



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP12/36

Monday, 25 June 2012

Minemakers Limited - Declaration of Unacceptable Circumstances and Orders

The Panel has made a declaration of unacceptable circumstances (Annexure A) and orders (Annexure B) in relation to an application dated 5 June 2012 by Minemakers Limited in relation to its affairs (see [TP12/32](#)).

Background

Minemakers is currently the subject of an off-market takeover bid by UCL Resources Limited.

On 28 May 2012, UCL lodged its bidder's statement with ASIC. Minemakers sought a declaration of unacceptable circumstances in relation to disclosure in UCL's bidder's statement.

Declaration

The Panel considers that there are material information deficiencies in the bidder's statement, including in relation to:

- proposed funding of UCL's bid
- related party transactions
- capital structure of the combined group and
- recent sales prices of Minemakers and UCL shares and the offer premium.

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).

Orders

The Panel has made orders to the effect that UCL:

1. immediately advise the market, in a form approved by the Panel, that the bidder's statement contains information deficiencies and UCL will lodge a replacement bidder's statement

2. prepare a replacement bidder's statement in a form approved by the Panel and
3. not, before lodgement of the replacement bidder's statement:
 - (a) despatch the original statement or any supplementary or replacement statement or
 - (b) publish (or further publish to the extent already published) such information.

The sitting Panel is Andrew Low, Jane Sheridan and Heather Zampatti (President).

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

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Takeovers Panel

Annexure A

**CORPORATIONS ACT
SECTION 657A**

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

MINEMAKERS LIMITED

CIRCUMSTANCES

1. On 18 May 2012, UCL Resources Limited (**UCL**) announced an off-market takeover bid for all the shares in Minemakers Limited (**MAK**).
2. Under the offer, MAK shareholders will receive:
 - (a) 1 UCL share for every 1.6 MAK shares held and
 - (b) 4.5 cents cash for every MAK share held.
3. On 28 May 2012, UCL lodged its bidder's statement with ASIC. There are material information deficiencies in the bidder's statement, including in relation to:
 - (a) proposed funding of UCL's bid
 - (b) related party transactions
 - (c) capital structure of the combined group and
 - (d) recent sales prices of MAK and UCL shares and the offer premium.
4. It appears to the Panel that the circumstances are unacceptable:
 - (a) having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:
 - (i) the control, or potential control, of MAK or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in MAK and
 - (b) having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (**Act**) and
 - (c) because they constituted, constitute, will constitute or are likely to constitute a contravention of a provision of Chapter 6 of the Act.

5. 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 MAK.

Alan Shaw
Counsel
with authority of Heather Zampatti
President of the sitting Panel
Dated 25 June 2012



Australian Government

Takeovers Panel

Annexure B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

MINEMAKERS LIMITED

The Panel made a declaration of unacceptable circumstances on 25 June 2012.

THE PANEL ORDERS

1. UCL Resources Limited (**UCL**) immediately advise the market, in a form approved by the Panel, of the following:
 - (a) its bidder's statement lodged with ASIC on 28 May 2012 contains information deficiencies in the areas identified in the Schedule (**information deficiencies**)
 - (b) the nature of the information deficiencies and
 - (c) it will lodge, and send each Minemakers Limited (**MAK**) shareholder, a replacement bidder's statement, in a form approved by the Panel, which addresses the information deficiencies.
2. UCL prepare a replacement bidder's statement as soon as practicable, in a form approved by the Panel, which addresses the information deficiencies.
3. UCL not, before lodgment of the replacement bidder's statement:
 - (a) despatch to Minemakers shareholders the original bidder's statement lodged with ASIC on 28 May 2012 or any supplementary bidder's statement or replacement bidder's statement or
 - (b) publish (or further publish to the extent already published) such information.

SCHEDULE

- (1) **Identity of provider of funding**
 - (a) Disclosure of the accounts for, or an accountant's certificate in respect of, Mawarid Mining LLC (**Mawarid**)
 - (b) Disclosure of details of the convertible note agreement with Marawid, including:
 - Conditions precedent
 - Events of Default

- The consequences of an event of default on the money being raised and on the issue price of shares under the convertible note
 - The consequences of an event of default, and in particular the change of control event, on the money being raised becoming repayable and
 - The impact of the underwriting agreement (for the 1:12 non-renounceable rights issue announced to ASX on 28 May 2012) on the money being raised and the number of shares that might be issued under the convertible note based on various assumptions as to who takes up shortfall
- (c) A statement that the additional funds required to fund the cash component of the bid (ie the difference between the funds raised under the convertible note and the cash required to fund the bid) are provided from the bidder's own resources
- (d) Disclosure of an estimate of the likely amount of additional funds required in each of the following scenarios:
- 50.1% acceptance
 - 100% acceptance
- (e) Disclosure, given the impact of the underwriting agreement on the convertible note, based on various assumptions as to who takes up shortfall, of the amount of additional funds required.
- (2) Related party disclosure**
- (a) Prominent disclosure that Marwarid is a related party of UCL
- (b) The information required by ASIC RG [76.148].
- (3) Capital structure of the combined group**
- (a) Clear, concise and effective disclosure regarding the debt obligations of the combined group assuming the subscription sum under the convertible note is:
- \$9 million
 - The amount required to fund the cash component of the bid where 50.1% of MAK shareholders accept
 - The amount required to fund the cash component of the bid where 100% of MAK shareholders accept and
 - The amount that will, on a fully diluted basis, result in Mawarid's voting power being 19.9%
- The disclosure should also show the difference between Mawarid taking up all of the rights issue and Marwarid taking up only its pro rata shareholding
- (b) Clear, concise and effective disclosure, in a table, of the shareholding structure of the combined group (for both 50.1% acceptance and

100% acceptance) assuming the subscription sum under the convertible note is:

- \$9 million
- The amount required to fund the cash component of the bid where 50.1% of MAK shareholders accept
- The amount required to fund the cash component of the bid where 100% of MAK shareholders accept and
- The amount that will, on a fully diluted basis, result in Mawarid's voting power being 19.9%

The disclosure should also show the difference between Mawarid taking up all of the rights issue and Mawarid taking up only its pro rata shareholding

- (c) disclosure that UCL has provided Mawarid with a first right to participate in future placements.

(4) MAK and UCL share prices and the takeover offer premium

- (a) Disclosure of MAK and UCL share prices:

- on the last practicable trading date prior to printing of the replacement bidder's statement
- as 1-month VWAP up to the last practicable trading date prior to printing of the replacement bidder's statement
- as 3-month VWAP up to the last practicable trading date prior to printing of the replacement bidder's statement and
- as 6-month VWAP up to the last practicable trading date prior to printing of the replacement bidder's statement

- (b) If a comparison of UCL's offer for MAK to MAK's offer for UCL is retained:

- only a 6-month VWAP up to the last practicable trading date prior to printing of the replacement bidder's statement must be used to arrive at the number of "MAK shares per UCL share" and
- the methodology used to arrive at the number of "MAK shares per UCL share" must be disclosed

- (c) Disclosure, in any reference to share prices, that the prices may have been affected by (as the case may be):

- MAK's bid for UCL, together with the date the bid was announced and concluded and
- UCL's bid for MAK, together with the date the bid was announced

- (d) Disclosure, in any reference to offer premium, that the calculation may have been affected by (as the case may be):

- MAK's bid for UCL, together with the date the bid was announced and concluded and
- UCL's bid for MAK, together with the date the bid was announced.

(5) **Other disclosure**

- (a) Clarification of the key dates table under "Important Information"
- (b) Amendment of references to MAK's shareholding in UCL
- (c) Reference to the replacement bidder's statement as a 'replacement', including on the front cover.

Alan Shaw
Counsel
with authority of Heather Zampatti
President of the sitting Panel
Dated 25 June 2012