



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP16/74

Monday, 17 October 2016

## **Regal Resources Limited – Declaration of Unacceptable Circumstances and Orders**

The Panel has made a declaration of unacceptable circumstances (Annexure A) and final orders (Annexure B) in relation to an application dated 22 September 2016 by Mr Warwick Sauer in relation to the affairs of Regal Resources Limited (see [TP16/68](#)).

### **Background**

On 30 June 2016, Regal shareholders approved a series of resolutions, including for the purposes of item 7 of section 611<sup>1</sup> which (among other things) would increase the voting power of Ndovu Capital VI B.V. in Regal from 13.23% to between 54.38% and 68.03% through the issue of Regal shares under a placement, conversion of a convertible loan and underwriting of a proposed entitlement offer.

The notice of meeting in respect of the resolutions indicated that Regal shareholders would be provided with the option to subscribe for shortfall shares in excess of their entitlement under the entitlement offer, on the terms and conditions disclosed in the entitlement offer prospectus. Regal's prospectus included statements to the effect that Regal shareholders would have priority under the shortfall offer.

The notice of meeting and prospectus also included statements that the directors reserved a general discretion over the allocation of shortfall shares.

Following closure of the entitlement offer, Regal received applications for 184,166,015 shortfall shares. However, Regal issued only 118,907,986 shares to applicants. The remaining shortfall shares were issued to Ndovu as underwriter.

### **Declaration**

The Panel considered that Regal's treatment of applications for shortfall shares was inconsistent with its disclosure in the notice of meeting and prospectus. As a result:

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<sup>1</sup> References are to the *Corporations Act 2001* (Cth)

- Regal shareholders were not given sufficient information to assess the transactions the subject of the shareholder resolutions and
- the acquisition of control over voting shares in Regal has not taken place in an efficient, competitive and informed market.

The Panel considered that the circumstances were unacceptable having regard to:

- the effect that the Panel is satisfied the circumstances have had on:
  - (a) the control, or potential control, of Regal or
  - (b) the acquisition, or proposed acquisition, by Ndovu of a substantial interest in Regal and / or
- the purposes of Chapter 6 set out in section 602.

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 requiring Regal to make an offer of new shares to Regal shareholders who were scaled back under the entitlement offer, at an offer price of \$0.01 per share (being the entitlement offer price). Those shareholders will be entitled to apply for the number of shortfall shares they applied for but were not issued under the entitlement offer.

The orders also cancel shares held by Ndovu in such number as is equivalent to the number of shares issued to scaled back shareholders pursuant to the new offer.

The sitting Panel was Michelle Jablko (sitting President), Denise McComish and Robert McKenzie.

The Panel will publish its reasons for the decision in due course on its website [www.takeovers.gov.au](http://www.takeovers.gov.au).

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## **ANNEXURE A**

### **CORPORATIONS ACT SECTION 657A**

#### **DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

##### **REGAL RESOURCES LIMITED**

##### **CIRCUMSTANCES**

1. Regal Resources Limited (**Regal**) is an ASX listed company (ASX: RER).
2. On 30 June 2016, Regal shareholders approved a series of resolutions, including for the purposes of item 7 of section 611<sup>1</sup> which (among other things) would increase the voting power of Ndovu Capital VI B.V. (**Ndovu**) in Regal from 13.23% to between 54.38% and 68.03% through the issue of Regal shares under a placement, conversion of a convertible loan and underwriting of a proposed entitlement offer (**the Transaction**).<sup>2</sup>
3. The notice of meeting for the Transaction:
  - (a) Referred to Regal shareholders' ability to reduce Ndovu's voting power by participating in the entitlement offer as a reason to vote in favour of the Transaction resolutions, and stated that:

*Shareholders will also be provided with the option for subscribing for Shortfall Shares in excess of their entitlement, on the terms and conditions to be disclosed in the Prospectus. The issue of any Shortfall Shares will be at the discretion of the Directors, in conjunction with Ndovu (in Ndovu's capacity as underwriter).*

- (b) Described the shortfall, in a summary of material terms of the underwriting agreement as:

*Eligible Shareholders may nominate to subscribe for additional Shares not subscribed for by other eligible Shareholders in the Rights Issue.*

*The Company must calculate the number of Underwritten Shares for which valid applications have not been received by the closing date of the Rights Issue (**Shortfall**). The Company must notify the Underwriter of the Shortfall within 3 business days of the closing date of the Rights Issue (or*

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<sup>1</sup> References are to the *Corporations Act 2001* (Cth)

<sup>2</sup> Shareholders also approved the exercise of options held by Ndovu which could further increase Ndovu's voting power

*such later date as agreed). The Underwriter must apply for the Shortfall within 6 business days of receiving this Shortfall notice from the Company.*

4. On 4 July 2016, Regal issued a prospectus which stated *“Eligible Shareholders applying for Shortfall Shares in excess of their full Entitlement will have priority under the Shortfall Offer...In the event of oversubscription from these applications they will be scaled back. Any remaining Shortfall Shares will be subscribed for by the Underwriter in satisfaction of its commitment under the Underwriting Agreement.”* The prospectus also indicated that shortfall shares would be issued at the discretion of Regal and there was no guarantee that any shortfall shares would be issued.
5. The entitlement offer closed on 4 August 2016. Regal received applications for 184,166,015 shortfall shares. Of these, Regal issued 118,907,986 shares to applicants. The remaining shares were issued to Ndovu as part of its underwriting commitment.<sup>3</sup>
6. Regal’s treatment of applications for shortfall shares was not consistent with its disclosure in the notice of meeting and prospectus.
7. By reason of Regal’s disclosure and subsequent approach in dealing with applications for shortfall shares:
  - (a) Regal shareholders were not given sufficient information to assess the Transaction and
  - (b) the acquisition of control over voting shares in Regal has not taken place in an efficient, competitive and informed market.
8. It appears to the Panel that the circumstances are unacceptable having regard to:
  - (a) the effect that the Panel is satisfied the circumstances have had on:
    - (i) the control, or potential control, of Regal or
    - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Regal and/or
  - (b) the purposes of Chapter 6 set out in section 602.
9. 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).

## **DECLARATION**

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

**Bruce Dyer**  
**Counsel**  
**with authority of Michelle Jablko**  
**President of the sitting Panel**  
**Dated 14 October 2016**

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<sup>3</sup> The total shortfall issued to Ndovu as underwriter comprised 244,051,820 shares



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## **ANNEXURE B**

### **CORPORATIONS ACT SECTION 657D ORDERS**

#### **REGAL RESOURCES LIMITED**

The Panel made a declaration of unacceptable circumstances on 14 October 2016.

#### **THE PANEL ORDERS**

##### **Orders**

1. Within 20 business days of the date of these orders, Regal must make an offer (in a form approved by the Panel) to Scaled-back Shareholders on material terms to the following effect:
  - (a) each Scaled-back Shareholder is invited to apply for such number of ordinary shares that the shareholder applied for under the Shortfall Offer but was not issued
  - (b) the offer price is \$0.01 per share
  - (c) the offer is open for no less than 21 days from the date the offers are sent to Scaled-back Shareholders
  - (d) Scaled-back Shareholders can apply for some or all of the shares offered to them, by following the instructions given by Regal (acting reasonably) including as to payment of application monies and
  - (e) Regal must apply for quotation of the shares on ASX.
2. Within 5 business days of the close of the offer, Regal must issue shares validly applied for by Scaled-back Shareholders pursuant to the offer. Regal may scale back an application for shares if it considers (acting reasonably) that the issue of shares would result in a contravention of section 606 of the *Corporations Act 2001* (Cth) or the related party provisions of Chapter 2E of the *Corporations Act* or ASX Listing Rule 10.11.
3. On the date which is one business day after the issue of shares to Scaled-back Shareholders pursuant to the offer:

- (a) Regal shares held by Ndovu, in such number equivalent to the number of shares issued by Regal to Scaled-back Shareholders pursuant to the offer made under order 1, are cancelled
  - (b) Regal must pay to Ndovu \$0.01 for each share cancelled pursuant to order 3(a) and
  - (c) Ndovu is released from the undertaking given to the Panel on 22 September 2016.
4. Regal must do all other things reasonably necessary to give effect to these orders.

**Interpretation**

5. In these orders the following terms apply:

<b>Ndovu</b>	Ndovu Capital VI B.V.
<b>Regal</b>	Regal Resources Limited
<b>Scaled-back Shareholder</b>	A Regal shareholder who applied for shares pursuant to the Shortfall Offer but was not issued all of the shares applied for
<b>Shortfall Offer</b>	The meaning given to that term in Regal's prospectus released to ASX on 4 July 2016

**Bruce Dyer**  
**Counsel**  
**with authority of Michelle Jablko**  
**President of the sitting Panel**  
**Dated 14 October 2016**