



Australian Government

Takeovers Panel

MEDIA RELEASE

No: 60/2010

Friday, 8 October 2010

NGM 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 September 2010 by NGM Resources Limited in relation to its affairs (see [TP10/59](#)).

Background

NGM is the subject of an off-market scrip takeover bid by Paladin Energy Limited. Paladin's bid is subject to defeating conditions, including condition 10.12(l) ("*No force majeure event*") and condition 10.12(m) ("*No material adverse change to NGM*").

On 24 September 2010, Paladin announced that its offer for NGM will lapse at the end of the offer period (8 October 2010), relying on conditions 10.12(l) and 10.12(m). It said:

On 16 September 2010, forces associated with al-Qaida in the Magreb (North Africa) (AQIM) entered the town of Arlit in Niger's uranium mining region and abducted seven people, employed by the French uranium company Areva and its construction contractor, Vinci. Areva subsequently evacuated expatriate personnel from its operations in the north of the country and, in response to a request by the Government of Niger, France has dispatched anti-terrorism forces and reconnaissance aircraft to Niger. According to The Associated Press, in order "to kidnap seven foreigners from inside their homes, al-Qaida-linked gunmen in northern Niger forced their way past the security cordon of one of the world's most heavily guarded mining towns." Such action "shows a new level of brazenness".

In the Panel's view, Paladin is not entitled to rely on condition 10.12(l) because, when properly construed, it requires the relevant event to have a "*materially adverse effect*" on NGM (which, on the material available, has not been established). Further, the 16 September 2010 event (relied on by Paladin to support its position) does not satisfy the other requirements of the condition.

On the material available, Paladin is not entitled to rely on condition 10.12(m) because a material adverse effect on NGM has not been established.

Declaration

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 that:

- Paladin extend the offer period for its bid in accordance with the Corporations Act until 5.00pm (Perth time) on 22 October 2010 (or a later date permitted under the Corporations Act)
- Paladin immediately withdraw the notice given to NGM and ASX under s630 dated 1 October 2010 in relation to the status of the bid conditions
- Paladin lodge a new notice with NGM and ASX in accordance with s630 in due course
- Paladin make an ASX announcement as soon as practicable explaining the effect and substance of the orders and
- as soon as practicable, Paladin confirm in writing to the Panel that it has complied with the orders.

The sitting Panel was John Fast, Robert Johanson and Norman O'Bryan AM SC (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

CORPORATIONS ACT

SECTION 657A

DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

NGM RESOURCES LIMITED

CIRCUMSTANCES

1. NGM Resources Limited (NGM) is the subject of an off-market scrip takeover bid by Paladin Energy Limited (Paladin). Paladin's bid is subject to defeating conditions, including:
 - (a) condition 10.12(l), which provides:

No force majeure event

During the Condition Period, no outbreak of hostilities (whether war is declared or not) or terrorism, mobilisation of armed forces, civil or political unrest or labour disturbance, fire or natural disaster, material increase in the intensity of any of the above events or other event beyond the control of NGM or the relevant subsidiary occurs which affects or is likely to affect the assets, liabilities, financial position, performance, profitability or prospects of NGM or any of its subsidiaries.

and;
 - (b) condition 10.12(m), which provides:

No material adverse change to NGM

During the Condition Period, no change occurs, is discovered or becomes public which has or could reasonably be expected to have a materially adverse effect on the:

 - (i) *assets, liabilities, financial position, performance, profitability or prospects of NGM and its subsidiaries taken as a whole or of any of them; or*
 - (ii) *status or terms of any material Approvals from Public Authorities applicable to NGM or any of its subsidiaries,*

including:

 - (iii) *any creditor demanding repayment of a debt of A\$100,000 or more;*
 - (iv) *NGM or a subsidiary of NGM entering into an agreement (including an option agreement) in relation to acquiring or disposing of assets the price or aggregate unencumbered value of which is A\$100,000 or more;*
 - (v) *any person accelerating or adversely modifying the performance of any obligations of NGM or any of its subsidiaries under any agreements, contracts or other legal arrangements;*

(vi) any of the Niger Tenements (or the extension of any of these tenements for a period of 27 months ending December 2012) is discovered to be not valid or binding.

2. On 24 September 2010, Paladin announced that its offer for NGM will lapse at the end of the offer period (8 October 2010), relying on conditions 10.12(l) and 10.12(m). It said:

On 16 September 2010, forces associated with al-Qaida in the Magreb (North Africa) (AQIM) entered the town of Arlit in Niger's uranium mining region and abducted seven people, employed by the French uranium company Areva and its construction contractor, Vinci. Areva subsequently evacuated expatriate personnel from its operations in the north of the country and, in response to a request by the Government of Niger, France has dispatched anti-terrorism forces and reconnaissance aircraft to Niger. According to The Associated Press, in order "to kidnap seven foreigners from inside their homes, al-Qaida-linked gunmen in northern Niger forced their way past the security cordon of one of the world's most heavily guarded mining towns." Such action "shows a new level of brazenness".

3. Paladin is not entitled to rely on condition 10.12(l) because:

- (a) properly construed, the condition requires that the relevant event has a "***materially adverse effect***" on NGM;
- (b) the event relied upon by Paladin (see 2 above) does not satisfy the requirements of the condition; and
- (c) on the material available, a material adverse effect on NGM has not been established.

4. Paladin is not entitled to rely on condition 10.12(m) because, on the material available, a material adverse effect on NGM has not been established.

5. The Panel considers that purported reliance by Paladin on those conditions has resulted in:

- (a) the acquisition of control over NGM shares not taking place in an efficient, competitive and informed market;
- (b) NGM shareholders not having enough information to enable them to assess the merits of the bid; and
- (c) as far as practicable, NGM shareholders not having a reasonable and equal opportunity to participate in any benefits accruing to NGM shareholders through the bid.

6. It appears to the Panel that the circumstances are unacceptable having regard to the effect that the Panel is satisfied the circumstances have had, are having, will have or are likely to have on:

- (a) the control, or potential control, of NGM; and
- (b) the acquisition, or proposed acquisition, by a person of a substantial interest in NGM.

7. 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 NGM.

**Allan Bulman
Director
with authority of Norman O'Bryan AM SC
President of the sitting Panel
Dated 8 October 2010**



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ANNEXURE B

**CORPORATIONS ACT
SECTION 657D
ORDERS**

NGM RESOURCES LIMITED

The Panel made a declaration of unacceptable circumstances on 8 October 2010.

THE PANEL ORDERS

1. Paladin must extend the offer period in relation to its off-market takeover bid for NGM in accordance with the Corporations Act 2001 (Cth) (Act) until 5.00pm (Perth time) on 22 October 2010 (or a later date permitted under the Act).
2. Paladin immediately withdraw the notice given to NGM and ASX under s630 of the Act dated 1 October 2010.
3. Paladin lodge a new notice with NGM and ASX in accordance with s630 of the Act in due course.
4. Paladin make an ASX announcement as soon as practicable after the date of these orders explaining the effect and substance of Orders 1, 2 and 3.
5. As soon as practicable, Paladin confirm in writing to the Panel that it has satisfied its obligations under these Orders.

**Allan Bulman
Director
with authority of Norman O'Bryan AM SC
President of the sitting Panel
Dated 8 October 2010**