- (b) clearly explained the source and basis of the statement;
- (c) clearly explained what Territory understood was meant by "supportive of the initiative"; and
- (d) expressed clearly any knowledge, or lack of knowledge, by Territory of Palmary's intentions as to accepting the Pallinghurst Offer or the Proposed Territory Offer.

The Panel considers that Territory's statements have led to an uninformed and inefficient market in Consolidated Minerals shares.

Managing Director's Long Term Share Plan statements

The Panel was concerned that the Territory Chairman's statements were unsustainable given the Pallinghurst bidder's statement and the notice of meeting for the Consolidated Minerals October 2006 AGM at which the Managing Director's Long Term Share Plan was approved by Consolidated Minerals shareholders. The Panel was concerned that the Territory Chairman appeared to have taken insufficient care in checking publicly available information before making assertions relevant to the motivation of a target company director's recommendation. The Panel required that the unsustainable assertions were unconditionally withdrawn.

Other issues

The Panel considered that while its concerns with respect to the 7 August letter (see items 3-6 above) required corrective disclosure in Territory's bidder's statement, they did not require immediate corrective disclosure in the form of an ASX announcement.

Statements about timing of revised consideration under Proposed Territory Offer

Pallinghurst submitted that since 28 June 2007, when Territory first announced the possibility of making a bid for Consolidated Minerals, Territory had made a number of statements to the media, and had had a number of statements attributed to it in the media (which Territory had not denied). The statements of which Pallinghurst complained included statements that Territory would announce a decision about a potential variation of the consideration to be offered under the Proposed Territory Offer by a specified date.

¹ Which Territory eventually did, on 15 August 2007.

The Panel considered that in the statements put before it, Territory had cautioned its statements sufficiently that a reasonable person would not believe that Territory was making a firm commitment to provide a decisive statement on the issues by a specified date. The Panel considered that Territory's statements were very largely cautioned by being Territory's intentions or aspirations and did not amount to "last and final statements". On that basis, the Panel did not commence proceedings in relation to this issue.

Statements about Proposed Territory Offer consideration

Pallinghurst submitted that since announcing the Proposed Territory Offer on 17 July 2007, Territory has made a number of statements to the media, which have been reported a number of times, in relation to the substance of possible variations to the consideration to be offered under the Proposed Territory Offer.

Similarly to the timing statements referred to above, Pallinghurst submitted that the Territory Chairman's statements caused Consolidated Minerals shareholders to postpone decisions on whether or not to accept the Pallinghurst Offer. However:

- (a) in the absence of any firm evidence that Territory was not actually seeking to refinance or vary the Proposed Territory Offer to make it more attractive to the all cash Pallinghurst Offer; and
- (b) given that the statements were very largely made with a caution that the outcome was not certain,

the Panel did not consider that there was a real possibility that it would find that the statements gave rise to unacceptable circumstances, and so declined to commence proceedings on this issue.

BDO Report

The Panel has requested further submissions from parties on the use of the "Quoted Market Price Basis" methodology in the BDO Report and will consider any appropriate action once it has considered the submissions.

Other issues

The Panel considered that the Pallinghurst Application raised a number of other issues which, while not sufficiently material to warrant a declaration of unacceptable circumstances will be addressed in its reasons for decision.

The President of the Panel appointed John Keeves, Alice McCleary and Simon Withers to form the Panel to consider the application.

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

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**Corporations Act
Section 657A
Declaration of Unacceptable Circumstances**

In the matter of CONSOLIDATED MINERALS LTD.

WHEREAS

Background

1. Consolidated Minerals Ltd is a listed public company. It is the subject of an off market takeover bid (**Pallinghurst Offer**) by Pallinghurst Resources Australia Ltd (**Pallinghurst**).
2. On 17 July 2007, Territory Resources Ltd (**Territory**) announced to Australian Securities Exchange Ltd (**ASX**) a proposed conditional takeover bid for all the Consolidated Minerals Shares (**Proposed Territory Offer**). Territory had not lodged a bidder's statement for the Proposed Territory Offer at the date of this declaration.
3. The consideration to be offered under the Proposed Territory Offer was stated to be \$2 plus 1.5 Territory shares per Consolidated Minerals Share. The Proposed Territory Offer was to be subject to a number of defeating conditions, set out in an announcement to ASX that Territory published on 17 July 2007, including a 90% minimum acceptance condition.
4. Pallinghurst lodged its bidder's statement on 27 July 2007 in respect of the Pallinghurst Offer (**Pallinghurst Bidder's Statement**). The Pallinghurst Offer is currently due to close on 8 September 2007.
5. On 30 July 2007, Palmary Enterprises Limited (**Palmary**) announced that on 27 July 2007 it had become a substantial holder of Consolidated Minerals with voting power of 12.1843%.
6. On 3 August 2007, Territory announced to ASX that it had received updated reports from:
 - (a) BDO Consultants (WA) Pty Ltd (**BDO** and **BDO Report** respectively) dated 31 July 2007, providing a valuation of Territory shares; and
 - (b) Snowden Mining Industry Consultants Pty Ltd (**Snowden report**) dated 26 July 2007, in relation to the valuation of the mineral assets of Territory.
7. The BDO and Snowden Reports themselves were not published on ASX but posted to Territory's website with a hyperlink from the 3 August announcement on ASX to the two reports.

8. On 7 August 2007, Territory conducted an analyst briefing in relation to the Proposed Territory Offer. In addition, Territory also conducted a press conference on that day. At the briefing and media conference, the Chairman of Territory made various statements concerning:
 - (a) the support of Palmary for the Proposed Territory Offer; and
 - (b) share entitlements of the Consolidated Minerals Managing Director under the Consolidated Minerals Long Term Share Plan.
9. On 7 August 2007, Territory published on ASX a letter it was sending to Consolidated Minerals shareholders (**7 August letter**).

Statements concerning Palmary and Privat

10. Following the substantial holding notice lodged by Palmary on 31 July 2007, the Territory Chairman held a number of media interviews in which he made a number of statements including:
 - (a) *"Privat indicated that they were supportive of the Territory initiative,"*
 - (b) *"It is 12 per cent that will support us";*
 - (c) *"They are very supportive of our initiative,"*
11. On 7 August 2007, the Territory Chairman made a series of statements concerning the support of Privat for the Proposed Territory Offer at an analyst briefing and at a media conference.
12. On 13 August 2007 the Territory Chairman is quoted as saying:

"With Privat, Ukraine people stepping into the frame, one would have to ascertain what is in their minds.' I am certainly travelling on the way to Europe to meet with the Privat people who are aware of our group."
13. On 15 August 2007, Territory published on ASX a letter setting out some information concerning a meeting between the Territory Chairman and "Privat" an entity connected to Palmary, in which Territory stated that

"Michael Kiernan has met with representatives of Privat and been informed that they are supportive of the Territory initiative. As with all shareholders of Consolidated Minerals Limited, Privat will have the right to consider the takeover offer announced by Territory in full once Territory's Bidder's Statement is sent to all shareholders of Consolidated Minerals Limited."

7 August Letter

14. In the 7 August Letter Territory represented the value of the Proposed Territory Offer as being \$3.65 per Consolidated Minerals share. This was based on the market price of Territory shares at the close of trading on 16 July 2007, immediately prior to the date on which it was announced.
15. Territory did not include a value of the Proposed Territory Offer based on the most recently available market price of Territory shares, which was \$0.90 giving a value of the Proposed Territory Offer of \$3.35.

16. In the 7 August Letter Territory represented the value of the Proposed Territory Offer as being between \$3.47 and \$3.62 per Consolidated Minerals share. This was based on a value of Territory shares of between \$0.98 and \$1.08 Territory shares from the BDO Report.
17. Territory did not disclose in the 7 August Letter:
 - (a) the methodology that BDO had used to derive the valuation; or
 - (b) the other values which BDO had derived in its consideration of the value of Territory shares.
18. In the 7 August Letter Territory represented that the BDO Report was supported by the Snowden report.
19. Territory did not disclose in the 7 August Letter the value of Territory shares that BDO had derived from the Snowden Report.

Managing Director's Long Term Share Plan statements

20. The Territory Chairman made a series of statements in a media conference and an analyst presentation at Kalgoorlie on 7 August 2007 relating to share entitlements of the Managing Director of Consolidated Minerals under the Consolidated Minerals Managing Director's Long Term Share Plan (**MDLTSP**).
21. Transcripts of the Territory Chairman's statements included:
 - (a) *"I could never understand why they were recommending their bid so quickly. It was not quite collusion between the board of ConsMin and Pallinghurst. It certainly was an unholy alliance"*
 - (b) *"they've actually said in there "if this bid is successful, the board of ConsMin have the right to issue up to 3 million shares in ConsMin"" [to the Managing Director of Consolidated Minerals];*
 - (c) *"I can now understand why these guys were within milliseconds accepting the bid".*
22. The Territory Chairman stated that he based his statements on statements in the Pallinghurst bidder's statement. The Pallinghurst bidder's statement refers to the share entitlements of the Consolidated Minerals managing director at paragraphs 2.6 and 6.8.
23. The MDLTSP was approved at the Consolidated Minerals annual general meeting on 26 October 2006. The terms of the MDLTSP were set out in the notice of meeting, which is published on ASX. The maximum number of shares that may be issued under the MDLTSP is one million shares over the three year period of the MDLTSP.

Circumstances unacceptable

24. It appears to the Panel that the circumstances referred to above (**Circumstances**) are unacceptable having regard to:

- (a) the effect that the Panel is satisfied that the Circumstances have had, are having, or are likely to have, on:
 - (i) the control or potential control of Consolidated Minerals; or
 - (ii) the acquisition or proposed acquisition by Pallinghurst or Territory of a substantial interest in Consolidated Minerals; or
 - (b) the purposes of Chapter 6 of the Corporations Act 2001 (*Cth*) (**Act**) as set out in section 602 of the Act.
25. The Panel considers that it is not against the public interest to make a declaration of unacceptable circumstances in relation to the Circumstances and the affairs of Consolidated Minerals.
26. The Panel has had regard to the matters in section 657A(3) of the Act.

Under section 657A of the Act, the Takeovers Panel declares that the Circumstances constitute unacceptable circumstances in relation to the affairs of Consolidated Minerals.

John Keeves
President of the Sitting Panel

Dated 26 August 2007