



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP24/41

Monday, 8 July 2024

Westgold Resources Limited – Panel Accepts Undertakings and Declines to Make a Declaration

The Panel has accepted undertakings from Westgold Resources Limited (**Westgold**) and Karora Resources Inc. (**Karora**) (see Annexure) and declined to make a declaration of unacceptable circumstances in response to an application dated 27 May 2024 from Ramelius Resources Limited (**Ramelius**) in relation to the affairs of Westgold (see [TP24/29](#)).

The application concerned (among other things) complaints in relation to:

- deal protection arrangements¹ in an arrangement agreement (**Arrangement Agreement**) which Westgold entered into with Karora pursuant to which Westgold is to acquire Karora via a Canadian plan of arrangement
- a standstill in a confidentiality deed (**Confidentiality Deed**) which Westgold entered into with Ramelius and
- Westgold and Karora’s disclosure of estimated operational and corporate synergies arising from the Karora transaction.

The Panel had concerns in relation to the non-solicitation provisions, in particular the effectiveness of the ‘fiduciary out’, in the Arrangement Agreement. The Panel considered those concerns are sufficiently addressed by Westgold and Karora’s undertakings to amend the relevant provisions of the Arrangement Agreement including to (in effect) reduce fetters or constraints on the ‘fiduciary out’.

The Panel considered that, in the circumstances, the termination fee payable by Westgold to Karora as set out in the Arrangement Agreement is not currently having an anti-competitive effect.

¹ Including non-solicitation covenants, an obligation to enforce any pre-existing confidentiality or standstill agreements and a termination fee of C\$40 million payable by Westgold to Karora should Westgold terminate the Arrangement Agreement due to (among other reasons) its entry into a binding agreement with respect to a superior proposal

The Panel did not consider Westgold's continued reliance on the standstill in the Confidentiality Deed to be inappropriate nor did the Panel consider that there was reason to question further whether there were reasonable grounds to support Westgold and Karora's disclosed estimates of operating and corporate synergies.

The Panel considers that it is not against the public interest to decline to make a declaration of unacceptable circumstances.

The sitting Panel was James Burchnell, Deborah Page and Sarah Rennie (sitting President). 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

SECTION 201A

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT (CTH)
UNDERTAKING**

Karora Resources Inc. and Westgold Resources Limited

Karora and Westgold each jointly and severally undertakes to the Panel to amend the Arrangement Agreement to:

1. exclude from Section 7.2(a) of the Arrangement Agreement any requirement that Westgold cannot release any third party from, or waive, amend, suspend or otherwise modify, any third party's obligations under any confidentiality agreement without Karora's prior written consent.
2. replace Section 7.2(a) of the Arrangement Agreement in its entirety with the following wording:

"Each Party shall, and shall direct and cause its respective officers, directors, representatives, advisors and agents and its subsidiaries and their representatives, advisors, agents, officers and directors (collectively, the "Representatives") to immediately cease and cause to be terminated any solicitation, encouragement, activity, discussion or negotiation with any parties that may be ongoing with respect to an Acquisition Proposal whether or not initiated by such Party, and each Party shall immediately discontinue access to, and disclosure of, all information regarding such Party and such Party's subsidiaries and promptly, and in any event within two (2) Business Days, request the return or destruction of information regarding such Party and its respective subsidiaries previously provided to such parties and shall request the destruction of all materials including or incorporating any confidential information regarding such Party and its subsidiaries. Each Party further represents and warrants that it has not waived any confidentiality, standstill, non-disclosure, non-solicitation or similar agreement, restriction or covenant to which it or a subsidiary is a party."

3. replace section 7.2(f) of the Arrangement Agreement in its entirety with the following wording:

"Each Party shall ensure that its officers and directors and its subsidiaries and their officers and directors, and any financial advisors or other advisors retained by it are aware of the provisions of this Section 7.2, and it shall be responsible for any breach of this Section 7.2 by such officers, directors, financial advisors or other advisors."

4. remove from section 7.2(d)(i)(D) of the Arrangement Agreement the following wording:

"that is substantively the same as the confidentiality agreement between the Parties hereto, and otherwise on terms no more favourable to such person than such confidentiality agreement, including a standstill provision at least as stringent as contained in such confidentiality agreement"

5. remove from section 7.2(d)(i)(E) of the Arrangement Agreement the following wording:
"(2) promptly, a copy of any such confidentiality agreement referred to in this Section 7.2(d)(i) upon its execution;"
and replace section 7.2(d)(i)(E)(3) of the Arrangement Agreement in its entirety with the following wording:
"(3) a list of the information provided to such person and is immediately provided with access to similar information to which such person was provided (to the extent that such information had not previously been provided or otherwise made available to the other Party). Nothing in this clause 7.2(d)(i)(E)(3) requires Karora or Westgold to provide or make available to the other Party any information the relevant Party, acting reasonably, considers is likely to disclose information relating to such person that is commercially sensitive information of that person. For the avoidance of doubt, this does not include the information required to be provided under section 7.3(a)(iii)."
6. replace section 7.3(a)(iii) of the Arrangement Agreement in its entirety with the following wording:
"the Terminating Party has provided the other Party with a copy of all documentation required pursuant to Section 7.2(c) and 7.2(d) and a summary of all material terms and conditions of the definitive agreement for the Superior Proposal (including a summary of the material terms and conditions of any supporting agreements)"
7. remove from section 7.3(a)(iv) of the Arrangement Agreement the following wording:
"(including a notice as to the value in financial terms that the board of directors has, in consultation with its financial advisors, determined should be ascribed to any non-cash consideration offered under the Superior Proposal)"
8. remove limb (c) of the definition of "Superior Proposal" in clause 1.1 of the Arrangement Agreement in its entirety.

Karora and Westgold each jointly and severally undertakes to the Panel that it will confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

In this undertaking the following terms have the corresponding meaning:

Arrangement Agreement means the arrangement agreement entered into between, among others, Karora Resources Inc. and Westgold Resources Limited on 8 April 2024.

Karora means Karora Resources Inc.

Ramelius means Ramelius Resources Limited.

Westgold means Westgold Resources Limited.

Signed by Wayne Bramwell of Westgold Resources Limited
with the authority, and on behalf, of Westgold Resources Limited.
Dated: 5 July 2024

Signed by Paul Huet of Karora Resources Inc.
with the authority, and on behalf, of Karora Resources Inc.
Dated: 5 July 2024