

# THE TAKEOVER PANEL

## BUMI PLC (“BUMI”)

### Background

Vallar PLC ("Vallar") was formed as a holding company to acquire a major business with significant operations in the global metals, mining and resources sector. Vallar raised gross proceeds of £707 million through an initial public offering and was listed on the standard listing segment of the Official List and admitted to trading on the London Stock Exchange on 14 July 2010.

On 16 November 2010, Vallar announced that it had agreed to acquire a 25% interest in PT Bumi Resources Tbk (the “Bumi Resources Transaction”) from PT Bakrie & Brothers Tbk (“B&BR”) and Long Haul Holdings Limited (“LHH”), and a 75% interest in PT Berau Coal Energy Tbk (the “Berau Transaction”) from PT Bukit Mutiara (“Bukit Mutiara”).

Upon completion of the Bumi Resources Transaction on 4 March 2011, B&BR and LHH (together, the “Bakrie Group”) were issued with new shares in Vallar. Vallar and the Bakrie Group agreed that the voting rights over a proportion of these shares be suspended, such that the aggregate voting rights exercisable by the Bakrie Group following the completion of the Bumi Resources Transaction did not exceed approximately 29.9% of the voting rights in Vallar. This meant that the completion of the Bumi Resources Transaction did not give rise to any obligation on the part of the Bakrie Group to make a general offer for Vallar that might otherwise arise under Rule 9 of the Takeover Code (the “Code”), or for Vallar to have had to seek a waiver of this obligation in the alternative. Rule 9 of the Code is summarised below.

Upon completion of the Berau Transaction on 8 April 2011, Bukit Mutiara, which is under the indirect control of Mr. Rosan Roeslani, was issued with new shares carrying approximately 20.4% of the voting rights in Vallar.

In aggregate, therefore, the shares issued to the Bakrie Group and Bukit Mutiara in connection with the Bumi Resources Transaction and the Berau Transaction (together, the “Transactions”) carried approximately 50.3% of the voting rights in Vallar.

On 28 June 2011, Bumi was established as the parent company of Vallar. Bumi was listed on the premium listing segment of the Official List.

On 31 October 2011, the Bakrie Group entered into agreements to transfer their shares in Bumi into a joint venture structure with PT Borneo Lumbung Energi & Metal Tbk (“Borneo”). Borneo is under the indirect control of Mr. Samin Tan, who is the chairman of Bumi. As a result of this arrangement, the Bakrie Group and Borneo are treated as acting in concert under the Code.

### **Rule 9 of the Code**

Rule 9.1 of the Code provides that, except with the consent of the Panel, when any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company, such person shall make a general offer for the company in accordance with Rule 9.

When, however, a person or group of persons acting in concert is issued with new shares as consideration for an acquisition, the Panel will normally waive any obligation to make a general offer that might otherwise arise under Rule 9, provided this is approved by independent shareholders in general meeting.

### **Investigation by the Panel Executive**

At the request of Bumi, the Panel Executive has undertaken an investigation into whether the Bakrie Group should be regarded as acting in concert with Bukit Mutiara. Having concluded its investigation, the Panel Executive has ruled that it should be, and that these parties should have been regarded as a concert party both at the time of the Transactions and subsequently.

The issue of new Vallar shares to the Bakrie Group and Bukit Mutiara in connection with the Transactions could have been the subject of a Rule 9 waiver in the manner described above. However, no such waiver was sought.

In the circumstances, the Panel Executive has further ruled that the aggregate voting interests of the Bakrie Group and Bukit Mutiara, and any persons acting in concert with either of them, must be reduced to less than 30% of the voting rights in Bumi by way of the disposal of a sufficient number of shares in Bumi. In addition, pending this disposal, and in accordance with Rule 9.7 of the Code, the Panel Executive has ruled that the aggregate number of voting rights that may be exercised at any general meeting of Bumi by the Bakrie Group and Bukit Mutiara, and any persons acting in concert with either of them, must not exceed 29.9% of all of the voting rights exercisable at any such meeting.

The Panel Executive is not requiring the Bakrie Group or Bukit Mutiara to make a general offer for Bumi under Rule 9.

Each of the Bakrie Group, Bukit Mutiara and Bumi has accepted the Panel Executive's rulings. The Panel Executive has also communicated its rulings to Mr. Nathaniel Rothschild, who has accepted them.

The Panel Executive is separately undertaking an investigation into why it was not previously made aware of the existence of the concert party, and why a Rule 9 waiver was not sought in relation to the Transactions.

19 December 2012