



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP13/70

Tuesday, 17 December 2013

Tigers Realm Coal Limited – Panel Receives Application

The Panel has received an application from Dr Bruce Gray in relation to the affairs of Tigers Realm Coal Limited. The application concerns an equity raising announced by Tigers Realm on 12 December 2013.

Details of the application, as submitted by the applicant, are below.

A sitting Panel has not been appointed at this stage and no decision has been made whether to conduct proceedings. The Panel makes no comment on the merits of the application.

Details

The applicant is a 19.1% shareholder in Tigers Realm. On 12 December 2013, Tigers Realm announced it intended to raise up to \$62.0 million at \$0.165 per share through:

- (a) a placement to Baring Vostok Private Equity Fund V (in tranches of \$21.6 million and \$14.6 million)
- (b) a placement to the Russian Direct Investment Fund (\$16.3 million)
- (c) a placement to new and existing shareholders (\$7.85 million) and
- (d) a share purchase plan to existing shareholders (up to \$1.65 million).

The first tranche investment by Baring Vostok would give it an interest of 19.99% in Tigers Realm. If all components of the equity raising are completed in full the newly issued shares will comprise 41.76% of Tigers Realm's shares on issue, Baring Vostok would have a 24.36% interest and RDIF would have an 11.00% interest.

Each component of the equity raising, other than the share purchase plan and the first tranche investment by Baring Vostok, is subject to shareholder approval. The first tranche investment by Baring Vostok is conditional on, among other things, Tigers Realm Minerals Pty Ltd (a 22.86% shareholder in Tigers Realm) and certain directors and officers of Tigers Realm¹ entering into escrow agreements. In addition,

¹ Mr Anthony Manini (Chairman), Mr Craig Parry (Director & Chief Executive Officer), Mr Owen Hegarty, Mr Brian Jamieson and Mr Craig Wiggill, (directors), Mr Peter Balka (Chief Operating Officer), Mr David Forsyth (Company Secretary), Mr David George (Manager of Investor Relations), Mr Chris McFadden (Head of Commercial Strategy and Commercial Development), Mr Leonid Skopstov and Mr Peter Tongs

certain shareholders² have stated that they will vote their shares in favour of the relevant shareholder approvals. In aggregate, the shareholders that have entered escrow agreements and/or made voting statements have an interest of greater than 32% in Tigers Realm.³

Tigers Realm has agreed to reimburse Baring Vostok and RDIF for expenses associated with the transaction to maximums of US\$400,000 and US\$150,000 respectively. Tigers Realm has also agreed to pay a break fee of US\$400,000 to Baring Vostok under certain circumstances, including if shareholders fail to approve the second tranche investment by Baring Vostok.

Tigers Realm has agreed to indemnify Baring Vostok and RDIF in relation to certain litigation. Tigers Realm Minerals has agreed to indemnify Baring Vostok and RDIF if Tigers Realm is unable to meet its indemnity obligations.

The applicant submits, among other things, that:

- (a) there are contraventions of the takeovers prohibition by Baring Vostok, RDIF and Tigers Realm as a result of one or more of the escrow agreements, voting statements and indemnity
- (b) it is unacceptable for the first tranche investment to Baring Vostok to proceed without shareholder approval
- (c) the placements offend the efficient, competitive and informed market principle *“because it is not efficient for the market to operate on the basis that existing shareholders may be significantly diluted, at a discount, in circumstances where the issuer has no immediate need [to raise that amount of funds]”*
- (d) the indemnity arrangements involve Tigers Realm giving financial assistance to Baring Vostok and RDIF and
- (e) the break fee of US\$400,000 is a “naked no vote” break fee that has a coercive effect on shareholders and is unacceptable under Guidance Note 7 *Lock-up Devices*.

The applicant seeks interim orders that Tigers Realm be restrained from completing the first tranche investment with Baring Vostok or, alternatively, that the proceeds of the placement be held by Tigers Realm and not expended until completion of the Panel proceedings.

² All escrowed shareholders (except Mr Leonid Skopstov and Mr Peter Tongs) and Mr Tim Berry

³ On 16 December 2013, Tigers Realm lodged a substantial holder notice stating that it had a relevant interest in itself of 10.09% pursuant to the escrow agreements

The applicant seeks final orders that the first tranche investment by Baring Vostok, the share purchase plan, the escrow agreements and the indemnity given by Tigers Realm be subject to shareholder approval, and that the shareholders that have entered escrow agreements and/or made voting statements be excluded from voting on such resolutions.

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