



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP16/80

Tuesday, 13 December 2016

Merlin Diamonds Limited – Orders

The Panel made a declaration of unacceptable circumstances on 29 November 2016 in relation to an application dated 31 October 2016 by Mr Thomas Reddicliffe in relation to the affairs of Merlin Diamonds Limited (see [TP16/76](#) and [TP16/78](#)).

In summary, the Panel considered among other things that:

1. Mr Mordechai Gutnick was associated with (a) his father (Mr Joseph Gutnick) and (b) Regals Fund LP
2. the issue of 50 million Merlin shares to Regals following the conversion of convertible notes contravened s606 and
2. the explanatory memorandum for a general meeting of Merlin shareholders on 6 September 2016, which involved among other things approval for the issue of convertible notes and options to Chabad Properties Pty Ltd, was misleading.

The Panel has made orders (Annexure A), the effect of which includes:

- A restriction on Chabad Properties and its associates converting or exercising any notes or options if that would result in any person's voting power in Merlin increasing above 19.9% unless it is previously approved by a resolution satisfying item 7 of s611.
- A prohibition on Regals and its associates voting 50 million of their Merlin shares, or all of their shares if they hold a lesser amount, for a period of 12 months.
- Merlin disclosing the effect of the Panel's decision.
- Costs in favour of the applicant and ASIC.

The interim orders made by the Panel (see [TP16/77](#) and [TP16/78](#)) have no further effect.

The sitting Panel was James Dickson (President), Shirley In't Veld 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 657D

ORDERS

MERLIN DIAMONDS LIMITED

The Panel made a declaration of unacceptable circumstances on 29 November 2016.

THE PANEL ORDERS

1. Chabad Properties and its associates must not convert any Chabad Notes into shares in Merlin or exercise any Chabad Options if the conversion or exercise would result in any person's voting power in Merlin increasing to, or from, a point above 19.9% unless it is previously approved by a resolution satisfying item 7 of s611.¹
2. For twelve months from the date of this order, Regals and its associates must not exercise, or allow the exercise of, and Merlin must disregard, voting rights attached to:
 - (a) if Regals and its associates have a relevant interest in more than 50,000,000 shares in Merlin – 50,000,000 of those shares or
 - (b) if Regals and its associates have a relevant interest in 50,000,000 or less shares in Merlin – all of those shares.
3. Each Noteholder must not rely on any right it may have to require redemption of any and all Notes held by it (including under clauses 9(h) and 10.1 of the Chabad Deeds or any similar clause in a Secured Note Deed) as a consequence of the application to the Panel in this matter, the declaration of unacceptable circumstances, the interim orders or these final orders.
4. As soon as practicable, and in any event within two business days after the date of these orders, Merlin must provide a draft ASX announcement to the Panel, ASIC and the other parties in the matter that:
 - (a) describes the circumstances around and the existence and nature of Mr Mordechai Gutnick's association with each of Regals and Mr Joseph Gutnick as found by the Panel
 - (b) describes the effect of those associations on the voting power of Mr Mordechai Gutnick as of 1 September 2016, including the contraventions of ss606 and 671B as found by the Panel and
 - (c) the effect of the Panel's final orders.

¹ All statutory references are to the *Corporations Act 2001* (Cth) and all terms used in Chapter 6 or 6C have the meaning given in the relevant Chapter (as modified by ASIC)

5. Merlin must provide to the ASX for release the announcement referred to in order 4, in a form approved by the Panel, forthwith after approval.

6. Within 15 business days of the date of these orders, Merlin, Mr Mordechai Gutnick and Regals must pay in aggregate to:

(a) ASIC, \$13,995.55 and

(b) the applicant, Thomas Reddicliffe, \$2,350.00,

in each case representing the costs actually, necessarily, properly and reasonably incurred in the course of the proceedings. Liability for these costs is joint and several.

7. In these orders the following terms apply:

Chabad Deeds	the secured note deeds between Merlin and Chabad Properties dated 28 June 2016 and 30 June 2016, respectively
Chabad Notes	notes issued under the Chabad Deeds
Chabad Options	options issued under the Chabad Deeds
Chabad Properties	Chabad Properties Pty Ltd as trustee of the Machon Chaim College Fund
Merlin	Merlin Diamonds Limited
Noteholders	Regals, Chabad Properties and any person who holds Notes under a Secured Note Deed at the date of these orders
Notes	the Chabad Notes and any other notes issued under a Secured Note Deed
Regals	Regals Fund LP
Secured Note Deed	any deed entered into by Merlin on or after 23 June 2016 providing for the issue of notes or options in similar terms to the Chabad Deeds

Bruce Dyer
Counsel
with authority of James Dickson
President of the sitting Panel
Dated 13 December 2016