



Wednesday, 31 October 2007

Resource Pacific Holdings Limited - Panel Declines to Commence Proceedings

The Panel has declined to commence proceedings on an application dated 19 October 2007 from New Hope Corporation Limited (**Applicant**) in relation to the affairs of Resource Pacific Holdings Limited (**Resource Pacific**) (see [TP 07/81](#)), on the basis of additional information Resource Pacific provided to shareholders.

On 26 September 2007 the Applicant announced its intention to make a scrip takeover bid for all the issued ordinary shares in Resource Pacific (**Bid**). It has not yet dispatched its bidder's statement. The Bid will be subject to a number of conditions, one of which is that Resource Pacific not issue shares between 26 September 2007 and close of the offer period without the prior written approval of New Hope.

On 27 September 2007 Resource Pacific announced a recapitalisation plan, the major part of which comprises a \$165 million pro rata offer of ordinary shares to existing shareholders (**Entitlement Offer**). A general meeting has been convened for 31 October 2007 to consider the Entitlement Offer in principle (**Shareholder Meeting**).

Amongst other things, the Applicant submitted that Resource Pacific shareholders have not had (and will not have by 31 October) sufficient time and adequate information to enable them to properly assess the merits of the Bid and the Entitlement Offer. The Applicant sought final orders that:

- (a) Resource Pacific make full disclosure in relation to the Entitlement Offer (including the provision of a comparison document outlining the advantages and disadvantages of both the Entitlement Offer and the Bid); and
- (b) The Shareholder Meeting be adjourned to a date 28 days after shareholders have received the disclosure, the bidder's statement and the target's statement.

The Panel was concerned about the level and adequacy of disclosure provided to shareholders in respect of the terms of the Entitlement Offer and was inclined to commence proceedings. In particular, given Guidance Note 12, the Panel considered that the issue of shares by Resource Pacific would trigger a defeating condition under the New Hope bid, and Resource Pacific shareholders should be provided with all the information material to their making an informed decision regarding the Entitlement Offer so they could properly consider whether to proceed.

Noting Resource Pacific's submission that "*[d]eferring the meeting and therefore the capital raising will cause real commercial detriment to Resource Pacific*", the Panel considered that its concerns regarding the level and adequacy of disclosure

would be met (and it would not consequently commence proceedings) if the following additional information in relation to the rights issue was disclosed:

- (a) indicative terms of the rights issue, that is, the issue price or the formula by which the issue price will be determined (or alternatively, the range of the proposed issue pricing and entitlement ratio);
- (b) whether or not the rights issue will be underwritten; and
- (c) the basis on which the board believed that the rights issue is the better alternative for the company, including identifying any possible ownership and control effects of the Entitlement Offer (for example that shareholders may be diluted under each alternative) and why, when shareholders are considering the alternatives, the Entitlement Offer is preferable.

The Panel considered that the effects of such disclosure would assist in ensuring that Resource Pacific shareholders understand that a vote in favour of the Entitlement Offer may mean that the New Hope bid does not proceed and understand the potential effects of the Entitlement Offer on control of Resource Pacific and the value of Resource Pacific shares. Secondly, the disclosure would enable New Hope to better understand the impact of the rights issue on its bid, and how it may be affected if it does not wish to avail itself of the defeating condition.

The Panel considered that with that additional information, shareholders would have sufficient information to enable them to assess the merits of the proposal, and sufficient time in which to consider that information. Accordingly, on the basis of undertakings received from Resource Pacific to provide that additional information (which it has now done) the Panel determined that it was not necessary to commence proceedings.

Finally, the Panel was concerned at the delay that ensued between the date of the announcement of the Entitlement Offer and the date of lodgement of the application. The Panel received no satisfactory explanation for the delay. However, having concluded that obtaining further disclosure would address its primary concerns, and would not adversely affect Resource Pacific, the Panel did not need to take account of the delay in deciding whether or not to commence proceedings in relation to the application.

The President of the Panel appointed Martin Alciaturi (Deputy President) Tom Bathurst QC, and John Fast (Sitting President) as 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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