



## Quarterly Bulletin on Takeovers Matters

**(First Quarter 2020)**

For the benefit of Takeovers Forum members, we have compiled various information and updates relating to takeover matters extracted from the official site of each Forum member. This bulletin will be published quarterly to serve as a centralized information hub on takeover matters.

*(Please click on the title of each item to go to the full write-up at the original source)*

### ***SECURITIES & FUTURES COMMISSION, HONG KONG***

#### **[TAKEOVERS BULLETIN – Issue No. 52 – March 2020](#)**

The SFC's Takeovers Bulletin is a newsletter to help participants in Hong Kong's financial markets better understand the Codes on Takeovers and Mergers and Share Buy-backs.

In its March 2020 issue, the following matters were highlighted:

- Practice Note 7 (PN 7) revised to take into account treatment of right-of-use assets
- Public censures of CLSA Limited, CITIC Securities Brokerage (HK) Limited, Beijing Enterprises Holdings Limited and their representatives for Share Buy-backs Code breaches
- Note 2 on dispensations from Rule 26 of the Takeovers Code
- Appointments and reappointments to the takeovers-related committees
- Quarterly update on the activities of the Takeovers Team

### ***TAKEOVERS PANEL OF AUSTRALIA***

#### **[Smoke Alarms Holdings Limited 02R](#)**

21 February 2020 – The review Panel, Teresa Dyson, Denise McComish and John Sheahan QC (sitting President), affirmed the initial Panel's decision to make a declaration of unacceptable circumstances in relation to the affairs of Smoke Alarms Holdings Limited and accepted undertakings from Fast Future Pty Ltd as trustee for the Fast Future Trust, SAH and Mr Randall Deer (a director of SAH, a beneficiary of the Fast Future Trust and the controller of Fast Future). The review Panel was satisfied that the undertakings

sufficiently remedied the unacceptable circumstances identified in the declaration of unacceptable circumstances and, accordingly, revoked the initial Panel's orders.

### **Energy Resources of Australia Limited 02R**

13 February 2020 – The review Panel, Jeremy Leibler, Bruce McLennan and Karen Phin (sitting President), affirmed the initial Panel's decision to make a declaration of unacceptable circumstances in relation to the affairs of Energy Resources of Australia Limited and varied the initial Panel's final orders. The review Panel was satisfied that orders prohibiting Rio Tinto from compulsorily acquiring shares in ERA as a consequence of ERA's entitlement offer would be unfairly prejudicial to Rio Tinto and removed those orders. The review Panel considered it was appropriate to require Rio Tinto to form intentions regarding compulsory acquisition in the event that Rio Tinto becomes a 90% holder in ERA's ordinary shares (as a result of the Entitlement Offer and Underwriting Agreement) and for ERA to provide further disclosure of Rio Tinto's intentions to its shareholders.

### **Cromwell Property Group**

6 February 2020 – The Panel, Richard Hunt (sitting President), Rory Moriarty and Sharon Warburton, declined to conduct proceedings on an application by Cromwell Corporation Limited and Cromwell Property Securities Limited as responsible entity for the Cromwell Diversified Property Trust in relation to the affairs of Cromwell. The application concerned whether a number of persons were associated in relation to Cromwell and held a combined, but undisclosed, relevant interest and voting power of up to 35.85% in Cromwell, consequently leading to breaches of the substantial holder notice provisions and the takeovers threshold in section 606. The Panel considered that it was not provided with a sufficient body of material to justify the Panel making further enquiries as to the alleged associations.

### **Keybridge Capital Limited 03**

23 January 2020 – The Panel, Yasmin Allen, Richard Hunt (sitting President) and Kerry Morrow, declined to conduct proceedings on an application by Mr John Patton in relation to the affairs of Keybridge Capital Limited. The application concerned whether an announced intention to bid for Keybridge Capital Limited by WAM Active Limited, that had not proceeded, resulted in a contravention of section 631, whether Bently Capital Limited's acceptance intention statement for the bid indicated an association with parties connected to WAM Active Limited in contravention of section 606, and a consequent contravention of section 671B, and whether in any event the circumstances surrounding the conduct of an extraordinary general meeting of Keybridge Capital Limited and the voting at that meeting gave rise to unacceptable circumstances. The Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.

### **Energy Resources of Australia Limited**

23 January 2020 – The Panel, Amy Alston, Ron Malek (sitting President) and Neil Pathak, made a declaration of unacceptable circumstances in relation to the affairs of Energy Resources of Australia Limited (**ERA**). The application concerned a pro-rata, renounceable entitlement offer of 6.13 ERA shares for every 1 ERA share held, to raise up to approximately \$476m to fund ERA's Ranger Project Area rehabilitation obligations (fully underwritten by a wholly owned subsidiary of Rio Tinto). The Panel considered the Entitlement Offer and Underwriting Agreement unacceptable in light of a combination of factors. The Panel recognized that ERA was in a unique set of circumstances, but the Panel considered the facts of the matter, when viewed in totality, led to the circumstances being unacceptable. The Panel made orders (in effect) that ERA must make supplementary disclosure, Rio Tinto cannot compulsorily acquire shares in ERA as a consequence of the Entitlement Offer without shareholder approval, a particular clause of the Underwriting Agreement relating to ERA's Jabiluka mine is void and of no effect and, without the consent of the Panel, the Underwriter cannot terminate or not comply with its obligations under the Underwriting Agreement as a consequence of the orders.

### **MEC Resources Limited 02**

22 January 2020 – The Panel, Chelsey Drake (sitting President), Marissa Freund and Philip Stone, declined to make a declaration of unacceptable circumstances on an application by a group of shareholders in MEC Resources Ltd in relation to its affairs. The application concerned the placement of shortfall shares following a rights issue and whether there had been a change of control in unacceptable circumstances. The Panel considered that there was insufficient material to establish a control effect in relation to MEC's fundraising, but had a number of concerns that led it to refer the matter to ASIC.

### **Smoke Alarms Holdings Limited**

20 January 2020 – The Panel, Elizabeth Hallett (sitting President), Bill Koeck and John McGlue, made a declaration of unacceptable circumstances in relation to the affairs of Smoke Alarms Holdings Limited. The application concerned disclosure and voting exclusions in relation to an item 7, s611 meeting to approve the conversion of convertible notes and exercise of options. The Panel declared the circumstances unacceptable because it considered that appropriate protocols and processes were not implemented to deal with the proposal for a director and his controlled entity to obtain control of the company and had serious concerns about disclosure in the notice of meeting. In light of the company's precarious financial position and to protect the interests of all shareholders, the Panel made orders requiring the director's controlled entity to subscribe for the last tranche of convertible notes and to convert all of its convertible notes into shares, and ensuring that the options issued on the conversion of those convertible notes could only be exercised either under the creep exception or a new item 7, s611 approval.

## **Donaco International Limited 03R**

9 January 2020 – The Panel, Tracey Horton AO (sitting President), Christian Johnston and Rebecca Maslen-Stannage declined to conduct proceedings on an application by Donaco International Limited to review the decision of the initial Panel and considered that there was no reasonable prospect of the review Panel coming to a different conclusion.

## ***AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION***

### **ASIC Consults on S444GA Share Transfers Under a Deed of Company Arrangement**

16 January 2020 – ASIC has released a consultation paper on a proposal to formalise its policy on share transfers made under s444GA of the Corporations Act. ASIC will seek public input on the proposal until Tuesday 28 February 2020. Section 444GA permits a court to grant leave to allow an Administrator to transfer shares as a part of a Deed of Company Arrangement (DOCA), where it will not 'unfairly prejudice' the interests of shareholders. The Courts will generally allow the transfer if evidence shows that the shares have no value. Where a transfer under a DOCA results in a shareholder's voting power in the company increasing above 20%, ASIC relief from Section 606 is required. ASIC is proposing to formalise its policy on giving relief from s606 in these circumstances.

## ***NEW ZEALAND TAKEOVERS PANEL***

### **Summary of Exemptions from the Takeover Code to Address COVID-19 Impact**

28 March 2020 – On 26 March 2020, the Takeovers Panel announced that it had approved the granting of a suite of temporary class exemptions from the Takeovers Code that are aimed at assisting Code companies in raising capital. These exemptions will apply to capital raisings conducted on or before 31 October 2020, unless extended further. The exemptions, while approved, will come into force only once an exemption notice has been finalised in accordance with the Takeovers Act 1993. The Panel wishes to keep market informed as to the nature of the exemption relief which has been approved so that it can be factored into the planning of transaction structures. Accordingly, the Panel has published the summary of the exemptions to assist in the planning of capital raisings.

### **The Panel Approves the Granting of Exemption Relief for Code Companies to Address COVID-19 Impact**

26 March 2020 – The Takeovers Panel today approved the granting of a suite of temporary class exemptions from the Takeovers Code (the Code) that are aimed at assisting Code companies in raising capital. The focus of the relief is on making it quicker and easier for shareholders to provide additional capital to Code companies. New temporary class exemptions will allow shareholders to make 'creeping' increases as a result of allotments (including between the 20% to 50% control zone) provided that the increase is subject to a 10% cap. In addition, shareholders will be allowed to underwrite pro-rata rights issues provided that any additional voting rights acquired above the 10% cap are not exercised and are

sold within a 24-month period. Amendments to current class exemptions will extend sell-down periods for shareholders and professional underwriters to 24 months. These temporary class exemptions will apply to capital raisings conducted on or before 31 October 2020.

### **COVID-19 Update: The Panel Remains Operational**

25 March 2020 – In accordance with the Government's COVID-19 response, the Panel's offices are closed until further notice. The Panel executive is working from home, and it is business as usual. We are able to take calls, and arrange for video conference meetings. Please contact us in the usual way if you have any questions. Our contact details are available [here](#).

### **Exemptions**

27 February 2020 – The Guidance Note provides information about the Panel's exemption power and provides guidance as to when exemptions are likely to be granted. A number of examples have been included for illustrative purposes.

Set out as appendices are:

- a guide to exemption applications; and
- a summary of the information which should be included in an application for an exemption.

## ***TAKEOVER REGULATION PANEL, SOUTH AFRICA***

### **Takeover Regulation Panel COVID-19 Notice**

17 March 2020 – As the number of COVID-19 positive cases continues to increase in South Africa and worldwide resulting in travel bans and quarantines, organizational issues and concerns continue to develop. At this stage we confirm that the Panel has a Business Continuity Plan in place that can be used for any emergency, including a pandemic similar to the outbreak of COVID-19.

## ***SECURITIES COMMISSION MALAYSIA***

### **SC Announces Appointment of New Executive Director**

2 January 2020 – The Securities Commission Malaysia (SC) announced the appointment of Dato' Zain Azhari Mazlan as its new Executive Director, Corporate Finance & Investments effective today. Zain succeeds Eugene Wong, who after ten years of service, completed his contract on 31 December 2019. As Executive Director, Corporate Finance & Investments, Zain will provide leadership and direction on matters related to issues and investments, including issuance of securities, takeover and merger activities, applications on collective investment schemes, and registration of prospectus.