



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP20/27

Thursday, 16 April 2020

Accelerate Resources Limited 01 & 02 – Declaration of Unacceptable Circumstances

The Panel has made a declaration of unacceptable circumstances (Annexure A) in relation to applications dated 4 March 2020 and 17 March 2020 by GTT Global Opportunities Pty Ltd (see [TP20/10](#) and [TP20/17](#)) in relation to the affairs of Accelerate Resources Limited (**Accelerate**).¹

Background

Accelerate is an ASX listed company (ASX code: AX8).

On 18 November 2019, Accelerate announced the acquisition of a kaolin project (**Kaolin Acquisition**) in consideration for Accelerate shares.

On 16 March 2020, Accelerate lodged a number of substantial holder notices disclosing for the first time that it had a relevant interest of 12.82% in itself as a result of voluntary escrow arrangements and shareholder support deeds being entered into with certain vendors under the Kaolin Acquisition in relation to the shares issued to them (**Voting Deeds**). The Voting Deeds were dated 18 November 2019.

As at 18 November 2019, Accelerate also had in place a similar shareholder support deed with GTT Global Opportunities Pty Ltd and certain other shareholders which gave Accelerate a relevant interest of 11.27% in itself (**Shareholder Support Deed**).²

By virtue of entering into the Voting Deeds when the Shareholder Support Deed was still on foot,³ Accelerate increased its voting power in Accelerate shares from below 20% to above 20% without any exceptions in section 611⁴ applying, in contravention of section 606.

Accelerate also delayed in disclosing its relevant interest in Accelerate shares under the Voting Deeds, in contravention of section 671B.

¹ The Panel decided to hear both applications together under Regulation 16 of the *ASIC Regulations 2001* (Cth).

² Accelerate lodged a substantial holder notice in respect of the Shareholder Support Deed on 11 December 2018.

³ The Shareholder Support Deed lapsed in December 2019.

⁴ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated.

Declaration

The Panel considered that the circumstances were unacceptable:

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

The Panel did not consider it against the public interest to make the declaration, and in making it had regard to the matters in section 657A(3).

The Panel is still considering the applications in relation to orders.

The sitting Panel was Shirley In't Veld, Jeremy Leibler and John O'Sullivan (sitting President).

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

Allan Bulman
Director, Takeovers Panel
Level 16, 530 Collins Street
Melbourne VIC 3000
Ph: +61 3 9655 3500
takeovers@takeovers.gov.au



Australian Government

Takeovers Panel

ANNEXURE A

CORPORATIONS ACT SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

ACCELERATE RESOURCES LIMITED 01 & 02

CIRCUMSTANCES

1. Accelerate Resources Limited is an ASX listed company (ASX code: AX8) (**Accelerate**).
2. On 18 November 2019, Accelerate announced the acquisition of a kaolin project (**Kaolin Acquisition**) in consideration for Accelerate shares.
3. On 16 March 2020, Accelerate lodged a number of substantial holder notices disclosing for the first time that it had a relevant interest of 12.82% in itself as a result of the shares issued under the Kaolin Acquisition being subject to a 9 month voluntary escrow and that certain vendors under the Kaolin Acquisition (**Kaolin Vendors**) had agreed to enter into shareholder support deeds in relation to the shares issued to them (**Voting Deeds**).
4. The terms of the Voting Deeds required, among other things, that the Kaolin Vendors vote all their Accelerate shares at a meeting of Accelerate shareholders in accordance with the voting intentions stated by the chair of the meeting in respect of undirected proxies. The Voting Deeds were dated 18 November 2019 and expire 9 months from that date (unless terminated earlier).
5. As at 18 November 2019, Accelerate also had in place a similar shareholder support deed with GTT Global Opportunities Pty Ltd and other shareholders¹ which gave Accelerate a relevant interest of 11.27% in itself (**Shareholder Support Deed**).²
6. Accordingly:
 - (a) by virtue of entering into the Voting Deeds when the Shareholder Support Deed was still on foot,³ Accelerate increased its voting power in Accelerate

¹ The other shareholders were Mounts Bay Investments Pty Ltd, Syracuse Capital Pty Ltd, Murdoch Capital Pty Ltd and Kcirtap Securities Pty Ltd.

² Accelerate lodged a substantial holder notice in respect of the Shareholder Support Deed on 11 December 2018.

³ The Shareholder Support Deed lapsed in December 2019.

shares from below 20% to above 20% without any exceptions in section 611⁴ applying, in contravention of section 606 and

- (b) Accelerate delayed in lodging a substantial holder notice disclosing details of its relevant interest in 12.82% of Accelerate shares pursuant to the Voting Deeds, in contravention of section 671B.

EFFECT

- 7. Accelerate shareholders and the market were not aware of Accelerate's relevant interest in the shares held by the Kaolin Vendors and the agreements giving rise to it.

CONCLUSION

- 8. 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 control, or potential control, of Accelerate or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Accelerate
 - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 or
 - (c) in the further alternative, because they constituted or constitute a contravention of a provision of Chapter 6 or of Chapter 6C.
- 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 Accelerate.

Tania Mattei
Counsel
with authority of John O'Sullivan
President of the sitting Panel
Dated 16 April 2020

⁴ References are to the *Corporations Act 2001* (Cth) unless otherwise indicated.