



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP16/15

Tuesday, 15 March 2016

Gulf Alumina 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 15 February 2016 by Metro Mining Limited in relation to the affairs of Gulf Alumina Limited (see [TP16/08](#)).

Gulf Alumina Limited (**Gulf**) is an unlisted company with more than 50 members. Gulf is currently the subject of an off-market takeover bid from Metro Mining Limited (**Metro**, ASX code: MMI) for all the shares in Gulf at 3.3 Metro shares for every Gulf share.

The application concerned, among other things, value statements by Gulf in a letter to its shareholders and disclosure issues in the target's statement.

The Panel considered that the letter to shareholders and the target's statement contained insufficient or misleading information regarding the value of Gulf and, in respect of the target's statement, required:

- information about the comparative value of Gulf as a standalone entity and the Metro offer
- the bases on which the directors recommend that shareholders reject the Metro offer
- more information on the intention statements provided by the non-participating Gulf shareholders and
- other, more minor, additional disclosures.

The Panel has made orders that Gulf:

- provide additional disclosure on value or procure an independent expert's report to opine on whether the Metro takeover offer is fair and reasonable and
- issue a supplementary target's statement which includes the disclosure on value (if provided) as well as other corrective disclosure.

The Panel has been informed by Gulf that it intends to seek an independent expert's report.

The sitting Panel was Richard Hunt (acting President), Andrew Lumsden and Karen Phin.

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

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Annexure A

CORPORATIONS ACT SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

GULF ALUMINA LIMITED

CIRCUMSTANCES

1. Gulf Alumina Limited (**Gulf**) is an unlisted public company with more than 50 members.
2. On 2 December 2015, Metro Mining Limited, an ASX listed company (ASX code: MMI), announced an off-market scrip takeover offer for all the shares in Gulf at 3.3 Metro shares for every 1 Gulf share (**Metro offer**).
3. On 3 December 2015, Gulf sent a letter to its shareholders regarding the Metro offer that contained an unsubstantiated value statement.
4. On 6 January 2016, Gulf lodged its target's statement, recommending shareholders reject the Metro offer.
5. The target's statement contains insufficient or misleading information regarding:
 - (a) the comparative value of Gulf as a standalone entity and the Metro offer, and the bases on which the directors recommend that shareholders reject the Metro offer
 - (b) shareholder intentions not to accept the Metro offer
 - (c) Gulf's definitive feasibility study
 - (d) whether convertible notes used to value Gulf's ordinary shares were properly described as having been transferred on an 'arm's length' basis
 - (e) the status and terms of a Heads of Agreement arrangement described as an offtake agreement and
 - (f) the value of Gulf's Skardon River North tenement.
6. By reason of the information deficiencies identified in paragraph 5:
 - (a) Gulf shareholders have not been given enough information to enable them to assess the merits of the Metro offer and

- (b) the acquisition of control over voting shares in Gulf is not taking place in an efficient, competitive and informed market.
7. 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 Gulf or
 - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Gulf 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 or constitute a contravention of a provision of Chapters 6 and 6B of the Act.
8. 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 Gulf.

Alan Shaw
Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 11 March 2016



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Annexure B

CORPORATIONS ACT SECTION 657D ORDERS

GULF ALUMINA LIMITED

The Panel made a declaration of unacceptable circumstances on 11 March 2016.

THE PANEL ORDERS

Value disclosure or independent expert's report

1. Unless Gulf proposes to obtain an independent expert's report providing an opinion for shareholders on whether the Metro offer is fair and reasonable, Gulf must include in the supplementary target's statement referred to in order 3:
 - (a) the comparative value of Gulf as a stand-alone entity on the one hand and the Metro offer on the other hand (that is, including Gulf as 44% of the merged entity) broadly consistent with ASIC's Regulatory Guide 111 *Content of expert reports*
 - (b) a clear explanation of the bases on which the directors have made their recommendation and
 - (c) in the DFS:
 - (i) a breakdown of the 'Other Infrastructure and contingency' item in the Capital Expenditure table on page 11 and
 - (ii) disclosure regarding the expertise and experience of the management personnel who compiled the DFS.
2. If the directors opt for obtaining an independent expert's report, Gulf must:
 - (a) instruct an independent expert within 5 business days of the date of this order and further instruct the expert to report within 4 weeks of the date it is given instructions
 - (b) promptly provide such information and assistance as is reasonably required by the expert
 - (c) in the supplementary target's statement referred to in order 3 disclose the fact of engagement of an independent expert together with a statement

about when that report is expected to be received and a statement that it will be sent to each shareholder to whom offers have been made and

- (d) as soon as practicable after receiving the report issue a supplementary target's statement including the report and send a copy to each shareholder to whom offers have been made.

Corrective disclosure

- 3. Gulf must within 6 business days of the date of this order issue, in a form approved by the Panel, a supplementary target's statement that includes the information in the draft first supplementary target's statement (as amended) provided in response to the Panel's supplementary brief, subject to the following:

- (a) shareholder intention statement disclosure
 - (i) disclosure of the statements provided by the non-participating Gulf shareholders between 17 February 2016 and 24 February 2016
 - (ii) disclosure of the relationship each non-participating Gulf shareholder has with Gulf, if any (e.g. director, associate of a director, related party) and
 - (iii) clear and prominent retraction of the statements provided by the non-participating Gulf Shareholders between 15 December 2015 and 3 January 2016
- (b) retraction of previous statements
 - (i) clear and prominent retraction on page 1 of the supplementary target's statement of the value statement made in the letter to shareholders dated 3 December 2015, and a statement that Gulf directors are not relying on such value statements and
 - (ii) where retracted information is discussed (e.g. sections 5, 7 and 8 of the draft supplementary target's statement provided), adding "Retraction of..." in the section heading
- (c) corrected statements
 - (i) in section 2, removal of the statement in paragraph 1 that the directors' recommendation in the target's statement was *"based on the respective merits of Gulf's Project and Metro's Project as set out in the Target's Statement"*
 - (ii) in section 2, paragraph 3, removal of "For this reason also"
 - (iii) in section 4.5, omission of paragraph 1 and removal of "legally binding" from the second paragraph and
 - (iv) in section 5, state *"...Target's Statement ~~and~~ as corrected by this First Supplementary Target's Statement along with any further Supplementary Bidder's Statement or Supplementary Target's Statement"* and

- (d) a general statement at the beginning of the supplementary target's statement that the corrective disclosure was required by the Panel.

Interpretation

In these orders the following definitions apply:

DFS	Definitive feasibility study
Gulf	Gulf Alumina Limited
Metro	Metro Mining Limited
Metro offer	The off-market scrip takeover offer by Metro for Gulf at 3.3 Metro shares for every 1 Gulf share
Non-participating Gulf shareholders	Shareholders who stated that they intend not to accept the Metro takeover offer

Alan Shaw
Counsel
with authority of Richard Hunt
President of the sitting Panel
Dated 11 March 2016