



Australian Government

Takeovers Panel

# MEDIA RELEASE

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No: TP18/46

Friday, 29 June 2018

## Realm 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 29 May 2018 by Realm Resources Limited in relation to its affairs (see [TP18/37](#)).

### Background

Realm Resources Limited (**Realm**) is an ASX listed company (ASX code: RRP). On 30 August 2016, Realm acquired a 70% interest in the Foxleigh mine in Queensland's Bowen Basin from Anglo American Metallurgical Coal Assets Pty Ltd (**Foxleigh Acquisition**).

ASX decided that the Foxleigh Acquisition triggered the application of Chapter 11 of the Listing Rules and required Realm to comply with Chapters 1 and 2 of the Listing Rules as if it were applying for admission to the official list. ASX required, among other things, that Realm have a free float of not less than 20% of the shares on issue. Realm's shares were to remain suspended from trading until the above requirements could be satisfied.

At all relevant times, Taurus Funds Management Pty Limited as manager of Taurus Resources No. 2 LP and Taurus Resources No. 2 Trust (together, **T2**), held over 85% of Realm's ordinary shares. Messrs Gordon Galt and Michael Davies, nominees of T2, were directors of Realm.

In order to satisfy the 20% free float requirement, Realm decided to undertake a capital raising in which T2 would not participate. On 8 June 2017, T2 signed a statement confirming its intention to support the capital raising. The capital raising and Foxleigh Acquisition were approved by Realm shareholders on 14 July 2017.

There were delays in undertaking the capital raising for various reasons. Realm updated the market from time to time on the status of the re-listing.

On 15 December 2017, T2 made a non-binding indicative proposal to acquire all the Realm shares it did not own for \$0.90 per share.

Prior to the date of the proposal, the nominees of T2 on the Realm board were supportive of the capital raising. At various times after the date of the proposal, the T2 nominees indicated that they would not support the capital raising or the re-listing of Realm on ASX.

On 9 February 2018, T2 announced its intention make an off-market takeover bid to acquire all the Realm shares it did not own for \$0.90 per share. On 23 February 2018, T2 released a bidder's statement which included statements to the effect that:

- (a) there was no certainty when re-listing of Realm shares might occur and the offer provided shareholders with certainty by comparison
- (b) T2 intended to compulsorily acquire the outstanding Realm shares if it became entitled to; and if not would seek to replace some or all of the current directors with its nominees and
- (c) T2 did not support Realm's continued listing, would not support the capital raising, and would cause Realm to apply for de-listing and as a consequence, if T2 does not proceed with compulsory acquisition shareholders may not be able to readily sell their shareholding.

The Realm board established an independent subcommittee who recommended that Realm shareholders should reject T2's bid. On 15 May 2018, T2 increased its offer price to \$1.00 per share. The independent Realm directors continued to recommend that shareholders reject T2's bid.

On 31 May 2018, two additional nominees of T2 were appointed to the Realm board.

The Panel considers that, in combination:

- (a) the continuing suspension of Realm, which denied shareholders a market and a readily observable value for Realm shares in light of market developments
- (b) the recognition by T2 of the improved financial and operational position of Realm since the Foxleigh Acquisition which likely increased the value of Realm
- (c) T2 changing its position from actively supporting the re-listing to actively opposing it
- (d) the intention of T2 to remove Realm from the official list whether or not its takeover bid results in it reaching the threshold for achieving compulsory acquisition
- (e) active steps taken by the nominees of T2 on the Realm board to stop the re-listing

- (f) the statements in the bidder's statement referred to in paragraphs 25 and 26 of the declaration and
- (g) the nomination of the additional directors of Realm which would ensure the intentions of T2 could be given effect to,

had the potential to coerce Realm shareholders to accept the T2 bid.

The Panel decided to extend time under s657C for the making of the application.

### **Declaration**

The Panel considered that the circumstances were unacceptable:

- (a) having regard to the effect that the Panel is satisfied they will have or are likely to have on:
  - (i) the control, or potential control, of Realm or
  - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Realm
- (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (**Act**).

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 providing withdrawal rights to shareholders who have accepted T2's bid before 7pm (Sydney time) on 2 July 2018 and extending the bid period until 7pm (Sydney time) on 3 August 2018. The Panel is considering whether to make further orders or accept undertakings in lieu of further orders.

The sitting Panel was Kelvin Barry, Teresa Dyson and Rod Halstead (sitting president).

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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**Australian Government**

**Takeovers Panel**

**ANNEXURE A**  
**CORPORATIONS ACT**  
**SECTION 657A**  
**DECLARATION OF UNACCEPTABLE CIRCUMSTANCES**

**REALM RESOURCES LIMITED**

**CIRCUMSTANCES**

1. Realm Resources Limited (**Realm**) is an ASX listed company (ASX code: RRP).
2. Foxleigh is an open cut mining operation near Middlemount in Queensland's Bowen Basin. On 30 August 2016, Realm announced that its subsidiary had acquired (among other assets) a 70% interest in Foxleigh from Anglo American Metallurgical Coal Assets Pty Ltd.
3. On 13 September 2016, Realm requested a voluntary suspension from trading and sought ASX's determination on the application of Chapter 11 of the Listing Rules to the transaction. ASX decided that Realm was required to comply with Chapters 1 and 2 of the Listing Rules as if it were applying for admission to the official list and ASX included a requirement that Realm obtain shareholder approval and have a free float of not less than 20% of the shares on issue.
4. At all relevant times, Taurus Funds Management Pty Limited as manager of Taurus Resources No. 2 LP and Taurus Resources No. 2 Trust (together, **T2**), held over 85% of Realm's ordinary shares.
5. At all relevant times, Messrs Gordon Galt and Michael Davies, nominees of T2, were directors of Realm. Mr Galt was Realm's chairman.
6. Realm began considering ways in which it could satisfy the 20% free float requirement. It decided on a capital raising in which T2 would not participate. On 8 June 2017, T2 signed a statement confirming its intention to support the capital raising.
7. Between 15 June 2017 and 13 July 2017 Realm shares were reinstated to trading ahead of a shareholders' meeting. The shares were then suspended again (and remain suspended) pending compliance with Chapters 1 and 2 of the Listing Rules.
8. On 14 July 2017, Realm shareholders approved on a show of hands:
  - (a) a capital raising to enable Realm to meet the 20% free float requirement (no price or date was set) and
  - (b) the acquisition of Foxleigh.

9. From time to time Realm kept the market updated on its re-listing. On 9 October 2017, Realm announced to the market that the re-listing was “*unlikely to occur before early 2018*”.
10. Up until at least 23 November 2017, the nominees of T2 on the Realm board appear to have been supportive of the timetable for the capital raising. The minutes of the meeting on 23 November 2017 state that the board was presented with the proposed timeline for “*prospectus and re-listing timetable with a view to re-listing in early March 2018*”, and that:

*[Mr Galt] confirmed the timeline is acceptable however he needs to see the [broker’s] valuation before he instructs the [due diligence committee] to reconvene.*
11. On 30 November 2017, an internal briefing paper was presented to certain members of the T2 Investment Committee (but not to Mr Galt or Mr Davies). The paper:
  - (a) proposed “*a friendly takeover offer for Realm’s minority shareholders*”
  - (b) stated that “*The objective of the transaction is to secure as large a shareholding in [Realm] as possible and take private*”
  - (c) stated that “*Given T2 already has a majority shareholding, a traditional control premium is not considered relevant*”
  - (d) suggested an indicative offer price of \$1.00 was being considered and
  - (e) stated that T2 would seek to delist Realm if it did not achieve 100% ownership and would make its intentions clear in the bidder’s statement.
12. On or around 2 December 2017, the T2 Investment Committee approved the transaction with an offer price of \$1.00.
13. On or before 5 December 2017, T2 had put in place information barriers excluding Mr Galt and Mr Davies from deliberations and decisions in respect of the bid.
14. An email to the Realm board, including to Mr Galt and Mr Davies, on 11 December 2017, further discussed the capital raising timetable indicating a need to settle the terms of the capital raising by 22 December 2017.
15. At 4.51pm on 15 December 2017, T2 made a non-binding indicative proposal to acquire all the Realm shares it did not own for \$0.90 per share.
16. A T2 internal briefing paper dated 15 December 2017 stated “*The offer will be presented to Realm shareholders as a choice between immediate liquidity or remaining a shareholder in an illiquid entity. T2’s intentions to seek a de-listing of Realm from the ASX will be made clear in its Bidder’s Statement.*”

17. On 16 December 2017, Realm established a subcommittee to respond to the proposal (and any subsequent takeover offer).<sup>1</sup>
18. On 25 January 2018, a paper on the proposed takeover bid was presented at a T2 Advisory Board Meeting stating, similar to the statements on 29 November and 15 December 2017, “*The objective of the transaction is to secure as large a shareholding in Realm as possible and take private. The offer will be presented to Realm shareholders as a choice between immediate liquidity or remaining a shareholder in an illiquid entity*”.
19. The paper also noted that “*Since completing the acquisition, Realm has introduced a new plan of operations at Foxleigh which has resulted in the mine achieving record levels of production and a significant reduction in unit operating costs. Coupled with improving coal prices this has allowed Realm to generate over \$100m in free cash flow from Foxleigh since acquisition.*”
20. On 31 January 2018, at the Realm board meeting, Mr Galt, indicated that he would not support the re-listing of Realm on ASX. The minutes note a declaration of Messrs Galt and Davies because of the non-binding proposal and state:  
  
*[Mr Rosengren] requested a mandate to continue the relisting process as market previously informed as waiting for new Managing Director to start. [Mr Galt] stated that he would not support relisting on ASX as did not believe coal assets were appropriately valued nor was there access to capital, compared to other jurisdictions. [Mr Beecher] requested a sub-committee be formed to progress the capital raise in order to nullify any potential conflict issues. [Messrs Galt and Davies] advised they are not conflicted, [Mr Beecher] disagreed. [Mr Galt] indicated that there was no rush as likely that Proposal would pass some milestones in next 2 weeks and that there would not be a need for relisting. [Mr Davies] advised the meeting on the likely timetable for the bidding process, pointing out that the capital raise was unlikely to occur before August.*
21. Mr Galt reiterated his objection to continuing the re-listing process at subsequent board meetings on 22 February 2018 and 30 April 2018.
22. On 9 February 2018, T2 announced its intention make an off-market takeover bid to acquire all the Realm shares it did not own for \$0.90 per share. The bid would be subject to prescribed occurrences not occurring such as Realm issuing new shares.
23. In response, the independent subcommittee released an announcement recommending that shareholders take no action ahead of further guidance from Realm. Messrs Davies and Galt took issue with the release of the announcement without the full board having had an opportunity to review it

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<sup>1</sup> The subcommittee comprised two directors (James Beecher and Staffan Ever) and the company secretary. Staffan Ever was subsequently replaced by Michael Rosengren.

first. Mr Davies raised concerns with the statement in the announcement that the company thought the price offered by T2 is too low, rather than the independent subcommittee, and queried why he and Mr Galt had not seen any advice on the value of Realm.

24. The minutes of a Realm board meeting held on 22 February 2018 noted that Mr Galt *“recommended advising the market that the relisting process is suspended until there is a resolution of the takeover offer”* and both he and Mr Davies *“indicated that progressing the relisting was a waste of money and a distraction while the bid was underfoot as the bid had restrictions on triggering relisting.”* Mr Galt also stated that *“he had not seen the bidders statement, but the bidders statement could contain words to the effect that should the takeover not succeed the board could be spilled and a vote for delisting passed.”*
25. On 23 February 2018, the bidder’s statement was released. It included an offer on conditions as in paragraph 22. It included statements to the effect that:
  - (a) there was no certainty when re-listing of Realm shares might occur and the offer provided shareholders with certainty by comparison
  - (b) T2 intended to compulsorily acquire the outstanding Realm shares if it became entitled to; and if not would seek to replace some or all of the current directors with its nominees and
  - (c) T2 did not support Realm’s continued listing, would not support the capital raising, and would cause Realm to apply for de-listing.
26. In the letter to shareholders in T2’s bidder’s statement, Mr Martin Boland on behalf of T2 said:

*If you do not accept the Offer and the Bidder does not compulsorily acquire the Realm Shares which have not been accepted into the Offer, you will remain a minority shareholder in Realm. In that circumstance, given Realm’s likely ongoing suspension from trading on the ASX and the Bidder’s intention to cause Realm to apply for removal of Realm from the official list, you may not be able to readily sell your shareholding.*
27. On 29 March 2018, Realm released its target’s statement recommending rejection of the offer. The independent expert’s report attached to the target’s statement concluded that the bid was neither fair nor reasonable (on a control basis), and the estimated fair market value for Realm shares was between \$1.62 and \$1.92 per share.
28. On 11 April 2018, Mr Galt advised Realm’s company secretary that T2 wanted to include resolutions for the appointment of 2 new directors in the notice of meeting for the Realm AGM scheduled for 31 May 2018. The two additional directors were elected on 31 May 2018.

29. On 30 April 2018, Realm held a board meeting. Mr Galt advised the board that he did not “*support the tabled resolution to progress the capital raise.*” This was because “*in his view*”
- *the capital raise is not timely and should only be considered when the bid was completed*
  - *he will not sign off on \$1.00 raising price*
  - *the process is going to take less than six weeks when it starts, and*
  - *costs associated with proceeding with the capital raising as proposed are unknown.*”
30. Messrs Galt and Davies voted against the resolution to proceed with the capital raising at this time. A majority of the Realm board voted to proceed. Mr Galt advised the Board that he would call a board meeting, to take place immediately following the AGM, to cancel the resolution. This board meeting was ultimately cancelled by Mr Galt.
31. As recently as 12 March 2018, the independent subcommittee advised shareholders that it was “*continuing with the preparations for the capital raising and re-listing in parallel with responding to the bid.*”
32. A report prepared by Realm’s broker dated 19 April 2018 included a valuation of Realm of \$1.21 per share (this did not include a premium for control). On 2 May 2018, Messrs Galt and Davies suggested to the independent subcommittee that the market should be made aware of the broker valuation to ensure Realm complied with its continuous disclosure obligations. Mr Galt also suggested that such an announcement should include a statement that T2 did not support the capital raising.
33. On 15 May 2018, T2 released a third supplementary bidder’s statement increasing the offer price to \$1.00 per share.
34. On 21 May 2018, in the second supplementary target’s statement, Realm’s non-affiliated directors continued to recommend that shareholders reject T2’s bid “*for the reasons set out in section 1 of the Original Target’s Statement*”. In the Original Target’s Statement, the reasons included that there were other potential alternatives, including “*a re-listing of Realm Shares on ASX.*”
35. The Panel considers that, in combination:
- (a) the continuing suspension of Realm, which denied shareholders a market and a readily observable value for Realm shares in light of market developments
  - (b) the recognition by T2 of the improved financial and operational position of Realm since the Foxleigh Acquisition which likely increased the value of Realm, including as described in paragraph 19 of this declaration

- (c) T2 changing its position from actively supporting the re-listing to actively opposing it
- (d) the intention of T2 to remove Realm from the official list whether or not its takeover bid results in it reaching the threshold for achieving compulsory acquisition
- (e) the active steps taken by the nominees of T2 on the Realm board to stop the re-listing, including the matters described in paragraph 30 of this declaration
- (f) the statements in the bidder's statement referred to in paragraphs 25 and 26 of this declaration and
- (g) the nomination of the additional directors of Realm (which directors were elected at Realm's AGM) which would ensure the intentions of T2 could be given effect to,

had the potential to coerce Realm shareholders to accept the T2 bid.

#### **EFFECT**

36. It appears to the Panel that the acquisition of control over voting shares in Realm has not taken place in an efficient, competitive and informed market, and Realm shareholders have not been given enough information to enable them to assess the merits of T2's bid.

#### **CONCLUSION**

37. It appears to the Panel that the circumstances are unacceptable circumstances:
- (a) having regard to the effect that the Panel is satisfied they will have or are likely to have on:
    - (i) the control, or potential control, of Realm or
    - (ii) the acquisition, or proposed acquisition, by a person of a substantial interest in Realm
  - (b) in the alternative, having regard to the purposes of Chapter 6 set out in section 602 of the *Corporations Act 2001* (Cth) (**Act**).
38. 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 Realm.

**Bruce Dyer**  
**Counsel**  
**with authority of Rod Halstead**  
**President of the sitting Panel**  
**Dated 28 June 2018**



**Australian Government**

**Takeovers Panel**

**ANNEXURE B  
CORPORATIONS ACT  
SECTION 657D  
ORDERS**

**REALM RESOURCES LIMITED**

The Panel made a declaration of unacceptable circumstances on 28 June 2018.

**THE PANEL ORDERS**

1. The terms of the offer dated 14 March 2018 by T2 Resources Fund Pty Limited (**T2**) to acquire fully paid ordinary shares in Realm Resources Limited (**Offer**) and all takeover contracts resulting from the Offer are varied to extend the offer period to close at 7pm (Sydney time) on 3 August 2018.
2. A person who accepts the Offer by 7pm (Sydney time) on 2 July 2018 may withdraw their acceptance on the same terms that would have applied under s650E of the Corporations Act 2001 (Cth) had T2 varied the Offer to close at 7pm (Sydney time) on 3 August 2018.
3. T2 must as soon as practicable take all action and give all notices that would have been required under sections 650D and 650E of the Corporations Act 2001 (Cth) had T2 varied the Offer to close at 7pm (Sydney time) on 3 August 2018.
4. Parties have liberty to apply for further orders.

**Bruce Dyer  
Counsel  
with authority of Rod Halstead  
President of the sitting Panel  
Dated 29 June 2018**